



March 31, 2020

The Honorable Tate Reeves, Governor  
State of Mississippi  
Mississippi State Capitol

Dear Governor Reeves:

The Land Title Association of Mississippi (LTAMS) applauds your leadership during this unprecedented time. We appreciate the countless hours of hard work and sacrifice you and your staff are devoting on behalf of the people of Mississippi.

LTAMS is a trade association dedicated to protecting home ownership and property interests in Mississippi. Its membership consists of real estate professionals, including title insurers, attorneys, abstractors, and leading experts from our legal education institutions in the state. We have been monitoring the actions taken to address the COVID-19 pandemic and its impact on the ability to conduct real estate transactions in the State of Mississippi.

As you are aware, real estate is a significant economic driver for the State of Mississippi and under Executive Order No. 1463 it is considered an "essential business." This industry must be able to provide its services to this state's home buyers, developers, builders, and commercial real estate groups. But current law and local guidance are constricting these essential services in two ways: (1) current law requires notaries to perform notarizations in person, and (2) a number of Boards of Supervisors are prohibiting access to county land records.

To address these issues, we respectfully request that you:

1. Issue an Executive Order temporarily authorizing both "remote notarization" and "remote online notarization" in line with the attached Exhibit A;
2. Support the amendment of HB 1156 or SB 2394 (both currently pending) to permanently authorize remote online notarization in Mississippi and to create a "papering out" procedure so that a true and correct tangible copy of electronic documents (those that have been electronically signed and electronically notarized) can be certified by an attorney or notary and recorded in those Mississippi counties that do not currently have the capability to electronically record documents; and
3. Encourage each of the local Board of Supervisors to adopt safety procedures that ensure reasonable access to the land record rooms so attorneys and abstractors can continue to search title and to continue to accept documents for recording.

We understand that Secretary of State Michael Watson delivered the attached language to your office yesterday. LTAMS worked closely with Secretary Watson's staff on the attached language.

Issuing an executive order to temporarily authorize remote notarization and remote online notarization (RON) will create a safe and consistent approach whereby a notary can remotely witness a remotely located individual's signing of a document and an online notary can electronically sign documents using simultaneous audio-video communication technology. This tool will equip us to better restrict the face-to-face requirements of real estate transactions.

We applaud those Chancery Clerks of Mississippi who are working hard to keep recording real estate transactions and the Mississippi real estate economy alive. However, there continue to be closures at the direction of local Board of Supervisors. There are reasonable accommodations that can be made short of prohibiting all access to this critical government infrastructure. We ask that you encourage each of the local Board of Supervisors to take steps to ensure that the Chancery Clerks offices around the state have the resources they need to continue safe operations. Most counties have already adopted safety procedures that allow reasonable access. To ensure that the real estate industry continues to operate, it is vitally important that each of the chancery clerk's offices continue to accept documents for recording and allow attorneys and abstractors access to their land records rooms to search title. To learn more about the current status of each clerk's office, visit: <https://ltams.org/resources/coronavirus/#chancery-clerk-status>.

For many Mississippians that are unable to work from the safety of their home, this catastrophe has claimed their job and threatened the financial well-being of their families. As of last week, a record 3.28 million American workers filed for unemployment. As this COVID-19 pandemic threatens to unravel our economy, now more than ever, Mississippi citizens and businesses need a means to access their equity in their property. These real estate transactions protect their financial future as our country spirals into recession.

Thank you for your assistance.

Sincerely,



Kenneth D. Farmer  
Executive Director  
Land Title Association of Mississippi

**EXHIBIT A**  
**SUBSTANCE OF PROPOSED EXECUTIVE ORDER**

*Emergency Order to allow remote notarization and remote online notarization*

1. In order to provide Mississippi citizens and businesses with a secure and safe method by which to execute important legal documents, and to promote and secure the safety and protection of the people of Mississippi, for the duration of the State of Emergency declared in Executive Order No. 1463, this Executive Order modifies 1 Miss. Admin. Code Pt. 5, R. 1.5 for the next 120 days and allows notaries public commissioned under the laws of this State to perform a notarization for a principal not in the physical presence of the notary officer if:
  - (A) the principal and the notary public can communicate simultaneously by sight and sound through an electronic device or process at the time of the signing;
  - (B) the notary public:
    - i. has reasonably identified the principal by one or more of the following:
      - (a) personal knowledge of the principal;
      - (b) at least two different types of processes or services by which a third person provides a means to verify the identity of the individual through a review of public or private data sources; or
      - (c) oath or affirmation of a credible witness who (I) is in the physical presence of either the notary public or the principal or (II) is able to communicate with the notary public and the principal simultaneously by sight and sound through an electronic device or process at the time of the notarization, if the credible witness has personal knowledge of the principal and has been reasonably identified by the notary public under clause (a) or (b); and
    - ii. either directly or through an agent:
      - (a) creates an audio and visual recording of the performance of the notarization; and
      - (b) retains such recording as a notarial record during the term of the notary public's office, including renewals thereof, unless a law of the State requires a different period of retention, and if any laws of the State govern the content, retention, security, use, effect, and disclosure of such recording and any information contained therein such recording shall be subject thereto; and
    - iii. for a principal physically located outside the geographic boundaries of the State of Mississippi –

**EXHIBIT A**  
**SUBSTANCE OF PROPOSED EXECUTIVE ORDER**

- (a) the record or document –
    - (1) is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the State of Mississippi; or
    - (2) involves property located in the territorial jurisdiction of the State of Mississippi or a transaction substantially connected to the State of Mississippi; and
  - (b) the notary public has no actual knowledge that the act of making the statement or signing the record or document is prohibited by the laws of the jurisdiction in which the principal is physically located.
2. If a State law requires a principal to appear personally before or be in the physical presence of a notary public at the time of a notarization that requirement shall be satisfied if the principal and the notary public are not in the physical presence of each other but can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization.
  3. Nothing in this Order shall require a notary public commissioned under the laws of the State of Mississippi to perform a notarization-
    - (A) with respect to an electronic record or document;
    - (B) for a principal not in the physical presence of the notary public; or
    - (C) using a technology that the notary public has not selected.
  4. In the case of a document in tangible form signed by a remotely located individual while being witnessed by a notary public using simultaneous audio-video communication technology,
    - (A) once signed, the requesting person shall mail the signed documents to the notary public for certification and execution with the notary public's signature and the official stamp or seal.
    - (B) the official date and time of the notarization shall be the date and time when the notary public witnesses the signature via the electronic devices that provide the audio-video presence.
  5. In the case of an electronic document or record signed electronically by a remotely located individual through the use of a remote online notarization platform,

**EXHIBIT A**  
**SUBSTANCE OF PROPOSED EXECUTIVE ORDER**

- (A) once signed, the notary public may affix their signature and their official stamp or seal.
  - (B) The official date and time of the notarization shall be the date and time determined by the remote online notarization platform.
6. In addition to the Five Dollar (\$5.00) fee per signature that a notary public may charge for a notarial act, a notary public may charge an additional fee for notarial acts under this rule of up to Twenty-Five Dollars (\$25.00) for any notarial act conducted when witnessing the signing of a document by a remotely located individual for the purpose of covering the cost of the remote online notarization platform.
7. In order to facilitate the recording of documents that have been electronically signed and electronically notarized using a remote online notarization platform, a notary public that has witnessed the signing of an electronic document by a remotely located individual, may certify that a tangible copy of the electronic document is a true and correct copy of the electronic document by attaching a “certificate of electronic document” using the following form:

**CERTIFICATE OF ELECTRONIC DOCUMENT**

I certify that the attached document, \_\_\_\_\_ (insert title), dated \_\_\_\_\_, and containing \_\_\_\_\_ pages, is a true and correct copy of an electronic document printed by me or under my supervision. I further certify that, at the time of printing, no security features present on the electronic document indicated any changes or errors in an electronic signature or other information in the electronic document after the electronic document's creation or execution. This certification is made under penalty of perjury.

Signed this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(stamp or seal)

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed name of Notary Public)

My commission expires: \_\_\_\_\_

8. The notary public making the certification provided in Section 7 above shall:
- (A) confirm that the electronic document contains an electronic signature that is capable of independent verification and renders any subsequent changes or modifications to the electronic document evident;

**EXHIBIT A**  
**SUBSTANCE OF PROPOSED EXECUTIVE ORDER**

- (B) personally print or supervise the printing of the electronic document onto paper; and
  - (C) not make any changes or modifications to the electronic document other than the certification described in paragraph 7.
9. The validity and recognition of a notarization under this Order shall not prevent an aggrieved person from seeking to invalidate a record, document, or transaction that is the subject of a notarization or from seeking other remedies based on State or Federal law other than this Order for any reason not addressed in this Order, including on the basis-
- (A) that a person did not, with present intent to authenticate or adopt a record or document
    - i. execute or adopt on the record or document a tangible symbol; or
    - ii. attach to or logically associate with the record or document an electronic signature;
  - (B) that a principal was incompetent, lacked authority or capacity to execute the record or document, or did not knowingly and voluntarily execute a record or document; or
  - (C) of fraud, forgery, mistake, misrepresentation, impersonation, duress, undue influence, or other invalidating cause.
10. Nothing in this Order shall affect or supersede a State law or rule governing, authorizing, or prohibiting the practice of law.
11. The failure of a notary public to meet a requirement specified in this Order shall not invalidate or impair the recognition of a notarization performed by the notary public under the authority granted in this Order.
12. This Order shall not be construed to create a public or private cause of action or remedy.
13. This Order shall not affect the validity of a notarization performed before the effective date hereof. The validity and recognition of a notarization performed pursuant to the terms of this Order and during the period hereof, shall not be affected by the subsequent expiration, modification, amendment or revocation of this Order.
14. If any provision of this Order or the application of such provision to any person or circumstance is held to be invalid or unconstitutional, the remainder of this Order

**EXHIBIT A**  
**SUBSTANCE OF PROPOSED EXECUTIVE ORDER**

and the application of the provisions thereof to other persons or circumstances shall not be affected thereby.

15. In this Order:

- (A) The term "commissioned" includes appointed and licensed.
- (B) With respect to real property, the term "document" has the meaning given that term in Miss. Code Ann. S. 89-5-103 et seq.
- (C) The term "electronic" has the meaning given that term in Miss. Code Ann. S. 75-12-1, et seq, and with respect to real property, Miss. Code Ann. S. 89-5-103 et seq.
- (D) The term "electronic record" has the meaning given that term in Miss. Code Ann. S. 75-12-1, et seq.
- (E) With respect to real property, the term "electronic document" has the meaning given that term in Miss. Code Ann. S. 89-5-103, et seq.
- (F) The term "electronic signature" has the meaning given that term Miss. Code Ann. S. 75-12-1, et seq, and with respect to real property, Miss. Code Ann. S. 89-5-103 et seq.
- (G) The term "information" has the meaning given that term in Miss. Code Ann. S. 75-12-1, et seq.
- (H) The term "law" includes any statute, regulation, or rule of law.
- (I) The term "notarization" includes:
  - i. any act-whether performed with respect to a tangible or electronic record and whether performed in a principal, official, or representative capacity-that a notary public may perform under the State of Mississippi or the law of the State in which the principal giving the acknowledgment is located, or under the laws of the State under which the notary public is commissioned; and
  - ii. any such act in which a principal making a statement or executing a record is not in the physical presence of the notary public but is able to communicate with the notary public simultaneously by sight and sound through an electronic device or process at the time of such act.
- (J) The term "notary public" has the meaning given that term in Miss. Code Ann. S. 25-33-1, et seq.

**EXHIBIT A**  
**SUBSTANCE OF PROPOSED EXECUTIVE ORDER**

- (K) The term "principal" has the meaning given that term in Miss. Code Ann. S. 25-33-1, et seq.
  - (L) The term "record" has the meaning given that term in Miss. Code Ann. S. 75-12-1, et seq.
  - (M) The term "requirement" includes a duty, a standard of care, or a prohibition.
  - (N) The term "simultaneously" means substantially simultaneously and without unreasonable interruption or disconnection but includes reasonably short delays inherent or common in the method of communication.
  - (O) The term "stamp or seal of office" means an image containing information as specified under the law of the State in which a notary public is commissioned, which is used by the notary public to authenticate the notarization of a record, and which may consist of a physical image or impression affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.
  - (P) The term "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, every territory or possession subject to the jurisdiction of the United States, and every federally recognized Indian tribe, and includes any executive, legislative, or judicial agency, court, department, board, office, clerk, recorder, register, commission, authority, institution, or instrumentality and any county, municipality, or other political subdivision thereof.
16. Any notarial act that has been performed remotely by a notary public licensed to perform remote online notarizations under the laws of another state, commonwealth, territory, district or possession of the United States shall have the same force and effect under the laws of the State of Mississippi, as if performed by a notarial officer of the State of Mississippi.