



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.

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