

ALTA Digital Closing Committee Report

Chair: Cynthia Durham Blair, NTP

Staff Liaison: Elizabeth Blosser

Recent Meetings:

Executive Committee Call July 15, 2020
Executive Committee Call July 21, 2020
MISMO Workgroup Call July 24, 2020
Digital Transactions Workgroup Planning Call
September 21, 2020

Future Meetings:

The Taskforce and Executive Committee meet in person at ALTA SPRINGBOARD, Advocacy Summit, and ALTA ONE, as well as via phone as needed

Recent/Current Projects:

- Ask the Digital Boot Camp Video Series
 - Launched “Ask the Digital Boot Camp Experts” video conversations to promote Boot Camp. Five conversations were hosted by Eddie Oddo and Lisa Steele, featuring guest speakers answering questions submitted by ALTA members on topics including eNotes, lender acceptance of remote notarizations, retention of audio-visual recordings, and limitations of knowledge-based authentication questions.

Ask the Digital Boot Camp Experts Video Series

That Darn Promissory Note

Sponsored by Qualia



Listen to the first installment of the Ask the Digital Boot Camp Experts video series as we discuss "That Darn Promissory Note." Joining Lisa Steele of Mother Lode Holding Co. and Eddie Oddo of First American Title Insurance Co. is Camilia Martin with Falcon Capital Advisors.

Agent Spotlight Boots on the Ground

Sponsored by Qualia



Eddie Oddo, vice president of First American Title's corporate business solutions, speaks with Web Raulston, CEO of Team Title Services in Tennessee, and Kelli Flores, vice president of First American's direct operations in Colorado. Learn how these title agents are approaching RON and RIN.

Boots on the Ground, The Real Story

Sponsored by FNF Family of Companies



During this third Ask the Digital Boot Camp Experts video series, Lisa Steele of Mother Lode Holding Co. and Eddie Oddo of First American Title Insurance Co. discuss how title companies are handling remote online notarizations with Celia Flowers of East Texas Title and Dennis Pospisil of Republic Title of Texas.

- Digital Closing and eMortgage Boot Camp
 - Planned a virtual Boot Camp in conjunction with MBA and MISMO.
 - Prepared resources and materials to provide Boot Camp attendees.



- Legislative
 - Tracked Remote Online Notarization (RON) legislation (see map of 28 states that have passed legislation below).
 - Tracked Remote Ink Notarization (RIN) emergency orders.
 - Supported the SECURE Notarization Act.
 - Drafted model emergency notarization order language and supporting materials for state land title associations to utilize (see below).
 - Researching the value of drafting uniform standards for the use of In Person Electronic Notary (IPEN).

- Executive Committee
 - Drafted principles around the use of the various types of remote notarization (see below).
 - Hosted discussions with the GSEs regarding the future of various types of notarizations, overcoming hurdles for acceptance of RON, and expanded use of eNotes.



Future Activities/Projects:

- New Digital Closing Workgroup
 - Launch a new workgroup focused on identifying and addressing barriers to adoption of digital transactions and technologies.
- Update Digital Closing Laws and Regulations Spreadsheet.

ALTA's Principles for Remote Notarization

Notarizations are central to the process of transferring real estate safely. For that reason, the American Land Title Association (ALTA), which represents the real estate settlement services, abstract and title insurance industry, has developed the following principles for notarizations conducted remotely, outside of temporary emergencies such as COVID-19. The principles outlined below represent ALTA's vision of the remote notarization system of the near-term future.

**AMERICAN
LAND TITLE
ASSOCIATION**



Leveraging Technology

COVID-19 has increased the necessity and demand for touchless transactions. Businesses are leveraging technology to create safe environments, while improving and enhancing the consumer experience. As we look to a digital future, remote notarization options should:

- Scale sufficiently to allow for broad adoption
- Allow for leveraging various identity proofing measures
- Provide consumers with digital options to complete their real estate transaction
- Encourage innovation through technology neutrality

Protecting Consumers

Safeguards are required in the notarization process to reduce fraud and protect the property rights of homeowners. Protection measures should include:

- Multifactor, third-party authentication prior to signing
- Capture of an audio-visual record of the notarial act
- Measures for verifying document integrity
- Record retention for 7-10 years, including availability and sharing capability consistent with applicable law
- Consumer data and privacy safeguards

Ensuring Usability

Practically speaking, any notarization must meet the following criteria to provide sufficient confidence for use in real estate transfer:

- Reciprocity and recognition in any state or jurisdiction
- Recordability in the land records, including capabilities to record certified paper copies of electronic documents in jurisdictions not ready for eRecording
- Disclosure of remote notarization on the document



Model State Executive Order for Remote Notarizations

Our organizations have collaborated to draft the attached model emergency notarization order. This model order is designed to create uniformity and provide legal certainty for use of remote notarizations in states promoting social distancing measures. State advocates are encouraged to use the model order, draft request letter and one-pager as appropriate in their state.

A home is a basic need and real estate finance is an essential service supporting that need. During any current or future periods of state or local shelter-in-place orders, this essential business infrastructure must be able to continue to operate. Indeed, freezing this part of the economy is not an option for consumers, and can have a multibillion-dollar impact on the American marketplace. Moreover, the inability to purchase or sell a home can have a punishing financial effect on consumers. For example, home sellers should not have to take their homes off the market when they need to sell it in order to fulfil their contractual obligations to purchase another home and a potential home buyer who needs to move for job a change cannot pause that activity without significant financial consequences. Additionally, current homeowners who may be facing pandemic-related financial hardship, must be able to take advantage of low interest rates to refinance their homes and allow that family to reduce their monthly payments.

Fortunately, there are well-tested and secure tools by which to conduct a closing electronically. Technology has provided consumers and industry with options that can be utilized without jeopardizing important consumer protections enshrined into federal and state laws and regulations. Over the last several years, consistent laws for Remote Online Notarization (RON) have been enacted in over 25 states. In recent months, these states have benefited from the ability to move to a “virtual” environment required by state and local public health ordinances.

Meanwhile, many of the remaining states have hurriedly approved different forms of Remote Ink Notarization (RIN) through executive order, proclamation, legislation or emergency rulemaking. These RIN-based approaches do not provide the same level of consumer protections and anti-fraud measures as RON. Although lenders and title insurance companies are temporarily leveraging this solution when necessary and federal housing programs are providing guidance apropos to RIN, this approach was never intended as a viable long-term solution.

Our organizations believe states should enact RON laws consistent with the non-partisan Uniform Law Commission's Revised Uniform Law on Notarial Acts and/or the MBA/ALTA Model Remote Online Notary Legislation. However, given the challenges of passing RON laws during the pandemic, we understand that states may see a need to authorize RIN on a temporary basis until legislatures can act. To ensure that any new or revised temporary state RIN authorization language be crafted in a way that assures real estate transactions are conducted in a manner that offers the most legal certainty, we have developed this model executive order, which allows for the implementation of both RON and RIN in a short-term time frame.

State advocates are welcome to contact us with questions or concerns.

American Land Title Association

Elizabeth Blosser at eblosser@alta.org

Mortgage Bankers Association

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National Association of Realtors

Amy Bos at abos@nar.realtor

Notarization Types & Emergency Options

Background & FAQ

Background: There are many types of notarizations available to consumers today, including options for using electronic documents and conducting a remote signing. During the COVID-19 emergency period, state lawmakers authorized the use of short-term notary options, such as Remote Ink Notarization (RIN).

Question: What’s wrong with states allowing use of RIN notarizations beyond the COVID-19 emergency period?

Answer: When considering long-term use, it is important to note that this type of process does not provide the same anti-fraud protections the notary process is intended to solve for, especially when it comes to identity verification.

Model legislation by the non-partisan Uniform Law Commission, as well as laws enacted by states to allow Remote Online Notarization (RON), incorporate certain core principles for the safe use of remote notarization technology. Safeguards include requiring multilayers of third-party identity verification, use of tamper-evident technology and retention of an audio-video recording of the notarial act.

In real estate transactions, notarizations must provide certainty for property transfer. Industry professionals support remote notarization options that leverage technology to improve the consumer experience, while protecting consumers from fraud and providing sufficient confidence for use in real estate transactions.

Rather than making permanent measures designed to be short-term solutions, lawmakers should pursue technology neutral notary legislation containing robust standards to protect consumers, prevent fraud and provide legal certainty.

NOTARIZATION TYPES AND TERMINOLOGY		American Land Title Association Protect your property rights					
Notarization Type	Definition	Authorization Type	Document Type	Multi-Factor Authentication (Credential Analysis & KBA)	Recorded and Retained AV Record	eNote Capability	In Person or Remote
Remote Online Notary (RON)	Remote online notarization of electronic documents with use of multi-factor authentication.	Permanent State Statute or Temporary Notarization Executive Order or Legislation					
Paper Remote Online Notarization (PRON)	Remote online notarization of paper documents (delivered via mail, courier, etc.) with use of multi-factor authentication.	Permanent State Statute (RULONA 2018) or Temporary Notarization Executive Order or Legislation					
Remote Ink Notarization (RIN)	Remote notarization of paper documents via audio-video communication platform (Skype, Facetime, etc.).	Temporary Notarization Executive Order or Legislation	<small>some electronic document solutions may exist</small>		Based on GSE and State Requirements		
Traditional Wet Ink Notarization (TWIN)*	In person notarization of paper documents.	Permanent State Statute					
In Person Electronic Notarization (IPEN)*	In person notarization of electronic documents.	Permanent State Statute					
* Not a touchless transaction. In person contact required.		LEGEND					
		electronic paper yes no remote in-person					

Sample Emergency Notarization Order Letter

Fill in areas highlighted in yellow as appropriate.

[LOGOS]

[DATE]

[ADDRESS TO GOVERNOR AND INCLUDE OR CC SECRETARY OF STATE AS APPROPRIATE]

RE: Expanded Consumer Protections and Legal Certainty for Remote Appearance for Notarization During COVID-19 Pandemic

Dear Governor [INSERT NAME],

First, we would like to thank you for your leadership during this difficult time as we all face the challenges of the COVID-19 pandemic together. We appreciate the hard work of you and your staff during these very difficult and uncertain times.

As we now look to the future and reopening our economy, there will continue to be a need for social distancing, especially for those at most risk from COVID-19. In light of that, the undersigned associations urge you to **[continue your support of the use of remote appearance for notarizations, and to ensure these temporary measures protect consumers and provide legal certainty.]**

Notarizations are used to authenticate many types of documents, including those in real estate transactions. In addition to transferring property, many homeowners in today's market are looking to refinance or access equity from their home. Using audio-visual technology, these transactions, which are so vital for consumers and our economy, can be touchless.

Given how vital notarizations are to our economy and various transactions, over half of the nation's governors have issued orders allowing for remote appearance for notarizations during the COVID-19 pandemic. These measures have been greatly appreciated by our associations and have helped protect both consumers and professionals working in our industries.

To create uniformity and ensure adequate consumer protections and anti-fraud measures, the American Land Title Association (ALTA), the Mortgage Bankers Association (MBA) and the National Association of Realtors (NAR) partnered to draft the attached language for states to use for authorization of remote appearance for notarizations, which is based on nationally accepted best practices for implementing remote notarizations. We believe this model order as drafted would provide safeguards for consumers in [STATE], as well as provide additional legal certainty for notarizations conducted under these emergency provisions.

To that end, we respectfully request that the attached model language be adopted in [STATE], **[and replace the existing emergency issued on ...DATE...].**

The undersigned associations appreciate your consideration of this request and are available to answer any questions you or your staff might have. **[Additionally, our organizations would welcome a future opportunity to discuss a more long-term approach to meeting borrower and real estate industry notarization needs. Many states have enacted permanent remote notarization laws and there is non-partisan model legislation available from the Uniform Law Commission.]**

[INSERT NAMES OF TRADE ASSOCIATIONS]

Sample Language for Emergency Notarization Order

Fill in areas highlighted in yellow as appropriate.

WHEREAS, INSERT STATE SPECIFIC INFORMATION

NOW, THEREFORE, I, NAME, Governor of the STATE/Commonwealth of NAME, by the authority vested in me by the Constitution and laws of the State of STATE, do hereby order and direct as follows:

1. In order to provide STATE citizens and businesses with a secure, safe, and legal method by which to execute important legal documents for the duration of the State of Emergency in my PROCLAMATION/EXECUTIVE ORDER dated DATE, providing an alternative to the in-person physical presence requirement under the current notarial process is a necessary measure to combat the COVID-19 emergency. Accordingly, pursuant to STATE LAW REFERENCE for the duration of the State of Emergency and for NUMBER OF DAYS thereafter, notaries public commissioned under the laws of this STATE/Commonwealth may perform a notarization for a remotely located individual if:
 - A. the remotely located individual appears before the notary public by using communication technology;
 - B. the notary public:
 - i. is physically located in the geographic boundaries of this STATE/Commonwealth;
 - ii. has reasonably identified the remotely located individual by one or more of the following:
 - a) personal knowledge of the individual;
 - b) at least two different types of identity proofing in compliance with [OPTION 1: the credential analysis and dynamic knowledge-based authentication provisions of the Standards for Remote Online Notarization (Version 1) adopted by The Mortgage Industry Standards Maintenance Organization on August 28, 2019][OPTION 2: any rules, regulations, or guidance issued by the [secretary of state]]; or
 - c) a government identification credential, which may be remotely presented through communication technology, that is issued to the individual and contains the signature and photograph of the individual; or
 - d) oath or affirmation of a credible witness who (I) is in the physical presence of either the notary public or the individual or (II) appears before the notary public and the individual by using communication technology, if the credible witness has personal knowledge of the individual and has been reasonably identified by the notary public under clauses (a) (b), or (c);
 - iii. reasonably confirms that a document before the notary public is the same document in which the remotely located individual made a statement on or which the individual executed a signature;

- iv. either directly or through an agent:
 - a) creates an audio-visual recording of the performance of the notarial act; and
 - b) retains such recording for ten years after the notarial act, such obligation to continue and be binding on any guardian or conservator of a notary public or any personal representative of a deceased notary public; and
- v. indicates in the notarial certificate that the notarization was performed using communication technology, a certificate in a form provided under the laws of this **STATE/COMMONWEALTH** being sufficient if it is in the form provided and contains a statement substantially as follows: “This notarial act involved the use of communication technology.”; and

[Drafters’ Note: A single-factor identification option is provided for in provision B.ii.c.). While this option may be temporarily necessary during emergencies such as COVID-19, state lawmakers and governors are encouraged to support long term remote notarization solutions for residents that embrace the consumer protections and anti-fraud measures obtained through the use of multi-factor, third-party authentication as provided in Option 1 of provision B.ii.b).]

- C. for a remotely located individual physically located outside the geographic boundaries of the United States or any territory or other location subject to the jurisdiction of the United States:
 - i. the document:
 - a) is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the United States; or
 - b) involves property located in the territorial jurisdiction of the United States or a transaction substantially connected to the United States; and
 - ii. the notary public has no actual knowledge that the act of making the statement or signing the document is prohibited by the laws of the jurisdiction in which the individual is physically located.
2. If a law of this **STATE/COMMONWEALTH** requires an individual to appear personally before or be in the physical presence of a notary public at the time of a notarization, that requirement is satisfied if the individual is a remotely located individual who appears before the notary public by using communication technology.
 3. A notary public may select one or more technologies to perform notarial acts for remotely located individuals or with respect to electronic documents under this Order. Nothing in this Order shall require a notary public commissioned under the laws of this **STATE/COMMONWEALTH** to perform a notarial act:
 - A. with respect to an electronic document;
 - B. for a remotely located individual; or
 - C. using a technology that the notary public has not selected.
 4. In the case of a notarial act performed for a remotely located individual with respect to a paper or other tangible document:
 - A. the notarial act may be performed either:

- i. for any notarial act, contemporaneously with the notary public's witnessing, by using communication technology, of the individual's execution of the document; or
 - ii. for an acknowledgment or verification on oath or affirmation, after the notary public's receipt of the executed document from the individual and contemporaneously with the taking of the acknowledgment or verification by using communication technology;
 - B. if the notarial act is performed under paragraph i of subsection A:
 - i. the individual shall send the document to the notary public by U.S. mail or courier service immediately after the document is signed by the individual;
 - ii. the notary public shall affix the notary public's signature and official stamp immediately upon receipt of the document; and
 - iii. the official date and time of the notarial act shall be the date and time the notary public witnessed the individual's execution of the document; and
 - C. if the notarial act is performed under paragraph ii of subsection A:
 - i. the notary public shall affix the notary public's signature and official stamp contemporaneously with taking the acknowledgment or verification; and
 - ii. the official date and time of the notarial act shall be the date and time the notary public took the acknowledgment or verification.
5. In the case of a notarization performed for a remotely located individual with respect to an electronic document:
 - B. the notary public shall affix the notary public's electronic signature and official stamp contemporaneously with the performance of the notarial act and after the individual has electronically signed the document; and
 - C. the notary public's electronic signature or official stamp must be attached to or logically associated with the electronic document using a tamper-evident technology.
6. In addition to the (ADD DOLLAR AMOUNT) fee that a notary public may charge for a notarial act pursuant to STATE LAW REFERENCE, a notary public may charge an additional fee of up to (ADD DOLLAR AMOUNT) for any notarial act performed for a remotely located individual under this Order.
7. In order to facilitate the recording or filing of documents that have been electronically signed and electronically notarized:
 - A. a notary public may certify that a tangible copy of an electronic document is a true and correct copy by attaching a notarial certificate that is substantially in the form provided in subsection C if the notary public:
 - i. confirms that the electronic document contains an electronic signature that is capable of independent verification and renders any subsequent changes or modifications to the electronic document evident;
 - ii. personally prints or supervises the printing of the electronic document onto paper; and
 - iii. makes no changes or modifications to the electronic document other than the certification described;

- B. a [RECORDER / CLERK / REGISTER OF DEEDS] must accept for recording a tangible copy of an electronic document containing a certificate that is substantially in the form provided in subsection C as satisfying any requirement under the laws of this STATE/COMMONWEALTH that, as a condition for recording, the document be an original or contain an original signature; and
- C. a notarial certificate under this subsection must be substantially in the following form:

CERTIFICATE OF ELECTRONIC DOCUMENT

I certify that the attached document (**insert title**), dated(**insert date**), and containing (**insert number**) pages, is a true and correct copy of an electronic document printed by me or under my supervision. I further certify that, at the time of printing no security features present on the electronic document indicated any changes or errors in an electronic signature or other information in the electronic document after the electronic document's creation or execution.

Singed this the (**insert date**) day of (**insert month**), 20__.

(Signature of Notary Public)

(Printed Name of Notary Public)

My Commission Expires: _____

- 8. Nothing in this Order shall affect a law of this STATE/COMMONWEALTH governing, authorizing, or prohibiting the practice of law.
- 9. The failure of a notary public to perform a duty or meet a requirement specified in this Order shall not invalidate a notarial act performed by the notary public under the authority granted in this Order. The validity of a notarial act under this Order does not prevent an aggrieved person from seeking to invalidate the document or transaction that is the subject of the notarial act or from seeking remedies based on the law of this STATE/COMMONWEALTH other than this Order or law of the United States.
- 10. The validity a notarial act performed under the authority of this Order and during the period hereof shall not be affected by the subsequent expiration, modification, amendment, or revocation of this Order.

11. Any notarial act that has been performed by a notary public commissioned under the laws of another state, commonwealth, territory, district or possession of the United States shall have the same force and effect under the laws of this State, as if performed by a notary public of this State. For purposes of this section, a notarial act may be performed by a notary public commissioned under the laws of another state, commonwealth, territory, district or possession of the United States for a remotely located individual who appears before the notary public by using communication technology.
12. If any provision of this Order or the application of such provision to any person or circumstance is held to be invalid, the remainder of this Order and the application of the provisions thereof to other persons or circumstances shall not be affected thereby.
13. In this Order:
 - A. The term "communication technology" means an electronic device or process that allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound.
 - B. The term "document" means information that is inscribed on a paper or other tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
 - C. The term "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
 - D. The term "electronic document" means a document created, generated, sent, communicated, received, or stored by electronic means.
 - E. The term "electronic signature" means an electronic symbol, sound, or process attached to or logically associated with a document and executed or adopted by an individual with the intent to sign the document.
 - F. The term "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 remotely located individual by a review of public or private data sources.
 - G. The term "law" includes any statute, regulation, or rule of law.
 - H. The term "notarial act" means an act, whether performed with respect to a tangible or electronic document, that a notary public may perform under the law of this **STATE/Commonwealth**. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying a tangible copy of an electronic document, and noting a protest of a negotiable instrument.
 - I. The term "official stamp" means a physical image or impression affixed to or embossed on a paper or other tangible document or an electronic image attached to or logically associated with an electronic document.
 - J. The term "person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government of governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

- K. The term "remotely located individual" means an individual who is not in the physical presence of a notary public who performs a notarial act.
- L. The term "sign" means, with present intent to authenticate or adopt a document, to execute or adopt a tangible symbol or to attach or logically associate with a document an electronic sound, symbol, or process.
- M. The term "verification on oath or affirmation", commonly known as a "jurat", means a declaration, made by an individual on oath or affirmation before a notary public, that a statement in a document is true.