

South Dakota Electronic Recording Commission
Teleconference Meeting
Tuesday, January 19, 2021
9:00 am MT / 10:00 am CT

The South Dakota Electronic Recording Commission members will be participating in the meeting via a teleconference/audio link in the South Dakota Association of County Officials Conference Room at 211 East Prospect Avenue, Pierre, South Dakota, 57501. Members of the public may listen or participate through the teleconference/audio link at the South Dakota Association of County Officials Conference Room at the address stated herein, or by conference call number and code as follows: Dial-in: 1-302-202-1102 Conference Code: 578111. All votes will be by roll call.

South Dakota Electronic Recording Commission Members:

Erika Olson, Chair – South Dakota State Bar Association Representative
Greg Wick, Vice Chair – South Dakota Land Title Association Representative
Deb Young – Davison County Register of Deeds
Julie Risty – Minnehaha County Register of Deeds
Lana Anderson – Meade County Register of Deeds
Donna Mayer - Pennington County Register of Deeds
Traci Radway – Haakon County Register of Deeds
Donald Straka - South Dakota Bankers Association Representative
Mitch LaFleur – South Dakota Land Title Association Representative
Monte Watembach – Information Technology Professional – Non-voting member
Kris Jacobsen – SDACO Deputy Director – Non-voting member

- 1) Call to Order
- 2) Roll Call
- 3) Approval of Minutes of January 30, 2020 meeting
- 4) Approval of Agenda
- 5) E-Recording Administrative Rules review – reports/comments from member organizations
- 6) Review of Proposed Amendments Remote Notarization Statute (SDCL 18-1-11.1) from South Dakota Land Title Association (see attached summary and proposed revisions)
- 7) Other Business

8) Opportunity for Public Comment

9) Adjournment

SDCL 18-1-11.1 Revision – Explanation

The proposed revisions to SDCL 18-1-11.1 on the following pages are being doing to clarify and address several issues that have arisen since the adoption of remote notarization in South Dakota in 2019. Below is a list of what the revisions do and do not address or accomplish. Please note that SDCL 18-1-11.1 as originally adopted represented an early form of what the real estate and lending community has termed “Remote Ink Notarization” which is distinct from “Remote Online Notarization”. The proposed revisions help to address some the terminology differences between SDCL 18-1-11.1 and other Remote Ink Notarization while still retaining the original purpose of SDCL 18-1-11.1 of allowing attorneys a statutory process to have their clients remotely execute documents that need to be acknowledged. The proposed revisions do not move South Dakota any closer to Remote Online Notarization nor does it expand the availability of Remote Ink Notarization to situations where the notary officer does not have an established personal and/or specific business relationship with the executioner of the instrument. Those changes would need to be addressed as part of a larger review of Title 18 and other parts of the statutes and should be addressed by the collaborative work of the various professions and industry that would benefit from and be impacted by such an adoption.

- The proposed revision adds “video” to the term “communication technology”. While explicitly clear in the statute via the “communicate with each other simultaneously by sight and sound” in the definition of “communication technology”, Dakota Homestead has been made aware of instances where telephonic communication only has been used, so the addition of “video” should further help eliminate this issue.
- A definition was added for personal knowledge that provides two ways to satisfy it. The first, (3)(a), gives more information about what personal knowledge constitutes and clarifies that a mere acquittance is insufficient. The second, (3)(b), provides that certain professional service relationships will automatically satisfy the personal knowledge requirement. The phrase “or employed by” allows for imputation of personal knowledge since often the primary contact at the firm / business may draft the document and some other employee may be acting as the notary.
- Draft Section 3 is modeled on what Professor Simmons proposed last April in the State Bar Journal and what Dakota Homestead has been providing to notaries when we are contacted. It includes a space for specifically listing the remote location where the executioner is located, a spot to detail the personal relationship to prove it satisfies 18-1-11.1(1), and contains sufficient language that matches the rest of 18-1-11.1 to prove that the statute was complied with.
 - The proposed language would work for individual acknowledgments only. An acknowledgment block matching fiduciary, corporate, partnership, or other situations where an individual acknowledgment is insufficient (the various forms in SDCL 18-4 and 5) would need to be used and with the remote notarization language added to it.
- If desired, Dakota Homestead can put together draft language for each of those situations. The concern is that document preparers and notaries routinely utilize the incorrect acknowledgment block right now (individual acknowledgments being used for all other situations) that the incorrect acknowledgment block would be even more widespread since only the form contained in likely SDCL 18-1-11.2 would be used in remote notarization situations.

FOR AN ACT ENTITLED, An Act to Update Remote Ink Notarization

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That §18-1-11.1 be amended to read:

A notarial officer in this state, while located in this state, may perform ~~by means of communication technology~~ a notarial act executed on a tangible document by a person who appears ~~before, but is not~~ in the physical presence of the notarial officer but by means of video communication technology if the notarial officer:

- (1) Has personal knowledge of the identity of a person through dealings sufficient to provide reasonable certainty that the person has the identity being claimed; and
- (2) Affixes the notarial officer's signature to the original tangible document executed by the person; and
- (3) Indicates in the notarial certificate the remote location of the person executing the document; and
- (4) Indicates in the notarial certificate that the notarial act involved a statement made or a signature executed by a person not in the physical presence of the notarial officer, but appearing by means of communication technology; and
- (5) Is able reasonably to confirm that the document before the notarial officer is the same document in which the person made the statement or on which the person executed a signature; and
- (6) All other notarial requirements, including the use of the proper acknowledgment block form, still apply and must be complied with.

Section 2. That §18-1-1.1 be amended to read:

Terms in this chapter mean:

- (1) "Acknowledgment," a declaration by a person before a notarial officer that the person has signed a document for the purpose stated in the document and, if the document is signed by a representative who is:
 - (a) An authorized officer, agent, partner, trustee, or other representative of a person other than a natural person;
 - (b) A public officer, personal representative, guardian, or other representative in the capacity stated in a document;
 - (c) An attorney-in-fact for a natural person; or
 - (d) An authorized representative of another person in any other capacity, that the representative signed the document with proper authority and signed it as the act of the person identified in the document;