



March 11, 2019

The Honorable Linda M. Trujillo
New Mexico House of Representatives
1157 Vuelta de las Acequias
Santa Fe, NM 87507
linda.trujillo@nmlegis.gov

Re: New Mexico House Bill 470

Dear Representative Rep. Linda Trujillo,

We are writing to follow up and expand on our concerns outlined in the attached letter previously provided to your office regarding House Bill 470.

The latest amended version of this bill, which includes a carve out for real estate transactions, creates enormous legal uncertainty for our industry and does away with decades of legal practice by calling into question the validity of a notarial act. Additionally, removing the personal appearance requirement from existing notarial law results in a statute unlike any other in the nation and eliminates basic protections traditionally provided by notaries in ascertaining capacity and free will, be it in a paper or electronic environment. These changes to current New Mexico law are fraught with potential for fraud and come at the expense of legal certainty within the real estate markets.

The evolving national consensus is to promote notarial laws that are safe for consumers, viable for use in real estate transactions and technology neutral – meaning they do not create a competitive advantage for any particular business model. As currently drafted, House Bill 470 does not meet any of these requirements, lacks clear guidance and creates conflicting notarial statutes within the state. All of these factors combine to put the residents of New Mexico at risk of having their legal documents deemed invalid, a devastating outcome on everything from home ownership to wills and powers of attorney.

While the intent of amendments to House Bill 470 may have been to satisfy concerns raised by those working in lending and real estate transfer businesses, the actual outcome of these modifications is a non-uniform piece of legislation that interjects a high-level of uncertainty into what might constitute a valid notarial act under New Mexico law. Further unintended consequences resulting from passage of this legislation will without a doubt include rejection of New Mexico notarizations to certify business transactions in other states.

Given the brief time remaining in this legislative session to modify House Bill 470, we request you work with our organizations and other notary stakeholders to draft legislation for introduction during 2020 which will update and modernize notarial laws. This would give you and other members of the legislature time to hold hearings and evaluate more carefully the options for electronic and remote online notarizations.

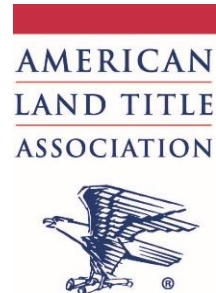
We support your efforts to utilize new technology to improve the notarial process for consumers, but as currently drafted House Bill 470 undermines the legal enforceability of documents, posing a serious risk to the transfer of real estate, which can not be mitigated with carve out language.

We welcome your questions and further discussion on this vitally important topic. Feel free to contact Aaron Thompson at NMMLA (athompson@legacymortgagenm.com), John R. Fox at NMLTA (johnf@sftitles.com), Elizabeth Blosser at ALTA (eblosser@alta.org) or Kobie Pruitt at MBA (kpruitt@mba.org).

Respectfully,

New Mexico Land Title Association
New Mexico Mortgage Lenders Association
American Land Title Association
Mortgage Bankers Association

CC: Honorable Maggie Toulouse Oliver, Secretary of State
Honorable, Daniel Ivey-Soto, Senator



February 27, 2019

The Honorable Linda M. Trujillo
New Mexico House of Representatives
1157 Vuelta de las Acequias
Santa Fe, NM 87507
linda.trujillo@nmlegis.gov

Re: New Mexico House Bill 470

Dear Representative Rep. Linda Trujillo,

Thank you for introducing legislation which would permit Remote Online Notarization (RON) in the state of New Mexico. The New Mexico Mortgage Lenders Association (NMMLA), the New Mexico Land Title Association (NMLTA), the Mortgage Bankers Association (MBA) and the American Land Title Association (ALTA) are writing to offer our comments on the bill and highlight our concerns with the current draft. We respectfully request that you consider amending the language in order to enhance consumer protections and achieve greater consistency with the RON laws of other states.

Our organizations are advocating for the enactment of state RON laws that are safe for consumers, viable in the real estate finance industry, and consistent with key principles shared by MBA and ALTA and which are reflected in almost all existing state RON laws as well as the RON legislative language developed by the non-partisan Uniform Law Commission (ULC) to update their Revised Uniform Law on Notarial Acts during 2018.

By way of background, prior to 2017, the only approaches to RON were the very different statutes in place in Montana and Virginia, which created significant legal uncertainty. An MBA-ALTA effort began after Texas enacted an online notarization law in 2017 that embraced the core principles espoused by both associations, which was quickly emulated by Nevada. The partnership includes the development of a comprehensive approach based on these laws, because MBA and ALTA believe that the implementation of RON laws that follow a common framework will provide certainty, lower costs and improve the mortgage experience for consumers nationwide.

The MBA-ALTA approach 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.

The MBA-ALTA approach, released in December 2017, helped serve as a vehicle for achieving enactment of consistent RON legislation in 5 additional states: Indiana, Minnesota, Michigan, Ohio, and Tennessee. Vermont also enacted a RON law in 2018, but it did not follow the contours of the laws of other states and their Secretary of State has expressed hesitancy in promulgating rules without the enactment of more detailed legislative language.

In addition to your legislation, this year as many as 20 new RON bills have been introduced across the country. This expanded policy landscape is also the result of four 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; the enactment of RON rules in Texas and Nevada to implement their laws; and, the previously noted release of RON language by the ULC to update RULONA.

Our organizations' concerns with HB 470 include, but are not limited to: a lack of any requirement for multi-factor authentication in the RON process; the absence of a requirement that any notarized real estate transaction clearly indicate whether the notarial act was made in-person or through a remote online means; and the absence of any standard in the bill for the creation and retention of a recording of the notarial act. These issues and others have been thoroughly discussed by policy makers, the real estate finance industry and other key stakeholders for the last two years and are included in the comprehensive approaches and implementation standards supported by our organizations. They are also the foundation of the laws of other states.

We believe that a careful review of your legislation should take place before it advances. Our organizations and their member companies in New Mexico are at your service and would welcome a discussion with you to provide further details and suggestions.

We will follow-up with your staff, but in the meantime, should you, your colleagues or your staff have any questions, please do not hesitate to contact Aaron Thompson at NMMLA (athompson@legacymortgagenm.com), John R. Fox at NMLTA

(johnf@sftitles.com), Elizabeth Blosser at ALTA (eblosser@alta.org) or Kobie Pruitt at MBA (kpruitt@mba.org).

Respectfully,

New Mexico Land Title Association
New Mexico Mortgage Lenders Association
American Land Title Association
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CC: Honorable Maggie Toulouse Oliver, Secretary of State
Honorable, Daniel Ivey-Soto, Senator

ⁱ The purpose of the New Mexico Mortgage Lenders Association is to: promote the welfare of the mortgage lending industry and related services in the state of New Mexico; encourage sound ethical business practices in the origination and servicing of real estate mortgage loans; sponsor meetings for the discussion of mortgage lending concerns; sponsor continued education; cooperate with public and private agencies in all matters relating to sound mortgage lending practices; to provide a resource for legislative issues affecting the mortgage industry; and, to build professional relationships among peers.

ⁱⁱ The vision of the New Mexico Land Title Association is to provide, equip and enable the escrow and title services provided by our members to achieve the active and diligent goals of: insuring and preserving the American Dream of homeownership; protecting all parties to real estate transactions (Sellers and Purchasers, Lenders and Borrowers) by impartial and honest settlement practices; upgrading the educational level and professional standards and maintaining high ethical standards within the land title industry; effectively and efficiently closing land transactions pursuant to the terms of the purchase agreement and closing instructions; and, promoting and sustaining the land title industry for future years.

ⁱⁱⁱ 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.

^{iv} 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.

^v <https://www.uniformlaws.org/committees/community-home?communitykey=8acec8a5-123b-4724-b131-e5ca8cc6323e&tab=groupdetails>

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

^{vii} <https://www.mba.org/RemoteOnlineNotarization>