

resignation, disbarment or suspension or placed on inactive status, shall (i) direct or manage a closing; or (ii) take the following actions in preparation for, or in furtherance of, a closing:

- (1) giving or furnishing legal advice as to the legal status of title;
- (2) ensuring that the seller, or the borrower-mortgagor in a mortgage refinancing transaction, is in a position to convey marketable title to the residential property at issue;
- (3) issuing a certification of title pursuant to section 70 of chapter 93;
- (4) drafting a deed to real property on behalf of another;
- (5) ensuring that the documents necessary for the transfer of title are executed and acknowledged in accordance with the laws of the commonwealth; provided, however, a non-attorney may take such action under the direction or supervision of an attorney; or
- (6) disbursing, or managing the disbursement, of consideration for the conveyance.

(c) The attorney general may initiate an action, including a petition for injunctive relief, against any person or creditor whose violation of this section is part of a pattern, or consistent with a practice, of noncompliance. The supreme judicial court and the superior court department of the trial court of the commonwealth shall have concurrent jurisdiction in equity. A person having an interest or right that is or may be adversely affected by a violation of this section may initiate an action against the person or creditor for private monetary remedies.

SECTION 23. Chapter 222 of the General Laws is hereby amended by striking out section 1, as appearing in the 2020 Official Edition, and inserting in place thereof the following section:-

Section 1. For the purposes of this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Acknowledgment", a notarial act in which an individual, at a single time appears in person before a notary public, is identified by the notary public through satisfactory evidence of identity and presents a document or electronic record to the notary public and indicates to the notary public that the signature on the document or record before the notary was voluntarily affixed by the individual for the purposes stated within the document or electronic record or that the signature on the document or electronic record was the individual's free act and deed and, if applicable,

that the individual was authorized to sign in a particular representative capacity.

"Affirmation", a notarial act, or part thereof, that is legally equivalent to an oath and in which an individual, at a single time appears in person before a notary public, is identified by the notary public through satisfactory evidence of identity and makes a vow of truthfulness or fidelity while appearing before the notary public under the penalties of perjury without invoking a deity.

"Appears in person", "appears personally" or "personally appears", (i) being in the same physical location as another individual and close enough to see, hear, communicate with and exchange tangible identification credentials with that individual; or (ii) interacting with a remotely-located individual by means of communication technology in compliance with section 28.

"Capable of independent verification", the ability to confirm the validity of an electronic notarial act, including the electronic signature and seal, through a publicly accessible system, in compliance with industry standard technology as approved by the secretary of the commonwealth.

"Communication technology", an electronic device or process that allows a notary public and a remotely-located individual to communicate with each other simultaneously by sight and sound, and when necessary and consistent with other applicable laws, facilitates communication with a remotely-located individual with a vision, hearing or speech impairment.

"Copy certification", a notarial act in which a notary public is presented with a document that the notary public copies, or that the notary supervises someone else copying, by a photographic or electronic copying process, compares the original document to the copy and determines that the copy is accurate and complete.

"Credential analysis", a process or service that meets the guidelines established by the secretary, through which a third person affirms the validity of a current government-issued identification credential by review of public or proprietary data sources.

"Credible witness", an honest, reliable and impartial person who personally knows an individual appearing before a notary and who takes an oath or affirmation before the notary to vouch for that individual's identity.

"Dynamic knowledge-based authentication", a form of identity proofing based on a set of questions that pertain to an individual and are formulated from public or proprietary data sources.

"Electronic", relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic record", information that is created, generated, sent, communicated, received or stored by electronic means.

"Electronic signature", an electronic sound, symbol or process that is attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

"Foreign state", a jurisdiction other than the United States, a state or a federally recognized Indian tribe.

"Identity proofing", a process or service that meets the guidelines established by the secretary, by which a third party provides a notary public with a means to verify the identity of a remotely-located individual by a review of personal information from public or private data sources, which may include credential analysis, dynamic knowledge-based authentication, analysis of biometric data including, but not limited to, facial recognition, voiceprint analysis or fingerprint analysis or other means permitted by the secretary.

"Journal", a chronological record of notarial acts performed by a notary public.

"Jurat", a notarial act in which an individual, at a single time appears in person before a notary public, is identified by the notary public through satisfactory evidence of identity and: (i) presents a document or electronic record; (ii) signs the document or electronic record in the presence of the notary public; and (iii) takes an oath or affirmation before the notary public vouching for the truthfulness or accuracy of the contents of the signed document or electronic record.

"Notarial act" or "notarization", an act that a notary public is empowered to perform, including acts performed electronically in accordance with this chapter.

"Notarial certificate", the part of or attachment to a notarized document or electronic record for completion by the notary public that bears the notary public's signature and seal and states the venue, date and facts that are attested by the notary public in a particular notarial act or notarization.

"Notary public" or "notary", a person commissioned to perform official acts pursuant to Article IV of the Amendments of the Constitution.

"Notarial seal", (i) a physical image or impression affixed, stamped or embossed on a tangible record; or (ii) an electronic image attached to, or logically associated with, an electronic record.

"Oath", a notarial act, or part thereof, that is legally equivalent to an affirmation and in which an individual, at a single time, appears in person before a notary public, is identified by the notary public through satisfactory evidence of identity and takes a vow of truthfulness or fidelity under the penalties of perjury by invoking a deity.

"Official misconduct", a violation of sections 13 to 24, inclusive, or any other general or special law in connection with a notarial act or a notary public's performance of an official act in a manner found to be grossly negligent or against the public interest.

"Personal knowledge of identity", familiarity with an individual resulting from interactions with that individual over a period of time sufficient to ensure beyond doubt that the individual is the person whose identity is claimed.

"Principal", a person whose signature is notarized or a person taking an oath or affirmation before a notary public.

"Record", information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Regular place of work or business", a place where an individual spends a substantial portion of their working or business hours.

"Remotely-located individual", an individual who is not in the physical presence of the notary public who performs a notarial act pursuant to section 28.

"Satisfactory evidence of identity", identification of an individual based on: (i) at least 1 current document issued by a United States or state government agency bearing the photographic image of the individual's face and signature; (ii) the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the individual; or (iii) identification of an individual based on the notary public's personal knowledge of the identity of the principal; provided, however, that for a person who is not a United States citizen, "satisfactory evidence of identity" shall mean identification of an individual based on a valid passport or other government-issued document evidencing the individual's nationality or residence and which bears a photographic image of the individual's face and signature. For purposes of a

notarial act performed using communication technology for a remotely-located individual, "satisfactory evidence of identity" shall be determined pursuant to section 28.

"State secretary", the secretary of the commonwealth.

"Signature witnessing", a notarial act in which an individual, at a single time, appears in person before a notary public, is identified by the notary public through satisfactory evidence of identity and presents a document or electronic record and signs the document or electronic record in the presence of the notary public.

"Tamper-evident", the use of a set of applications, programs, hardware, software or other technologies that will display evidence of any changes to an electronic record.

"Tangible journal", a journal created on a fixed tangible medium in a permanent bound register with numbered pages.

"United States", a location within the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory, insular possession or other location subject to the jurisdiction of the United States.

SECTION 24. Section 1A of said chapter 222, as so appearing, is hereby amended by striking out, in line 6, the figure "26" and inserting in place thereof the following figure:- 29.

SECTION 25. Section 8 of said chapter 222, as so appearing, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b)(1) A notary public shall keep an official notarial seal that shall be the exclusive property of the notary public. A notary public shall not permit another to use such notarial seal. A notary public shall obtain a new seal upon renewal of the commission, upon receipt of a new commission or if the name of the notary public has changed. The notarial seal shall include: (i) the notary public's name exactly as indicated on the commission; (ii) the words "notary public" and "Commonwealth of Massachusetts" or "Massachusetts"; (iii) the expiration date of the commission in the following words: "My commission expires ____"; and (iv) a facsimile of the seal of the commonwealth.

(2) If a notarial seal that requires ink is employed, black ink shall be used. The seal of a notary public may be a digital image that appears in the likeness or representation of a traditional physical notary public seal. Only the notary public whose name and registration number appear on an electronic

seal shall affix said seal. If the seal is electronically generated, it shall include the words "Electronically affixed". The requirements of this subsection shall be satisfied by using a seal that includes all of the information required by this section.

(3) A notary public shall attach or logically associate the notary public's electronic signature and electronic seal to an electronic record that is the subject of a notarial act by use of the digital certificate in a matter that is capable of independent verification and renders any subsequent change or modification to the electronic document tamper evident.

SECTION 26. Section 16 of said chapter 222, as so appearing, is hereby amended by inserting after the word "notarization", in line 3, the following words:- , except as specifically provided in this chapter.

SECTION 27. Said section 16 of said chapter 222, as so appearing, is hereby further amended by inserting after the word "services", in line 27, the following words:- ; provided further, that a notary public shall not be precluded from receiving a technology services fee that has been clearly disclosed in advance to the person requesting the service and that technology services fee reflects the actual reasonable cost to the notary public of utilizing a third-party technology service provider; provided further, that the state secretary may set reasonable limits on such technology services fee.

SECTION 28. Section 18 of said chapter 222, as so appearing, is hereby amended by adding the following subsection:-

(e)(1) Whenever the state secretary has cause to believe that a notary public registered pursuant to section 28 has engaged in any conduct, practice or procedure that the state secretary determines is contrary to section 46E of chapter 221, the state secretary may revoke the notary public's ability to perform notarial acts, or order the notary public to comply with the law. The state secretary may adopt regulations governing administrative proceedings under this section.

(2) The attorney general may enforce an order issued by the state secretary pursuant to this section by civil action as provided in said section 46E of said chapter 221.

(3) The remedies provided by this section shall not limit the availability of judicial remedies to any person or official.

SECTION 29. Subsection (a) of section 22 of said chapter 222, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following 3 sentences:- A journal may be

created on a fixed tangible medium or in an electronic format. If the journal is maintained on a tangible medium, it shall be a permanent, bound register with numbered pages. If the journal is maintained in an electronic format, it shall be in a permanent, tamper-evident electronic format complying with the rules of the state secretary, including rules concerning the regular transfer of electronic journal entries to the secretary.

SECTION 30. Said section 22 of said chapter 222, as so appearing, is hereby further amended by striking out, in lines 6 and 7, the words "active journal at the same time" and inserting in place thereof the following words:- tangible journal at any time. A notary may keep more than 1 electronic journal; provided, however, that each electronic journal shall conform to the requirements of subsection (a).

SECTION 31. Clause (v) of subsection (c) of said section 22 of said chapter 222, as so appearing, is hereby amended by striking out subclauses (3) and (4) and inserting in place thereof the following 3 subclauses:- (3) a notation indicating whether the notarial act was conducted in person or remotely; (4) the fee, if any, charged for the notarial act, including whether a technology services fee was charged and the amount of the technology services fee; and (5) the address where the notarization was performed; provided, however, that if the notarial act was performed remotely, the notary shall include the address of the notary and each principal and witness.

SECTION 32. Said section 22 of said chapter 222, as so appearing, is hereby further amended by striking out subsection (i) and inserting in place thereof the following subsection:-

(i) If not in use, a journal shall be kept under the exclusive control of the notary public or a third-party technology service provider designated by the notary public; provided, however, that there is a mutual agreement by both the notary public and the third-party service provider; and provided further, that a journal shall not be used by any other notary public or surrendered to an employer upon termination of employment.

SECTION 33. Said chapter 222 is hereby further amended by adding the following 3 sections:-

Section 27. (a) A notary public may select 1 or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person shall not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected. Any technology approved by the state secretary pursuant to

subsection (h) of section 28 and selected by a notary public shall require the notary public's electronic signature and electronic seal to be:

- (i) unique to the notary public;
- (ii) capable of independent verification;
- (iii) retained under the sole control of the notary public; and
- (iv) attached to or logically associated with the electronic record in a tamper-evident manner.

(b) A tangible copy of an electronic record shall be accepted as the equivalent of an original document for purposes of recording said copy; provided, however, that: (i) the copy contains a notarial certificate that satisfies all requirements for an original document to be accepted for recording; (ii) the copy satisfies all requirements for recording an original document set forth in chapters 183 and 185, as applicable; and (iii) the notary public executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

Section 28. (a) A notary public physically located in the commonwealth may perform a notarial act using communication technology for a remotely-located individual who is the principal in a notarial act if the notary public:

(i) (A) has personal knowledge of the identity of the remotely-located individual; (B) has identified the remotely-located individual by means of an oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the remotely-located individual; or (C) can reasonably identify the remotely-located individual by not less than 2 different types of identity proofing processes or services;

(ii) is able to execute the notarial act in a single, real-time session;

(iii) is reasonably able to confirm that a record before the notary public is the same record in which the remotely-located individual made a statement or on which the remotely-located individual executed a signature; and

(iv) the notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act.

(b) A notary public physically located in the commonwealth may perform a notarial act using communication technology for a remotely-located individual who is the principal in a notarial act and is located outside the United States if the: (i) record: (A) is to be filed with or relates to a matter

before a public official or court, governmental entity or other entity subject to the jurisdiction of the United States; or (B) involves property located in the territorial jurisdiction of the United States or a transaction substantially connected with the United States; and (ii) act of making the statement or signing the record is not prohibited by the foreign state in which the remotely-located individual is located.

(c) A notary public shall not use communication technology to notarize a record related to the electoral process, or a will, codicil or document purporting to be a will or codicil.

(d) Before a notary public performs the notary public's initial notarization using communication technology, the notary public shall: (i) register as a remote notary with the state secretary; (ii) inform the state secretary that the notary public intends to perform remote notarizations; and (iii) identify the communication technology that the notary public will use. The communication technology shall conform to the requirements of this chapter and any rules adopted by the state secretary. The notice shall be submitted in the form prescribed by the state secretary and shall: (A) include an affirmation that the notary public has read and will comply with this section and all rules adopted by the state secretary; (B) be accompanied by proof that the notary public has successfully completed any training that may be required by the state secretary; and (C) identify a usual place of business in the commonwealth or, if a foreign entity, identify a registered agent, and in either case identify an address for service of process in connection with a civil action or other proceeding.

(e) If a notarial act is performed pursuant to this section, the certificate of notarial act required by section 15 shall indicate that the notarial act was performed remotely using communication technology and identify the venue for the notarial act as the county within the commonwealth where the notary public was physically located while performing the notarial act.

(f) A notary public, a guardian, conservator or agent of a notary public or a personal representative of a deceased notary public shall retain the audio-visual recording created under clause (iv) of subsection (a) or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. The recording shall be retained for 10 years after the recording is made.

(g) Upon request, the notary public shall make available electronic copies of the pertinent entries in the electronic journal and provide access

to any related audio-video communication recording to the following persons: (i) the parties to an electronic record notarized by the notary public; (ii) the title insurer reviewing an insured transaction in the context of an audit of its agent, if the agent conducted the electronic notarial act as an element of the insured transaction; and (iii) any other persons pursuant to a subpoena, court order, law enforcement investigation or other lawful inspection demand.

(h) The state secretary shall establish standards, in conformity with national standards, for the use of communication technology and identity proofing by notaries public commissioned by the commonwealth. The state secretary shall create and maintain a registry of communication technology service providers who meet the established standards as certified by the communication technology service provider. A notary public who uses communication technology shall utilize communication technology and identity proofing from communication technology service providers included on the state secretary's registry.

(i) The state secretary shall assess on each communication technology service provider approved by the secretary an annual fee to be proportioned equally among registered providers. The annual fee shall not exceed, in the aggregate, the actual and reasonable costs incurred by the state secretary for administering the requirements imposed under this section. The costs may include acquiring additional software and other such costs and expenses as determined by the state secretary as reasonable and necessary to meet such requirements. The annual fee shall not be greater than \$500,000, in the aggregate.

(j) The secretary shall adopt rules regarding performance of the notarial act that: (i) prescribe the means of performing a notarial act involving a remotely-located individual using communication technology; (ii) establish standards for identity proofing by means of credential analysis using 1 or more commercially available automated software or hardware processes that, consistent with sound commercial practices: (A) aid the notary public 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; and (B) use information held or published by the issuing source or authoritative source to confirm the validity of credential details; provided, however, that the results of the credential analysis process shall be provided to the notary public performing the notarial act; and (iii) provide

for the use of audio-video communication technology that: (A) allows the signal transmission to be reasonably secure from interception, access or viewing by anyone other than the participants communicating; (B) provides sufficient audio clarity and video resolution to enable the notary to communicate with the remotely-located individual and any witness and to confirm the identity of the remotely-located individual and any witness, as required, using identity proofing; and (C) meets tamper-evident technological requirements by the use of additional technology that renders any subsequent change or modification to the electronic record evident.

(k) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely-located individual or by providing storage of the audio-visual recording created under clause (iv) of subsection (a), the provider of the communication technology, identity proofing or storage shall appoint the state secretary as the provider's agent for service of process in any civil action in the commonwealth related to the notarial act.

(l) With respect to notarial acts conducted during a closing, as defined in section 46E of chapter 221, the communication technology shall be engaged by the closing attorney with the approval of the lender. Upon successful verification of the identity of the remotely-located individual by the notary as required by clause (i) of subsection (a), such attorney, or the attorney directing or managing the closing who is directly supervising a non-attorney notary public, shall enter and affirm the attorney's board of bar overseers registration number prior to the conduct of the first notarial act. The communication technology shall record such information in a manner that is logically associated with the transaction and shall retain such information for the same length of time and in the same manner as it retains all other information regarding the notarial act.

(m) In addition to any coverage it elects to provide for individual notaries public, a communication technology service provider shall provide maintenance of errors and omissions insurance coverage in a total amount of not less than \$250,000 in the annual aggregate with respect to potential errors or omissions in or relating to the technology or processes provided by the communication technology service provider. A notary public shall not be responsible for the security of the systems used by the remotely-located individual or others to access the notarization session.

(n) Prior to a notary public's initial notarization using communication technology, the state secretary may require the notary public to complete a

course, either in-person or online, addressing the duties, obligations and technology requirements for conducting remote notarizations offered by the state secretary or a vendor approved by the state secretary; provided, however, that if such course is required the course's duration shall not exceed 3 hours. Each such provider of communication technology shall make the in-person or online course generally available to all applicants. Regardless of membership in the provider's organization, the provider shall charge each attendee the same cost for the course unless the course is provided in conjunction with a regularly scheduled meeting of the provider's membership.

(o) Notwithstanding any general or special law to the contrary, with respect to any document executed in the course of a closing, as defined in section 46E of chapter 221, involving a mortgage or other conveyance of title to residential real property, only a notary public appointed pursuant to this chapter who is an attorney licensed to practice law in the commonwealth, or a non-attorney who is under the direct supervision of, or acting pursuant to a direct request by, the attorney directing or managing the closing, shall perform an acknowledgment, affirmation or other notarial act utilizing communication technology. The notarial certificate affixed to any such document shall recite the board of bar overseers registration number of the attorney notary, or of the supervising attorney for a document notarized by a non-attorney.

(p) The chief justice of the land court department may promulgate rules, orders, guidelines and directives to implement this section and section 27 as said sections pertain to the execution, acknowledgment and registration of documents affecting title to land whose title has been registered and confirmed by the land court department pursuant to chapter 185.

Section 29. A notary public shall not use, sell or offer to sell to another person or transfer to another person for use or sale any personal information obtained under section 28 that identifies a remotely-located individual, a witness to a remote notarization or a person named in a record presented for remote notarization, except: (i) as necessary to facilitate performance of a notarial act; (ii) to effect, administer, enforce, service or process a record provided by or on behalf of the individual or the transaction of which the record is a part; (iii) in accordance with said section 28, including the rules adopted pursuant thereto; or (iv) in accordance with other applicable federal or state law, or to comply with a lawful subpoena or court order.