

FAQs

Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020 (SECURE Notarization Act)

1. Q: Why is the SECURE Notarization Act important for my constituents?

A. The SECURE Notarization Act allows constituents to close real estate transactions and execute legal, healthcare, financial or other vital documents from the safety of their own homes. Businesses and individuals can securely execute these documents utilizing two-way audio-visual communication, otherwise known as Remote Online Notarization (RON).

2. What is the difference between RON and electronic notarization?

A. An electronic notarization takes place when the notarial seal, signature or certificate is created, placed and stored electronically. RON is a type of electronic notarization where the notary and signer are in different physical locations. The authentication and signing process uses two-way real-time audio-visual technology, which enables the signer and notary to see and hear each other simultaneously.

3. Q: Who supports the SECURE Notarization Act?

A. The American Land Title Association (ALTA), the Mortgage Bankers Association (MBA) and the National Association of Realtors (NAR).

4. Q: Why is notarization important for real estate transactions?

A. In the United States, real estate transfer documents are signed by parties in the presence of a notary and then are typically recorded in local land records (register of deeds) at the end of a transaction. These public records, such as mortgages and deeds, are required by law to be notarized and they provide the world with constructive notice about American property rights. The ability to create and 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.

5. Q: Upon passage, how quickly could RON be available for consumers?

A. Immediately! This legislation expands the availability of RON to consumers in all states.

6. Q: Is RON new? Has it been tested before?

A. RON has already been enacted in 23 states. It has been available and utilized by consumers since 2012.

7. Q: What consumer protections does the SECURE Notarization Act provide?

A. The key elements to reducing fraud include a multi-factor method of authenticating the identity of the signer, an audio-visual recording of the notarization and use of tamper-evident technology.

8. Q: How is the SECURE Notarization Act similar to the Electronic Signatures In Global Commerce (ESIGN) Act?

- A. In 2000, Congress passed the ESIGN Act to set national minimum standards for the use of electronic signatures and records. In these extraordinary times, we are following the same path by setting minimum standards to allow nationwide use of remote and electronic notarization.

9. Q: Does the SECURE Notarization Act stop states from promulgating their own laws, regulations and specific notary training?

- A. No. The SECURE Notarization Act sets the floor, not the ceiling, on use of RON. Nothing prevents states from passing their own laws or setting their own regulations. The minimum regulations set forth in the act are to ensure consumers are adequately protected when using RON. In fact, legislation is currently pending in 13 states which have not yet enacted RON and these bills generally follow the approach of states with RON laws. Moreover, most existing state statutes reflect the provisions embraced by the non-partisan Uniform Law Commission and reflected in its model state legislation – Revised Uniform Law on Notarial Actions (RULONA) 2018.

10. Q: Does the SECURE Notarization Act preempt state law?

- A. Any state law meeting the minimum standards of multi-factor authentication (i.e. KBA and credential analysis), use of tamper-evident technology and an audio-visual recording of the notarial act, supersedes the SECURE Notarization Act.

11. Q: Are there already national standards for RON?

- A. Yes. The Mortgage Industry Standards Maintenance Organization (MISMO) has created standards to enable RON for real estate financing transactions. These standards have been used as the foundation for the majority of state regulations where RON has been enacted around the country.

12. Q: Does this replace the notarial process or limit consumer options or rights?

- A. No. RON is just another option for consumers to use. Consumer rights and optionality must be protected in every respect. Consumers must always have the choice of utilizing their preferred method of notarization.

13. Q: Does this bill allow for communications technology that services those consumers with vision, hearing or speech impairments?

- A. The bill does not eliminate any requirements in current state law to provide reasonable accommodations for such individuals.

14. Q: Where does this bill fit into federal law?

- A. The SECURE Notarization Act complements and would work in tandem with the Electronic Signatures In Global Commerce (ESIGN) Act (Pub. Law 106-229).