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## MEMORANDUM

**TO:** Clients and Friends of the Firm

**FROM:** Aaron Polasek

**DATE:** August 30, 2018

**SUBJECT:** Texas Form of Notary Acknowledgment; Online Notarization

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Texas has adopted a process whereby a notary acknowledgment can be taken via online, two-way audio and video communication that meets certain requirements. House Bill 1217 was effective as of July 1, 2018 and amended section 121.006 of the Texas Civil Practices and Remedies Code. The Texas Secretary of State recently provided guidance on implementation of the processes necessary to achieve such a notary acknowledgment. While it will likely take time for the industry to put in place the necessary components to realize online notarization in earnest, it is important for all documents that will be notarized to include an amended notary acknowledgment block to align with the amended statute pertaining to notarization. The Texas Secretary of State has not provided a model form or suggested format for the new acknowledgement block, other than to require a notary public (duly commissioned as an online notary public) to indicate on the notary acknowledgment that the notarial act was performed either as a traditional acknowledgment (whereby the notary and person or persons for whom the notary is being performed appeared “live” in front of the notary public) or as an online acknowledgment (whereby the notarial acknowledgment was completed via online communication).

Amended section 121.006, Texas Civil Practices and Remedies Code provides, in pertinent part, an acknowledgment form must include a space for an online notarization to indicate whether the notary act was completed as a traditional or online notarial acknowledgement. The rules adopted by the Texas Secretary of State provide the following guidance relating to traditional and online notarizations:

- For traditional notarizations, the notary public shall attach a notarial certificate that names the principal, the date of the notarization, the state and county in which the notarization is performed, and language evidencing the type of notarial act performed, as well as signing and including an impression of the notary’s seal.
- For online notarizations, the notary public shall attach an electronic notarial certificate that identifies the principal, the date of the notarization, the state and county in which the notarization was performed, that the notarial act was an online notarization, and language evidencing the type of

the notarial act performed, as well as “signing” the document by affixing the online notary public’s digital certificate and including an attachment of the online notary public’s digital certificate and the notary public’s electronic seal.

The main difference between the formatting and required content, as expressed in the two rules above, is the online notarization requires inclusion of language evidencing the notarial act was performed as an online notarization.

An online notarization may not be contemplated as part of a closing or related document execution, but a client may not know if a settlement agent will utilize an online notary and, if an online notary is used, a client does not know if the notary public will include an appropriate form of notary acknowledgment in compliance with the statute and rules applicable thereto. Therefore, all clients should amend the form of notary acknowledgment block that is preprinted on documents to read substantially similar to the following:

THE STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by **JOHN DOE AND JANE DOE, HUSBAND AND WIFE.**

\_\_\_\_\_  
Notary Public

**TO BE COMPLETED BY THE NOTARY PUBLIC – MARK THE APPROPRIATE BOX APPLICABLE TO YOUR NOTARIAL ACKNOWLEDGMENT: [ ] This notarial act was a traditional, in person notarization; or [ ] This notarial act was an online notarization whereby the person(s) appeared before me by interactive two-way audio and video conference technology that met the online notarization requirements under Subchapter C, Chapter 406, Government Code, and rules adopted under that subchapter.**