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REBA seeks to keep its members abreast of the latest developments in the title industry - by Paula Devereaux

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It is a pleasure to be asked by the New England Real Estate Journal to write an article on behalf of The Real Estate Bar Association (REBA) for distribution at the New England Land Title Association (NELTA) Conference in June. REBA values its relationships with conveyancers, real estate attorneys, NELTA, and the title insurance industry and is proud that NELTA president Beth Young is also a REBA member.

REBA seeks to keep its members abreast of the latest developments in the title industry that may be coming to Massachusetts and to advocate on behalf of its members regarding these developments, case law, and legislative proposals that affect our industry. Collaborating relationships with groups such as NELTA are an important part of the services REBA provides to its members in Massachusetts. It is always helpful to know how our neighboring states are addressing the myriad issues affecting the real estate title industry and which practices adopted in our neighboring states might be helpful to us in Massachusetts.

One issue that REBA has been following is the growth in laws and practices relating to both remote and electronic notarizations. Electronic notarizations that comply with Massachusetts law require the person's physical presence before a notary public. A remote notarization, authorized in some states, need not require the person's physical presence before the notary but allows for notarizations via video conferencing and webcams. Massachusetts is at the beginning of a new two-year legislative term. While no legislation has been filed to date to allow for remote notarizations, bills to study the practice have been filed. In contrast, H.3293 has been filed in the Massachusetts House to allow for electronic notarizations. REBA will be monitoring this legislation. This bill does not change the requirement that a person physically appear before the notary public, but it will allow using electronic technology to memorialize the notarial act which is helpful for electronic recording, now an accepted practice at registries in Massachusetts.

REBA has concerns with remote notarization given questions regarding the ability of a notary public

to verify the identity of the signer and the unique requirements of the Massachusetts Land Court for Registered Land. REBA understands that remote signing of various documents in the loan application process is happening now, but Massachusetts needs to think through and understand how such practices will help to protect the public in the long term. Further, whether an instrument affecting real property in Massachusetts should be acceptable for recording or registration with a remote notarization from another jurisdiction is highly problematic. REBA has also reached out to the Massachusetts Land Court on this issue.

Buying a house remains one of the most impactful decisions (both personal and economic) that a person makes in her or his lifetime and it is prudent to make sure that the integrity and reliability of the recording systems remain protected. It should also be noted that most title insurance underwriters in Massachusetts will not insure a mortgage that has been notarized via remote notarization.

Another REBA supported bill, S. 877 filed in the Massachusetts Senate and H. 1575 filed in the House (the same bill), will, inter alia, amend MGL c. 222 to delete the requirement that a principal's signature be his or her "free act and deed" or be his or her "voluntary act." At least 40 other states do not require such statements and this bill will bring Massachusetts in line with those other jurisdictions and hopefully end questions that have arisen at the recording desk if such state's notarizations do not include the voluntariness or free act and deed language.

Developments in notary practices is but one issue that REBA is watching this legislative session. Advocacy for our members, our industry and members of the public continues to be one of the prime missions of REBA - a mission shared with NELTA. REBA looks forward to continuing its collaboration with NELTA to identify and educate on the many changes and opportunities facing the industry in Massachusetts and the New England region.

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