

POLUNSKY BEITEL GREEN
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To: Clients and Friends of the Firm

From: Polunsky Beitel Green, LLP

Date: April 8, 2020

Please be advised that Governor Abbott issued a press release this afternoon which indicates he has temporarily suspended the statutory requirement that a person appear before a Texas notary for certain documents to be acknowledged. This directive specifically suspends the in-person acknowledgement requirement for execution of a durable power of attorney. The suspension also applies to the acknowledgement for the execution of a self-proved will, a healthcare power of attorney and an oath of an executor, administrator or guardian. PLEASE NOTE THAT THE ACKNOWLEDGEMENT OF MORTGAGE TRANSACTIONS OR DEEDS IS NOT SPECIFICALLY ADDRESSED IN THE SUSPENSION OF THE STATUTORY REQUIREMENT, but such documents could potentially be executed by an agent under a durable Power of Attorney executed under the suspension. The following conditions will apply whenever the suspension is invoked:

- A notary public shall verify the identity of a person signing a document at the time the signature is taken by using a two-way video and audio conference technology.
- A notary public may verify identity by personal knowledge of the signing person, or by analysis based on the signing person's remote presentation of a government-issued identification credential, including a passport or driver's license, that contains the signature and a photograph of the person.
- The signing person shall transmit by fax or electronic means a legible copy of the signed document to the notary public, who may notarize the transmitted copy and then transmit the notarized copy back to the signing person by fax or electronic means, at which point the notarization is valid.

This suspension will remain in effect until terminated by the Governor or until the March 13, 2020 Disaster Declaration is lifted or expires.

Please note that acknowledgements under this directive are different from the Texas Remote Online Notarization rules in a few key respects. First, any Texas approved notary is authorized to notarize documents in accordance with this order, while only certain notaries in Texas are authorized to act as Remote Online Notaries. Second, only certain types of transactions can be executed and acknowledged under this suspension. While the acknowledgement of a durable Power of Attorney is authorized, there is not a general authorization for the acknowledgement of the execution of deeds or deeds of trust. Of course, as stated above, a durable power of attorney acknowledged in

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accordance with the temporary suspension could enable the agent to execute the deed or the deed of trust on the principal's behalf in a mortgage or real property transaction. Finally, the other requirements for a Remote Online Notarization in Texas (such as retention of a recording of the ceremony) do not appear to apply to documents executed in accordance with this temporary suspension by the Governor. Nevertheless, it may still be prudent to record such ceremony to confirm that the requirements of the suspension have been satisfied. Also, mortgage lenders should consult with investors and title companies to make sure that such parties do not have a prohibition on using a power of attorney executed in accordance with this temporary suspension by the Governor or do not otherwise impose additional requirements that must be met for documents executed in accordance with the suspension to be acceptable.

If you have questions regarding the contents of this alert, please let us know.

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