



MORTGAGE BANKERS ASSOCIATION

AMERICAN
LAND TITLE
ASSOCIATION



**Mortgage Bankers Association – American Land Title Association
Model Legislation for Remote Online Notarizations
Frequently Asked Questions (FAQs)**

What is a notarization?

A notarization is performed by government-authorized person called a Notary Public who confirms the identity of the signatory (usually established by government issued ID) on a document before placing their signature and seal on the document.

Why notarize documents in the first place?

Notarization helps provide confidence that transaction documents are actually signed by the persons named in the documents. Also, notarizations have evidentiary value in court because notarized documents are considered as self-authenticating.

Why is notarization important for real estate transactions?

In the United States, real estate transfer documents are typically recorded in local land records at the end of a transaction. These public records, such as deeds, are required by law to be notarized and they provide the world with constructive notice about American property rights. The ability to rely on the validity of these records is central to our real estate market and provides a fundamental foundation for all parties when mortgaging, purchasing, and selling real property.

What are remote online notarizations?

Remote online notarization involves the use of audio visual technology and electronic methods to conduct a notarization.

Why did MBA and ALTA working together to draft this model legislation?

Remote online notarizations are seen as a valuable consumer benefit, and the real estate finance industry would like to be able to offer them to consumers. However, different states have taken different approaches. Both MBA and ALTA believe obstacles that might inhibit the use of remote online notary should be removed for those who want to use this type of service and more common standards should be adopted.

What approaches have states taken to allow remote online notarizations?

At the start of 2017, there were two basic – but different – approaches in states to remote online notarization: Virginia’s law was very permissive about where lenders, customers and property could be located while Montana’s law was much more conservative in establishing a very state-specific nexus in the transaction. These differences created legal uncertainty in the market for MBA’s and ALTA’s members and the consumers they serve.

During 2017, Texas enacted a law (which was quickly emulated by Nevada) that achieved wide consensus in how it allowed remote online notarizations to have the same validity as in-person notarizations. MBA and ALTA members were part of that collaboration, and have asked that their trade associations help leverage these new statutes to achieve more national consensus among state laws on this important issue.

How did MBA and ALTA go about drafting this model bill?

The MBA-ALTA model legislation is actually based in large measure on the approach taken in Texas law, and emulated by Nevada. Those statutes are being carefully reviewed by several Secretaries of State around the country who respectively have convened industry stakeholder groups to discuss the possibility of enacting laws in 2018. The model bill is an effort to provide a considered industry approach to what such a law could look like rather than relying on industry input from multiple parties that have varying views on how the laws and rules should be written.

What is the difference between remote online notarization and electronic notarization?

States have used these terms differently. An electronic notarization takes place when the notarial seal is created, placed and stored electronically. Other parts of the signature process may also be done electronically. Remote online notarization means when the authentication and signature process takes place using audio visual technology and not in the physical presence of the notary. Typically, an online notarization culminates in an electronic notarization.

Why is the industry developing a model bill when the National Association of Secretaries of State is working on this and also the Uniform Law Commission has started a similar project? Wouldn’t either of those processes represent a better approach for crafting uniform standards?

The reality is that some states have already passed laws and other state legislatures and policy makers are reviewing those enacted statutes in anticipation of the 2018 state legislative sessions. As the biggest consumers of notarial services, the lending and title industry have a unique vantage point for drafting standards. While others are working to develop and propose models, the real estate finance industry needs to react today and have a say in the policy debates that will be taking place in 2018. Moreover, policy makers will benefit from a consensus industry view. It is MBA’s and ALTA’s shared view that without a model to help guide discussions in 2018, multiple divergent standards are likely to result. That outcome is the last thing consumers or the industry need, as it will lead to inefficiencies, additional costs and a poor customer experience. Lastly, MBA and ALTA are working with NASS and the ULC to ensure consistency and uniformity amongst all of the standards. The Associations shared drafts of the model with the ULC and NASS and accepted input from them.

How can a notary in one state possibly verify the identity of a person in another state over the internet?

States that have enacted online electronic notarization generally require a very high threshold for identity assurance. For example, there must be a video and audio feed free from tampering. Additionally, the notary must be able to assure the identity of the signer. Moreover, new methods such as biometric solutions, provide robust options for identity verification.

How do we reduce the risk of fraud with online remote notarization?

The key to reducing fraud is a multi-factor method of authenticating the identity of the signer. This process should include two of the following: (1) items the signer possesses, like a driver's license; (2) information the signer knows based on personal knowledge such as, "What was the make and model of your first car?;" and (3) characteristics unique to the signer, like a finger print. Notaries using remote electronic notarization should maintain secure and tamper-evident records of the documents they authenticate and the method of identity verification used.

Why doesn't the model bill prescribe specific data standards for states with respect to remote online notarizations?

As of yet there is no broad consensus on how to define those standards nor how to achieve implementation of them in the marketplace. That is why a broad cross section of real estate finance industry volunteers is working together through MISMO to resolve this issue and make suggestions for data standards that could be used by Secretaries of State as they develop regulations for implementation of the law.

What is MISMO?

MISMO stands for Mortgage Industry Standards Maintenance Organization. MISMO is the standards development body for the mortgage industry. MISMO developed a common data language for exchanging information in the residential finance industry. Today, MISMO standards are accepted and deployed by every type of entity involved in creating mortgages, and they are required by most regulators, housing agencies and the government sponsored-enterprises (GSEs, i.e. Fannie Mae and Freddie Mac) that participate in the industry. Use of MISMO's standards has been found to lower per loan costs, improve margins, reduce errors and speed up the loan process by reducing manual, paper-based processes while creating cost savings for the consumer.

Why are the industry and others relying on MISMO to develop data standards for online electronic notarizations?

Technology for data storage, credential analysis and identification standards are rapidly and constantly advancing. These improvements help lower costs for the industry and consumers, improve the consumer experience and enhance safety and integrity of the real estate transaction. Thus, state laws should permit continued advancement in technology and process. A MISMO Working Group has been convened to produce data standards for use by state regulators that would apply to lenders, title companies, vendors, and others. These standards, however, must achieve two important results: they must be vendor neutral and they must not be static or otherwise stifle innovation and adoption of technology improvements that would benefit consumers and the industry alike.

How are MISMO standards developed?

MISMO standards are established through a voluntary consensus process in accordance with OMB Circular A119 that is transparently managed and operated. The MISMO Development Process Document provides policy guidance for the process by which model changes are reviewed and approved. The process is collaborative, requiring input and approval by multiple MISMO workgroups and subject matter experts from all sectors of the mortgage finance industry. Development and approval of MISMO Products (Standards and Collateral) are governed by Standards Governance Committees and documented in the appropriate Development Process Document.

What exactly is the MISMO Working Group trying to do?

The MISMO Working Group is trying to create and maintain industry standards and other collateral to enable remote online notarizations for real estate financing transactions. It is collaborating, where possible, with other industries that may utilize online notary to develop common standards for all online electronic notarial transactions. Also, it is collaborating with appropriate state agencies for the adoption of consensus standards in governing statutes.

Specifically, it will create standards that include credential analysis, consumer identification, audio/visual, retention, privacy, security and other items. It will also create additional materials as necessary for lenders, title companies, investors, notaries, service providers and others. Lastly, it will work to produce these standards so that state Secretaries of State can include or reference them in their regulations.

What if a county does not currently accept electronically notarized documents?

It is important that any notarized document is recordable in the land records and that, once recorded, the document is a public record upon which the general public can rely. While electronic and remote online notarizations are a component of the real estate finance industry's desire for a fully paperless closing, many counties around the country do not accept electronic documents. Thus, following the provisions of the model bill that relate to online electronic notarization are additional provisions that, if enacted, would provide greater legal certainty by allowing counties to accept "papered out" copies of digitally notarized real estate documents.

If adopted by a state, does the model bill effect any other notarial act?

No, it does not. State lawmakers can work with the industry and consumers in their state to determine the extent to which a particular notarial act shall be valid if performed via remote online means.

Would the model bill, if enacted, compel consumers to close their real estate transactions through remote online means?

No. Consumer rights and optionality must be protected in every respect. Consumers must always have the choice of utilizing traditional in-person notarization, electronic notarization, or remote online notarization.

**Don't a whole host of people involved in post-closing need to know how a transaction is notarized?
Will they have any way to know that under this bill?**

Yes and yes. From county recorders to professionals in the secondary mortgage market, there is a need to ensure that documents that were closed digitally are clearly identifiable. Some of these needs are based on marketplace realities and others are more general concerns that exist about the electronic process which can be new to some officials. Thus, the bill includes language that requires the notarized documents to indicate in what manner the notarization was made.

What about other key federal government housing programs think about the model?

MBA and ALTA shared the model bill with the leadership of each of the GSEs and also with FHA during the exposure process providing them with an opportunity to comment.

Doesn't the model require notaries to spend a lot of extra money to store data, specifically their journals?

It's important to remember that the model does NOT require ANY notary to do remote online notarizations. It is entirely optional. However, if they chose to perform them, then any marginal costs associated with data storage would be a new cost of business for all notaries electing to do so.

How and why is the MBA-ALTA model different from what was enacted into law in Texas?

While the model is based in large measure on the Texas law, it is important to be transparent about several ways the model is different. There are several factors that influenced the model. Here a few:

- Influence of other state laws. State legislators emulate each other all the time and the issue of remote online notarization is no different. Before adjourning in 2017, the Nevada legislature used the Texas law as a bit of a road map to pass their own law. However, a review of both laws shows that this was not merely a cut and paste exercise nor was it done in haste. Lawmakers in any state are likely to take the opportunity to make improvements or approach legislative language differently. It's important to add that as more states embrace remote online notarizations, that MBA and ALTA may seek to improve the model by borrowing from the future work of legislators from other states.
- Consideration of MISMO in developing of regulations for data standards. The Texas statute gave the Texas Secretary of State broad authority to promulgate rules to implement the law. It also directed the Texas Secretary of State to develop and maintain standards for data standards online notarization including standards for credential analysis and identity proofing. In this language, the Secretary of State may confer with other Texas state agencies. The model bill makes one important addition to that direction to make explicit that the Secretary of State in a state that adopts the model may also consult with other entities such as data standards organizations like MISMO. This was added to the model because the MISMO Working Group on Data Standards was created in response to the Texas and Nevada laws to help those Secretaries of State receive expert industry input.

- Input from key policy regulators. As expected, the Texas law drew a lot of interest from real estate finance regulators and other policy makers. Among those examining it were Secretaries of State from across the country as well as the National Association of Secretaries of State (NASS). This is critical, because ultimately these are the public officials responsible for implementing the provisions of these laws if enacted. Following the passage of the Texas and Nevada laws, MBA, ALTA, their respective member companies and state association partners have been participating in stakeholder meetings convened by Secretaries of States in many states. Also, NASS has been invited to participate in the MISMO Working Group meetings and has been offered early drafts of the model for comment. As MBA and ALTA members developed the model, it was influenced by these meetings and the input of the NASS.
- Federal policy maker input. MBA and ALTA have shared early drafts of the model with, and received feedback from, Fannie Mae, Freddie Mac and the Federal Housing Administration.
- Ongoing model bill development of the Uniform Law Commission (ULC). The ULC has been convening meetings to update its Revised Uniform Law on Notarial Acts (RULONA) to include new provisions to permit states that adopt RULONA to accept remote online notarizations. This process is ongoing, and will not be completed before the 2018 state legislative sessions begin. However, early drafts of the model were shared with ULC members, MBA and ALTA staff participated in ULC meetings and edits to the model were made to direct it towards the views of ULC commissioners. Moreover, as the ULC continues to give greater legal direction and consistency, it is likely that MBA and ALTA may amend the model to remain in step with the ULC's approach.

On a related and important point, MBA and ALTA made a deliberate effort in drafting the model to borrow from the current version of RULONA in order to start the process of directing the industry model towards the ULC's language that has already been adopted by several states.

- "Paper Out" Language. Online electronic notarizations are a component of lenders' desire for a fully paperless closing. Because Texas already accepted electronically closed notarizations, in developing the model, consideration was given to other aspects of the fully paperless closing that require legal certainty in other states, and the model would provide that legal certainty to recording "papered out" copies of digital real estate documents. That is why, while not part of the mode, there is optional language provided to help state legislators with this issue.