ONLINE NOTARIZATIONS AND STATE LAWS – WHEN CAN YOU CLOSE REMOTELY?

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PROFESSIONAL ACTIVITIES

Nicole Hadaway currently serves as corporate counsel at Stewart Title Guaranty Company, providing legal advice to business partners while reviewing and negotiating contracts, working M&A deals, maintaining the compliance program for Stewart Lender Services, Inc. and keeping abreast of the latest technological issues. Nicole started her legal career researching and writing private letter rulings, technical advice memoranda, regulations, and change in accounting methods at the Office of Chief Counsel for the Internal Revenue Service in Washington, D. C. From there, she practiced real estate and business law for two prominent New Orleans firms: Liskow & Lewis PLC, and Elkins PLC. She entered the world of lenders when she started working for the Houston-based Situs Companies, LLC, in 2013, and then moved to fully merge real estate with lender services at Stewart in 2014.

SPEAKING ENGAGEMENTS AND PUBLICATIONS

- Speaker at the July 2017 Texas Bar Advanced Real Estate CLE (Title Companies and Lender Audits)
- Speaker at February 2018 ALTA SLRAC (Blockchain & State Laws)
- Co-Wrote *Online eClosings – What Lenders and Title Companies Need to Talk About and Collaborate On* with Dawn Lewallen (September 2017; https://bit.ly/2HY1oCf)
- Wrote *Cryptocurrencies, An Introduction* (January 2018; https://bit.ly/2rAq0ZO)
- Wrote *Blockchain, Business As Usual?* (April 2018; https://bit.ly/2rsmgGq)

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I. INTRODUCTION.

"Science fiction is any idea that occurs in the head and doesn't exist yet, but soon will, and will change everything for everybody and nothing will ever be the same again." – Ray Bradbury, author of science-fiction novels.

E-Books. Streaming services. Self-driving cars. Online grocery shoppin. Skyping Grandma while you're on vacation in Disney World and she's snug in her home in Indiana. Depositing a check into your bank account by using your phone without ever leaving your desk.

Technology has boomed within the last ten years; what was considered "the future" in the movies and novels of science fiction is now our reality. Technological advancements have largely taken place with the goal of making daily tasks more efficient. This is where remote online notarization comes into play – the idea that signers can "personally appear" to a notary through audio-visual technology and simultaneously sign documents as the notary watches through the computer screen. After all, if you can buy groceries through an app on your phone while you are sitting at home, why can't you also buy a house, all from the convenience of your living room? Online notarization has been the subject of legislation in several states, with a handful of states (including Texas) allowing legitimate notarizations to occur if signers personally appear before a notary via a webcam (or similar technology), as long as certain statutory and regulatory protocol are followed. This paper and presentation will provide background on remote online notarization, as well as particulars with regards to the Texas law.

Let's use this scenario to illustrate how remote notarization would work. A Texas couple is vacationing in New York, when they receive word that the offer they made on a house in Texas has been accepted, but they need to act fast. Seller is moving out of the country and wants the sale to be completed within the week. The Texas couple could have the documents sent to their New York hotel, which may be able to arrange for the couple to sign in the lobby of the hotel, in the presence of a New York notary, so that the documents are properly executed. Assuming that the notary didn't do anything to affect recordation, the documents are then sent via express shipping service back to Texas. The documents drafted in Texas and comporting with Texas law are valid, even though they were signed in New York and notarized by a New York notary. Yet there are unknowns as to logistically coordinating the presence of the notary, as getting the documents safely to and from New York.

But what if the couple, using their tablet and the hotel's complimentary wi-fi, has the documents sent to them electronically? And then they use their tablet's audio video conferencing application to "appear", via the tablet's camera, in front of a notary who is located in Texas. The documents are signed electronically, and the notary electronically affixes not only her signature, but her electronic seal, to the digital copies of the documents.

Done. No paper copies were wet-signed by pen and ink, the notary didn't leave her computer station in Texas, and the Texas couple stayed in their cozy New York hotel room. Are the closing documents signed by the Texas couple and notarized by the notary valid? Did the Texas couple "personally appear in front of the notary" via the audio-video conferencing application? The Texas couple saw and heard the notary (and vice versa), even though the parties were not in the same room.

A. Terminology. You've probably heard the terms "digital mortgage", "e-closing", "Online Notary", and "digital closing", among others, but what exactly do they mean? Is there a difference between an electronic notary and an Online Notary? Is an electronic notary the same as an Online Notary? Here are some basic terms that will be used consistently throughout this paper.

1) <u>eSignature (aka electronic signature)</u> – a signature made using a computer program whereby the program "writes" or "signs" the signer's name to a document; no pen or ink is used.

2) <u>Online Notary (aka remote notarization or remote online notarization)</u> – a notary who witnesses the signing of documents through two-way audio-visual technology; the notary is not in the same room as the signer. The signer could be located anywhere in the world and appear before the notary by means of a live, two way video conference.

3) eClosing (aka electronic closing) - an eClosing is the act of closing a mortgage loan electronically through a secure electronic environment where some (or all) of the closing documents are executed and accessed online.

4) eNotary (aka electronic notarization) – an eNotary is not to be confused with an Online Notary. An eNotary is a notary whose signature and seal are made using a computer program, the same as an eSignature. No pen, ink, stamp, or seal are used. An eNotary witnesses and signs in the same room as the signer; an eNotary is not necessarily an Online Notary.

5) eRecording (aka electronic recording) - this is the process of submitting electronic documents to the county clerk or recorder, or other local authority via email or through the county's recording platform, where they are received, examined, recorded, indexed, fees collected and returned to the submitter in the same manner.

B. The Precursors to Online Notarization.

Like most concepts and technologies, online notarization wasn't just "invented" in 2017. Rather, it's been a slow process of combining available technology with what is currently allowed under individual states' laws.

1) UETA and ESIGN. Electronic signature technology has been available since the late 1990's, when the Uniform Electronic Transactions Act of 1999 ("UETA") and the Electronic Signatures in Global and National Commerce Act of 2000 ("ESIGN") were developed. These laws sought to provide legitimacy to documents which were signed by electronic signatures and which followed certain protocols, such that the document wouldn't be de-facto contested merely because it was e-signed.[1] The Uniform Electronic Transactions Act of 1999 was drafted by the Uniform Law Commission and intended to be model legislation for electronic signatures. UETA defines an "electronic signature" as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." This definition of "electronic signature" is intended to be broad, including a voice on an answering machine, a name at the end of an email, or a firm's name on a fax, however, what is needed is an intent for that sound or symbol to be meant as a signature[2]. The effect of an intended electronic signature is to be determined from all the circumstances surrounding its making on the record; the signature must be linked to a record in order to have the intended effect. While UETA legitimizes the use of electronic signatures on important documents, it specifically exempts wills, codicils, and testamentary trusts from its scope; transactions governed by the UCC are also exempt, except for those transactions under Sections 1-107, 1-206, Article 2 and Article 2A.

Texas adopted its version of UETA in 2007, which was effective in 2009. In the Business and Commerce code, Title 10, Subtitle B, Chapter 322 features the Texas Uniform Electronic Transactions Act ("TUETA"). TUETA's definition of "electronic signature" is the same as UETA's; under the Texas law, an "electronic signature means as an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." And, as also with UETA, TUETA does not apply to any laws governing wills and other testamentary documents, or the UCC (with the same exceptions as UETA). TUETA applies to parties wishing to conduct their transactions by electronic means, and their intent is to be determined from the context and circumstances surrounding the transaction.[3]

All but three states (including the District of Columbia, Puerto Rico, and the U.S. Virgin Islands) have adopted UETA, while New York, Illinois, and Washington have adopted their own electronic signatures acts.[4]

On a Federal level, the Electronic Signatures in Global and National Commerce Act of 2000[5] provides that, where federal law is applicable, an electronic signature is defined as as "an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record." The Act was even signed into law by President Clinton via an electronic signature. The ESIGN Act provides that an eSignature on most documents is valid, may be used as evidence in a court of law to prove the existence of a contract or other binding agreement, and prevents denial of the document's validity solely because the document was electronically signed.

2) RULONA.[6] The Revised Uniform Model on Notarial Acts ("RULONA")[7] was approved by the National Conference of Commissioners on Uniform State Acts in 2010, and is a model act which governs notarial acts as well as defining the duties and responsibilities of notaries. It does specify a provision for the notarization of electronic records, but it does not define "personally appear" to include appearance through audio-visual technology. Since RULONA is a model act, the states are not under an obligation to adopt it word-for-word, thus, those states which have adopted it may have different provisions. RULONA provides in a comment that "personal appearance" does not include appearance by video technology, even if the video appearance happens as a "live stream" in front of the notary. States which have adopted RULONA often have inconsistent definitions of "personal appearance." For

example, Iowa's version of RULONA expressly excludes remote notarization through audio-visual technology, however, Oregon's RULONA statute may allow for online notarization as it doesn't define "personally appear."

Another issue addressed by RULONA is the idea of a state recognizing the validity of documents notarized outside of that particular state. In the example at the beginning of this paper, if a New York notary witnesses and stamps her seal on the real estate documents, will Texas recognize such documents as being properly executed and notarized? In short – yes. Section 14 of RULONA provides that notarial acts done by foreign notaries are valid, provided that the state in which the act took place has adopted RULONA, and the act was done in accordance with the law of the state in which it took place. A word of caution here that -- merely because RULONA allows for such foreign recognition of notarial acts does not mean that individual states have adopted that particular provision of RULONA.

3) <u>MBA-ALTA Model Act ("Model Act")</u>. Since the mortgage closing process is regulated at the state level, it's conceivable that states would start enacting laws governing remote notarization which vary greatly from one jurisdiction to the next. The American Land Title Association ("ALTA") and the Mortgage Bankers Association ("MBA") jointly developed a model act in an effort to encourage uniformity among the states with regards to laws governing online notarization. The main topics covered in the Model Act are:

a) Definitions: The Model Act addresses the definition of "personally appears" and includes appearance via two-way audio-visual technology as part of that definition.
b) Obtaining an Online Notary Commission/Certification: The Model Act proposes two processes: Option 1 requires a separate Online Notary application and notary commission, while Option 2 only requires that an already-commissioned notary public may register as a remote Online Notary and no separate commission is required. Under Option 1, the notary applies for an Online Notary commission and, upon the grant of the commission, also may perform pen-and-paper notarial acts, in addition to the remote online notarizations.
c) Location of the Signer: The Model Act proposes that for an Online Notary located in the state, they may notarize documents for an individual who is physically located:
    i. In the state;
    ii. Outside this state but within the U.S.; or
    iii. Outside the U.S. but only if the Online Notary has actual knowledge that the act may be prohibited in the jurisdiction in which the signer is located and the documents being notarized pertain to a matter in a U.S. court, or property located in the U.S., or to a transaction substantially connected to the U.S. *For remote notarizations outside of the U.S., it's necessary to note that GDPR may requirements may need to be considered if the notarization involves a person residing in the E.U.*
d) Retention of Electronic Records: the Model Act suggests that the Online Notary retain an electronic record or electronic journal of the transaction (as well as a backup) for ten (10) years after the date of the notarial act. The electronic journal should contain the type of notarial act, its date and time, a description of the proceeding, the name of the signer as well as evidence of their identity proven through the methods noted in the Online Notary Procedures (below), and the fee (if any) charged by the Online Notary.
e) Maintenance of Electronic Journal, Signature, and Seal: it nearly goes without saying that the Model Act recommends the Online Notary maintain secure and safe electronic journal and affix the electronic seal to a document in such a manner as to render it tamper-evident. The Online Notary must not let anyone other than they use their electronic signature and seal, and if the signature and seal are vandalized or stolen, the Online Notary has a duty to immediately notify the local authorities; if the signature, seal, or electronic journal are lost or used by another person, then the Online Notary must notify the Secretary of State.
f) Procedures: The Model Act also addresses is the identification of the signer through technology. The technology must be good enough that it is tamper and fraud-resistant, so that there is no doubt that the signer is indeed who they claim to be. There are two components to this issue: "credential analysis," in which the notary verifies the government-issued identification of the signer through a review of public and private data, and also "identity proofing," which is a process whereby the notary verifies the signer by either biometric data technology (fingerprint analysis, facial recognition, voice recognition), or uses knowledge-based authentication ("KBA") which asks the signer to prove their identity through data gained from public and private sources.
g) Fees: the Model Act provides that the Online Notary may charge a fee for the remote notarization.
h) Termination of Commission: the Model Act suggests that the Online Notary destroy the means for using the notary's electronic signature and seal when the notary's commission is terminated.

i) Wrongful Possession: it's interesting to note that the Model Act contains a provision whereby anyone who is caught wrongfully possessing an electronic signature or seal or who destroys the signature and seal of an Online Notary commits an offence (likely a misdemeanor).

II. REMOTE ONLINE NOTARIZATION LAWS.

Currently, there are laws in four states which are effective and active. Texas is discussed in detail, while only noteworthy items of other states' laws are mentioned in this paper.

A. Texas.

Texas's Remote Online Notary Bill (H.B. 1217) went into effect July 1, 2018[8], and online notarizations may be done for purchases of property located in the state of Texas. What does this mean for Texas real property attorneys?

1) Definitions. H.B.1217 added to Section 121.006 of the Texas Civil Practice and Remedies code the concept that a person may "personally appear" before a notary via a two-way audio/video communication. Thus, a personal appearance in Texas has been broadened to include "appearance" through audio-video technology as well as being in the same room as the notary.

2) Obtaining Online Notary Commission/Certification. In Texas, the notary who wishes to become an Online Notary must first meet the standards for being a "traditional" notary, and then must file an application specifically related to online notarization (as well as paying a fee). If the application has been being approved by the Texas Secretary of State, then the notary may be registered as an Online Notary in Texas. Once a Texas notary is registered as an Online Notary, they need to follow the laws and regulations applicable to traditional notaries as well as Remote Notaries. Essentially, aTexas Online Notary is considered a notary for both remote notarial acts and traditional notarial acts. However, a traditional notary cannot perform online notarizations until they have applied and been approved as an Online Notary by the TX Secretary of State.

3) Retention of Electronic Records; Use of Electronic Records. A Texas Online Notary must retain, in a safe and secure manner, the electronic records of the documents notarized (including a backup) for five (5) years. Similar to the Model Act, the Texas law provides that the electronic journal should contain the following information: (a) the type of notarial act, (b) its date and time, (c) a description of the proceeding, and (d) the fee (if any) charged by the Online Notary. The name of the signer as well as evidence of their identity needs to be retained, but what constitutes "evidence of identity" differs slightly than the Model Act. In Texas, the following may suffice as evidence of a signer's identity: (a) a statement that the signer is personally known to the notary, (b) a notation of the type of identification provided, (c) a record of identity verification, or (d) the printed name/address (as well as identification) of a witness swearing to know the person. The Texas Online Notary also needs to maintain an audio-video recording of the notarial act, such that the recording could satisfy identification on an evidentiary-basis standard. All of the aforementioned records should be safely and securely stored by the notary using "reasonable steps". While Texas provides that notarial records are public records, the credential analysis and identity proofing of the audio-video recording of the online notarization is private, to be kept confidential unless released by the consent of the signer, through court order, or by the secretary of state.

4) Maintenance of Electronic Journal, Signature, and Seal: here again, Texas has adopted standards similar to the Model Act in that a Texas Online Notary shall keep their electronic signature, seal, and electronic journal in a safe and secure manner under the notary's exclusive control, and the notary will affix the electronic seal to a document in a way that will show if anyone attempts to wrongfully tamper with the seal ("tamper-evident"). For theft or vandalism of the notary's electronic record, signature, or seal, the Online Notary must notify the local authorities, while use by another person or loss of the electronic record, signature or seal would result in notification to the Secretary of State (this is similar to the Model Act's recommendations). A Texas Online Notary may contract with a third-party vendor to provide storage of electronic records of online notarizations (provided the vendor provides reasonable evidence to the notary that the vendor is capable of secure storage and, upon the termination of the contract between the notary and the vendor, the vendor must return all records to the notary).

5) Procedures: a Texas Online Notary may notarize the signature of a signer (even if the signer is not physically located in the state of Texas) through the use of two-way simultaneous audio-video conferencing technology. Jurisdictions outside of the United States are not specifically addressed by the Texas law. The notary must verify identification of the signer, and this can be done in one of three ways: either the notary personally knows the signer, or a credible witness swears by oath as to the identity of the signer or by the signer showing valid identification. If neither the signer or the witness is personally known to the notary, then they must prove their identity by showing a valid ID and by using (a) credential analysis (which Texas defines as a SOS-sanctioned process

by which a third person affirms the validity of government issued ID through a review of public and private records), and (b) identity proofing (defined as an SOS-sanctioned process by which a third person affirms the identity of the signer through a review of public and private data sources). It is worth noting that for now, the Texas definition of "identity-proofing" does not include the use of biometric data. Texas regulations[9] recommend:

a) The notary must see a valid, (federal or state) government-issued picture ID which has not expired;

b) "Identity-proofing" is performed through knowledge-based authentication in which the signer must prove their identity by answering 80% of a minimum of 5 questions (each having a minimum of 5 answers), all within 2 minutes. If the signer does not score an 80%, they can re-do the process wherein 40% of the asked questions must be exchanged for new questions. If the signer fails the KBA exam a second time, then the notarization cannot go forward; the signer must wait 24 hours before trying again with the same notary public. This follows the MISMO recommendations (which are discussed in further detail below).

c) "Credential analysis" should include an automated process that uses (but is not limited to): (a) image correction and edge detection; (b) a classification based on identifying features such as format, style, layout, etc.; (c) data extraction or optical character recognition (on text) or barcode scanning; and (d) forensic inspection of expected security features typical of that particular type of identification. Credential analysis should be such that it can confirm that the identification is indeed that of the signer.

d) Technology should be sufficient to: (a) allow for simultaneous, two-way, audio-visual communication which allows the notary to perform the identity-proofing and credential analysis without interruption; (b) give both the notary and the signer enough clarity to be able to see and hear each other clearly (in real time); (c) provide a way for the Online Notary to prove that the finished, notarized electronic record is indeed what was signed during the session;(c) be capable of creating and storing (or transmitting to be stored) the online notarial act; and (d) last, but not least, keep the transmission, electronic documents, and records secure and free from unauthorized intrusions.

An Online Notary may refuse to perform an online notarization if: (a) the notary is unable to verify the identification of the signer in accordance with the methods recommended by law and regulations; (b) the notary is unable to verify the security of the two-way audio-visual transmission (it should be noted here that Texas places the burden of taking "reasonable steps" to ensure the security of the audio-visual technology on the notary, not the signer); (c) the signature of the signer cannot be attached to the document; or (d) the signature or seal of the notary cannot be affixed to the electronic document in a way that renders the signature or seal tamper-resistant.

6) Fees: a Texas Online Notary may not charge more than $25 for performing a remote online notarization.

7) Termination of Commission: Similar to the Model Act, a Texas Online Notary must certify the destruction of the means of making the electronic signature and seal once the commission has ended. An Online Notary may be disciplined or have their commission terminated if:

a) the notarial certificate fails to include a notation that the notarization is online;

b) the notary fails to take reasonable steps to ensure that the audio-visual communication is secure from unauthorized access;

c) the notary fails to safely and securely maintain Online Notary materials;

d) the notary performs an act that they were not authorized to perform; and

e) the notary fails to report a new online signature or seal as required by the regulations.

8) Wrongful Possession: if a person knowingly obtains or destroys the hardware/software which enables the notary to affix his/her electronic signature or seal, then that person has committed a criminal offense (Class A misdemeanor).

B. Other States. While this continuing education class focuses on attorneys practicing law in Texas, it is important to note laws of other states, since some states allow their notaries the authority to notarize documents affecting title to property in other states. Therefore, while the property may be located in Texas, the notary may actually be located and licensed in Virginia. Since Texas has adopted online notarial standards, it is likely that a Virginia Online Notary may notarize documents for the purchase of property in Texas, provided that the notarization follows the Texas standards.

1) Montana started allowing online notarizations in 2015, but in order for real property to be properly notarized through remote methods, the signer must be Montana resident, the property must be located in Montana, and the notary must be licensed in Montana. Also, for a Montana notary to notarize the signer's signature, it's not enough that the signer have a valid ID; rather the notary must personally know the signer or identification must be proven by a credible witness.[10]

2) Virginia has been allowing remote online notarizations since 2011 and allows its remote notaries to notarize

3) Similar to Texas, Nevada's law became effective July 1, 2018, however, Nevada's law is unique in that it is going to allow wills to be signed electronically and also notarized through remote online notarization.[12]

4) Tennessee recently passed its online notarization act which will become effective July 1, 2019. In Tennessee, the Secretary of State will approve which technology vendors a notary can use.

5) Indiana's online notarization law also becomes effective July 1, 2019. It provides, in part, that Indiana Remote Notaries must be physically located within the state to perform the online notarization.

Currently, there are title insurance underwriters who will insure real estate purchases which included remote online notarization outside of the states listed above. For an underwriter to insure an Online Notary transaction in a state without having remote online notarization legislation on its books, the underwriter will need to evaluate the risks of insuring such a transaction. Different underwriters have different risk levels, but it's important to understand that the policies of most underwriters are written such that the underwriter insures actions of the notary, so the underwriters' input is valuable in deciding whether or not to close a real estate deal using an Online Notary.

III. CONSIDERATIONS.

It's important to recognize that while Texas and other states have enacted laws which permit remote online notarizations, a remote notarization may be undesirable from a secondary mortgage market standpoint. In fact, may lenders will not accept an electronically-signed promissory note, as there can be holder-in-due-course issues which are not present when an ink signature can more clearly indicate that a document is an original.

A. Positions of Government and Government-Sponsored Enterprises.

1) Fannie Mae[13] accepts documents which have been electronically notarized, including documents which have been notarized through remote online notarization.[14] See (*Electronic Records, Signature, and Transactions*). As of the end of May 2018, Fannie approves loans closed via Online Notary in VA, MT, TX, NV, WA, IL, IN, MO, AL, MS and TN.

2) Freddie Mac[15] recognizes that electronic signatures which comply with applicable state and federal laws are valid. Freddie Mac will purchase loans closed via Online Notary as long as title insurance has been issued on the loan.

3) Veterans Benefits Administration, Dept. of Veterans Affairs[16] provided, in Circular 26-13-13, that they will accept electronic signatures on documents in the VA Home Loan Program[17] until January 1, 2019, however. It is unclear whether or not this includes electronic or online notarizations.

4) HUD[18] will accept electronic signatures which are conducted in accordance with ML 2014-03 other following documents: the Note, documents associated with servicing or loss mitigation services, FHA Insurance claim documentation (including HUD-27011) and the HUD REO Sales Contract and related addenda.[19] Again, it is unclear whether this will include electronic or online notarizations.

5) Ginnie Mae,[20] in response to the FHA, stated that it will not accept electronic signatures on electronic documents on notes, security instruments, or loan modification agreements.[21]

B. Consents.

TUETA and ESIGN require that the signer affix their electronic signature to a document with the intent to legally sign that document. ESIGN further provides that financial institutions can provide electronic documents to consumers if certain rules are followed. The financial institution needed to obtain the consumer's consent to receive documents in electronic form, which consent could be revoked at any time; the consumer also has the right to obtain paper copies of the documents at any time, and the financial institution needed to let the consumer know the specific hardware and software requirements needed to read the documents.[22] All of this information needs to be provided to the consumer before any electronic documents are sent or received.[23]

It's also important to obtain consent to perform audio-video recording of the signer in a Online Notary transaction. While Texas wiretapping statutes only require the consent of one party to record[24], it's prudent to obtain the signer's consent given regulators' desire to protect consumers.

C. Notary Vetting/Licensing.

Additional standards to consider when choosing an Online Notary for remote notarizations, in addition to those prescribed by the Texas Secretary of State, are ALTA Best Practices Pillar #1. Such standards and requirements may include:

1) Verification that there is a current, valid state license and/or certification to perform notarial acts;

2) Verification of a current, valid NNA certification and/or equivalent certification as determined in advance in

writing by Stewart in its sole discretion;
3) Verification of a current, valid Errors & Omissions Insurance with a minimum of $100,000.00 liability per individual transaction, with such verification requirement limited to Online Notary obtaining a copy of the notary's Certificate of Insurance;
4) Verification of a current, valid Surety and/or Fidelity bond, if applicable, with such verification requirement limited to Online Notary obtaining a copy from the Online Notary's surety or fidelity bond agreement, certificate from the surety or fidelity bond issuer stating that the agent has a surety or fidelity bond or other commercially reasonable documentation of the same;
5) Verification of background check with the following criteria:
   a) Report completed in the last 12 months, not expired by signing date;
   b) SSN Trace;
   c) County Criminal Search for county in which the Online Notary reports as his/her current county of residence (7 or 10 year search based on state);
   d) Federal Criminal Search (7 or 10 year search based on state);
   e) National Sex Offender.

D. County Recordings.

With remote notarization, there is a lot of preparation on the front end to ensure that the documents are properly signed and notarized. But it's important to consider the recording requirements of the county in which the documents will be recorded. The remote notarization will not serve any convenient purpose if the county only ends up rejecting the documents because the county does not accept electronic signatures or notarizations on documents affecting title to real property, or because an electronically signed and notarized document does not serve as notice (actual or constructive) once it is recorded. MISMO has promulgated recommendations for the recordation of electronic documents (see Appendix B).

E. Technological Requirements.

It is technology which makes Online Notary possible. Due to the nature of the real estate closing process, Online Notary transactions will contain highly confidential and sensitive information of borrowers as individuals. To protect this information, MISMO[25] has proposed minimum technological standards for remote notarizations to meet to ensure that data is kept secure according to mortgage-industry best practices. These standards are being recommended to state regulators, banks and financial institutions, Online Notary service providers, and secretaries of state, among others. A summary of the recommended standards is as follows:
1) Fraud is always a concern in any real estate transaction, and in the situation where the notary cannot be in the same room as the signer to physically compare the identification against the physical appearance and documents of the signer, it's especially critical to have the technology and standards to ensure the signer is indeed who they say that they are. The Model Act and the Texas Online Notary Law both discuss "identity-proofing" and "credential analysis"; the MISMO recommendations clearly describe what each should entail from a practical and technological standpoint.
2) MISMO recommends a "multi-factor authentication" process involving both credential analysis and identity-proofing. For credential analysis, MISMO suggests software that provides an automated process to assist the notary in verifying the government-issued identification of the signer. Firstly, the identification used should be in the possession of the signer; the signer should not be using previously captured images since they are able to be manipulated through digital programs. The software should capture the image of the identification, and the software should be able to discern the edges of the ID, what type of ID it is and from which state/country it was issued; the software should be able to scan a barcode (if it exists) or recognize characters on the ID, and to forensically inspect the ID for security features typical to that type of identification (such as microdots, etc.). In addition to all of the foregoing, the software should allow the Online Notary to compare the identification against the physical appearance of the person on the video screen.
3) The second factor, which the Model Act and the Texas Online Notary Law refer to as "identity-proofing", is termed Dynamic Knowledge Based Authentication by MISMO. MISMO recommends the signer answer a set of questions for which they've not previously provided answers to the Online Notary. The KBA "test" will involve the Online Notary should asking the signer five multiple-choice questions, the answers to which are drawn from historical records and the signer's identity. There should be a minimum of five answers to each question, and the Signer needs answer four out of five questions correctly (80%), within about eight minutes' time (two minutes per question). If the signer does not answer 80% of the questions correctly, then they can re-try one more time, with two

of the questions being replaced by different questions. A second failure will result in the signer needed to wait twenty-four (24) hours before trying with the same notarial service.

4) "Identity proofing" may also, under MISMO recommendations, include biometric screenings, however, as the technology is not fully developed in this area, MISMO is holding off on specific recommendations until such technologies become common practice.

If, at any point, the signer needs to end the remote notarization, then when they start again, the credential analysis and Dynamic KBA must be re-started from the very beginning.

5) Of course, MISMO recommends that a clear quality audio- video recording of only the notarial act, (not the entire session between the principal and notary), be maintained. The participants should be clearly seen and heard throughout the entire notarial act in a proper audio-video recording. Similar to the Texas Online Notary Law, MISMO relies on the judgment of the notary to determine whether or not the audio-visual video is of good enough quality to serve as an adequate recording. If the notary judges that it is not, then the notary should terminate the session and try again.

6) MISMO also recommends that the notary maintain an electronic journal, either by the notary him or herself, or obtain such a journal through a reliable technology provider. The journal should only include the data elements which are absolutely necessary to the transaction, and it should keep the information secure using encryption/decryption methods for data (both at rest and in transit).

7) MISMO recommends that there be a post-execution document record which includes an audit trail of date-and-time-stamped documents which are particular to each action performed in the online notarization, as well as tamper-evident technology.

8) Finally, MISMO recommends that technology providers of Online Notary services maintain a comprehensive vendor security program, such as those which follow the frameworks of SSAE 16 SOC2 or ISO27001.

IV. CONCLUSION.

Online notarizations will certainly change how real estate transactions occur in the state of Texas, as well as across the United States, if not even the world. Texas was one of the first four adopters of online notarization laws and regulations, and we can hope that such foresight will guide us well into the future. Technology is advancing at a rate that may seem scary to some, but with industry professionals who have studied the technology, an active bar association, and strong legislation, we can use technology to our benefit, not our detriment.

"Science fiction writers aren't fortune tellers. Fortune tellers are fakes." -- William Gibson, author of speculative-fiction novels.

ADDITIONAL SOURCES:

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[1] https://www.fdic.gov/regulations/compliance/manual/10/x-3.1.pdf
[2] Comment 7 "electronic signature".
[3] http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.322.htm
[4] https://content.next.westlaw.com/Document/I66e3df587a6611e498db8b09b4f043e0/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true&bhcp=1
[5] Public Law 106-229; 15 USC 7001.
[6] http://www.uniformlaws.org/shared/docs/notarial_acts/rulona_final_10.pdf
[7] http://www.uniformlaws.org/shared/docs/notarial_acts/rulona_final_10.pdf
[8] Texas Government Code Chapter 406; Subchapter A concerns Notary Publics (406.001 – 406.026), while Subchapter C deals specifically with Online Notary Publics (406.101 – 406.113); See 43 TexReg 2676 (May 4, 2018) for the regulations used in writing this paper.
[9] Texas Online Notarization Regulations; 43 TexReg 2676 (May 4, 2018).

[10] https://sos.mt.gov/notary/enotarization
[11] https://commonwealth.virginia.gov/official-documents/notary-commissions/enotary-faq/; https://commonwealth.virginia.gov/media/2089/NotaryHandbook.pdf
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[21] https://www.ginniemae.gov/issuers/program_guidelines/Pages/mbsguideapmslibdisppage.aspx?ParamID=24
[22] https://www.fdic.gov/news/news/financial/2000/fil0072.html
[23] Id.
[24] Texas Penal Code 16.02
[25] MISMO" is an entity wholly-owned subsidiary of the Mortgage Bankers Association ("MBA"), and it develops the uniform standards for the mortgage 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 GSEs that participate in the industry. See their website: http://www.mismo.org/x140197

APPENDIX A
TEXAS ONLINE NOTARIZATION BILL

H.B. No. 1217

AN ACT

relating to appointment of and performance of notarial acts by an Online Notary public and online acknowledgment and proof of written instruments; authorizing a fee and creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 121.006, Civil Practice and Remedies Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) For purposes of Subsection (b), a person may personally appear before the officer taking the acknowledgment by:

(1) physically appearing before the officer; or

(2) appearing by an interactive two-way audio and video communication that meets the online notarization requirements under Subchapter C, Chapter 406, Government Code, and rules adopted under that subchapter.

(d) The acknowledgment form provided by this chapter must include a space for an online notarization as defined by Section 406.101, Government Code, to indicate by which method described by Subsection (c) the acknowledging person appeared before the officer.

SECTION 2. Chapter 121, Civil Practice and Remedies Code, is amended by adding Section 121.016 to read as follows:

Sec. 121.016. EFFECT OF OTHER LAW. To the extent that a provision of this chapter conflicts with Subchapter C, Chapter 406, Government Code, that subchapter controls with respect to an online notarization as defined by Section 406.101, Government Code.

SECTION 3. Chapter 406, Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ONLINE NOTARY PUBLIC

Sec. 406.101. DEFINITIONS. In this subchapter:

(1) "Credential analysis" means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

(4) "Electronic notarial certificate" means the portion of a notarized electronic document that is completed by an Online Notary public and contains the following:

(A) the Online Notary public's electronic signature, electronic seal, title, and commission expiration date;

(B) other required information concerning the date and place of the online notarization; and

(C) the facts attested to or certified by the Online Notary public in the particular notarization.

(5) "Electronic seal" means information within a notarized electronic document that confirms the Online Notary public's name, jurisdiction, identifying number, and commission expiration date and generally corresponds to information in notary seals used on paper documents.

(6) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document.

(7) "Identity proofing" means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the identity of an individual through review of personal information from public and proprietary data sources.

(8) "Notarial act" means the performance by an online notary public of a function authorized under Section 406.016.

(9) "Online notarization" means a notarial act performed by means of two-way video and audio conference technology that meets the standards adopted under Section 406.104.

(10) "Online notary public" means a notary public who has been authorized by the secretary of state to perform online notarizations under this subchapter.

(11) "Principal" means an individual:

(A) whose electronic signature is notarized in an online notarization; or

(B) taking an oath or affirmation from the online notary public but not in the capacity of a witness for the online notarization.

(12) "Remote presentation" means transmission to the Online Notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the Online Notary public to:

(A) identify the individual seeking the online notary public's services; and

(B) perform credential analysis.

Sec. 406.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to an online notarization.

Sec. 406.103. RULEMAKING. The secretary of state may adopt rules necessary to implement this subchapter, including rules to facilitate online notarizations.

Sec. 406.104. STANDARDS FOR ONLINE NOTARIZATION. (a) The secretary of state by rule shall develop and maintain standards for online notarization in accordance with this subchapter, including standards for credential analysis and identity proofing.

(b) The secretary of state may confer with the Department of Information Resources or other appropriate state agency on matters relating to equipment, security, and technological aspects of the online notarization standards.

Sec. 406.105. APPLICATION; QUALIFICATIONS. (a) A notary public or an applicant for appointment as a notary public under Subchapter A may apply to the secretary of state to be appointed and commissioned as an Online Notary public in the manner provided by this section.

(b) A person qualifies to be appointed as an Online Notary public by:

(1) satisfying the qualification requirements for appointment as a notary public under Subchapter A;

(2) paying the application fee described by Subsection (d); and

(3) electronically submitting to the secretary of state an application in the form prescribed by the secretary of state that satisfies the secretary of state that the applicant is qualified.

(c) The application required by Subsection (b) must include:

(1) the applicant's name to be used in acting as a notary public;

(2) a certification that the applicant will comply with the secretary of state's standards developed under Section 406.104; and

(3) an e-mail address of the applicant.

(d) The secretary of state may charge a fee for an application submitted under this section in an amount necessary to administer this subchapter.

Sec. 406.106. PERFORMANCE OF NOTARIAL ACTS. An online notary public:

(1) is a notary public for purposes of Subchapter A and is subject to that subchapter to the same extent as a notary public appointed and commissioned under that subchapter;

(2) may perform notarial acts as provided by Subchapter A in addition to performing online notarizations; and

(3) may perform an online notarization authorized under this subchapter.

Sec. 406.107. AUTHORITY TO PERFORM ONLINE NOTARIZATIONS. An Online Notary public has the authority to perform any of the functions authorized under Section 406.016 as an online notarization.

Sec. 406.108. ELECTOnline NotaryIC RECORD OF ONLINE NOTARIZATIONS. (a) An Online Notary public shall keep a secure electronic record of electronic documents notarized by the Online Notary public. The electronic record must contain for each online notarization:

(1) the date and time of the notarization;

(2) the type of notarial act;

(3) the type, the title, or a description of the electronic document or proceeding;

(4) the printed name and address of each principal involved in the transaction or proceeding;

(5) evidence of identity of each principal involved in the transaction or proceeding in the form of:

(A) a statement that the person is personally known to the Online Notary public;

(B) a notation of the type of identification document provided to the Online Notary public;

(C) a record of the identity verification made under Section 406.110, if applicable; or

(D) the following:

(i) the printed name and address of each credible witness swearing to or affirming the person's identity; and

(ii) for each credible witness not personally known to the Online Notary public, a description of the type of identification documents provided to the Online Notary public;

(6) a recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence; and

(7) the fee, if any, charged for the notarization.

(b) The Online Notary public shall take reasonable steps to:

(1) ensure the integrity, security, and authenticity of online notarizations;

(2) maintain a backup for the electronic record required by Subsection (a); and

(3) protect the backup record from unauthorized use.

(c) The electronic record required by Subsection (a) shall be maintained for at least five years after the date of the transaction or proceeding.

Sec. 406.109. USE OF ELECTOnline NotaryIC RECORD, SIGNATURE, AND SEAL. (a) An Online Notary public shall take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device's issuing or registering authority.

(b) An Online Notary public shall keep the Online Notary public's electronic record, electronic signature, and electronic seal secure and under the Online Notary public's exclusive control. The Online Notary public may not allow another person to use the Online Notary public's electronic record, electronic signature, or electronic seal.

(c) An Online Notary public may use the Online Notary public's electronic signature only for performing online notarization.

(d) An Online Notary public shall attach the Online Notary public's electronic signature and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(e) An Online Notary public shall immediately notify an appropriate law enforcement agency and the secretary of state of the theft or vandalism of the Online Notary public's electronic record, electronic signature, or electronic seal. An Online Notary public shall immediately notify the secretary of state of the loss or use by another person of the Online Notary public's electronic record, electronic signature, or electronic seal.

Sec. 406.110. ONLINE NOTARIZATION PROCEDURES. (a) An Online Notary public may perform an online notarization authorized under Section 406.107 that meets the requirements of this subchapter and rules adopted under this subchapter regardless of whether the principal is physically located in this state at the time of the online notarization.

(b) In performing an online notarization, an Online Notary public shall verify the identity of a person creating an electronic signature at the time that the signature is taken by using two-way video and audio conference technology that meets the requirements of this subchapter and rules adopted under this subchapter. Identity may be verified by:

(1) the Online Notary public's personal knowledge of

the person creating the electronic signature; or

(2) each of the following:

(A) remote presentation by the person creating the electronic signature of a government-issued identification credential, including a passport or driver's license, that contains the signature and a photograph of the person;

(B) credential analysis of the credential described by Paragraph (A); and

(C) identity proofing of the person described by Paragraph (A).

(c) The Online Notary public shall take reasonable steps to ensure that the two-way video and audio communication used in an online notarization is secure from unauthorized interception.

(d) The electronic notarial certificate for an online notarization must include a notation that the notarization is an online notarization.

Sec. 406.111. FEES FOR ONLINE NOTARIZATION. An online notary public or the Online Notary public's employer may charge a fee in an amount not to exceed $25 for performing an online notarization in addition to any other fees authorized under Section 406.024.

Sec. 406.112. TERMINATION OF ONLINE NOTARY PUBLIC'S COMMISSION. (a) Except as provided by Subsection (b), an online notary public whose commission terminates shall destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the Online Notary public's official electronic signature or seal. The Online Notary public shall certify compliance with this subsection to the secretary of state.

(b) A former Online Notary public whose commission terminated for a reason other than revocation or a denial of renewal is not required to destroy the items described by Subsection (a) if the former Online Notary public is recommissioned as an online notary public with the same electronic signature and seal within three months after the former Online Notary public's former commission terminated.

Sec. 406.113. WOnline NotaryGFUL POSSESSION OF SOFTWARE OR HARDWARE; CRIMINAL OFFENSE. (a) A person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling an Online Notary public to affix an official electronic signature or seal commits an offense.

(b) An offense under this section is a Class A misdemeanor.

SECTION 4. This Act takes effect July 1, 2018.

______________________________ ______________________________

President of the Senate Speaker of the House

I certify that H.B. No. 1217 was passed by the House on May 6, 2017, by the following vote: Yeas 141, Nays 1, 2 present, not voting.

____

Chief Clerk of the House

I certify that H.B. No. 1217 was passed by the Senate on May 22, 2017, by the following vote: Yeas 27, Nays 3.

____
Secretary of the Senate

APPROVED: _____________________
Date

____
Governor

APPENDIX B
MISMO PROPOSED STANDARDS

1. **AUTHENTICATION AND CREDENTIAL ANALYSIS**
   The following authentication and analysis protocols are intended to support the notary public in making the determination that satisfactory evidence of the Signer's identity has been established for a Remote Online Notarization. If a State requires identify proofing involving KBA and or credential analysis, the following section specifies standards for either. If a State specifies additional means for identify verification aside from identify proofing or credential analysis, such as credible witness, personal knowledge or other means, such additional and other means are not addressed by this standard.
   a. Signer identity verification for Remote Online Notarization services must follow a consistent Multi Factor Authentication pattern:
      i. Each Signer's claimed identity credential must be verified against trusted third-party data sources;
      ii. Identity is then bound to each individual Signer following successful knowledge-based authentication, or another form of trusted third-party identity verification such as online banking authentication;
      iii. Then used as the basis for software-aided human visual comparison with a government-issued photo credential
   b. **Credential Analysis of Government Issued Identification** (Factor One)
      Remote Online Notarization service providers must use automated software processes to aid the notary public with their role in verifying the Signer's identity.
      i. A Credential Analysis procedure must meet the following requirements:
         1. Applies automated processes that may include but are not limited to:
            a. Image correction and edge detection.
            b. Credential type classification based on format, style, layout and other identifying features.
            c. Data extraction when possible, using optical character recognition (OCR) for text, and barcode scanning when necessary.
            d. Forensic inspection to identify expected security features based on credential type (e.g. microdots and other patterns)
         2. Confirms that the data on the credential is valid and matches the Signer's claimed identity.
         3. Enables a notary public to visually compare the following for consistency:
            a. Available credential analysis automated process output
            b. The credential image itself
            c. The physical person
      ii. Credential Type Requirements
         1. Must be a government-issued document meeting the requirements of the State that contains a photograph of the individual(s), and can be subjected to credential analysis.
      iii. Credential Image Capture
         1. An image of the credential must be captured as part of an Uninterrupted Remote Online Notarization Workflow, using a camera that is controlled by the notarization service provider's software. This ensures that:
            a. The physical credential is in the Signer's possession at the time of capture and notarization
            b. Previously captured — and thus manipulable — images are not used for credential analysis
         2. Specifying image resolution and required image captures is beyond the scope of this workgroup, although the following general principles should be considered:
            a. Captured image resolution must be sufficient for the service provider to perform credential analysis per the requirements above.
            b. Image resolution should be sufficient to enable visual inspection by the notary public.

c. All images necessary to perform visual inspection and credential analysis must be captured — e.g. U.S. Passport requires identity page; state driver's licenses require front and back.

c. **Dynamic Knowledge Based Authentication** (Factor Two)
Dynamic Knowledge Based Authentication (KBA) is an identity assessment that is based on a set of questions formulated from public or private data sources for which the Signer has not provided a prior answer to the Remote Online Notarization service provider. A Dynamic Knowledge-Based Authentication procedure must meet the following requirements:
   i. Signer must answer five questions, drawn from their identity and historical events records.
   ii. Each question must have a minimum of five possible answer choices.
   iii. At least four of the five questions must be answered correctly (a passing score of 80%).
   iv. All five questions must be answered within two minutes.
   v. If the Signer fails their first attempt, they may retake the quiz one time.
   vi. During the retake, a minimum of 40% (two) of the prior questions must be replaced.
   vii. If the Signer fails their second attempt, they are not permitted to retry with the same Remote Online Notarization service for 24 hours.

d. **Biometrics** and Other Requirements
Biometric sensing capabilities are an emerging set of capabilities that have future application to authentication, credential analysis, and identity verification processes for Remote Online Notarization. These technologies include but are not limited to: facial, voice, and fingerprint recognition. MISMO will promulgate technical standards for these and additional tools as they come into common practice

e. **Workflow Continuity Requirement**
If the Signer must exit the workflow, they must meet the criteria outlined above and restart the Credential Analysis and Authentication workflow from the beginning.

2. AUDIO/VIDEO QUALITY

a. A reliable Remote Online Notarization operating model should consist of continuous, synchronous audio and video feeds with good clarity such that all participants can be clearly seen and understood at all times.
b. Inherent in online audio/video technology is the presence of temporary surges or spikes in quantitative measures like bitrate and/or frequency of communications and no simple technical limits are practical or prudent. Rather, a sounder approach to ensuring reliable real-time communications is to rely on the judgement of the notary public to determine the adequacy of the communications and provide direction to terminate the session if those conditions are not met.
c. The audio/video recording must include the Notarial Act, and must be captured using a widely available format that can be read by broadly available audio/video players.
d. The audio/video recording must include all parties involved in the Notarial Act.

3. STORAGE OF NOTARIAL RECORDS

a. It is the responsibility of the notary public to maintain an accurate and reliable journal, which includes a copy of the audio-video recording where applicable. Notaries have the ability to capture the required records themselves or to employ a technology provider to do so on their behalf. In either case, the chosen technology solution should:
   i. Facilitate the process of collecting the required elements of the journal.
   ii. Provide a method by which a notary public can access and/or export the journal to a new technology solution.
   iii. Provide automated data backup to ensure redundancy.
b. The technology solution being used to store notary public journal records shall employ sufficient safeguards to accomplish the following key objectives.
   i. Keep information secure - safeguards should be consistent with generally accepted best practices of information security, such as encryption/decryption methods for all data elements at rest and in transit, and a comprehensive access control strategy consistent with the principles of least privilege.
   ii. Ensure privacy protection – the journal records shall include only required data elements and should avoid inclusion of additional unnecessary data elements.

c. Retention of the audio-video recording and the electronic journal by either the notary public or their designated technology provider, as directed by the notary public, should adhere to the laws, rules and regulations of the State.

4. **POST-EXECUTION DOCUMENT RECORDS**
   a. **Audit trail -** Documents completed as part of a Remote Online Notarization should include a Document level audit trail that records significant actions that occur during the Document's lifecycle. Each entry in this audit trail should clearly indicate the action performed (e.g. addition of an electronic signature), the date/time of its performance in Coordinated Universal Time (e.g. 2017-12-05 01:14:22 UTC), and the party performing the action (e.g. John Doe). Further detailed guidance on the audit trail form is beyond the scope of this standard at this time.
   b. **Tamper seal** – each Document completed as part of a Remote Online Notarization should be digitally signed as soon as practical following the successful performance of the Notarial Act using X.509 certificate. This digital signature should operate such that the each Document itself and its audit trail are subject to the tamper seal. Evidence of tampering may be used to determine whether the notarial act is valid or invalid.

5. **SECURITY CONSIDERATIONS**
   Technology providers of Remote Online Notarization services should have comprehensive security programs in place to ensure data security. There are many accepted frameworks for how to develop such a program, such as SSAE 16 SOC2 or ISO27001.

6. **COUNTY RECORDING CONSIDERATIONS FOR ELECTOnline NotaryICALLY NOTARIZED DOCUMENTS**
   a. Tangible versions of electronic records
   While a steadily increasing number of counties are adopting electronic recording (eRecording) capabilities, there are a large number of counties that do not accept electronic documents. Even in counties that have adopted eRecording, there are some scenarios that prevent all document types from being eRecorded. These limitations present the need to convert an electronically signed and notarized document into a tangible medium. Rules adopted to support URPERA, RULONA and Remote Online Notarization should clarify that a printed version of an electronic record meets the requirements of the applicable recording statutes. Such rules should not impose operational hurdles that would impede the use of electronic records.

Remote Online Notarized Documents should have disclosure language stating as such.

Once affixed to the electronic document, the document is rendered tamper evident; unauthorized attempts to alter the document will be evident to relying parties.