

REFERENCE TITLE: deeds; personal appearance requirement

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HB 2409

Introduced by

Representatives Gillette: Aguilar, Biasiucci, Bliss, Carbone, Contreras L,
Contreras P, Cook, Dunn, Grantham, Gress, Griffin, Heap, Hendrix,
Hernandez L, Hernandez M, Jones, Kolodin, Livingston, Longdon, Marshall,
McGarr, Schwiebert, Smith, Sun, Terech, Travers, Willoughby, Wilmeth;
Senators Borrelli, Carroll, Rogers

AN ACT

AMENDING SECTIONS 33-401 AND 41-263, ARIZONA REVISED STATUTES; RELATING TO
CONVEYANCES AND DEEDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-401, Arizona Revised Statutes, is amended to
3 read:

4 33-401. Formal requirements of conveyance; writing;
5 subscription; delivery; acknowledgment; defects

6 A. No estate of inheritance, freehold, or for a term of more than
7 one year, in lands or tenements, shall be conveyed unless the conveyance
8 is by an instrument in writing, subscribed and delivered by the party
9 disposing of the estate, or by his agent thereunto authorized by writing.

10 B. Every deed or conveyance of real property must be signed by the
11 grantor and must be duly acknowledged before some officer authorized to
12 take acknowledgments as prescribed in title 41, chapter 2, article 1.

13 C. In every deed or conveyance of real property in which the
14 grantee is subject to regulation pursuant to title 6, 10 or 29, or would
15 be subject to regulation pursuant to title 6, 10 or 29 if doing business
16 in this state, the grantee's name and address and the state in which the
17 grantee is incorporated, organized, licensed, chartered or registered
18 shall be set forth fully, together with the name of the country under
19 which the grantee is chartered or formed. The validity of any deed shall
20 not be affected by any failure to comply with the requirements set forth
21 in this subsection.

22 D. For the purposes of this section, a deed or conveyance that
23 contains any defect, omission or informality in the certificate of
24 acknowledgment, or for which there is any failure to perform a duty or
25 meet a requirement in the taking of the acknowledgment, and that has been
26 recorded in the office of the county recorder of the county in which the
27 property is located shall be deemed to have been duly acknowledged on and
28 after the date of its recording, **EXCEPT THAT ANY DEED OR CONVEYANCE
29 RECORDED AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION MUST
30 BE ACKNOWLEDGED IN PERSON BEFORE A NOTARY PUBLIC AS PRESCRIBED IN SECTION
31 41-254 AND A GRANTOR MAY NOT USE THE COMMUNICATION TECHNOLOGY PRESCRIBED
32 BY SECTION 41-263 TO APPEAR BEFORE A NOTARY PUBLIC FOR A DEED OR
33 CONVEYANCE.**

34 Sec. 2. Section 41-263, Arizona Revised Statutes, is amended to
35 read:

36 41-263. Notarial act performed for remotely located
37 individual; definitions

38 A. **EXCEPT FOR A DEED OR CONVEYANCE OF REAL ESTATE**, a remotely
39 located individual may comply with section 41-254 by using communication
40 technology to appear before a notary public.

41 B. A notary public located in this state may perform a notarial act
42 using communication technology for a remotely located individual if:

43 1. The notary public has any of the following:

44 (a) Personal knowledge under section 41-255, subsection A of the
45 remotely located individual's identity.

1 (b) Satisfactory evidence of the identity of the REMOTELY LOCATED
2 individual by oath or affirmation from a credible witness appearing before
3 and identified by the notary public under section 41-255, subsection B or
4 this section.

5 (c) Satisfactory evidence of the identity of the remotely located
6 individual by using at least two different types of identity proofing.

7 2. The notary public is able reasonably to confirm that a record
8 before the notary public is the same record in which the remotely located
9 individual made a statement or on which the individual executed a
10 signature.

11 3. The notary public, or a person acting on behalf of the notary
12 public, creates an audiovisual recording of the performance of the
13 notarial act.

14 4. For a remotely located individual located outside the United
15 States, both of the following apply:

16 (a) The record either:

17 (i) Is to be filed with or relates to a matter before a public
18 official or court, governmental entity or other entity subject to the
19 jurisdiction of the United States.

20 (ii) Involves property located in the territorial jurisdiction of
21 the United States or involves a transaction substantially connected with
22 the United States.

23 (b) The notary public has no actual knowledge that the act of
24 making the statement or signing the record is prohibited by the foreign
25 state in which the remotely located individual is located.

26 C. If a notarial act is performed under this section, the
27 certificate of notarial act required by section 41-264 and the short form
28 certificate provided in section 41-265 must indicate that the notarial act
29 was performed using communication technology.

30 D. A short form certificate provided in section 41-265 for a
31 notarial act subject to this section is sufficient if either of the
32 following applies:

33 1. The form of certificate complies with rules adopted under
34 subsection G, paragraph 1 of this section.

35 2. The certificate is in the form provided in section 41-265 and
36 contains a statement substantially as follows: "This notarial act involved
37 the use of communication technology."

38 E. A notary public, a guardian, conservator or agent of a notary
39 public or a personal representative of a deceased notary public shall
40 retain the audiovisual recording created under subsection B, paragraph 3
41 of this section or cause the recording to be retained by a repository
42 designated by or on behalf of the person required to retain the recording.
43 Unless a different period is required by rule adopted under subsection G,
44 paragraph 4 of this section, the recording must be retained for a period
45 of at least five years after the recording is made.

1 F. Before a notary public performs the notary public's initial
2 notarial act under this section, the notary public must notify the
3 secretary of state that the notary public will be performing notarial acts
4 with respect to remotely located individuals and identify the technologies
5 the notary public intends to use. If the secretary of state has
6 established standards under subsection G of this section and section
7 41-275 for approval of communication technology or identity proofing, the
8 communication technology and identity proofing must conform to the
9 standards.

10 G. In addition to adopting rules under section 41-275, on or before
11 July 1, 2022, the secretary of state shall adopt rules under this section
12 regarding performance of notarial acts for remotely located individuals.
13 The rules may:

14 1. Prescribe the means of performing a notarial act involving a
15 remotely located individual using communication technology.

16 2. Establish standards for communication technology and identity
17 proofing.

18 3. Establish requirements or procedures to approve providers of
19 communication technology and the process of identity proofing.

20 4. Establish standards and a period for the retention of an
21 audiovisual recording created under subsection B, paragraph 3 of this
22 section.

23 H. Before adopting, amending or repealing a rule governing
24 performance of a notarial act with respect to a remotely located
25 individual, the secretary of state must consider:

26 1. The most recent standards regarding the performance of a
27 notarial act with respect to a remotely located individual adopted by
28 national standard-setting organizations and the recommendations of the
29 national association of secretaries of state.

30 2. Standards, practices and customs of other jurisdictions that
31 have laws substantially similar to this section.

32 3. The views of governmental officials and entities and other
33 interested persons.

34 I. For the purposes of this section:

35 1. "Communication technology" means an electronic device or process
36 that:

37 (a) Allows a notary public and a remotely located individual to
38 communicate with each other simultaneously by sight and sound.

39 (b) When necessary and consistent with other applicable law,
40 facilitates communication with a remotely located individual who has a
41 vision, hearing or speech impairment.

42 2. "Foreign state" means a jurisdiction other than the United
43 States, a state or a federally recognized Indian tribe.

44 3. "Identity proofing" means a process or service by which a third
45 person provides a notary public with a means to verify the identity of a

1 remotely located individual by a review of personal information from
2 public or private data sources.

3 4. "Outside the United States" means a location outside the
4 geographic boundaries of the United States, Puerto Rico, the United States
5 Virgin Islands and any territory, insular possession or other location
6 subject to the jurisdiction of the United States.

7 5. "Remotely located individual" means an individual who is not in
8 the physical presence of the notary public who performs a notarial act
9 under subsection B of this section.