

WDFI Authorizes Remote Online Notarizations for Real Estate Transactions in Wake of Coronavirus Fears, but Beware

Wisconsin law requires persons signing deeds, easements, mortgages and any other real estate instrument that will be recorded to "appear[] before" a notary public so that the notary can apply an acknowledgment to the instrument, and her or his notarial seal.[1] The notary is required to personally witness the signature and then either acknowledge or authenticate the signature by affixing his or her name, signature and notary seal on the document.[2] The original document containing the wet signatures can then be recorded by either delivering it to the register of deeds office or submitted electronically by a trusted submitter.[3] Notaries public must receive commissions from the State of Wisconsin to acknowledge signings in Wisconsin.

On March 18, 2020, the Wisconsin Department of Financial Institutions (WDFI) issued a press release announcing that, effective immediately,[4] remote online notarizations, utilizing live audio and video connections, are now authorized in the State of Wisconsin due to the COVID-19 public health emergency.[5] According to the WDFI, "[t]his action is necessary to provide relief to the people of Wisconsin who are following guidance to contain the spread of the COVID-19 virus and are in need of notarization services today," said Kathy Blumenfeld, WDFI Secretary.[6]

The WDFI announcement was based on a remote online notary law adopted in March, but that does not become effective until May 1, and no standards have been issued for acceptable remote acknowledgments. The State Bar of Wisconsin issued a press release reminding us that the law is not yet in effect, and that any use of remote online notaries at this time would still be subject to a title insurer's willingness to insure the deed, mortgage or other instrument acknowledged in that way.

The WDFI later was persuaded to revise its guidance to more closely follow existing Wisconsin law. Here is a link to the [revised guidance](#)[7].

The Risks Associated with Remote Online Notarizations

The WDFI emergency guidelines attempt to "safeguard" remote online notarization by limiting the number of approved providers.[8] The WDFI identified

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only four:

- The general public is being asked to use either [Notarize.com](https://www.Notarize.com) or www.NotaryCam.com.
- Title companies and others performing real estate transactions may use either [Pavaso](#) or Nexsys.

The WDFI emergency guideline purports to authorize those companies to host notarial acts performed by out of state notaries for documents signed here in Wisconsin.^[9] Because the law is not in effect yet, and standards for remote online notarizations have yet to be adopted, there is considerable uncertainty around three important issues:

- Whether or not the notary complies with current Wisconsin statutes requiring personal appearance;
- Whether or not title companies will insure the property based on a conveyance that has not been personally signed and notarized; and
- Whether or not the register of deeds will accept documents for recording that do not contain wet signatures or that were not verified to contain wet signatures by trusted submitters.

As a result, Reinhart is not recommending the use of remote online notarizations at this time. A deed, mortgage or other instrument that is recorded but that contains a defective or insufficient acknowledgment can be attacked in a lawsuit. The court could rule that the instrument is void or does not give effective notice to the world of the rights of the grantee. Such attacks are common in bankruptcy courts, but are equally available in other courts.

The Emergency Guidance of Remote Notarization issued by the WDFI even warns: "Before using remote notarial services for any land transactions, you should check with your title company whether the remote notary provider is approved for insurance purposes."^[10] Reinhart has not been informed that any title insurer will insure a deed with a remote notarial act based on the WDFI emergency guideline. Even if an insurer was willing to do so, however, insurable title is not always the same as good title.

Alternatives to Remote Online Notarizations



Reinhart agrees with the WDFI that Wisconsin residents need options for having real estate documents acknowledged during this time of emergency measures. Real estate transactions can, and will, continue to close. When signing documents, the Centers for Disease Control and Prevention recommendations should be followed, and extra precautions taken to reduce the risk of spreading COVID-19. In light of the WDFI's recent announcement, it is important to know the risks and alternatives available to you in obtaining notarizations in this incredibly harsh environment.

Reinhart remains committed to protecting our clients' valuable real estate interests during this global pandemic. Our attorneys have been briefed on the ways in which real estate documents can be acknowledged, in a legal and prudent way, while protecting the health of our clients and the notaries. Please contact your Reinhart attorney if you need to have a real estate document notarized during these emergency times, so that we can find the solution that works best for you.

During this time of uncertainty, e-recording may be the only way to record documents in many Wisconsin counties. Please feel free to contact a Reinhart attorney to assist you in determining how to e-record documents.

[1] Wis. Stat. §§ 137.01(4)(b), 706.05(2)(b) & 706.07(2).

[2] Wis. Stat. §§ 706.06 & 706.07.

[3] Wis. Stat. §§ 706.05 & 706.25.

[4] Although Wisconsin recently adopted a remote online notarization statute, it does not go into effect until May 1, 2020. *See* 2019 Wis. Act 125.

[5] *See* Press Release, State of Wisconsin Department of Financial Institutions, DFI Issues Emergency Guidance on Remote Notarization (March 18, 2020).

[6] *Id.*.

[7] *See* State of Wisconsin Department of Financial Institutions, Emergency Guidance on Remote Notarization (updated March 20, 2020).

[8] *See id.*

[9] *See* State of Wisconsin Department of Financial Institutions, Emergency Guidance on Remote Notarization (March 18, 2020).



[10] See *id.*

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