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## Client Alert: North Carolina Authorizes Video Notarization and Witnessing of Documents

### SERVICE LINE

Wealth Strategies

### MEDIA CONTACT

Wendy M. Byrne

wbyrne@shumaker.com

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On May 4, 2020, Governor Cooper signed Senate Bill 704 into law. Section 4.1(b) of the Bill provides for emergency video notarization of documents while Section 4.2(a) provides for emergency video witnessing of documents, codified at N.C.G.S. §§10B-25 and 10B-201, respectively. **BE AWARE:** If you decide to make use of the video notarization and witnessing provisions, the statutory requirements are specific and must be followed to the letter.

The purpose of the emergency video notary and witness provisions is to afford a temporary option for individuals who need to execute documents, but must be isolated in light of the COVID-19 pandemic. The provisions of Bill 704 are the General Assembly's response to the pandemic. Consequently, these provisions are temporary and are currently set to expire on August 1, 2020. The provisions for video notarization and witnessing require simultaneous live audio and visual communication between all parties and all parties must place their "wet-ink" signature on paper counterparts of the same document before the counterparts are combined into one original document. In addition to this requirement, Bill 704 includes the following requirements for video notarization and witnessing of documents:

- **Video Technology Requirement.** The parties must make sure the video technology selected meets all the requirements of the statute, including, but not limited to, the electronic communication must 1) occur in real time; 2) allow direct interaction between the principal, witnesses and the notary by sight and sound; 3) include clear audio to ensure all parties can clearly hear and understand each other; 4) not be pre-recorded; 5) be capable of recording (but is not required to be recorded).
- **Location Requirement.** The notary, principal, and witnesses must all be located in the State of North Carolina at the time of the notarization. The principal and witnesses must each verify that he or she is physically present in the State of North Carolina and must identify the county in the state where each is located.
- **Identification Requirement.** If a notary does not have personal knowledge of the principal or a witness, the notary must require satisfactory evidence of the person's identity based on at least one document that meets the requirements set forth in the statute.
- **Observation Requirement.** The notary must use the video technology to observe the principal and each witness sign the document that is to be notarized. The principal must also verbally identify the documents that are being signed for the notarial record. Each witness should make a similar

identification and is required to sign the document immediately after the principal signs in real-time while the video technology allows for direct, real-time audio and video between the principal and the witnesses. The notary must observe each principal and witness signing the document to be notarized.

- **Transmittal Requirement.** The principal and each witness should transmit a legible copy of the signed document to the notary by facsimile or other electronic means on the same day the document is signed (i.e., the same day as the video conference). The principal and each witness should also deliver the original “wet-signed” document to the notary by mail or other physical method. It does not appear from the statute that the return of the original “wet-signed” document is required to be performed on the same day as the signing.
- **Notary Requirements.** When the notary receives the original “wet-signed” document from the principal or a witness, the notary must compare the original document with the electronically-transmitted copy. If the signatures match, the notary must notarize the original “wet-signed” document and date the notarial act as of the date the notary observed the principal signing the document – not the date the original document was received by the notary. Once the complete document is compiled by the notary, the notary must then transmit the original “wet-signed” document to the principal by mail or other physical delivery.
  - **NOTE:** The notarial acknowledgement must include the statements required by §10B-25.
- **Journal Requirements.** For each emergency video notarization, the notary is required to record the information required by statute in a notary journal that must be kept for at least 10 years and may be in electronic form.

NOTE: In addition to the provisions related to emergency video notarization and witnessing of documents, Bill 704 also provides that Health Care Power of Attorney documents executed during a state of emergency may be signed with a notary only and without the need for two witnesses as typically required, codified at N.C.G.S. §32A-16.1. However, when a health care power of attorney document is executed without two qualified witnesses during a state of emergency, the document must contain a short and plain statement indicating that the instrument was executed in accordance with the procedures of the statute.

NOTE: The emergency provisions affecting video notarization, video witnessing, and health care power of attorney documents are currently scheduled to expire on August 1, 2020, at 12:01 AM. However, the General Assembly may elect to extend the deadline.

For more detailed information on the provisions of Senate Bill 704 signed into law by Governor Cooper on May 4, 2020, please see the link below.

<https://www.ncleg.gov/Sessions/2019/Bills/Senate/PDF/S704v5.pdf>

Please do not hesitate to contact Stephanie C. Daniel at [sdaniel@shumaker.com](mailto:sdaniel@shumaker.com) or 704.945.2954 if you have any questions.