Underwriting Bulletin: UNNM-2020-008

Date: April 17, 2020
To: All New Mexico Agents
From: David Dickard and David Hays
RE: Remote Online Notarization (RON)

Social distancing and stay-at-home orders arising from the COVID-19 pandemic have made people increasingly reluctant to travel to title companies and real estate offices for closings and their related notary services. As a result in many states across the country Remote Online Notarization (RON), wherein the notary and the parties to the transaction are not in the same physical location, has quickly gone from something that is coming in the future to something that is here now. Unfortunately RON is not compatible with current New Mexico law requiring that notary acts be performed in person.

On March 30th New Mexico Governor Michelle Grisham signed into law Executive Order 2020-15, temporarily permitting notarial acts through audio-visual technology under certain conditions. The Order directs the state's Notary Compliance and Enforcement Unit not to pursue disciplinary action against a notary who performs a notarial act through audio-visual technology that meets these conditions. The Order is very general about acceptable forms of audio-visual communication. The identity verification process for persons not personally known to the notary does not require multi-factor authentication consisting of credential analysis and identity proofing. Authorized audio-visual notary acts are limited to New Mexico notaries and individuals physically located within the state. The Order is currently scheduled to expire on June 20th. While performing a notarial act meeting the Order's criteria would protect a notary from having disciplinary action imposed by the state, it would not protect a title insurer from a later claim that a document was not duly acknowledged and recorded under New Mexico law. The Order calls for the remotely located party to transmit fax or electronic copies of signed documents to the notary. The Order does not address N.M.S.A. 14-8-4, which requires the recording of original documents that have been duly acknowledged. The Order does not require county recorders to accept RON documents. Even if recorded, it is currently not clear if a RON document would qualify as duly acknowledged and recorded under New Mexico law.

For these reasons, at this time FNTI is declining to insure transactions in New Mexico which include RON documents. We will continue to monitor legislative and executive developments relative to RON transactions. As always, please feel free to reach out to your FNTI underwriting team for guidance as situations develop.

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.