



A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS  
ATTORNEYS AT LAW

## MEMORANDUM

TO: All Pension Clients

FROM: Klausner, Kaufman, Jensen & Levinson

DATE: January 2020

RE: Changes to Florida's Notary Public Law to Permit Remote Online Notarizations

---

Effective January 1, 2020, Florida's Notary Public Law, Chapter 117, was changed by House Bill 409 which permits a Florida Notary Public ("Notary") to perform remote online notarizations.

Remote online notarization ("RON") allows Florida Notaries to acknowledge documents via "audio-video communication technology." Florida law defines audio-video communication technology as "technology in compliance with applicable law which enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another." Notaries may charge a fee of up to \$25 for this service.

### **REGISTERING AS A REMOTE ONLINE NOTARY**

Pursuant to Fla. Stat., §117.225, registering to become a remote online Notary includes the following:

- (a) holding a current Notary or civil law Notary commission or appointment as a commissioner of deeds and submitting proof of commissioning or appointment;
- (b) certifying that they have completed a two hour classroom or online course covering the duties, obligations and technology requirements for serving as an online Notary;
- (c) paying a ten dollar registration fee;

7080 NORTHWEST 4TH STREET, PLANTATION, FLORIDA 33317

PHONE: (954) 916-1202 • FAX: (954) 916-1232  
[www.klausnerkaufman.com](http://www.klausnerkaufman.com)



- (d) submitting a signed and sworn registration as an online Notary to the Department of State;
- (e) identification of the RON service provider for audio-video communication technology, identity proofing and credentials analysis the applicant intends to use and confirming that these technologies satisfy the requirements of the new law and rules adopted by the Department of State; and
- (f) providing evidence satisfactory to the Department of State that the applicant obtained a \$25,000 bond as an online Notary and a minimum of \$25,000 errors and omissions policy on such terms as are specified by the Department of State by rule.

### **REMOTE ONLINE NOTARIZATION PROCEDURES**

This new law permits individuals seeking a notarization (the “principal”) to utilize the services of a Florida Notary whether or not they are physically located within the state. For principals located outside the state of Florida, the online Notary must receive either a verbal or written affirmation that they want the notarial act subject to Florida law and performed by a Florida Notary.

Remote Online Notaries must confirm the principal’s identity and the identity of the witness(es) who appear remotely. Identity confirmation must be done at the time of signing and may be completed by personal knowledge of each principal and each witness or by completing all of the following:

- (i) remote presentation of a government-issued identification credential by each principal;
- (ii) credential analysis of each government-issued identification document;<sup>1</sup> and

---

<sup>1</sup> “. . . the following minimum standards shall apply to credential analysis used for any online notarization performed by an online Notary or his or her RON service provider: (a) credential analysis must use one or more commercially available automated software or hardware processes that are consistent with sound commercial practices; (b) credential analysis must aid the Notary in verifying the authenticity of the credential by analyzing the integrity of visual, physical, or cryptographic security features to indicate that the credential is not fraudulent or inappropriately modified; (c) credential analysis must use information held or published by the issuing source or authoritative source, as available, to confirm the validity of credential details; and (d) the output of the credential analysis process must be provided to the online Notary performing the notarial act.”

- (iii) identity proofing of each principal in the form of knowledge-based authentication or another method or identity proofing that conforms to Florida law.

Under §117.285(4), witnesses of an electronic signature must either be in the physical presence of the principal or present through audio-video communication technology. Remote witnesses are required to provide the Notary with a “verbal confirmation that he or she is a resident of and physically located within the United States or a territory of the United States at the time of witnessing.”

All documents notarized via RON must be conspicuously identified as such; this can be accomplished by including the words “online notarization” next to the online Notary’s seal (see attached sample notary acknowledgment). Notarizations must be tracked and all remote online Notaries must keep one or more electronic journals in compliance with §117.245(1).

Pursuant to §117.245(2), online notarizations must be retained. This means Notaries must keep an “unedited copy of the recording of the audio-video communication in which an online notarization is performed.” The online recording must include the following:

- (a) appearance by the principal and any witness before the online notary public;
- (b) confirmation of the identify of the principal and any witness;
- (c) a general description or identification of the records to be signed;
- (d) at the commencement of the recording, recitation by the online notary public of information sufficient to identify the notarial act; and
- (e) a declaration by the principal, notary public, and any required witness during the entire online notarization, including the signing of any records before the online notary public.

### **OTHER APPLICABLE CHANGES TO FLORIDA’S NOTARY PUBLIC LAW**

In the wake of increased cyber-attacks to many Florida municipalities, Chapter 117 was also amended to require additional protections when acquiring an electronic signature. Section 117.021(2)(c) now provides that “in performing an electronic notarial act, a notary public shall use an electronic signature that is . . . retained under the notary public’s sole control and includes access

protection through the use of passwords or codes under control of the notary.”

Section 117.285(5) was created and provides that when an electronic record to be signed is: (a) will, (b) trust will testamentary aspects, (c) health care advance directive, (d) waiver of spousal rights, or (e) power of attorney authorizing any of the transactions enumerated in s. 709.2208, the following written notice must be given by the RON service provider to a principal who is considered a vulnerable adult.

**NOTICE:** If you are a vulnerable adult as defined in s. 415.102, Florida Statutes, the documents you are about to sign are not valid if witnessed by means of audio-video communication technology. If you suspect you may be a vulnerable adult, you should have witnesses physically present with you before signing.

### **CHANGES TO FLORIDA'S POWER OF ATTORNEY LAW**

To be valid, a power of attorney drafted in Florida must comply with the provisions of Chapter 709. Retirement plans are often given a power of attorney requesting the Board take particular action. The new provisions found in the remote online notarization law amend some of the requirements found under Florida's power of attorney law. The following three changes to Fla. Stat., §709 are relevant to retirement plans.

1. Section 709.2119(3)(d) authorizes third parties to request and rely upon “the electronic journal or record made by the notary public . . . if the power of attorney is witnessed or notarized remotely through the use of online witnesses or notarization.”

2. Section 709.2120(4)(d) provides that a power of attorney may be rejected if it “is witnessed or notarized remotely through the use of online witnesses or notarization, and either the agent is unable to produce the electronic journal or record, or the notary public did not maintain an electronic journal or record of the notarization.”

3. Section 709.2202(6) provides that “a power of attorney, executed by a principal domiciled in this state at the time of execution, that is witnessed remotely. . . by a witness not in the physical presence of the principal is not effective to . . . create or change a beneficiary designation or to waive a principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.”

**CONCLUSION**

Effective January 1, 2020, Florida's law governing Notaries public has been amended to allow the use of audio-video communication technology to remotely notarize documents when certain criteria are met. Florida's power of attorney law was also amended based on these changes. Finally, and of particular importance to retirement plans, remote online notarizations cannot be used to create or change a beneficiary designation or to waive a beneficiary's right to a joint and survivor annuity, including any survivor benefits when the witness is not in the physical presence of the principal at the time of notarization. Attached is the most common Notary acknowledgment updated for electronic notarizations.

Please contact our office if your retirement plan has any questions.

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  
 online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ (name of person making statement).

\_\_\_\_\_  
(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

If Identification Produced, type of Identification \_\_\_\_\_