
To: Members of The Senate Judicial Proceedings Committee

From: William A. O’Connell, Real Property Section Legislative Chairperson

Date: February 20, 2020

Subject: SB636 – Maryland Revised Uniform Law on Notarial Acts - Delay of Effective Date

Position: Oppose unless amended

The Maryland State Bar Association (MSBA) Real Property Section **opposes Senate Bill 636 unless it is amended.** SB636 seeks to delay the implementation of the *entire* Maryland Revised Uniform Law on Notarial Acts [SB678 2019] (“the Act”) that was passed by the Legislature and signed by the Governor in May 2019. The implementation of the Act was delayed 16 months (i.e. until October 1, 2020) to give the Secretary of State time to create the pre-commissioning course of study and testing for new applicants and course of study for renewal applicants.

Delaying the implementation of the *entire* Act is unreasonable. It appears that the Secretary of State contends that there are no funds available to implement the Act. But the Act makes no changes to the way the Secretary of State operates, or the application process involved in becoming a commissioned notary in Maryland. The only thing the SOS is required to do under the Act is to create a test and course of study (or approve others doing so) for initial commissioning and create the requirements for continuing education to renew a commission which is required every four years. *The rest of the Act is self-executing.* The provisions in the Act related to pre-commissioning testing and education and continuing education are highlighted below.

Our notary laws are woefully outdated. We enacted the 1939 version of the Uniform Acknowledgment Act on or before 1957. We have not updated our law in any meaningful way since then. Yet, the Uniform Law Commission has updated the model act five times. The most recent amendments were in 2010 to allow for electronic in person notarization and in July 2018 to allow for remote on-line notarization. The Secretary of State will tell you that we already have electronic notary because Maryland enacted the Uniform Electronic Transactions Act in **2000**. But that act simply gives an electronic notarization the same legal status as a traditional paper and ink notarization. There is no law that allows a *Maryland notary* to complete an electronic

notarization or identify the process to be followed to do so. Attempts to update our notary laws begin in 2016 and were finally successful in 2019. Consumers want a choice. It is time to give it to them.

If the SOS is unable to prepare the required testing or education by October 1, 2020 then *only* that portion of the Act should be delayed. The effective date of the Act was already postponed for year to allow the SOS to prepare for it. From the time the Act was signed by the Governor in May 2019, the SOS will have had 16 months to implement it.

For the above reasons, the Real Property Section **opposes SB636 unless it is amended** and asks for an **unfavorable** report if not so amended. We understand that an amendment consistent with the above has been prepared by bill drafting, but not yet introduced.

Should you have any questions, please contact The MSBA's Legislative Office at (410)-269-6464 / (410)-685-7878 ext: 3066 or at Richard@MSBA.org and Parker@MSBA.org

Section 18-102. Qualifications; instruction and examination.

(a) Qualifications. -- Subject to Section 18-104 of this subtitle, to be appointed as a notary public, an individual must:

- (1) be at least 18 years old;
- (2) be of good moral character and integrity;
- (3) (i) be a resident of the State; or
(ii) have a place of employment or practice in the State;
- (4) (i) *for an initial applicant, have completed the course and passed the examination offered under subsection (b) of this section; or*
(ii) *for a renewal applicant, have completed the course offered under subsection (b) of this section;*
- (5) if living in the State, be a resident of the senatorial district from which appointed; and
- (6) if living outside the State, be a resident of a state that allows Maryland residents working in that state to serve as notaries public in that state.

(b) *Instruction and examination.* --

- (1) *Subject to paragraph (2) of this subsection, the Secretary of State regularly shall offer a course of study and an examination that cover the laws, regulations, procedures, and ethics relevant to notarial acts.*
- (2) *The course and examination may be offered through an entity approved by the Secretary of State.*