

# Strafford

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*Presenting a live 90-minute webinar with interactive Q&A*

## **Virtual Real Estate Closings: Verification, E-Signature, Remote Notarization, Best Practices and Procedures**

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TUESDAY, JULY 7, 2020

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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Today's faculty features:

Enza Brandi, Founder, **The Enza Brandi Law Firm**, New York

Cynthia M. (Cyndi) Stovall, Member, **Sherman & Howard**, Denver

Peter J. Wagner, Attorney, **The Law Office of Peter J. Wagner**, Huntington Station, NY

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Electronic Execution and Notarization; Remote Notarization

# Virtual Real Estate Closings: Verification, E-Signature, Remote Notarization, Best Practices and Procedures

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Electronic Execution and Notarization; Remote Notarization

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## Life with COVID-19

- First global pandemic that has directly affected “us”
- Covid-19 has affected everyone.
  - Schools shut down
  - Spectator sports canceled
  - Stores closed, some forever
  - People unemployed
  - Mandatory stay at home orders and quarantines....
  - No hair cuts and no play dates.
  - Increased Fear and Stress, and Less Coping Mechanisms



## Fear, Concern, and the Law

- Lost jobs, lost homes, lost businesses
- Alcoholism, drunk driving, drug abuse, etc. are almost certainly up
- Mask shaming...Protests, Fights...
- WHAT ELSE IS UP???

## Life with COVID-19: Reality...

- REAL ESTATE SALES AND REFINANCES....
- 80% of New Home buyers put their dreams on hold...
- Sellers fear people coming into their homes
- Agents have been showing homes virtually, and some even sold!!
- NY recently allowed realtors to show houses in person, with limits
- Everything takes longer... but
- Rates are low and refinances are BOOMING... which means so are closings. People need access to cash, right now!!

## Life with COVID-19---Refis and Closings

- With low rates and access to capital, people can save approximately \$280/month with a refinance, which is \$3300 of extra cash per year.
- We want to refi, but we don't want to get close during closings...
- How do we do them? What are the options?
- A refi has at least 4 people in a room....
- A Purchase has usually 6-8 people in a room...

## Options for socially distanced execution and acknowledgment

- Socially distanced in-person execution
- Drop box
- Drive by/roving notary
- Suspension of certain signature/notarization requirements
- Remote execution and notarization

## Major differences between E-Sign and Remote Notarization

1. Electronic execution: E-SIGN ACT.: Federal Electronic Signatures in Global and National Commerce Act (“E-Sign”) and the state versions called the Uniform Electronic Transactions Act (“UETA”) allow state licensed notaries to notarize documents “electronically” Signer and notary must be physically **present** and docs must be signed in front of the notary.
2. E-Signing allows the signer to electronically sign a document using a commercially acceptable format such as DocuSign/PDF-Filler or another method.
3. The notary verifies the signer’s identify using specific methods (unique sign-in identifiers, etc.)

## Major differences between E-Sign and Remote Notarization

1. Remote Notarization: Remote Online Notarization (“RON”) are conducted using electronic records and the parties are **not** in each other’s physical presence.
2. They are conducted using web cams, zoom, or special secured software. (addressed later)
3. RON’s need state regulatory and/or statutory authorization to allow the document signer to be in another location from the Notary.
4. Most states have enacted statutes through legislative action, and other governors have issued temporary or emergency regs to address RONs. Some still do not permit RONs.

## Electronic Execution

- Uniform Electronic Transactions Act (UETA) adopted in 47 states (per Uniform Law Commission)
- Validates e-signatures and e-contracts including for purposes of statute of frauds (UETA § 7)
- E-signatures may be used provided the parties have agreed to conduct the transaction by electronic means (UETA § 5)
- Agreement determined from the context and surrounding circumstances (UETA § 5 cmt. 4)
- Does not apply to creation/execution of wills or testamentary trusts or to certain transactions under the UCC (UETA § 3)

## Electronic Execution - Requirements

- “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. No specific technology need be used in order to create a valid signature (UETA § 2)
- That an e-record or electronic signature has been adopted by a person with the intent to sign may be shown in any manner--must be construed broadly in light of developing technologies (UETA § 2 cmt re “electronic”)



## Electronic Execution - Requirements

Would include:

- Execution using an e-signing platform such as DocuSign
- Signing using a stylus or touch screen
- Importing an image of the signature into the document
- Including one's name as part of an electronic mail communication or firm name on a facsimile

It also may be shown that the requisite intent was not present and accordingly the symbol, sound or process did not amount to a signature (UETA § 2 cmt "electric signature")

## Electronic Execution - Requirements

- Permits the use of security procedures which the parties select or which are established by law. (UETA § 9)
- A security procedure may be applied to verify an electronic signature, verify the identity of the sender, or assure the informational integrity of an electronic record. (UETA § 2 cmt “security procedure”)
- The definition does not identify any particular technology and instead permits flexibility among the parties and allows for future technological development. Includes verification via asymmetric cryptographic system, by phone call . . .

## Electronic Notarization

- Uniform Electronic Transactions Act also allows for the electronic notarization of documents, effectively removing the stamp/seal requirements for documents notarized electronically. (UETA § 11)
- All other requirements for a notarial act still apply, so any notarization: (UETA § 11 cmts)
  - must be done in the physical presence of a notary
  - The notary must satisfy him/herself as to the identity of the party executing the document (e.g., see the party's driver's license) and swear to such identification.

## Electronic Notarization – Prerequisites

- Electronic Records (RULONA § 20)
  - Notary public may select one or more tamper-evident technologies.
    - One that is designed to allow a person inspecting an electronic record to determine whether there has been any tampering with the integrity of a certificate of notarial act logically associated with a record or with the attachment or association of the notarial act with that electronic record.
  - Before a notary public performs the notary public's initial notarial act with respect to an electronic record, the notary shall notify the [commissioning officer or agency] that the notary will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use (which must conform to standards established by the [commissioning officer or agency] (if established)).

## Electronic Notarization – Prerequisites

- State Specific Prerequisites: Consider Colorado (C.R.S. § 24-21-520):
  - Only currently commissioned Colorado notaries who have been approved as eNotaries by the SOS's Office may perform electronic notarization.
  - Before a notary performs the notary's notarial act with respect to an electronic record, the notary must apply to the SOS for a unique document authentication number (with a different document authentication number being required for each electronic notarization) which be set forth within the electronic signature of the notary.

## Electronic Notarization – State Requirements

States may impose their own additional requirements for electronic notarization by statute or rule. (Covered under the remote notarization discussion below.)

# Electronic Execution and Notarization – Efficacy and Recording

- UETA validates e-signatures and e-notarization as binding between the parties.
- To be effective against third parties via constructive notice, the document will have to be recorded in the real property records.
- RULONA provides a recorder may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record. (RULONA §20)
- Some state laws, or their application by Clerk and Recorder's offices and title companies, may still require "wet" signatures on a tangible medium even where documents are e-recorded.

# Notarization In-Person, Electronic & RON

## Why Notarize?

Any deed or other instrument relating to or affecting title to real property that is acknowledged before a notary shall be prima facie evidence of the proper execution thereof. C.R.S. § 38-35-101

All deeds or other instruments instrument relating to or affecting title to real property acknowledged or proved in accordance with law may be read in evidence without further proof of the execution thereof. C.R.S. § 38-35-104

Title company, underwriter, lender requirements.



# Notarial Acts

- Revised Uniform Law on Notarial Acts (2018) (RULONA) adopted in 10 states; introduced in 6 states (per Uniform Law Commission)
- Predecessor, Law on Notarial Acts (1982) adopted in 10 states (per Uniform Law Commission) & does not provide for RON
- States have adopted RON statutes outside RULONA as well as temporary rules under Executive Orders
  - Consider issues of possible invalidity of remote notarial act if executive order under which temporary rule was adopted is invalidated.
  - Any malpractice insurance policy covering the acts of the notary public should be reviewed to determine whether coverage will be available for notarial acts and the existence and scope of exclusions from coverage where the notary violates applicable statutes or rules.

## Notarial Acts – Presence Before Notary

- In any event, notarization (the notarial act) must take place in the signer's presence:

A notarial act must be evidenced by a certificate executed contemporaneously with the performance of the notarial act signed by the notary (RULONA § 15)

- A notarial act may be performed in a state by a notary public of that state. (RULONA § 10)
- As the acknowledgment must be made/signature to be attested must be signed in the presence of the notary, both the notary and the signatory must be located in the state where the notary is authorized to perform notarial acts. This includes when a document is notarized electronically.(UETA § 11 cmts)

## Notarial Acts

- “Notarial act” means an act that a notarial officer may perform, including taking an acknowledgment or witnessing or attesting a signature. (RULONA § 2)
- Includes:
  - Acknowledgment. Taking a declaration before the notarial officer that the individual has signed a record for the purpose & in the capacity stated in the record with proper authority & as the act of the individual or entity identified in the record. Declaration must occur before notary but execution does not have to so occur. (RULONA § 2 and cmt.)
  - Signature Executed on the Record. Witnessing or attesting a signature signed in the notary’s presence. (RULONA § 2) Execution must occur before notary.

# Notarial Acts via RON – Presence Before Notary

- RON laws, such as the 2018 amendment to RULONA, and emergency rules allow requirement for presence to be satisfied remotely through “communication technology”.
- “Communication technology” means an electronic device or process that: allows a notary public and a remotely located individual (RLI) to communicate with each other simultaneously by sight and sound. (RULONA § 14A and “communication technology”)
  - The technology must consist of both audio and video components.
  - The notary public and the RLI must be able to see and hear each other interactively in real time so the notary can assess competency and whether acts are knowingly and voluntarily made.
  - The notary must reasonably be able to confirm that a record before the notary is the same record in which the RLI made a statement or on which such individual executed a signature.
  - The technology must enable the notary to verify the identity of the RLI via satisfactory evidence of identity (“identity proofing”) or witnesses.
  - The notary or person acting on notary's behalf to create an audio-visual recording of the performance of the notarial act. Specific requirements for those platforms contemplated to be adopted by rule.
  - Satisfaction of state rules regarding standards and a period for the retention of an audio-visual recording.
  - No specific technology need be used.

## Notarial Acts – Crossing State Lines

- As physical presence is required for customary notarization and electronic notarization, it may not be done across state lines.
- Provided the notarial act complies with all other applicable requirements, RULONA allows a notary to notarize across state lines & outside the U.S. (RULONA § 14A)
  - Check applicable statute or rule. Colorado's temporary rule, for example, allows a notarial act to be performed remotely only where both the signatory and notary are located in Colorado while a newly adopted statute allows the RLI to be outside of CO.
    - CO SB20-096 re C.R.S. § 24-21-514.5 effective December 31, 2020
    - CO temporary Rule 5—Remote Notarization addition to 8 CCR 1505-11
- In any event, notarial act must be performed in state where notary is commissioned. (RULONA § 10)

## Notarial Acts – Full Faith & Credit

- A notarial act performed in another state has the same effect under the laws of this state as if performed by a notarial officer in this state if the act is performed in that state by a notary public of that state. (RULONA § 11)
- This may allow for the possibility of a notary public in a state that has adopted a remote notarization law conducting a notarial act in the notary's home state with respect to a document acknowledge or signed in a state which has not adopted a remote notarization rule.

## Remote Notarization – Prerequisites

- Remote Notarization (RULONA § 14A)
  - Notary public may select one or more compliant technologies. (See slide above re Notarial Acts - Presence Before Notary)
  - Before a notary public performs the notary public's initial remote notarial act, the notary shall notify the [commissioning officer or agency] that the notary will be performing notarial acts with respect to a RLI and identify the technology the notary public intends to use (which must conform to communication standards and identity proofing established by the [commissioning officer or agency] (if established)).

## Remote Notarization – Prerequisites to Each Session

- In connection with each notarial act via RON Colorado law requires disclosure to RLI of fact of recording and details of its intended storage and that the RLI consents to both.
- At the commencement of the recording Colorado law requires a recitation of information sufficient to identify the notarial act ((1) date and time of notarial act; (2) description of record and type of the act; (3) full name & address of each person for whom notarial act is performed; (4) method used to identify the individual).

(CO SB20-096 re C.R.S. § 24-21-514.5 effective December 31, 2020)



## Remote Notarization – Identity Proofing

- Meeting requirement for satisfactory evidence of the identity of the RLI requires using at least two different types of identity proofing. (RULONA § 14A)
- “Identity proofing” means a process or service by which a third person provides a notary public with a means to verify the identity of a RLI by a review of personal information from public or private data sources. (RULONA § 14A)
  - Identity proofing is a service or process that is provided by a third person. The verification is performed by comparing and reviewing data from public or private data sources with information from or provided by the RLI. (RULONA § 14A cmt “identity proofing”)
  - Currently, some frequently used technologies involve asking the RLI a number of personal questions, the verification of which can be ascertained from public or private data sources (which is generally referred to as “knowledge-based authentication”), or the remote analysis of the characteristics and security features of identity cards (which is generally referred to as “credential analysis”). (RULONA § 14A cmt “identity proofing”)
  - See, for example, the demonstration found at <https://www.notarycam.com/eclose-quickstart/>
  - CO requires notary public, RLI & witnesses access the system through an authentication system. CO SB20-096 re C.R.S. § 24-21-514.5 effective December 31, 2020
- RULONA contemplates states via rules addressing establishment of requirements or procedures to approve providers of communication technology and the process of identity proofing. (RULONA § 14A)

## Remote Notarization – Privacy

- In Colorado, the notary must make a good faith effort to include in the recording any information outside of what is specifically required.
- Recording must be stored and secured in compliance with rules adopted by the SOS.
- To be eligible for approval as a remote notarization system or storage system, the provider must not use, sell, or offer to sell to another person or transfer to another person for use or sale any personal information obtained in a RON proceeding that identifies a RLI, a witness to a RON, or a person named in a record presented for RON except as necessary to perform the notarial act and subject to additional rules and limitations.

CO SB20-096 re C.R.S. § 24-21-514.5 effective December 31, 2020

## Remote Notarization – Record Retention

- RULONA contemplates states via rules addressing establishment of standards and a period for the retention of an audio-visual recording. (RULONA § 14A)
- In connection with each notarial act via RON CO requires the audio-visual record to include:
  - At the commencement of the recording, recitation by the notary of information sufficient to identify the notarial act including name of notary, date & time of notarial act, description of the nature of the documents, identity of the RLI and the methods by which the RLI will be identified.
  - A declaration of the RLI that the RLI's signature is knowingly and voluntarily made.
  - The statements, act and conduct necessary to perform the notarial act.
  - Provisions of CO's RULONA re journals apply to audio visual records made in RON proceedings.

(CO SB20-096 re C.R.S. § 24-21-514.5 effective December 31, 2020)

## Comparing Requirements for a Notarial Act - Identification

A notarial officer has satisfactory evidence of the identity of an individual if the officer can identify the individual by means of:

In-person notarial act on tangible medium	Electronic Notarization	RON
A passport, driver's license, or government-issued non-driver ID card that is current or expired not more than 1 year	Same as in-person notarial act on tangible medium	"Identity proofing" via a process or service by which a third person provides a notary with a means to verify the identity of a RLI by a review of personal information from public or private data sources.
Another form of government ID that is current or expired not more than 1 year	Same as in-person notarial act on tangible medium	
By a verification on oath or affirmation of a credible witness	Same as in-person notarial act on tangible medium	Also allowed via RON
RULONA § 7	RULONA § 7; UETA § 11	RULONA § 14A

# Comparing Requirements for a Notarial Act – Certificate of Notarial Act & Stamp/Seal

A notarial act must be evidenced by a certificate to which a notarial officer shall not affix or logically associate the officer's signature until the notarial act has been performed. The certificate must:

In-person notarial act on tangible medium	Electronic Notarization	RON
Be signed and dated by the notarial officer	Be signed and dated by the notarial officer via electronic signature	Be signed and dated by the notarial officer via electronic signature
Identify the county and state in which the notarial act is performed	Same as in-person notarial act on tangible medium	Same as in-person notarial act on tangible medium
Contain the title of office of the notarial officer	Same as in-person notarial act on tangible medium	Same as in-person notarial act on tangible medium
Indicate the date of expiration of the officer's commission.	Same as in-person notarial act on tangible medium	Same as in-person notarial act on tangible medium
An official stamp must be affixed to or embossed on the certificate	An official stamp may be attached to or logically associated with the certificate	An official stamp may be attached to or logically associated with the certificate
	In CO certificate must as include a unique document authentication number issued by the secretary of state. C.R.S. §24-21-520	Contain a statement substantially as follows: "This notarial act involved the use of communication technology."
RULONA § 15	RULONA § 15	RULONA § 14A; RULONA § 15

## Comparing Requirements for a Notarial Act – Journal

Notary public shall maintain a journal in which the notary chronicles all notarial acts that the notary public performs, making entries contemporaneously with performance of the notarial act:

In-person notarial act on tangible medium	Electronic Notarization	RON
May be on a tangible medium or in an electronic format	Same as in-person notarial act on tangible medium	Same as in-person notarial act on tangible medium CO law requires electronic journal with respect to each remote notarization. (CO SB20-096 re C.R.S. § 24-21-9 effective December 31, 2020)
Must be retained for 10 years after the last notarial act in the journal	Same as in-person notarial act on tangible medium	Same as in-person notarial act on tangible medium
Only one journal at a time may be maintained to chronicle all notarial acts, whether performed regarding tangible or electronic records	Same as in-person notarial act on tangible medium	Same as in-person notarial act on tangible medium
Entry must include (1) date and time of notarial act; (2) description of record and type of the act; (3) full name & address of each person for whom notarial act is performed; (4) method used to identify the individual; & (5) fee charged.	Same as in-person notarial act on tangible medium	Same as in-person notarial act on tangible medium
		Audio-visual recording must also be retained.
RULONA § 19	RULONA § 19	RULONA § 14A; RULONA § 19

## New York Emergency Order 202.7

1. Signer must present Valid photo ID to Notary during the conference.
2. Conference must be “live” and not pre-recorded.
3. Signer must affirmatively represent that he or she is physically situated in New York;
4. Signer must transmit by fax or electronic means a legible copy of the signed document directly to the Notary on the same date it was signed;
5. Notary may notarize the transmitted copy of the document and transmit the same back to the person; and
6. Notary may repeat the notarization of the original signed document as of the date of execution provided the Notary receives such original signed document together with the electronically notarized copy within thirty days after the date of execution.
7. Notary must follow normal procedures when notarizing remotely:
  - a. Placing the notary’s expiration date and county where the notary is commissioned upon the document.
  - b. If notary and signer are in different counties, the notary should indicate on the document the county where each person is located.

## New York Emergency Order 202.7

- c. Electronically transmitted document sent to the notary can be sent in any electronic format (e.g., PDF, JPEG, TIFF), provided it is a legible copy.
- d. The signatory may use an electronic signature, provided the document can be signed electronically under the Electronic Signatures and Records Act (Article 3 of the State Technology Law). If the signer uses an electronic signature, the notary must witness the electronic signature being applied to the document, as required under Executive Order 202.7.
- e. The Notary must print and sign the document, in ink, and **may not use an electronic signature to officiate the document.**
- f. The Executive Order does not authorize other officials to administer oaths or to take acknowledgments, and only applies to notary publics commissioned by the Secretary of State's office.
- g. Following remote notarization, if the notary receives the original document within 30 days, the notary may notarize the document again (i.e., physically affixing a notary stamp and hand signing the document) using the original remote notary date.



## New York Emergency Order 202.7

- h. When performing remote notarization pursuant to this Executive Order, the Department recommends the following best practices. (However, not following these two recommendations will not invalidate the act or be cause for discipline):
- i. Keep a notary log of each remote notarization;
  - ii. Indicate on the document that the notarization was made pursuant to Executive Order 202.7.

## NYC reality...

Real Estate Board of New York (NYC) recognized the need to accommodate closings without the danger of personal exposure, of coops and condos in NY:

- To avoid defaults
- To take advantage of the interest rates
- To continue the flow of transfer fees to NYC

Two types of recognized closings to avoid the “in person” closing during COVID:

- “VIRTUAL” closings:
- \*\*\* These closings are only done in those counties that do not require original documents for recording!

## NYC “Virtual Reality...”

- Done strictly electronically. Both the execution of documents and the exchange of funds (by wire transfer or otherwise).
- Issue in that some Clerk's offices on Long Island are not accepting electronically signed documents for recording.
- Firms are using messengers and paralegals to be their “legs” in getting these documents to the right place.
- 75% of closings in NYC are co-ops, which require Board interviews. These interviews are continuing, via Zoom, facetime and other videoconferencing (Skype, Facetime, Zoom, WhatsApp, Microsoft Teams, Jitsi, Amazon Chime, Cisco Webex and GoToMeeting).

## NYC “Virtual Reality...”

- “Wet Ink” still required by these entities...:
  - Lenders
  - Co-op Boards
  - Suffolk & Nassau County Clerk offices
- Certain counties outside of the City & Long Island are beginning to accept electronic filings of land records (Westchester).

## States allowing RON through Statute and/or Regs

1. Alabama (Proclamation by governor in effect).
2. Alaska (1/1/21, order expiring).
3. Arizona (law effective 7/1) Under special rules now.
4. Arkansas (Emergency order by governor).
5. **California (NOT permitted... encourage mobile notary).**
6. Colorado (Effective 12/31/2020. Emergency Proc in place) .
7. Connecticut (Emergency Regs).
8. Delaware (Emergency Regs notary must be verified by atty).
9. District of Columbia (Permits online notary).
10. Florida (Notary must register with commissioning official)
11. Georgia (Emergency Order).
12. Hawaii Exec order).

## States allowing RON through Statute and/or Regs

13. Idaho.
14. Illinois (Emergency Order).
15. Indiana (Exec order, agency regs).
16. Iowa (Effective 7/1/2020, Orders expiring).
17. Kansas (6/8/2020, Executive order expiring).
18. Kentucky.
19. Louisiana (8/1/2020, Executive Proclamation expiring) .
20. Maine (Executive order).
21. Maryland (Effective 10/1/2020 , orders expiring).
22. Massachusetts (4/23/2020 allows remote during state of emergency).
23. Michigan, (Exec order permitted under law).
24. Minnesota
25. Mississippi (Effective 7/1/2020 (Proclamation by governor in effect)).

## States allowing RON through Statute and/or Regs

26. Missouri (Executive order)
27. Montana (executive order and rules)
28. Nebraska, (Effective 7/1/2020, Orders expiring)
29. Nevada
30. New Hampshire (Executive order)
31. New Jersey
32. New Mexico (Executive order expiring)
33. New York (Exec order 202.28 and state dept. guidance)  
extends until 6/6/2020 prior Executive Orders that authorized  
use of AV tech during the notarial process. (Details later)
34. North Carolina (Permitted until 8/1/2020)
35. North Dakota (Guidance from SOS)
36. Ohio,
37. Oklahoma,
38. **Oregon (Not permitted... Safety tips only. )**

## States allowing RON through Statute and/or Regs

39. Pennsylvania (4/20/2020, with Exec order. Limited)
40. Rhode Island (Emergency Rules. Must follow guidance)
41. **South Carolina (Not permitted)**
42. South Dakota, (Limited. Notary must know principal *personally*, and notary must be affixed to original docs)
43. Tennessee,
44. Texas, (notary needs special commission).
45. Utah
46. Vermont (emergency rules must be “wet signature”)
47. Virginia
48. Washington (10/1/2020, emergency orders in place)
49. West Virginia (Emergency rule)
50. Wisconsin (emergency guidance)
51. Wyoming (Emergency guidance through 7/1/2020)



# Guidance from the GSE's Fannie Mae/Freddie Mac

## **GSE'S and RON:**

1. Lenders want to use RON, and set up their own policies according to their investors
2. GSEs incorporated policies for RON, effective immediately. The policies are set to remain in effect until further notice
3. Fannie Mae: [Lender Letter 2020-03](#) (See attached)
4. Freddie Mac [Bulletin 2020-8](#). (See attached)
5. Both require that RON systems meet at least:
  - Two-factor authentication,
  - “tamper proof” notarized docs and enhanced security
  - RON journal and backup (pictures/proof)
  - Video recording of the notary ceremony and storage of same for time required or 7 years.
  - Must be acceptable to clerk's office (No different than now.)
  - The Lender must maintain ceremony for life of loan.
  - Freddie Mac additions: Won't allow Texas Home Equity Mortgages, both signer and notary must be in same state. Lender must obtain title policy (no exceptions)

# FEDERAL BILLS for RON

## **Federal: S. 3533/H.R. 6364.**

On 3/18/2020, the US Senate introduced legislation (S. 3533) and the US House of Representatives (HR 6364) introduced bills **“Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020”** (SECURE), setting minimum standards for remote notarization, that would permit *all* notaries across the nation to begin using RON, irrespective of state laws, rules or regs.

- a. Legislation would require simultaneous communication over an electronic device or process during the notarial act.
- b. The notary public would be required to confirm the identity of the signer , other third party processes, or oath or affirmation from witness who is physically with singer or notary who can communicate with sight and sound at time of notarization.
- c. Notary would have to keep audio and video records for duration of their term (or longer if required by state law)
- d. Would permit individuals outside the US (e.g., military personnel) to utilize RON services
- e. Allows state laws, but would pre-empt any inconsistent state laws.

# Escrow Closing Option

- Parties do not attend in person.
- Third party (attorney, escrow company, title company) acts as escrow agent.
- Each party pre-signs all documents. Documents and money is collected by the escrow agent.
- Once all funds and documents are delivered to the escrowee, the deal has "closed."
- To assure that the closing goes smoothly, an escrow instruction letter is recommended to be signed by all:
  - o What docs each party signs.
  - o Whether original signatures are required
  - o Who is delivering specific documents, and to whom.
  - o When documents must be received.
  - o Process of reviewing all documents in advance of closing.
  - o Manner of money transfer (wire, couriered bank checks...)
  - o When funds may be released
  - o Method of release of funds
  - o Contract information for all parties during the remote transaction
  - o Instructions for post-closing transactions.
- It has been suggested that each Bar should promulgate guidelines for escrow letters, to facilitate remote closings.

## Platforms – Electronic Execution Providers

- Adobe Sign - <https://acrobat.adobe.com>
- Adobe Acrobat Pro - <https://acrobat.adobe.com>
- DocuSign - <https://go.docusign.com>
- SignRequest - <https://signrequest.com>
- PactSafe - <https://www.pactsafe.com>
- signNow - <https://www.signnow.com>
- eversign - <https://eversign.com>

## Platforms – Electronic Notary Providers

- Digital Delivery, Inc. - <http://www.digitaldeliveryinc.com>(link is external)
- DocVerify - <https://www.docverify.com>(link is external)
- eNotaryLog.com <https://www.enotarylog.com>(link is external)
- NotaryCam - <https://www.notarycam.com>(link is external)
- OnlineNotary.Net - <https://onlinenotary.net>(link is external)
- Pavaso, Inc. - <https://pavaso.com>(link is external)
- Safedocs - <https://www.safedocs.com>(link is external)
- Signix - <https://www.signix.com>(link is external)
- Simplifiers - <https://simplifile.com>(link is external)
- SYNARGO, Inc. - <http://www.synrgo.com>(link is external)
- WWNotary - <http://wwnotary.com>(link is external)
- ZorroSign - <https://www.zorrosign.com>

## Platforms – Remote Online Notary Providers

- Digital Delivery, Inc. - <http://www.digitaldeliveryinc.com>(link is external)
- DocVerify - <https://www.docverify.com>(link is external)
- eNotaryLog.com <https://www.enotarylog.com>(link is external)
- Nexsys Technologies - <https://www.nexsystech.com>(link is external)
- Notarize - <https://www.notarize.com>(link is external)
- NotaryCam - <https://www.notarycam.com>(link is external)
- Online Notary - <https://www.onlinenotary.us>(link is external)
- OnlineNotary.Net - <https://onlinenotary.net>(link is external)
- Pavaso, Inc. - <https://pavaso.com>(link is external)
- Safedocs - <https://www.safedocs.com>(link is external)
- Signix - <https://www.signix.com>(link is external)
- SYNREGO, Inc. - <http://www.synrgo.com>(link is external)

## Platform - Considerations

- Satisfies requirements of applicable law in relevant jurisdiction
- Free vs paid & cost
- Browser vs app-type platform
- Ability to view and sign documents on a phone or tablet
- Methods of signing permitted (insert electronic signature, sign with finger or stylus . . .)

## Platform - Considerations

- Ability to upload (and have returned) multiple documents separately vs as one combined document or having to upload each separately
- Degree of flexibility re settings on how documents are signed
- Degree of control and flexibility re execution/notarization order
- How technical is the platform to operate
- Type of tech support available: phone, online, both



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# Questions?

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