



October 23, 2020

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Office of the Honorable Elaine F. Marshall
North Carolina Secretary of State
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Sent via electronic mail to: ostallworth@sosnc.gov

Re: Remote Notarization Legislative Efforts

We applaud your efforts to champion legislation which would permit Remote Online Notarization (RON) in the state of North Carolina. The American Land Title Association (ALTA)ⁱ and the Mortgage Bankers Association (MBA)ⁱⁱ have been involved in discussions related to RON legislation in various states and welcome the opportunity to engage with you and your staff on the best path forward for North Carolina. ALTA, MBA, the Mortgage Bankers Association of the Carolinas and the North Carolina Land Title Association are specifically writing to express concern over current COVID-19 response policy discussions that might codify standards for remote notarizations which are inconsistent with those adopted throughout the country that have established robust consumer protections, and which consequently would introduce unnecessary legal uncertainty and risk to transactions conducted under such a legal framework.

RON laws allow businesses and consumers the ability to execute critical documents using two-way audiovisual communication. The evolving national consensus is to promote RON laws that are safe for consumers, viable for use in all types of transactions and technology neutral – meaning they do not create a competitive advantage for any particular business model.

Our combined industry approach to RON policy is based on core principles, including, but not limited to: the recognition of consumer choice in using RON; that RON should receive the same legal status as traditional notarization; the inclusion of robust provisions for ID proofing and credential analysis; that acknowledgements performed online can be readily identified and distinguished from those done in person; that technology requirements should not be so specific as to favor one vendor over another, nor should they be so restrictive that they impede evolution of new ways to improve security over time; and, that legislation should conform to other legal standards and laws. All these factors combine to ensure consumers are not at risk of having their legal documents deemed invalid.

Currently, 28 states have passed legislation embracing these principles. This expanding policy landscape is the result of key non-partisan developments that argue for greater consistency in RON authorization statutes: the work to produce implementation standards by the Mortgage Industry Standards Maintenance Organization (MISMO); the release of RON standards by the National Association of Secretaries of State (NASS) for use by their elected and appointed members; and, the publication of RON legislative language by the Uniform Law Commission (ULC) to update Revised Uniform Law on Notarial Act (RULONA).

Practically speaking, RON has been a valuable tool during the pandemic. A survey conducted in May by ALTA showed that about 30% of their members were offering remote digital transactions. That was up from 17% at the end of 2019, and those numbers are only increasing. Freddie Mac has reported seeing over a 1000% increase in use of RON on loans they purchased in 2020 compared to 2019. A review of data from several RON platform providers shows a similar increase of transactions this year compared to last. Additionally, it is of note that approximately 80% of RONs conducted by vendors are for non-real estate transactions.

While the COVID-19 crisis has led to emergency measures allowing video notarizations to occur without protections like mandatory multi-factor authentication of a signer, this should not be considered a viable long-term policy approach. The actual outcome of codifying these temporary measures into permanent law is a non-uniform standard that interjects a high-level of uncertainty into what might constitute a valid notarial act. Further unintended consequences resulting from passage of this type of legislation will without a doubt include rejection of North Carolina notarizations to certify business transactions in other states.

Our Associations support your efforts to utilize new technology to improve the notarial process for consumers, and hope North Carolina will pursue a model legislative framework that ensures the legal enforceability of documents remotely notarized. We look forward to engaging with you during this process and in the meantime, should you or your staff have any questions, please do not hesitate to contact Elizabeth Blosser at ALTA (eblosser@alta.org), Kobie Pruitt at MBA (kpruitt@mba.org), Robin Weyrens at MBAC (robinW@mbac.org) or Nancy Ferguson at NCLTA (nancy.ferguson@ctt.com).

Respectfully,
American Land Title Association
Mortgage Bankers Association
Mortgage Bankers Association of the Carolinas
North Carolina Land Title Association

ⁱ 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.

ⁱⁱ 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.