



MORTGAGE BANKERS ASSOCIATION

AMERICAN
LAND TITLE
ASSOCIATION



June 1, 2018

Ms. Briana Godbey
Office of the Texas Secretary of State
Business and Public Filings Division
P.O. Box 13697
Austin, Texas 78711-3697
bgodbey@sos.texas.gov

Re: Proposed Regulations for Online Notarization

Dear Ms. Godbey,

The Mortgage Bankers Association (MBA)¹ and the American Land Title Association (ALTA)² have collaborated with each other and their member companies to advocate for enactment of remote online notarization (RON) state laws that are safe for consumers, viable in the real estate space and technology neutral. The MBA-ALTA effort includes the development of model state legislation³ based on the Texas online notarization law enacted in 2017.⁴ Implementation of RON laws that follow a common framework will lower costs and improve the mortgage experience for consumers nationwide. Thus, we welcome this opportunity to comment on proposed rules released by your office to implement the Texas law.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field.

² The American Land Title Association, founded in 1907, is a national trade association and voice of the real estate settlement services, abstract and title insurance industry. ALTA represents over 6,200 member companies. With more than 8,000 offices throughout the country, ALTA members operate in every county in the United States to search, review and insure land titles to protect home buyers and mortgage lenders who invest in real estate. ALTA members include title insurance companies, title agents, independent abstracters, title searchers and attorneys, ranging from small, one-county operations to large, national title insurers.

³ Please see www.mba.org/remotelinearization or www.alta.org/RON.

⁴ <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=85R&Bill=HB1217>

Your leadership on this issue furthers the important goal of establishing consistency among states' requirements. As you may know, the National Association of Secretaries of State (NASS) released their model standards for RON earlier this year and the Uniform Law Commission (ULC) has convened a working group to update the Revised Uniform Law on Notarial Acts (RULONA) to include provisions that would incorporate RON.

We also wish to note at the outset, that MBA and ALTA support the work of the Mortgage Industry Standards Maintenance Organization (MISMO®)⁵ Remote Online Notarization Development Workgroup,⁶ which has separately provided your office with the most recent draft of its "Standards for Remote Online Notarization." These model standards for using RON are not only intended to enable lenders, title and settlement services agents and other organizations to quickly adapt new practices to facilitate the use of RON, but also to help secretaries of state adopt consistent policies for electronic and online notarizations. It should be noted that the MISMO® RON standards are under development and should therefore be considered in draft form, pending possible updates prior to an expected approval later this year. Because standards are likely to evolve over time as new technologies are introduced, our organizations recommend that the Secretary of State's final rules should embrace standards in a manner that facilitates such future technology improvements and developments (for example, by incorporating recognized standards such as MISMO).

MBA and ALTA are supportive of the proposed rules because they reflect our organization's key principles for RON. We believe any final rules should continue to embrace the following:

- The regulations should recognize consumers have a choice in whether to use remote online notarization or not;
- The regulations should appropriately protect consumer data privacy and security;
- The regulations should take into account the personal nature of any information contained in the audio-video recording and require disclosure of what is stored and what becomes public record to the consumer as a way of helping them manage their own data privacy.
- The regulations should be technology neutral. More specifically, the technology requirements should not be so specific as to favor one vendor over another;
- The regulations should not be so prescriptive that they impede the evolution of technology security practices;
- The regulations must have provisions requiring identity verification while avoiding prescriptive language that might limit the introduction of newer solutions at a future date;
- For purposes of determining a valid notarial act, the regulations should require a limited digital recording that captures solely the notarial act in audio and video;
- The regulations must provide that acknowledgements that are performed online can be readily identified and distinguished from "in person" acknowledgements;

⁵ MISMO® is the standards development body for the mortgage industry. MISMO developed a common language for exchanging information for the mortgage finance industry. Today, MISMO standards are accepted and deployed by every type of entity involved in creating mortgages, and they are required by most regulators, housing agencies and the GSEs that participate in the industry. Use of MISMO's standards has been found to lower per loan costs, improve margins, reduce errors and speed up the loan process by reducing manual, paper-based processes while creating cost savings for the consumer. MISMO is a wholly owned subsidiary of the Mortgage Bankers Association. MISMO stands for Mortgage Industry Standards Maintenance Organization. MISMO standards are grounded in an open process to develop, promote and maintain voluntary consensus-based standards that allow participants in the mortgage industry such as mortgage lenders, investors in real estate and mortgages, servicers, industry vendors, borrowers and other parties to exchange information and more securely, efficiently and economically.

⁶ <http://www.mismo.org/get-started/participate-in-a-mismo-workgroup/remote-online-notarization-dwg>

- The regulations should incorporate by reference the standards developed by MISMO®; and,
- The regulations should conform to the Uniform Electronic Transactions Act (UETA) and the Uniform Real Property Electronic Recording Act (URPERA), and to the maximum extent possible with the Revised Uniform Law on Notarial Acts (RULONA), which is subject to change in the months ahead.

Again, MBA and ALTA believe that the promulgation of rules in Texas offer an opportunity to build on the sound framework established by the Texas Legislature to create balanced standards that can serve as a model for consistency among state laws. The regulations can also help in the effort to align state requirements with current and ongoing work of Secretaries of State around the country as well as the ULC. Both MBA and ALTA are working with their respective state and local association partners to help in this effort to create consistent standards based on principles achieved in Texas and included in these comments.

Thank you for this opportunity to offer comments. Should you or your colleagues have any questions, please do not hesitate to contact Elizabeth Blosser at ALTA (eblosser@alta.org, 202-261-0310) or William Kooper at MBA (wkooper@mba.org, 202-557-2737).

Sincerely,



Michelle L. Korsmo
Chief Executive Officer
American Land Title Association



Pete Mills
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