



MORTGAGE BANKERS ASSOCIATION

AMERICAN
LAND TITLE
ASSOCIATION



The Mortgage Bankers Association (MBA) and the American Land Title Association (ALTA) have collaborated with each other and their member companies to produce a model for state legislation in 2018 to allow remote online notarizations in real estate finance transactions. If adopted, the model legislation would create legal certainty across the country from a uniform and consistent framework that is based on a common set of core principles. It would also enable the creation of a fully electronic mortgage experience by MBA and ALTA member companies who choose to do so.

The starting point for MBA's and ALTA's work was the compromise reached during 2017 by state and national stakeholders in Texas. Both organizations believe that this law was well thought out and have made refinements to the Texas text that are designed to make it more suitable in a multistate environment. MBA and ALTA believe the model is faithful to the core tenets of the Texas law and should be considered during 2018's state legislative sessions.

During the coming year, MBA and ALTA will work with their respective state and local association partners to advocate for the model bill. Both associations fully expect changes to be made during state legislative review processes. However, the Associations believe it is important to remain consistent with certain principles achieved in Texas and also reflected in the model. These include, but are not limited to, the following:

- State legislation must have robust provisions requiring multilayers of identity verification. This must include a requirement for presentation of a photo ID; credential analysis; identity proofing; and a digital recording of an audio/video communication capturing the notarial act.
- State legislation must provide that acknowledgements that are performed online can be readily identified and distinguished from "in person" acknowledgements.
- State legislation should not provide a competitive advantage to any company. More specifically, the technology requirements in the bill itself should not be so specific as to favor one vendor over another. Nor should they be so restrictive that it impedes evolution of technology and ways to improve security over time.
- State legislation should direct Secretaries of State, in their promulgation of regulations to implement the law, to use data standards developed by the Mortgage Industry Standards Maintenance Organization (MISMO).
- The legislation should conform to Uniform Electronic Transactions Act (UETA) and Uniform Real Property Electronic Recording Act (URPERA), and to the maximum extent possible with Revised Uniform Law on Notarial Acts (RULONA), which is subject to change in the months ahead.
- State legislation should recognize consumers have a choice in whether to use remote online notarization or not.

The reader should understand there are a few key issues the model does not resolve. **The absence of policy language on a given topic should not be interpreted as an endorsement by MBA or ALTA of any**

given approach on that issue. Some of these include matters related to state sovereignty which should be considered by state legislators and regulators or by members of the Uniform Law Commission (ULC), such as interstate recognition¹ and savings clause,² for example.

MBA and ALTA worked with the most informed notarization experts – staff at their member companies – to produce the model. The associations also received input from nationally recognized legal experts retained for this project, federal policy makers at the government housing programs, the National Association of Secretaries of State and the Uniform Law Commission (ULC). Both associations would like to thank all those who worked so hard to provide input.

MBA and ALTA believe this model legislation is based on a sound framework established by the Texas Legislature, will help create consistency among state laws, and align with current and ongoing work of Secretaries of State around the country and as well as the ULC, which is working on updates to RULONA.

¹ For example, Sections 1 and 2 of Texas [H.B.1217](#) amended Section 121.006 of the Civil Practice and Remedies Code.

² For example, Section 38.1 1(b) and 2 of Nevada [A.B. 413](#) address the savings clause.