

SB 114 (2019): E-RECORDING, NOTARY LAW CHANGES AND REMOTE NOTARIZATION

In 2019, SB 114 ushered in some major changes to laws affecting real estate recordings, allowed for e-recordings and updated the Notary Public laws including remote notarization. Here are some of the statutory changes and practical changes.

E-RECORDING: With the passing of SB114, changes were made to KRS Chapter 369 to allow for electronic recording.

However, certain documents are still subject to original “wet” signatures on the documents per KRS 369.103. These include wills, codicils, and testamentary trusts, Department of Transportation documents involving the transfer of vehicles, notary public bond forms and candidate filings.

E-recording will be available on January 1, 2020 but the language is permissive, so not every County Clerk will have e-recording available. It is our goal to have e-recording available in the first quarter of 2020. Check our website for updated information: www.grantcountyclerk.org

FORMATTING OF DOCUMENTS: Along with the advent of e-recording is the need to standardize documents whether they are e-recorded or submitted in a paper format. The Kentucky County Clerk’s Association has adopted the following standards for submission of documents.

Legibility Standards are as follows:

Paper weight:	20 lb
Paper size:	8 ½ x 11 preferred; 8 ½ x 14 accepted
Paper color:	White; no water marks
Staples or binding:	None
One or two side print:	One side only
Impression Seals:	None allowed
Colored highlight markers:	None allowed
Margins:	Top 3” of first page recommended for Recorder use, especially on right side of page (not recommended on last page); all other margins 1”
Ink color:	Black preferred, with dark blue signatures
Font:	10-point Times New Roman or equivalent
Spacing:	9 lines per inch maximum

Since it will take time for everyone to adapt to these formatting standards, most county clerks will not reject a document due to formatting standards for 90 days after January 1, 2020 and will always retain the discretion to take a document that doesn’t meet formatting standards but still meets all the recording requirements.

PREDICTABLE RECORDING FEES: The change to e-recording also brought predictable recording fees under KRS 64.012. Most county clerks will have the new fee schedule available on their websites. Different counties still maintain specific recording requirements that may require additional fees, like additional references or parcel identification numbers. *In Grant County, a mortgage with a MERS assignment will use the fee structure of a mortgage with a MERS assignment which costs \$126 for the thirty (30) pages, each additional page will be a \$3.00 fee.*

CHAPTER 382 Conveyances and Encumbrances: There were many changes to KRS Chapter 382 to allow for the adoption of the Uniform Real Property Electronic Recording Act. KRS 382.075 along with the changes to the Uniform Electronic Transaction Act under Chapter 369, has allowed for electronic signatures on documents and therefore allows County Clerks to accept documents through electronic means.

However, since e-recording is permissive, KRS 382.076 details how a document that may be born digitally can be “papered out” for purposes of filing that document with the county clerk.

The statute allows this practice as long as the tangible document is accompanied by a certificate from a notary public with:

- Signature of notary public with date signed
- Jurisdiction in which signed
- Title of notary public
- Commission number and expiration date of commission
- Language certifying that the document is a true and correct copy of an electronically executed document

The following form of certificate is sufficient for the purposes of this section, if completed with the information required by subsection (3) of this section:

State of _____

[County] of _____

I certify that the foregoing and annexed document entitled _____

[document title], dated _____ [document date, if applicable],

and containing _____ pages is a true and correct copy of an electronic document bearing one (1) or more electronic signatures.

Executed this _____ [date].

[Signature of notary public]

Some documents may be a ‘hybrid’, meaning the instrument includes both wet and e-signatures, which is acceptable for recording but the above certificate, must be included on any document that is presented on paper that was electronically signed. Any electronic signature must have an indication from the notary that the document was electronically signed and acknowledged as such. This requirement does not apply for a plat, map or survey not presented as a part of a deed.

KRS 382.140 Recording of Deeds executed out of State: This statute has been repealed as of January 1, 2020 and effectively removes the requirement for a “seal” on instruments executed outside the Commonwealth of Kentucky.

CHAPTER 423 Notary Public: SB114 had the biggest impact on Notary Public law including the adoption of remote online notarization.

Effective on January 1, 2020 the changes to becoming a notary public include:

- A person can now apply for a notary public directly with the Secretary of State using their online portal <http://app.sos.ky.gov/notaries/> a link is also on our website www.grantcountyclerk.org. The Secretary of State is still refining the administrative regulations that govern notary public.
- KRS 423.390 defines the requirements and process for being either regular notary or a remote online notary.
- The language about “good character” has been removed from the statute so the application no longer has to be signed by specific elected officials.
- A personal bond is no longer an option and all notaries will need to provide a \$1,000 insurance bond when they come to the county clerk’s office to take their oath of office.
- The notary identification number issued by the Secretary of State will not change every four years as a notary renews their commission. The identification number will remain with an individual until they chose to terminate their notary commission.
- The notary identification number is now mandatory along with the notary’s expiration date on notarized documents.
- There is now an educational component to becoming a notary. This educational component would be administered by the Secretary of State’s office and has yet to be defined by the Secretary of State’s Office.
- KRS 423.370 has eliminated the need for a notary to use a stamp/seal when notarizing a document but if they choose to have an ink stamp it must include:
 - the notary public’s name, title, jurisdiction, commission number, and expiration date
 - be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated
- KRS 423.390 (7) allows for a notary public to change their name within 10 days of making the name change. The notary must submit this information to the Secretary of State as required by their form and pay the required fee. The notary will then have to go to the county clerk’s office to complete the new oath and bond.

REMOTE ONLINE NOTARIZATION: The ability for someone to have a document notarized will now be available on January 1, 2020. There are different companies that offer this service to the public and you can see some of their videos on Youtube. This new aspect of notary law includes the following:

- KRS 423.390 (10) defines the requirements and process for being a remote online notary.
- KRS 423.390 requires the online notary to keep a journal.
- KRS 423.455 defines the process of remote notarization and the process of retaining the audio-visual recordings.
- KRS 423.450 (3) *An electronic certificate of authority evidences the authenticity of the official signature and seal of an online notary public of this state and shall contain substantially the following:*

Certificate of Authority for a Notarial Act

I, (name), Secretary of State of the Commonwealth of Kentucky, certify that (name of electronic notary), the person named as a Notary Public in the attached or associated electronic document, was indeed commissioned as a Notary Public for the Commonwealth of Kentucky and authorized to act as such at the time of the document's electronic notarization.

To verify this Certificate of Authority for a Notarial Act, I have included herewith my electronic signature this day of , (year).

(Electronic signature and seal of the Kentucky Secretary of State)"

Should you have questions please feel free to reach out to the Grant County Clerk's Office:

Phone: 859-824-3321 option 3 recording department or option 6 to speak with Tabatha Clemons

Email: Tabatha.clemons@ky.gov or Allison.conner@ky.gov

Website: www.grantcountyclerk.org