

Date: April 16, 2020

To: All Arizona Agents

From: David Dickard & David Hays

RE: Arizona's Early Inaction of the Remote Online Notarization (RON) Process

On April 8th Arizona Governor Doug Ducey issued Executive Order 2020-26, immediately implementing the provisions of A.R.S. 41-371 through 41-380 regulating the use of RON procedures in the state. The statutes had originally been scheduled to go into effect on July 1, 2020. The Governor's Order authorizes the use of RON effective April 10th, subject to compliance with the above-referenced statutes and the rules adopted by the Arizona Secretary of State. This bulletin is intended to provide guidance to our agents on the newly enacted Arizona RON procedures.

Notaries must have written authorization from the Secretary of State to perform RON in Arizona. The Secretary of State's office has announced that it will begin accepting RON applications from notaries on April 10th. Applicants must be a current, active Arizona notary public. Included in the application process is a description of the technologies or devices that the notary intends to use to perform RON and the name, address and website URL of any vendor or person who will be directly supplying RON technology to the notary. Once authorized to conduct RON by the Secretary of State, notaries must follow very specific criteria in order to complete a legally binding transaction, including:

1. The essence of RON is that the parties to the transaction and the notary are not in the same physical location. While the remotely located individuals may be physically located outside of Arizona (including outside of the U.S.), the notary performing RON services must be physically located within the state.
2. Skype, Zoom and FaceTime are not acceptable RON platforms. Legal standards for communication technology and identity verification go well beyond what is offered by these services. Examples of certified RON platform providers familiar to FNTI include Docverify, Notarize, Pavaso, Docmagic and Notary Cam. Links to these providers can be found on the FNTI website.
3. The notary must make and securely preserve an audio and video recording of the RON meeting. The communication technology used must be synchronous and of sufficient video and audio quality to allow the notary and the remotely located party to see and speak with each other in real time. The notary must be able to reasonably verify that the electronic record before the notary is the same as the one upon which the remotely located party made a statement or signed a document. Any communication technology used must provide adequate safeguards to prevent unauthorized access to the live transmission of the RON meeting, the methods used to perform identity verification and the electronic record of the RON meeting.

This Underwriting Bulletin becomes a part of the principles and practices with which you are to comply under the terms of your Underwriting Agreement with First National Title Insurance Company. Should the content of this bulletin address the closing and escrow function, this information should be considered a directive and part of the principles and practices if non-compliance would result in liability to FNTI under either the insured closing service letter or policy of title insurance notwithstanding that the Underwriting Agreement does not include the closing and escrow functions of your agency.

4. The notary is not going to have personal knowledge of the identity of the vast majority of persons who appear before the notary remotely. While personal knowledge of the notary is an acceptable form of RON verification of identity, the procedure that will be most commonly used for RON identity verification is called multi-factor authentication. It is a two-step process consisting of credential analysis, which uses technology to verify the legal authenticity of the form of identification presented (driver license, passport) and identity proofing, which consists of the remote individual answering a series of personal questions unique to that individual. The notary will be relying upon the third party RON platform provider (Docverify, Notarize, etc.) to provide technology that meets the requirements for a legally binding RON procedure. It is critical that the notary thoroughly vet the RON platform provider prior to contracting because it is the notary who is ultimately responsible for the legal sufficiency of the RON act.

A. In credential analysis, the RON platform provider uses public or private data sources to confirm the integrity of visual, physical or cryptographic security features of the identification credential presented and that the identification credential presented is not fraudulent or inappropriately modified. The notary must be able to visually verify that the information and photo on the identification credential is consistent with what the notary is seeing in real time through the communication technology.

B. In identity proofing, the remotely located individual must answer a quiz consisting of at least five questions about the individual's personal history gleaned from public or private data sources by the RON platform provider. All questions must be answered within two minutes and at least 80% of the questions must be answered correctly. If the individual fails on the first attempt they may retake the quiz once in the next 24 hours with at least 40% of the original questions being replaced. If the individual fails on the second attempt they may not be allowed to retake the quiz before the same notary for another 24 hours. The notary must not be able to see or record any questions or answers.

Remember that in order create a legally binding RON act utilizing this method of identification verification the notary must utilize both credential analysis and identity proofing. If a remotely located individual has to exit the RON session before the identity verification process is completed, that individual must restart the identity verification process from the beginning.

C. The notary may also perform RON identity verification through the oath or affirmation of a credible third party witness. The witness must have personal knowledge of the remotely located individual. The witness must also be personally known to the notary or be verified to the notary using the multi-factor authentication process set forth above. The witness does not have to be in the physical presence of the remotely located individual if the witness is available via the communication technology set forth above.

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5. The form of notary certificate for a RON satisfies statutory requirements if it substantially contains the statement “This remote online notarization involved the use of communication technology.” A list of short form RON acknowledgments can be found on the Secretary of State’s website.
6. The notary must retain an electronic journal and the audio-visual recording of RON transactions in a secure computer location. The notary may not record the RON act in a paper journal. The electronic journal must not include the serial or identification number of the identification credential presented. The electronic journal and the audio-visual recordings must be kept separate from one another. The electronic journal must be retained for at least five years after the last RON act was entered. An audio-visual recording must be retained for at least five years after it is made.

FNTI is dedicated to providing excellent service to our agents. Should you have any questions regarding this bulletin, do not hesitate to contact your friendly FNTI underwriter.

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