

# States Should Permit Online and Electronic Notarizations for Real Estate Transactions

States Legislatures should adopt laws and Secretaries of State should promulgate regulations to permit the ability of consumers to choose to conduct their real estate finance transactions using electronic and remote online notarial acts.

## OVERVIEW

Notarial acts are a necessary component of the residential loan closing process. As the industry continues to serve consumers' needs by using online, mobile and other electronic means, it has become clear that certain state-based notarial laws and regulations are inadequate to support this technology shift. The limitations with existing laws may result in increased risk to MBA members that seek to serve their customers through the use of these technologies. Some states do not even permit the use of electronically notarized documents, which in those states, as a first step, must be legalized as well.

## IMPACT

- Consumers who want to take advantage of the convenience of electronic or remote online notarizations (RON) do not have the same options in all states.
- The real estate finance industry must navigate the evolving, but incongruent, landscape among states, which can add to avoidable costs that are ultimately passed on to customers.
- Lenders and other industry parties to a real estate transaction have uncertainty about their risk as mortgage documentation may change from hard copy to digital and back again at different points in the loan closing and post-closing process.
- Twenty-Three (23) states have now enacted legislation to permit RON in the furtherance of financial transactions:
  - Prior to 2018: TX, NV, VA, MT
  - 2018 Legislative Session: MN, MI, TN, IN, OH, VT
  - 2019 Legislative Session: KY, IA, WA, AZ, UT, OK, MD, ID, ND, NE, SD, FL
  - 2020 Legislative Session: WI

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- While not all states originally approached RON in the same manner, states like Montana have recently updated their law to be in line with the developing national consensus developing around RON.
- Secretaries of State in states which have recently enacted legislation permitting RON are beginning to promulgate regulations to establish standards, for example, for verifying a consumer's identity or for electronic record storage. The real estate finance industry must have a unified, informed and coordinated response to ensure maximum consistency across state requirements.

## MBA'S POSITION / NEXT STEPS

MBA supports providing consumer choice for RON and will pursue enactment of laws and regulations that support adoption in all states. These efforts will take two forms.

- **Advocate for MISMO Standards:** The Mortgage Industry Standards Maintenance Organization (MISMO) RON Working Group developed standards for credential analysis, consumer identification, audio/visual, retention, privacy, security and other items. These standards are vendor neutral and were developed to provide consensus industry input into the rulemaking in states that enacted RON laws. MISMO standards have already been influential in many states.
- **Advocate for MBA-ALTA Model Legislation in States without RON:** MBA, the American Land Title Association, and its member companies drafted model legislation to permit the use of RON for electronic documents and real estate finance transactions. The legislation provides that:
  - Consumer rights and optionality are protected in every respect and that the industry's customers always have the choice of using traditional notarization, electronic notarization, or remote online notarization;
  - All notarizations (including RON) are treated equivalently without any additional restrictions or unnecessary barriers;
  - The development of technology standards should rely on those established by MISMO, and that all public policy regarding technology should permit flexibility in order to foster innovation and maintain vendor neutrality;
  - The development of appropriate safeguards ensure that fraud and capacity issues are appropriately addressed by the remote online notarization process; and,
  - Any notarized real estate transaction clearly indicate whether the notarial act was made in-person or through a remote online means.

To pursue state adoption, MBA will continue to collaborate with its state and local association partners, member companies, consumer groups, state legislators and regulators as well as their associations, related real estate finance industry trade associations and others.