



MORTGAGE BANKERS ASSOCIATION

AMERICAN
LAND TITLE
ASSOCIATION



**Mortgage Bankers Association – American Land Title Association
Model Legislation for Remote Online Notarizations
Frequently Asked Questions (FAQs)**

Overview

What is a notarization?

A notarization is performed by government-authorized person called a Notary Public who confirms the identity of the signatory (usually established by government-issued ID) on a document before placing their signature and seal on the document.

Why notarize documents in the first place?

Notarization helps provide confidence that transaction documents are actually signed by the persons named in the documents. Also, notarizations have evidentiary value in court because notarized documents are considered as self-authenticating.

Why is notarization important for real estate transactions?

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

What are remote online notarizations (RON)?

RON involves the use of two-way, real time audio visual technology and electronic methods to conduct a notarization.

What is the difference between RON and electronic notarization?

States have used these terms differently. An electronic notarization takes place when the notarial seal, signature or certificate is created, placed and stored electronically. Electronic notarization can either be done in person or remotely. Other parts of the signature process may also be done electronically.

In person electronic notarization (IPEN) occurs when a notary and signer are in the same physical location.

Remote online notarization occurs when the authentication and signing process take place using two-way real time audio visual technology, which enables the signer and notary to see and hear each other simultaneously. Typically, an online notarization session culminates with an electronic notarization.

MBA-ALTA Model Bill

Prior to the MBA-ALTA Model Bill, what approaches have states taken to allow RON?

At the start of 2017, there were two basic – but different – approaches in states to remote online notarization: Virginia’s law was very permissive about where lenders, customers and property could be located while Montana’s law was much more restrictive in establishing a state-specific nexus in the transaction. These differences created legal uncertainty in the market for MBA’s and ALTA’s members and the consumers they serve.

During 2017, Texas enacted a law (which was quickly emulated by Nevada) that achieved wide consensus in how it allowed remote online notarizations to have the same validity as in-person notarizations. MBA and ALTA members were part of that collaboration, and asked their trade associations to help leverage these new statutes to achieve more national consensus among state laws on this important issue.

Why did MBA and ALTA work together to draft this model legislation?

Remote online notarization is seen as a way to improve the customer experience, and the real estate finance industry would like to be able to offer it to consumers. Both MBA and ALTA believe obstacles that might inhibit the use of remote online notarization should be removed and more common standards should be adopted.

How did MBA and ALTA go about drafting this model bill?

The MBA-ALTA model legislation is based in large measure on the approach taken in the Texas law, and emulated by Nevada. The model bill is an effort to provide a considered industry approach to what such a law could look like rather than relying on industry input from multiple parties that have varying views on how the laws and rules should be written.

How and why is the MBA-ALTA model different from what was enacted into law in Texas?

While the model bill is based in large measure on the Texas law, it is important to be transparent about several ways the model is different. There are several factors that influenced the model bill. Here a few:

- Influence of other state laws. State legislators emulate each other all the time and the issue of remote online notarization is no different. Before adjourning in 2017, the Nevada legislature used

the Texas law as a road map to pass their own law. However, a review of both laws shows that this was not a cut and paste exercise nor was it done in haste. Lawmakers in any state are likely to take the opportunity to make improvements or approach legislative language differently. It's important to add that as more states embrace remote online notarization, MBA and ALTA may seek to improve the model bill by borrowing from the future work of legislators from other states.

- Consideration of the Mortgage Industry Standards Maintenance Organization (MISMO) in developing regulations for data standards. The Texas statute gave the Texas Secretary of State broad authority to promulgate rules to implement the law. It also directed the Texas Secretary of State to develop and maintain data standards for online notarizations, including standards for credential analysis and identity proofing. The Secretary of State may confer with other Texas state agencies. The model bill makes one important addition to that direction to make explicit that the Secretary of State may also consult with other entities such as data standards organizations like MISMO. This was added to the model bill because the MISMO Working Group on Data Standards was created in response to the Texas and Nevada laws to help those Secretaries of State receive expert industry input.
- Input from key policy regulators. As expected, the Texas law drew a lot of interest from real estate finance regulators and other policy makers. Among those examining it were Secretaries of State from across the country as well as the National Association of Secretaries of State (NASS). This is critical, because ultimately these are the public officials responsible for implementing the provisions of these laws if enacted. Following the passage of the Texas and Nevada laws, MBA, ALTA, their respective member companies and state association partners have been participating in stakeholder meetings convened by Secretaries of States in many states. Also, NASS was invited to participate in the MISMO Working Group meetings and was offered early drafts of the model bill for comment. As MBA and ALTA members developed the model bill, it was influenced by these meetings and the input of the NASS.
- Federal policy maker input. MBA and ALTA shared early drafts of the model with, and received feedback from, Fannie Mae, Freddie Mac and the Federal Housing Administration.
- Ongoing model bill development of the Uniform Law Commission (ULC). MBA and ALTA made a deliberate effort in drafting the model to borrow from the current version of Revised Uniform Law on Notarial Acts (RULONA) to ensure consistency of the ULC's RULONA 2018, with the MBA-ALTA Model.
- "Paper Out" Language. There was a need to provide legal certainty to recording "papered out" copies of digital real estate documents. That is why there is optional language provided in the model to help state legislators with this issue.

Why did the industry develop a model bill when the Uniform Law Commission started a similar project?

The reality is that some states had already passed laws and other state legislatures and policy makers were reviewing those enacted statutes in anticipation of the 2018 state legislative sessions. As the biggest consumers of notarial services, the lending and title industry have a unique vantage point for drafting standards. It is MBA's and ALTA's shared view that without a model to help guide discussions in 2018, multiple divergent standards were likely to result. MBA and ALTA worked with NASS and the ULC to ensure consistency and uniformity amongst all of the standards. The Associations shared drafts of the model with the ULC and NASS and accepted input from them.

How many states have enacted RON legislation consistent with the MBA-ALTA model?

There have been a total of 20 states that have enacted legislation consistent with the MBA-ALTA model bill. Virginia and Vermont remain the only outliers when compared to the other states. This is due in part to the fact that Virginia was enacted prior to the release of the MBA-ALTA model and Vermont's legislature enacted legislative language authorizing the Secretary of State to promulgate rules enabling the use of RON without the proper statutory guidance. MBA and ALTA continue to work with both states to achieve 100% state compliance with the MBA-ALTA model.

Why are there so many states that have introduced RON legislation but haven't enacted the proposed bills?

During recent legislative sessions, many states chose to introduce RON legislation to allow their constituents the option of using this method of notarizing a document. However, for some states, lawmakers believe additional work needs to be done prior to the passage of RON legislation. In particular, some states have not yet passed legislation that enables the use of electronic notarization and need to introduce RON legislation that is more comprehensive than previously thought required.

MISMO and Promulgation of Rules Governing RON

What is MISMO?

MISMO stands for Mortgage Industry Standards Maintenance Organization. MISMO is the standards development body for the mortgage industry. MISMO developed a common data language for exchanging information in the residential finance 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 government sponsored-enterprises (GSEs, i.e. Fannie Mae and Freddie Mac) that participate in the industry. Use of MISMO's standards has been found to lower per loan costs, improve margins, reduce errors and speed up the loan process by reducing manual, paper-based processes while creating cost savings for the consumer.

Why are the industry and others relying on MISMO to develop data standards for RON?

Identification standards, technology for data storage and credential analysis is rapidly and constantly advancing. These standards help lower costs for the industry and consumers, improve the consumer experience and enhance safety and integrity of the real estate transaction. Thus, state laws should

permit continued advancement in technology and process. A MISMO Working Group was convened to produce data standards for use by state regulators that would apply to lenders, title companies, vendors, and others. These standards, however, must achieve two important results: they must be vendor neutral and they must not be static or otherwise stifle innovation and adoption of technology improvements that would benefit consumers and the industry alike.

How are MISMO standards developed?

MISMO standards are established through a voluntary consensus process that is transparently managed and operated in accordance with OMB Circular A119. The MISMO Development Process Document provides policy guidance for the process by which model changes are reviewed and approved. The process is collaborative, requiring input and approval by multiple MISMO workgroups and subject matter experts from all sectors of the mortgage finance industry. Development and approval of MISMO Products (Standards and Collateral) are governed by Standards Governance Committees and documented in the appropriate Development Process Document.

What exactly has the MISMO Working Group done?

The MISMO Working Group has created industry standards and other collateral to enable RON for real estate financing transactions. Through its collaboration with industry and state actors, the final MISMO RON standards include necessary guidance for credential analysis, consumer identification, audio visual, retention, privacy, security and other items. Going forward, it will also create additional materials as necessary for lenders, title companies, investors, notaries, service providers and others. Lastly, it will share these standards with state Secretaries of State so they can include or reference them in their regulations.

Are states following the MISMO Standards?

Even in its draft form, states like Texas, Nevada and Tennessee used the MISMO standards as the impetus for rules promulgated by their Secretaries of State. Moreover, now that the standards have been completed, MISMO will share its final product with other states that have enacted RON legislation but have yet to issue guidance on how to implement the law in way that is safe for consumers.

RON Adoption and Implementation

If adopted by a state, does the model bill affect any other notarial act?

No, it does not. State lawmakers can work with the industry and consumers in their state to determine the extent to which a particular notarial act shall be valid if performed via remote online means.

What if a county does not currently accept electronically notarized documents?

It is important that any notarized document is recordable in the land records and that, once recorded, the document is a public record upon which the general public can rely. While electronic and remote online notarizations are a component of the real estate finance industry's desire for a fully paperless closing, many counties around the country do not accept electronic documents. Thus, following the provisions of the model bill that relate to online notarization are additional provisions that, if enacted,

would provide greater legal certainty by allowing counties to accept “papered out” copies of digitally notarized real estate documents.

Would the model bill, if enacted, compel consumers to close their real estate transactions through remote online means?

No. Consumer rights and optionality must be protected in every respect. Consumers must always have the choice of utilizing traditional in person notarization, in person electronic notarization, or remote online notarization.

How can a notary in one state possibly verify the identity of a person in another state over the internet?

States that have enacted remote online notarization generally require a very high threshold for identity assurance. For example, there must be a video and audio feed free from tampering. Additionally, the notary must be able to assure the identity of the signer through multi-factor authentication. Moreover, new methods such as biometric solutions, provide robust options for identity verification.

How do we reduce the risk of fraud with remote online notarization?

The key to reducing fraud is a multi-factor method of authenticating the identity of the signer. This process should include two of the following: (1) items the signer possesses, like a driver’s license; (2) information the signer knows based on personal knowledge such as, “What was the make and model of your first car?;” and (3) characteristics unique to the signer, like a finger print. Notaries using remote online notarization should maintain secure and tamper-evident records of the documents they authenticate and the method of identity verification used.

Don’t a whole host of people involved in post-closing need to know how a transaction is notarized? Will they have any way to know that under this bill?

Yes and yes. From county recorders to professionals in the secondary mortgage market, there is a need to ensure that documents that were closed digitally are clearly identifiable. Some of these needs are based on marketplace realities and others are more general concerns that exist about the electronic process which can be new to some officials. Thus, the bill includes language that requires the notarized documents to indicate in what manner the notarization was made.

What do other key federal government housing programs think about the model?

MBA and ALTA shared the model bill with the leadership of each of the GSEs and also with FHA during the exposure process providing them with an opportunity to comment.

Doesn’t the model require notaries to spend a lot of extra money to store data, specifically their journals?

It’s important to remember that the model does NOT require ANY notary to do remote online notarizations. It is entirely optional. However, if they chose to perform them, then any costs associated with required hardware, software and for data storage would be a new cost of business for all notaries electing to do so.