

New Texas Online Notarization Law Allows Remote Acknowledgment in Domestic and Cross-Border Transactions

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The 85th Session of the Texas Legislature passed H.B. 1217 to allow online notarization, making it the third state (after Virginia and Montana) to allow notaries to perform remote notarial acts. Effective on July 1, 2018, the new law enables a signing party to acknowledge documents via audio-visual communication, while retaining the option to physically appear in person before the notary. H.B. 1217 also expressly provides that the person giving the acknowledgment does not need to be physically present in the state of Texas, in order to obtain an online notarization from a Texas notary holding a separate online commission. The new procedure amends and supplements existing law concerning proofs of written instruments and notary commissions, in Chapter 406 of the Government Code and Chapter 121 of the Civil Practice and Remedies Code.

The Texas authorization to perform remote notarizations will surely expedite routine banking and finance transactions and real estate closings, given the increased flexibility in times and places to acknowledge important documents. The new law will also bolster the efficacy of cross-border transactions, wherein the current rules requiring physical presence before a notary often impede the deal's pace. For example, acknowledgments from persons in Mexico and China currently require the signer to make an appointment with the U.S. Embassy or consulate in the foreign country, in order to appear in person in order to obtain a notarized signature. H.B. 1217 now expands the concept of "personal appearance" to include appearance by means of two-way audio-video communication with the notary—allowing dealmakers to make the necessary acknowledgments remotely and efficiently.

Before its July 1, 2018 rollout, the Texas Secretary of State must develop and maintain standards for Texas notaries to obtain their online commissions, including safeguards for credential analysis and identity proofing. Like Virginia and Montana's online notary procedures, Texas will require a notary who performs remote notarizations to be a regular notary public of the state first, and obtain a separate commission to perform online acts. H.B. 1217 appears targeted at protecting the integrity of the notary process, by requiring notaries performing online acts to record the audio-video conference with the person making the acknowledgment, and by affirming in the notarization certificate that the online appearance was accomplished using two-way audio-video communication. However, the question remains whether major players like banks and title companies will actually accept electronic notarizations, given the potential for fraud. While the Texas Secretary of State works through the necessary logistical safeguards, banks and financial institutions should start developing their internal procedures for conducting online notarizations now, to streamline the potential benefits of the new law into their service models.

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