

Date: June 27, 2018  
To: All Texas Agents  
From: Ellen Wied, Senior Vice President and Underwriting Counsel  
RE: Remote Online Notarization (RON)

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## Remote Online Notarization (RON)

As everyone knows, Texas became one of the leaders in the country when it enacted the Remote Online Notarization (RON) legislation last year. As we approach the time to start implementation, we need to take a look at a few of the specifics.

- **RON is not facetime or skype.**
- Requires a different (online) notary license than the traditional license, but an online notary applicant must first be appointed as a traditional notary before they are eligible to apply for an online license.
- Requires interactive two-way audio and video communication software.
- Requires software from a reputable third-party provider that can perform required credential analysis and identity proofing, which must be kept confidential.
- Requires that the notary maintain records electronically (as well as a back-up) that includes a recording of any video and audio communication identifying the person who is executing documents, and the actual notarial act performed, for a period of five years.
- Requires a secure storage platform for the notarization video.
- Requires that the county in which the property is located allows e-recording.
- Requires a modified electronic notarial acknowledgment certificate that includes notation that the RON form of notarization was performed.
- Effective date is July 1, 2018, but the Secretary of State (SOS) has to promulgate rules to implement. The rules have been published but will not have final approval until August at the earliest due to the high volume of questions and comments being received.
- The application for an online notary public license must be submitted electronically and include (among other information) a copy of the applicant's digital certificate, a copy of the applicant's electronic signature and electronic seal (in JPG, BMP, PNG or TIF format), and a statement that the applicant will comply with all identity proofing and credential analysis requirements and use an electronic technology standard that utilizes Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant.

RON is a notarization procedure that does not require the person who is executing the documents to be in the physical presence of the notary. The RON notary must be located in Texas, but the person executing the documents can be in their home, out of state, or even out of the country.

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.

A RON notary can eliminate the need for mobile notaries and cut down on the courtesy closing requests from other offices and companies. **NOTE:** There are some transactions that require the documents to be executed at the title company, such as a home equity loan, the Power of Attorney to be used with a home equity loan, repair and renovation Mechanic Lien Contracts, and reverse mortgages—these will still need to be handled with the signers physically coming to the title company.

Identity proofing will involve the signer answering a series of security questions pertaining to their life history, formulated from public and proprietary data sources, that only they should be able to answer. According to the pending SOS rules, the signer must answer a quiz consisting of a minimum of five questions, each with five possible answer choices, and answer at least 80 percent of the questions correctly within two minutes. If the signer fails the quiz, they get one chance to retake it and at least 40 percent of the prior questions must be replaced. If the signer fails the second time, they may not retry with the same online notary for a 24-hour period.

Credential analysis is the process by which the ID presented by the signer will be authenticated. The process must provide a confirmation to the online notary public that the credential is valid and matches the signer's claimed identity. The pending rules require that an automated process be utilized that includes image correction and edge detection; credential type classification based on format, style, layout, and other identifying features; data extraction using optical character recognition for text; and barcode scanning or forensic inspection. The process must also enable the online notary to visually compare the credential presented and the signer.

All of this will, of course, be done on an online system with live, real-time transmission, with the signer and the online notary public able to see and speak to each other. The RON software provider should be able to provide for multiple signers and sequential signing, as well as an audit trail in the form of a digital certificate for every signed document. All technology should be in compliance with ALTA Best Practices Pillar #3.

Very rigid data-security standards and secure storage methods are essential and strict confidentiality of the video record of the identity proofing and notarial act must be maintained. The online notary must also protect their electronic seal/signature from unauthorized access and use.

- \* The proposed new rules **prohibit** a notary from entering certain personal information in the notary record book, such as a driver's license number or any identification number that was assigned by a governmental agency that is set forth on the identification card or passport or biometric information, including a thumb or finger print.
- \* The rules further provide that this new section does not apply to an online notary public's process of making an audio-visual recording during the identity proofing, although the online notary must redact personal identifying information before any release of the information or obtain the consent of the signer.

Please do not hesitate to contact our agency representatives for assistance in locating third party RON vendors' information and vetting tips.

Additional bulletins will be forthcoming once the rules are fine-tuned and finalized.

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### **Consent to Use of Electronic Documents and Electronic Signature**

[Company Name] (“Company”) wants to ensure you have all of the information you need to effectively manage your real estate transaction. Our goal is to provide you with as many options as possible for efficiently receiving your title and closing/settlement documents. This Consent to Use of Electronic Documents and Electronic Signature in Real Estate Transactions (“Consent”) is to be used in conjunction with your digital and/or electronic signature on documents, agreements, addendums and other real estate transaction-related materials in connection with your (purchase/refinance) real estate transaction closing/settlement with Company.

**1. Understanding Electronic “Lingo”:**

“**Electronic**” means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“**Electronic Communications**” include any electronic version of a communications, information, disclosure, notices about Company’s privacy policies and other notices, reports, agreements, legal disclosures, contract or other documents and records for your real estate transaction and other information Company may provide to you, or that you sign or agree to through Company’s Electronic Services or as an attachment to or in an e-mail.

“**E-Signature**” or “**Electronic Signature**” means an electronic symbol or process attached to, or logically associated with, a record and used by you with the intent to sign the record. Just like you can legally “sign” a printed document by hand with a pen, so you can “sign” an electronic document by making your mark through high-tech encrypted, digital signature or just typing your name in the signature line - these are all electronic signatures.

**2. Consent to Electronic Delivery and Use of Electronic Signature.** Company is required to give you certain information “in writing” so you are entitled to receive it on paper. Company, however, may provide this information to you electronically with your consent. Company also requires your general consent to use Electronic Communications and Electronic Signatures in connection with your Company electronic transaction. Before you electronically sign closing and settlement-related documents, you must consent, by signing below, to receive these materials electronically using e-mails and Electronic Communications. Company reserves the right to furnish to you, and the right to require you to furnish to it, writings or paper copies of information, communications, and/or legal documents relating to your closing, in lieu of and/or in addition to electronic records thereof, at any time, in Company’s sole discretion.

**3. Method of Providing Electronic Communications.** All Electronic Communications will be provided to you: \_\_\_\_\_

4. **Communications in Writing.** All communications in either electronic or paper format from Company to you will be considered “in writing.” You should print or download for your records a copy of this Disclosure and any other communication that is important to you. Please notify Company promptly if you have any changes to your email or other electronic address.
5. **Your Right To Receive Paper Copies of the Documents.** You have the right to have any document and communication provided in paper form by contacting Company. *You may have to pay a fee for the paper copy unless charging a fee is prohibited by applicable law. Please refer to your fee schedule for Company’s current fees. These fees may change from time to time, in Company’s sole discretion; you will be notified of any such change.* [Note: Section 101(c)(1)(B) requires a clear and conspicuous statement information the consumer how the consumer may nonetheless request a paper copy of a record and whether any fee will be charged for that copy.]
6. **Your Right to Withdraw Your Consent.** You have the right to withdraw your consent by notifying Company. The legal validity and enforceability of the electronic documents, signatures and deliveries used prior to your withdrawal of consent will not be affected.
7. **How to Contact Company.** The available methods for contacting Company are:
  8. **Termination / Changes.** Company reserves the right, in its sole discretion, to discontinue the provision of your Electronic Communications, or to terminate or change the terms and conditions on which Company provides Electronic Communications. Company will provide you with notice of any such termination or change as required by law.
  9. **State and Federal Law.** You acknowledge that your transaction is subject to the state electronic transaction statute and the federal Electronic Signatures in Global and National Commerce Act and the applicable state electronic transaction act collectively (“E-Sign Acts”) and that you and Company both intend the applicable E-Sign Acts apply to the fullest extent possible to validate Company’s ability to conduct business with you by electronic means.
  10. You may sign this document electronically or by hand. Both methods will have the same enforceability.

By signing below, you agree that your electronic signature is the legal equivalent of, and enforceable as and to the full extent of, a hand-written signature whether presented in court (state or federal), arbitration, or otherwise. You also acknowledge and agree to be legally bound by this Consent and any and all materials you sign electronically as if signed by hand with a pen. You will not raise any defense or invoke regulatory or statutory claims attempting to invalidate the enforceability of documents to which your electronic signature is affixed. You further agree that no certification authority or other third party verification is necessary to validate your electronic signature and the lack of such certification or third party verification will not in any way affect the enforceability of your electronic signature.

By signing below, you hereby agree to the terms and conditions stated herein.

Transaction File No.: \_\_\_\_\_ Transaction Property Address:

\_\_\_\_\_  
Borrower/Buyer/Seller Printed Name

\_\_\_\_\_  
Borrower/Buyer/Seller Signature

\_\_\_\_\_  
Mailing Address if different from above

\_\_\_\_\_  
Borrower/Buyer/Seller E-mail Address

# REMOTE ONLINE NOTARY SERVICE PROVIDERS

## DocVerify

Contact: Darcy Mayer      949.222.1001 ext. 1001      [dmayer@docverify.com](mailto:dmayer@docverify.com)  
[www.docverify.com](http://www.docverify.com)

## Notarize

Contact: Laura Lopez      571.402.5444      [laura.lopez@notarize.com](mailto:laura.lopez@notarize.com)  
[www.notarize.com](http://www.notarize.com)

## Pavaso

Contact: Aaron McKinley      469.453.0316 ext. 1221      [amckinley@pavaso.com](mailto:amckinley@pavaso.com)  
[www.pavaso.com](http://www.pavaso.com)

## DocMagic

**\*Works in conjunction with Notary Cam**

Contact: Tim Anderson      800.649.1362      [tim@docmagic.com](mailto:tim@docmagic.com)  
[www.docmagic.com](http://www.docmagic.com)

## Notary Cam

Contact: David Kressel      617.290.0900      [david.kressel@notarycam.com](mailto:david.kressel@notarycam.com)  
[www.notarycam.com](http://www.notarycam.com)

*While this list contains a group of industry leaders specializing in RON, it is not considered conclusive. FNTI requires its agents to properly vet their chosen service provider, on or off this list, to ensure the guidelines set forth in FNTI Texas Underwriting Bulletin 2018-01 Remote Online Notarization are followed.*



**FIRST  
NATIONAL**  
TITLE INSURANCE COMPANY

## **RON Provider Checklist:**

- ✓ Assistance with obtaining the Texas E-Notary for the escrow officers
- ✓ Creates the notary's electronic signature and digital seal
- ✓ Provides interactive two-way audio and video communication software
  - Live, real time transmission
- ✓ Performs Credit Analysis and Identity Proofing
  - 5 Questions/at least 80% accuracy/2 minutes
  - Utilizes Public Key Infrastructure (PKI) technology from a PKI service that is X.509 compliant
- ✓ Maintains records electronically
  - Must have a back-up system
  - Includes a recording of any video and audio communication of the notarial act performed
  - Must be maintained for a period of 5 years
- ✓ Provides an electronic notarial acknowledgement certificate
- ✓ All technology compliant with ALTA Best Practices Pillar #3