



NYSBA Supports **A.7241-A (Lavine)/S.8663 (Hoylman-Sigal)** to Limit the Recordkeeping and Reporting Duties of Public Notaries

Background

Executive Law § 135-c was enacted in 2022 to establish requirements and procedures for Electronic Notarization. The statute delineates conditions that must be met when engaging in electronic notarization, including additional record keeping requirements, which are different than what were traditionally imposed by law on notaries public. In fact, the language in that section -- entitled "Electronic notarizations" -- has nothing to do with in-person notarizations. What's more, although the chapters that resulted in the new notarization laws empowered the New York State Department of State (DOS) to promulgate regulations, they presupposed actions related to electronic notarization. However, when DOS promulgated regulations implementing the new Electronic Notary law, the regulations surprisingly contained record keeping requirements applicable to all notary acts.

Regulations Inconsistent with Legislative Intent and Enactment

The Legislature has long considered proposals that would statutorily impose notary record keeping requirements, particularly in the context of residential property transfers. In fact, though it could have opted to create new requirements for notarization other than electronic notarization when it enacted legislation in 2021 and 2022, the Legislature opted not to do so. As such, DOS stepped in prematurely without the authorization of the Legislature, overreaching in its implementation of Executive Law §135-c regarding Electronic Notarizations. The adopted regulations impose the electronic notarization statute's record keeping and retention requirements on all notarial acts without basis in statute, in a manner that creates significant challenges for attorneys practicing in New York, but in no way creating an obstacle for bad actors -- as was the statute's stated intent. The DOS regulations apply far broader than necessary and are not tailored to achieve even the deed fraud reduction concerns expressed by the Legislature.

Burdens on the Bar

The application of these regulations to attorneys and their employees imposes unduly burdensome record retention requirements. Additionally, the DOS regulations raise serious attorney-client privilege issues. Attorneys and members of their staff will often notarize statements by clients that are privileged or contain privileged information; now the regulations require that there be a notary log, capable of being produced to DOS and others.

Support for **A7241-A/S8663**

This legislation takes the important step of clarifying that this overreach by the DOS is inconsistent with statute and is premature -- particularly as the Legislature continues to debate general notary requirements in a variety of contexts. The New York State Bar Association supports this legislation, which would exempt non-electronic notarial acts from the record-keeping rules and regulations set forth by the Department of State.

For more information, please contact **NYSBA's Governmental Relations team** at **518.463.3200** or **lfaustel@nysba.org**.