



EXECUTIVE ORDER NO. 26

FACILITATING REMOTE NOTARIZATION, REMOTE WITNESSING & COMMERCE IN THE STATE OF TENNESSEE

Just this April 9, 2020, Governor Bill Lee issued Executive Order No. 26 which suspended law(s)—including the provisions & requirements of the Online Notary Public Act, Title 8, Chapter 16, Part 3 to the extent necessary—to facilitate remote notarization & remote witnessing of documents in the state of Tennessee.

Executive Order No. 26 temporarily suspends all statutes requiring a physical presence for a notary public, and witness(es), and allows for the use of both simultaneous real-time audio & visual communication—such as FaceTime, Zoom, Skype, and other similar communication technologies. With the intent of reducing in-person contact in order to

lessen exposure to COVID-19, this Executive Order serves to permit remote notarization and remote witnessing of documents to provide for individuals to engage in commerce, and execute legal documents.

The Tennessee Bar Association established a Remote Notary/Witness Task Force which communicated with both the Tennessee Supreme Court, and the Tennessee Governor's Office on remote notarization & remote witnessing. Terry Olsen ("Terry")—one of the contributors to this Update—was a member of the Task Force. Terry will share his view(s) of the practical mechanics of the Order (later on in the Update).

First, I—**Waddell Wright**—will share my view(s) of the short-term, and possible long-term effects of the Order, as stated below:

- This is a good 1st step.
- The 2nd step is getting title insurance company underwriters then the lenders to allow as well on loans requiring title insurance.
- One of the most important factors of Executive Order No. 26 is that it gives protection to real estate professionals clients, customers as well as legal representatives.
- There are drive up closings occurring all over the US and this order will help facilitate in keeping people in quarantine—protecting the most vulnerable of our population.
- We need to do business the way consumers want to do business. Right now, many of the consumers across the US are not consuming; however, there is a want and a need from these consumers for deals to still to be done. In the wake on COVID-19, video conferencing is now how business is being conducted across all sectors.
- It seems to me that people are getting used to working remotely and spending more time with their families—and that ultimately will lead to a more productive society with healthier families. I am getting four to six very productive hours in every workday, and I look forward to the next day.
- Before this pandemic I was working 70-80 hours a week, stressed, and not as focused. Being able to simply video conference, and having the ability to notarize important real estate transaction documents will give all our developments, loans

and legal documents a better chance of being successful due to everyone already having the technology at home to transact business.

- At the end the day, the title insurance companies and lenders must be comfortable with the signing of counterparts, and subsequently. As this Order gets unpacked by the legal brainiacs, I am sure all the fraud concerns will be addressed. We are, and always have been a resilient nation.

Terry's view(s) regarding the sections & mechanics of Executive Order No. 26 are listed below:

- **Document** means an instrument, trust, will, living will, durable health care power of attorney, durable power of attorney, deed, or other legal document;
- **Signatory** means a person or persons who execute or sign ("execute", "executed", or "execution") a Document;
- **Witness(es)** means a person or persons who acknowledge, attest, or otherwise witness ("witness" or "witnessing") the execution or signing of a Document by a Signatory, and/or a person or persons who witness an act performed by another Witness(es);
- Execution by a Signatory, witnessing by Witness(es), and notarization by a notary public must occur via real-time audio and visual communication means where the Signatory, the notary public, and Witness(es) **can see and hear one another** simultaneously, including, but not limited to, video conference technology such as **Skype, FaceTime, Zoom, WebEx, and other similar communication technologies**;

- The Signatory, notary public, and Witness(es) must each be **physically located in Tennessee** during the real-time audio and visual communication;
- Notary public and Witness(es) through use of real-time audio and visual communication must verify identity of the Signatory, **by personal knowledge or by government-issued** identification at the time that execution occurs;
- Signatory and Witness(es) must **affirmatively identify** on real-time audio and visual communication the Document being executed and witnessed;
- Execution and witnessing must be **captured sufficiently close on real-time audio and visual communication** for notary public and Witness(es) to observe;
- Document must include provision **stating that it was executed in compliance with Executive Order No. 26 by Tennessee Governor Bill Lee, dated April 9, 2020;**
- Execution, witnessing, or notarization of Document, as applicable must be memorialized by 1 of the 2 following methods:
 - i. Counterparts. Persons who execute, witness, or notarize Document—while in different locations—**must execute, witness, or notarize separate signature pages in counterparts;** OR
 - ii. Subsequent notarization or witnessing of original Document. Document is executed by Signatory, and then notary public or Witness(es), or a combination thereof, subsequently notarizes or witnesses original

Document executed by Signatory. Such notarizing or witnessing shall be deemed to be carried out at the time of the execution by the Signatory as long as the notarizing or witnessing is **completed not later than ten calendar days from the date of the execution of the Document.**

- This Order is effective and enforceable from **11:59 p.m., Central Daylight Time, on April 9, 2020 thru 12:01 a.m., Central Daylight Time, on May 18, 2020;**
- The Online Notary Act can still be used;
- The validity period of the Order must be considered;
- The role of attorney as both the drafter of the Document, and as notary public must be considered;
- The instructions given to all parties before any action(s) taken must be considered;
- The purpose(s), and goal(s) of the Document must be considered;
- Counterparts as compared to subsequent notarization/subsequent witnessing must be weighed & balanced as per efficiency, good faith, success, fraud, etc.; and
- The instructions given to all parties after any action(s) taken must be considered.



Waddell Wright

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Waddell Wright, CPM®, CCIM is the CEO of W. Wright & Co., a full service real estate firm that specializes in brokerage, management and development.

A licensed real estate professional for 24 years, he is a licensed broker in both TN and FL and has expertise in land acquisition, analysis, entitlement, development, construction, leasing, and exit strategies for commercial, residential, and mixed-use properties. Wright has provided over 1,000 asset valuations to lenders of real estate properties, and has sold/purchased investment real estate more than \$500 million.

Wright holds a Certified Commercial Investment Member (CCIM), a Certified Property Manager (CPM), and a Certified Residential Specialist (CRS) designation, among others. He serves as president of the IREM Nashville chapter and serves the IREM governing council on a national level.



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Terry L. Olsen, Esq. practices Immigration & Nationality Law, and International Law. Mr. Olsen has served, and continues to serve the international community, and his clients' interests in the United States, and internationally. He is the Chair of the International Law Section of the Tennessee Bar Association, and is former Chair of the Immigration Law Section of the Tennessee Bar Association—having served as Chair of the TBA's Immigration Section for approximately five terms since 2009. He is also Vice Chair of the Tax Law Section of the Tennessee Bar Association.

Mr. Olsen has served as Chair of the Chattanooga Branch of the British American Business Group from 2012-2014, and he served as Chair of the World Trade Society of Chattanooga from 2004-2008. Mr. Olsen has served as adjunct faculty in the Executive MBA Program, and Aspire Program at Bryan College. He has given immigration law seminars at the following universities: University of Tennessee at Chattanooga, University of Tennessee at Knoxville, Southern Adventist University, Bryan College, Dalton State College, Oakwood University, the University of Alabama at Huntsville, Sewanee: The University of the South, National Taiwan University, and National Chung Hsing University.