

REBNY Testimony | May 7, 2021

## The Real Estate Board of New York to The New York State Legislative Hearing on Remote Online Notary

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY appreciates the opportunity to testify at today's legislative hearing to express our support for **A.399-A/S.1780-B** relating to remote online notary (RON).

The goal of notary documentation is to protect the consumer and prevent fraud. The goal of any legislation regarding online notary should be to reduce the chance of fraud from both consumer and notary prospective and, as it relates to real estate, ultimately to extend these protections at signing. REBNY represents many voices for which this issue matters. However, for this to be successful once enacted, the NYS Department of State will need to promulgate rules that reflect input from attorneys, the banking industry, the title industry and the recording offices. While we recognize that there are many legal nuances to consider when addressing a complete remote closing and the need for State government to work across industries to ensure proper implementation, we support this legislation in its limited scope. This bill will advance longstanding industry efforts to reach the goals of not only remote notary, but ultimately remote real estate closings.

Over a year ago we entered a national pandemic that shut down most of the country and the entire state of New York for days, then weeks, and continued for months until health and safety protocols were established to mitigate the risks involved with in-person contact. The reverberating impact on real estate and other industries was devastating. Every level of the industry was affected: tenants who were unable to work and meet rental costs; owners and operators unable to complete routine maintenance or construction; and real estate agents unable to do showings or complete the most basic steps to close on a real estate transaction. As we entered a state of emergency, REBNY worked closely with the State Legislature and the Governor's office to craft the use of online notary. We recognized the critical industry need and worked with many of you to make this possible. Like A.399-A/S.1780-B, this solved an immediate need, although it did not address the entirety of the ability to record electronically notarized documents.

A.399-A/S.1780-B, designed pre-pandemic, is unique as it addresses consumer protection issues that build on existing New York e-recording law. The legislation requires four key consumer protection security protections:

- The notary must use an electronic signature that uniquely identifies the notary;
- The notary's e-signature must be capable of independent verification;
- The notary must maintain sole control over the e-signature. If there are any subsequent alterations or forgery of the e-signature evident, the document is invalid;

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*Important Note*

- As a benefit of RON, the notary must create and retain a recording of each audio-video notarization session.

These protections are important to ensure the integrity of RON and best protect consumers against fraud, including real property and deed fraud.

Again, we recognize that there are many key elements to the notary, and ultimately recording, process that must be addressed in future legislation. As it relates to RON, we join with other stakeholders who have urged for more comprehensive look at notary laws and we recommend addressing issues around the recording process. However, A.399-A/S.1780-B addresses one key issue that brings us a step closer to a system that bridges the gap in challenging circumstances, like the pandemic, by extending the availability of notarial services to people with disabilities, seniors and persons residing in remote locations.

This bill has already been adopted by the NYS Senate and continues to address a critical issue resolved through the Governor's Emergency Executive Order. The bill also has the support of the New York Department of State and numerous real estate industry organizations across New York. No matter the nuances of opinion, we can all agree the past 12 months have demonstrated that this is a valuable service for consumers and practitioners alike and should be a permanent part of New York State's notary system.

For the reasons above, **we encourage the NYS Assembly to adopt A.399-A/S.1780-B**. We also encourage the Legislature to continue to study the necessary legislation needed to further advance this system and address any remaining concerns around the full recording of documents process.

Thank you for the consideration of these points.

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