

## Summary and Highlights of RON Legislation (An Act Modernizing Notary Services)

### Overview:

The purpose of the Act is to establish guidelines for notarial acts to be conducted using electronic media, both in person and remotely. The Act adds to the existing framework of laws governing notaries and notarial acts, providing new definitions for terminology specific to electronic documents and revising some existing definitions to apply them to electronic notarization. The Act sets forth terms and conditions that must be met in order for a Massachusetts notary to perform a notarial act electronically and expands the concept of notarization to allow notaries to also be commissioned to notarize documents remotely. The Act includes penalties for misconduct in the execution of a notarial act, and specifically seeks to preserve important consumer protections by codifying the Supreme Judicial Court's ruling in *REBA v. NREIS*, 459 Mass. 512 (2011) ("*NREIS*"), pertaining to the unauthorized practice of law in the conduct of a real estate closing. The Act serves to adapt Massachusetts law to evolving technology and allow electronic transactions involving notarized documents to be conducted safely, efficiently and properly.

### Highlights of the Legislation:

- adds a new statutory section pertaining to the unauthorized practice of law in real estate conveyances, including refinance closings. M.G.L. c. 221, § 46E would codify the elements of a real estate closing deemed to be the practice of law by the Supreme Judicial Court in *REBA v. NREIS*, 459 Mass. 512 (2011) ("*NREIS*"). In accordance with current practice for closings on 1-4 family residential property, this section specifies that no person shall direct or manage the real estate closing unless he or she is a Massachusetts attorney or a person directly supervised by a Massachusetts attorney. The statute authorizes the attorney general to bring an action for injunctive relief against a lender or other party who demonstrates a pattern of noncompliance and allows for a private right of action by any individual harmed by a violation of the statute.
- revises the definitional section of the law governing notaries public (M.G.L. c. 222, § 1) to incorporate definitions related to electronic devices and processes. Many of these definitions are already in use in other states and federal laws. In addition, the legislation updates certain existing definitions so it is clear that the notarial acts referenced in those definitions can be conducted electronically and remotely.
- amends the existing statute pertaining to notarial seals (M.G.L. c. 222, § 8) to allow for the use of an electronic seal as well as the traditional physical notarial seal.
- updates current law regarding prohibited acts by a notary, carving out an exception for remote notarizations to the general rule against notarizing a document outside the presence of the principal. (M.G.L. c. 222, § 16)
- authorizes a notary to charge a person requesting the services of a third-party technology services provider, as for remote online notarization, a reasonable fee that is disclosed in advance and reflects the actual cost to the notary for the services of that provider.

- adds a provision to M.G.L. c. 222, § 18 to allow the Secretary of the Commonwealth to order a notary to discontinue any practices or pattern of practice that violate the laws of notarial conduct. The new subsection also allows the attorney general to enforce the order by civil action.
- revises the existing statute pertaining to notary journals (M.G.L. c. 222, § 22) to allow a notary to maintain one or more electronic journals. The section also makes minor revisions to the information the notary is required to record in the journal when documenting a notarial act.
- creates three new statutory sections, §§ 27-29 of M.G.L. c. 222, to take effect on January 1, 2024:

§27 states that a notary may perform notarial acts with respect to an electronic record that uses minimum requirements for tamper-evident technology and would empower the Secretary of the Commonwealth to establish other standards for appropriate technology. The legislation also clarifies that a hard copy printout of an electronic record can serve as an original document for recording purposes as long as the document is otherwise recordable and the notary certifies the document is an accurate copy. It permits a notary to designate a third-party technology services provider to have exclusive control of the electronic notary journal by mutual agreement, subject to existing restrictions on use by another notary.

§28 allows Massachusetts notaries to perform notarial acts outside the physical presence of the principal using secure audio-visual technology. Individuals seeking to conduct remote online notarization would be required to register as a remote notary with the Secretary of the Commonwealth and maintain an electronic journal. The statute empowers the Secretary to establish rules regarding the conduct of remote online notarization, including the use of appropriate communication technology and identity proofing. To ensure consistent rules and practices the Secretary shall promulgate regulations that include the use of dynamic knowledge-based authentication for identity proofing, use of credential analysis, use of tamper-evident communications technology from an insured provider, and training for the notary prior to conducting remote notarizations. On or before January 1, 2024 the Secretary shall set the standards for communication technology and maintain a registry of such compliant providers from which notaries could select the provider to use.

§28 limits the conduct of remote online notarizations in 1-4 family residential real estate closings to notaries who are Massachusetts attorneys or acting under the supervision of a Massachusetts attorney, thereby avoiding the use of out-of-state notary “factories” to circumvent the SJC’s holding in *NREIS* regarding the unauthorized practice of law. The Massachusetts attorney’s BBO number shall be included on the notary certificate.

§28 clarifies the authority of the Chief Justice of the Land Court to promulgate rules, orders, guidelines, and directives concerning § 27 and 28 as they pertain to the execution, acknowledgment, and registration of documents affecting land to which title has been registered or confirmed by the Land Court pursuant to chapter 185.

§29 prohibits a notary from using, selling, or offering to sell personal information of a signatory obtained by the notary as part of a remote notarial act, except as allowed by law or a court order.