



July 14, 2021

Mr. Edward Buchanan
Secretary of State
Herschler Building East
122 W 25th St
Suites 100 and 101
Cheyenne, WY 82002-0020
SecOfState@wyo.gov

Dear Secretary Buchanan,

The Mortgage Bankers Association (MBA)¹, the American Land Title Association (ALTA)², and the Wyoming Land Title Association (WLTA) would like to applaud your efforts in championing legislation (SF29) that will permit Remote Online Notarization (RON) in the state of Wyoming. If implemented properly, RON offers consumers with safe and secure options to complete Wyoming real estate and financial service transactions. However, our associations are concerned that the proposed rules released by your office do not include the requisite language for credential analysis and ID proofing that are necessary to protect the personal information and data of Wyoming consumers.

Prior to finalizing the rules and implementation, our associations would like to encourage your office to adopt provisions for credential analysis and ID proofing that are consistent with the national standard for RON adoption. This standard is based on the well-reasoned approach of the non-partisan Uniform Law Commission's (ULC) Revised Uniform Law on Notarial Acts (RULONA), the Mortgage Industry Standards Maintenance Organization (MISMO) RON standards,³ and the bipartisan National Association of Secretaries of State standards for remote

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 330,000 people in virtually every community in the country. Headquartered in Washington, D.C., 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 1,700 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

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 <https://www.mismo.org/standards-and-resources/emortgage-specifications/remote-online-notarization-standards>

notarization implementation.⁴ This framework has been implemented throughout the country to operationalize RON with robust consumer protections. Therefore, we recommend the inclusion of the following language in the final regulations to ensure transactions facilitated by RON are safe and secure in Wyoming.

IDENTITY PROOFING.

If a notary public does not have satisfactory evidence of the identity of a remotely located individual [reference section related to satisfactory evidence], the notary public must reasonably verify the individual's identity through two (2) different types of identity proofing consisting of a multi-factor authentication procedure as provided in this [insert section of regulations]. The procedure must analyze the individual's identity credential against trusted third-person data sources, bind the individual's identity to the individual following successful knowledge-based authentication, and permit the notary public visually to compare the identity credential and the individual. The analysis of the identity credential and the knowledge-based authentication shall conform to the following requirements:

1. Credential Analysis. *The analysis of an identity credential must use public or private data sources to confirm the validity of the identity credential presented by a remotely located individual and shall, at a minimum:*

a. *Use automated software processes to aid the notary public in verifying the identity of each remotely located individual;*

b. *Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;*

c. *Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and*

d. *Enable the notary public visually to compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the notary public in real time through communication technology.*

2. Knowledge-Based Authentication. *A knowledge-based authentication is successful if it meets the following requirements:*

a. *The remotely located individual must answer a quiz consisting of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;*

b. *Each question must have a minimum of five possible answer choices;*

c. *At least 80% of the questions must be answered correctly;*

d. *All questions must be answered within two minutes;*

e. *If the remotely located individual fails the first attempt, the individual may retake the quiz one time within 24 hours;*

⁴ https://www.nass.org/sites/default/files/resolutions/2018-02/nass-support-revised-enotarization-standards-winter18_0.pdf

- f. During a retake of the quiz, a minimum of 40% of the prior questions must be replaced;*
- g. If the remotely located individual fails the second attempt, the individual is not allowed to retry with the same notary public within 24 hours of the second failed attempt; and*
- h. The notary public must not be able to see or record the questions or answers.*

OTHER METHODS OF IDENTITY VERIFICATION.

A notary public has satisfactory evidence of the identity of a remotely located individual if the notary public has personal knowledge of the identity of the individual or if the notary public has satisfactory evidence of the identity of the individual by oath or affirmation of a credible witness appearing before the notary.

1. Personal Knowledge. *A notary public has personal knowledge of the identity of the individual appearing before the notary public if the individual is personally known to the notary public through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.*

2. Credible Witness. *To be a credible witness, an individual must have personal knowledge of the remotely located individual who has made a statement in or executed a signature on the record that is the subject of the notarial act. The notary public must have personal knowledge of the credible witness under [insert relevant law or section of regulations] or must have verified the identity of the credible witness under [insert relevant law or section of regulations]. A credible witness may be a remotely located individual if the notary public, credible witness, and individual whose statement or signature is the subject of the notarial act can communicate by using communication technology.*

USE OF ELECTRONIC RECORDS.

1. Tamper-Evident Technology Required. *A notary shall select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to use a technology that the notary public has not selected.*

2. Digital Certificate. *Tamper-evident technology shall consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology. A notary public shall attach or logically associate the notary public's electronic signature and official stamp to an electronic record that is the subject of a notarial act by use of a digital certificate. A notary public may not perform a notarial act with respect to an electronic record if the digital certificate:*

- a. Has expired;*
- b. Has been revoked or terminated by the issuing or registering authority;*
- c. Is invalid; or*
- d. Is incapable of authentication at the time the notarial act is performed.*

COMMUNICATION TECHNOLOGY.

1. Audio-Video Feeds. *Communication technology shall:*

a. *Provide for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the notary public and remotely located individual to see and speak with each other; and*

b. *Provide a means for the notary public reasonably to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.*

2. Security Measures. *Communication technology shall provide reasonable security measures to prevent unauthorized access to the live transmission of the audio-visual feeds, the methods used to perform the identify verification process [insert relevant law or section of regulations], and the electronic record that is the subject of the notarial act.*

3. Workflow. *If a remotely located individual must exit the workflow, the remotely located individual must restart the identify verification process under [insert relevant law or section of regulations] from the beginning.*

The language outlined above is consistent with the national consensus for RON adoption and implementation, and the regulations issued in neighboring states.

Our associations welcome the opportunity to engage with you further. If you have any questions, please contact Kobie Pruitt (kpruitt@mba.org or 202-557-2870) at the MBA, Elizabeth Blosser (elizabethb@alta.org or 202-261-0310) at ALTA or Sasha Johnston (sasha@sheridancountytitle.com or 307-672-6478) at WLTA with any questions you may have.

Sincerely,
Mortgage Bankers Association
American Land Title Association
Wyoming Land Title Association