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Memorandum

Date: February 14, 2017

To: National Association of Secretary of State
NASS Remote Notarization Task Force
Attn: Ms. Leslie Reynolds, Executive Director

From: Dennis M. Horn, Co-Chair 
ABA – RPTE – Future Practice and Guidance Task Force

Cc: RPTE Executive Committee

Re: Remote Notarization

In my capacity as the Co-Chair of the ABA-Real Property, Trusts and Estate Law Section Future Practice and Guidance Task Force, I have been asked to respond to your invitation to comment as to whether the NASS Remote Notarization Task Force should recommend that a remote notarial act performed under state law which recognizes non-physical presence should be recognized on par with a physical presence notarial act.

By way of background, I understand that the American Bar Association House of Delegates approved the Revised Uniform Law on Notarial Acts (“Model Act of 2010”), promulgated in 2010 by the National Conference of Commissioners on Uniform State Laws (“ULC”). Among other things, the Model Act of 2010 establishes procedures for performing notarial acts for both tangible and for electronic records. The Model Act of 2010 also requires an individual to appear personally before a notarial officer.

We understand that the NASS Remote Notarization Task Force is considering revising this standard to permit the requirement for “personal presence” to be satisfied by a live audio and video connection between the notary and the signatory augmented by various procedures to authenticate the identity of the signatory, prevent alteration of the document being digitally signed by the notary, long term storage of the audio and visual recording of the notarization process and appropriate tamper proof evidence of the notarial act. We also understand that both Virginia and Montana have passed legislation permitting remote notarization and that the ULC is considering an update to its Revised Uniform Law on Notarial Acts which may address remote notarization.

The notarial act is intended to prevent fraud by properly identifying signatories and by determining their willingness to execute a document and their awareness of what they are executing. There are certainly good public policy reasons to consider remote notarization including consumer preferences for online business transactions and the lack of availability of notaries in certain rural parts of the country. On balance, as long as the integrity of the notarial act is respected and proper safeguards to prevent fraud are incorporated, we believe that remote notarization should be considered as an additional tool in the notarization of documents.