STATE OF NEW YORK

4277--A

Cal. No. 145

2021-2022 Regular Sessions

IN ASSEMBLY

February 1, 2021

Introduced by M. of A. WALKER -- read once and referred to the Committee on Judiciary -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the executive law, in relation to the requirements for notaries public and commissioners of deeds relating to certain instruments affecting real property

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new section 135-d to read as follows:

§ 135-d. Requirements of notaries public and commissioners of deeds related to certain instruments affecting real property. 1. This section shall apply to every notarial act in the state involving a document of conveyance that transfers or purports to transfer title with respect to residential real property located in the state. It shall also apply to commissioners of deeds appointed pursuant to section one hundred forty of this article.

2. As used in this section, the following terms shall have the following meanings:

a. "document of conveyance" shall mean a written instrument that transfers or purports to transfer title effecting a change in ownership to residential real property, excluding:

(i) court ordered or court-authorized transfer of residential real property including but not limited to a transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation, or as a result of property settlement, or agreement incidental to a decree of divorce, dissolution of marriage, annulment, or legal separation;

(ii) a transfer order by a probate court during the administration of a decedent's estate;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(iii) a judgment of a foreclosure and sale, or a levy pursuant to an execution;

(iv) a court ordered voiding of an instrument affecting real property;

(v) a transfer of property to a trust in which the beneficiary is or includes the grantor; and

(vi) a deed from a grantor to himself or herself that is intended to change the nature or type of tenancy by which he or she owns residential real property.

b. "financial institution" shall mean a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

c. "notarial record" shall mean the written document created in conformity with the requirements of this section.

d. "residential real property" shall mean a building or buildings consisting of one to three dwelling units where the square footage of the residential portion exceeds the square footage of any commercial portion.

e. "signatory" shall mean the person or persons whose signature is being acknowledged by a notary public or commissioner of deeds.

3. A notary appointed and commissioned as a notary in this state and a commissioner of deeds shall create a notarial record of each notarial act performed in connection with a document of conveyance. The notarial record shall contain:

a. the date of the notarial act;

b. the type, title or description of the document of conveyance being notarized, the block and lot number used to identify the residential real property for assessment or taxation purposes, and the common street address for the residential real property that is the subject of the document of conveyance;

c. the signature, printed name and residence street address of each person whose signature is the subject of the notarial act, and a certification by the person that the property is residential real property as defined in this section;

d. a description of the satisfactory evidence reviewed by the notary or the commissioner of deeds to determine the identity of the person whose signature is the subject of the notarial act. Satisfactory evidence shall include presentation of any one of the following documents identifying the signatory or signatories:

(i) a valid driver's license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, Commonwealth or possession, the District of Columbia, or a state government within the United States;

(ii) a valid passport issued by the United States government;

(iii) a valid passport issued by a foreign government; or

(iv) a valid municipal identification card issued pursuant to section 3-115 of the administrative code of the city of New York; and

e. the date of notarization, the fee charged for the notarial act, the notary's home or business phone number, the notary's business or residence street address, the notary's commission expiration date or the commissioner of deeds appointment expiration date, the correct legal name of the notary's employer or principal, and the business street address of the notary's employer or principal.

4. The notarial record required under subdivision three of this section shall be created and maintained for each person or representative whose signature is the subject of a notarial act regarding a document of conveyance. It shall be in substantially the following form:

NOTARIAL RECORD:

DEED TRANSFER

I, (GRANTOR) HEREBY AUTHORIZE THE TRANSFER OF OWNERSHIP OF MY PROPERTY TO THE GRANTEE DESIGNATED BELOW. I UNDERSTAND I MAY BE TRANSFERRING OWNERSHIP OF MY HOME.

Date Notarized:

Fee: $

The undersigned grantor hereby certifies that the real property identified in this notarial record is residential real property as defined in section 135-d of the executive law.

Grantor's (Signer's) Printed Name:

Grantor's (Signer's) Signature:

Grantor's (Signer's) Residential Street Address, City, State and Zip Code:

Grantee's Relationship to Grantor:

Grantee's (Signer's) Printed Name:

Grantee's (Signer's) Signature:

Grantee's (Signer's) Residential Street Address, City, State and Zip Code:

Type or Name of Document of Conveyance:

PIN No. of Residential Real Property:

Common Street Address of Residential Real Property:

Description of Means of Identification:

Additional Comments:

Name of Notary or Commissioner of Deeds Printed:

Notary Phone Number:

Commission or Appointment Expiration Date:

Street Address of Notary, City, State and Zip Code:

Name of Notary's Employer or Principal:

Business Street Address of Notary's Employer or Principal, City, State and Zip Code:

5. Filing of the notarial record. The notary or commissioner of deeds shall file the notarial record in accordance with the procedures set forth in this subdivision.

a. Except as provided in paragraph b of this subdivision, the notarial record shall be delivered no later than fourteen days after it is created to the clerk or office of the register of the county or city within which the residential property that is the subject of the conveyance is located.

b. If the notarial record was created by a notary public in the scope of his or her work for a title insurance company, title insurance agent, financial institution, law firm or attorney at law, the notary public shall deliver the notarial record no later than fourteen days after it is created to such title insurance company, financial institution, law firm or attorney at law. Such title insurance company, financial institution, law firm or attorney at law, or any successor or assignee of such title insurance company, financial institution, law firm or attorney at law within the seven-year retention period, shall retain the notarial record and may disclose such record only as permitted under subdivision seven of this section.

6. The notarial record shall be retained for seven years in accordance with the procedures described in subdivision five of this section and with the confidentiality and disclosure provisions established in subdivision seven of this section. No copies of the original notarial record may be made or retained by the notary. The notary's employer or principal pursuant to paragraph b of subdivision five of this section, or a

notary attorney acting within the scope of his or her employment may retain copies of the notarial records as business records, subject to applicable privacy and confidentiality standards outlined in subdivision seven of this section.

7. The notarial record shall not be disclosed nor shall its contents be made known except as provided in this subdivision.

a. A certified copy of a notarial record shall be provided to the United States or any department thereof, the state or any department thereof, and the city of New York or any department thereof, provided that such notarial record is required for official business.

b. A certified copy of a notarial record shall be provided in accordance with a judicial order.

c. Upon written request by the grantor or a legal representative of the grantor who is named in the notarial record.

8. Any person or entity violating the provisions of this section shall, in addition to all other penalties provided by law, be liable for a civil penalty of up to two hundred fifty dollars for each such violation. The secretary of state may assess such penalty following an adjudicatory proceeding conducted in accordance with the state administrative procedure act.

9. The failure of a notary or a commissioner of deeds to comply with the procedure set forth in this section shall not affect the validity of the residential real property transaction in connection to which the document of conveyance is executed, in the absence of fraud.

§ 2. Section 136 of the executive law is amended by adding a new subdivision 4 to read as follows:

4. For performing a notarial act related to a document of conveyance for which a notarial record is required pursuant to section one hundred thirty-five-d of this article, the notary or commissioner of deeds may charge a fee of twenty-five dollars in addition to any fees required to file the notarial record.

§ 3. This act shall take effect immediately.