

Date: June 27, 2018
To: All Texas Agents
From: Ellen Wied, Senior Vice President and Underwriting Counsel
RE: Remote Online Notarization (RON)

Remote Online Notarization (RON)

As everyone knows, Texas became one of the leaders in the country when it enacted the Remote Online Notarization (RON) legislation last year. As we approach the time to start implementation, we need to take a look at a few of the specifics.

- **RON is not facetime or skype.**
- Requires a different (online) notary license than the traditional license, but an online notary applicant must first be appointed as a traditional notary before they are eligible to apply for an online license.
- Requires interactive two-way audio and video communication software.
- Requires software from a reputable third-party provider that can perform required credential analysis and identity proofing, which must be kept confidential.
- Requires that the notary maintain records electronically (as well as a back-up) that includes a recording of any video and audio communication identifying the person who is executing documents, and the actual notarial act performed, for a period of five years.
- Requires a secure storage platform for the notarization video.
- Requires that the county in which the property is located allows e-recording.
- Requires a modified electronic notarial acknowledgment certificate that includes notation that the RON form of notarization was performed.
- Effective date is July 1, 2018, but the Secretary of State (SOS) has to promulgate rules to implement. The rules have been published but will not have final approval until August at the earliest due to the high volume of questions and comments being received.
- The application for an online notary public license must be submitted electronically and include (among other information) a copy of the applicant's digital certificate, a copy of the applicant's electronic signature and electronic seal (in JPG, BMP, PNG or TIF format), and a statement that the applicant will comply with all identity proofing and credential analysis requirements and use an electronic technology standard that utilizes Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant.

RON is a notarization procedure that does not require the person who is executing the documents to be in the physical presence of the notary. The RON notary must be located in Texas, but the person executing the documents can be in their home, out of state, or even out of the country.

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A RON notary can eliminate the need for mobile notaries and cut down on the courtesy closing requests from other offices and companies. NOTE: There are some transactions that require the documents to be executed at the title company, such as a home equity loan, the Power of Attorney to be used with a home equity loan, repair and renovation Mechanic Lien Contracts, and reverse mortgages—these will still need to be handled with the signers physically coming to the title company.

Identity proofing will involve the signer answering a series of security questions pertaining to their life history, formulated from public and proprietary data sources, that only they should be able to answer. According to the pending SOS rules, the signer must answer a quiz consisting of a minimum of five questions, each with five possible answer choices, and answer at least 80 percent of the questions correctly within two minutes. If the signer fails the quiz, they get one chance to retake it and at least 40 percent of the prior questions must be replaced. If the signer fails the second time, they may not retry with the same online notary for a 24-hour period.

Credential analysis is the process by which the ID presented by the signer will be authenticated. The process must provide a confirmation to the online notary public that the credential is valid and matches the signer's claimed identity. The pending rules require that an automated process be utilized that includes image correction and edge detection; credential type classification based on format, style, layout, and other identifying features; data extraction using optical character recognition for text; and barcode scanning or forensic inspection. The process must also enable the online notary to visually compare the credential presented and the signer.

All of this will, of course, be done on an online system with live, real-time transmission, with the signer and the online notary public able to see and speak to each other. The RON software provider should be able to provide for multiple signers and sequential signing, as well as an audit trail in the form of a digital certificate for every signed document. All technology should be in compliance with ALTA Best Practices Pillar #3.

Very rigid data-security standards and secure storage methods are essential and strict confidentiality of the video record of the identity proofing and notarial act must be maintained. The online notary must also protect their electronic seal/signature from unauthorized access and use.

- * The proposed new rules **prohibit** a notary from entering certain personal information in the notary record book, such as a driver's license number or any identification number that was assigned by a governmental agency that is set forth on the identification card or passport or biometric information, including a thumb or finger print.
- * The rules further provide that this new section does not apply to an online notary public's process of making an audio-visual recording during the identity proofing, although the online notary must redact personal identifying information before any release of the information or obtain the consent of the signer.

Please do not hesitate to contact our agency representatives for assistance in locating third party RON vendors' information and vetting tips.

Additional bulletins will be forthcoming once the rules are fine-tuned and finalized.

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