

## **EXECUTIVE SUMMARY**

### **Background**

HB 1156 and SB 2394, otherwise known as the Revised Mississippi Law on Notarial Acts (“e-Notary Law”), is based on the Revised Uniform Law on Notarial Acts (“RULONA”) which was published by the Uniform Law Commission in 2010. While the original text of both SB 2394 and HB 1156 would authorize Mississippi notaries to perform electronic notarizations, neither bill (as passed their respective chambers) would allow Mississippi notaries to perform notarial acts using communication technology for a remotely located individual. The ongoing COVID-19 state of emergency has created significant issues for real estate closings in Mississippi. Mississippians risk contracting or spreading the coronavirus if they are required to meet in person to sign documents for their sale, purchase, or refinance.

### **The Need**

Like many Americans, a significant number of Mississippians have found themselves in a new reality. Unable to go to work. Refinancing will immediately save Mississippians money, and current mortgage rates represent what the Washington Post just called a “once-in-a-lifetime opportunity” precisely at the time when many homeowners are facing serious financial challenges from the pandemic. Every loan closed puts money directly in Mississippian’s pockets, letting them further stimulate the local and state economy. A recent news article showed that the average American could save \$277 per month with a refinancing. That is over \$3,300 of additional stimulus for Mississippi families and local businesses. Right now, refinancing orders are soaring, as people look to lower monthly mortgage payments or get much-needed equity out of their homes. There are currently 44.7 million homeowners with equity available to tap via cash-out refinance according to Black Knight. The average amount of available equity is approximately \$138,000.

### **The Problem**

How will these loans be able to close when Americans must keep social distancing? Mississippians, like most Americans, need the choice and ability to complete these loan transactions without having to gather at a closing table and risk contracting or spreading the coronavirus. Notary laws are antiquated and designed for in-person pen and paper transactions, which are in no way suited for the way people do business today, let alone dealing with a global pandemic. Currently, borrowers in over half the country lack the ability to close on a real estate transaction without signing in person.

### **The Solution**

The solution is easy - authorize remote online notarization – using standards approved nationally by the American Land Title Association, the Mortgage Bankers Association, and the National Association of REALTORS®. The amendments being proposed to SB 2394 and HB 1156 meet the minimum standards set forth in the Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020 (SECURE Notarization Act), introduced by Sens. Cramer (ND) and Warner (VA) and would allow for the use of technology available today to remotely and safely close loans.

These amendments, if enacted, would solve many of the issues currently faced by Mississippians and would help put money in American’s pockets, without any cost to taxpayers. Among other things, the proposed amendments:

- permit a Mississippi notary to electronically notarize a document for a remotely located individual by means of communication technology;
- includes robust provisions requiring multilayers of identity verification through the presentation of a photo ID, credential analysis, identity proofing, and a digital recording of an audio-video communication capturing the notarial act;
- provides a “papering out” process, which permits a tangible copy of an electronic document to be recorded if certified by a licensed attorney or the custodian of the original version of the document;
- requires that notarial act state that it was performed through the use of communication technology, which makes these acknowledgements readily identifiable and distinguishable from “in person” acknowledgements.
- grants the Secretary of State power to adopt rules (a) prescribing the means of performing a remote notarial act, (b) establishing standards for communication technology and identity proofing, (c) establishing requirements or procedures for approving providers, and (d) establishing standards and periods for retention of audio-visual recordings; and
- gives consumers a much-needed choice in whether to use remote online notarization or be physically present for signing.

These amendments will help reduce the economic damage the COVID-19 emergency could cause to the real estate market in Mississippi. Mississippians will no longer have to choose whether to risk infecting themselves and their families or refinancing or purchasing their home. If these amendments are enacted, they will have another choice.

### **More Information**

For more information, please contact Ken Farmer with the Land Title Association of Mississippi, by phone (769-232-9252) or email ([kfarmer@ltams.org](mailto:kfarmer@ltams.org)).