



MORTGAGE BANKERS ASSOCIATION

AMERICAN
LAND TITLE
ASSOCIATION



Mortgage Bankers Association-American Land Title Association Model Legislation for Remote Online Notarization Section-by-Section

Section 1: Definitions

- “Appear” or “Personally Appear” or “In the presence of”
- “Communication Technology”
- “Credential Analysis”
- “Electronic”
- “Electronic Record”
- “Electronic Seal”
- “Electronic Signature”
- “Identity Proofing”
- “Notarial Act”
- “Outside the United States”
- “Principal”
- “Remote Online Notarial Certificate”
- “Remote Online Notary Public”
- “Remote Online Notarization”
- “Remote Presentation”
- “Remotely located individual”

Section 2: Rulemaking

The Secretary of State has the authority to implement standards to facilitate online remote notarizations.

Section 3: Standards for Online Remote Notarization

The Secretary of State is required to develop and maintain standards for remote online notarization, including standards for credential analysis and identity proofing.

The Secretary of State is encouraged to consider standards established by the National Association of Secretaries of State (NASS) and national standard setting bodies such as the Mortgage Industry Standards and Maintenance Organization (MISMO).

The bill provides the Secretary State 12 months to adopt and enact the standards.¹

Section 4: Application; Qualifications²

A person must qualify to be appointed as a remote online notary public.³

An online remote notary public application must include the applicant's name, certification that the applicant agrees to comply with the secretary of state's standards, and email address.

The Secretary of State may charge the applicant a fee and any technology selected by the remote online notary must purport to standards set forth by the Secretary of State.

Once the requirements are met, a remote online notary public is imbued with the same rights and privileges of a commissioned notary public.

Section 4: Registration Required

Requires a remote online notary public to register with the Secretary of State and identify the technology to be used in their operation as a notary. The online remote notary public must also send proof that they have completed the required course of instruction approved by the Secretary of State.

The term of registration begins on the registration start date and continues as long as the notary public's current commission remains valid.

The remote online notary public must disclose any and all license or commission revocations or disciplinary actions.

The remote online notary public must send proof that they are in possession of a valid surety bond for the performance of electronic notarial acts.

Section 5: Authority to Perform Online Remote Notarizations

A remote online notary public may perform notarial acts for a person who is physically located in state or remotely located.

A remote online notary can only perform notarial acts outside the United States if the notary has no actual knowledge that the act of making a statement or signing a record is prohibited within the jurisdiction in which the person is located. The notary public can perform notarial acts if the person placing their signature on the electronic record confirms to the notary public that the requested notarial act is a part of a matter that is currently before a court or government entity in the United States, relates to a property in the United States, or relates to a transaction substantially connected to the United States.

¹ The time required to enact the standards may vary by jurisdiction in order to comply with existing state law.

² The model act provides two optional approaches to qualifications for an online notary. Option 1, requires a separate notary commission and separate application process

³ Requirements to qualify as an online notary public are: being 18 years of age, being a resident of the state, having not been convicted of a felony or crime of moral turpitude, paying the required application fee, and electronically submitting the application form.

Section 6: Electronic Record of Online Remote Notarizations

The bill requires a remote online notary public to keep a secure electronic journal of notarized documents. The journal must include the date and time of notarization, the type of notarial act, a description of the electronic document/proceeding, the information of each principal involved in the proceeding and evidence of the identity of each principal involved in the proceeding. A recording of any video and audio conference can be the basis for satisfactory evidence of identification. The record must also include the fee, if any charged, for the notarization.

The remote online notary public is required to take reasonable steps to insure the integrity and security of online notarizations, maintain a backup for the electronic record, and protect the backup record from unauthorized use.

The electronic journal must be maintained for a least ten years after the date of the transaction or proceeding.

The remote online notary public has the ability to designate a custodian of the recordings in a manner that complies with standards set forth by the Secretary of State. The standards shall include procedures for the preservation of the audio and video copy of the notarized document and the electronic journal in the circumstance the notary public dies, is adjudicated to be incompetent, or has their commission terminated.

Section 7: Use of Electronic Journal, Signature, and Seal

The remote online notary public's electronic signature must kept secure and used only to perform online notarial acts. The notary may not allow another person to use the notary's electronic signature.

The remote online notary public must attach their electronic signature and seal to an online notarial certificate in a way that renders subsequent changes to the document as evidence of tampering.

A remote online notary public must immediately report any loss, theft, or vandalism of the electronic signature.

Section 8: Online Remote Notarization Procedures

The principal is not required to be physically located in the state at the time of the online notarization.

The remote online notary must verify the identity of the person creating the electronic signature at the time the signature is taken. The identity can be verified by the remote online notary public's personal knowledge of the person creating the signature and verification of a government issued ID (passport, driver's license, etc.) that contains a signature and photo of the individual.

The remote online notary must take reasonable steps to verify the communication technology for the online notarization is secure from unauthorized use.

The electronic certification for the notarization must include information that indicates the notarization was completed online.

Section 9: Fees for Online Notarization

Grants the right to the remote online notary public or its employer to charge a fee for the performance of an online notarization

Section 10: Termination of Online Remote Notary Public's Commission

Requires a notary public whose commission is terminated to destroy any coding, disk, certificate, card, software or password that enables the online remote notary public's electronic signature or seal to be affixed.

A remote online notary public whose commission is terminated for any reason other than revocation or denial of renewal is not required to destroy the aforementioned items if the notary public is recommissioned within three months and keeps the same electronic signature.

Section 11: Wrongful Possession of Software or Hardware; Criminal Offense

It is an offense to knowingly obtain or destroy without prior authorization a certificate, disk, coding, card, program, software, or hardware that enables the notary public's electronic signature to be affixed.

Section 12: Conflict

In the event of conflict between state provisions, the provisions of this Chapter will control.

Section 13: Effective Date

The state will determine the effective date of this act.

The following provisions are not part of the MBA-ALTA Model Act. These provisions are recommended for consideration to address recording in those states that have not adopted the Uniform Real Property Electronic Recording Act or to address recording in local recorder offices that do not have electronic recording capability

Recording of an Electronic Record⁴

If state law requires the document to be on paper or be in writing, then the requirement is satisfied by a paper copy of the electronic document. Similarly, if there is a requirement that the document be signed, the requirement is fulfilled by an electronic signature.

A physical or electronic image of a stamp, impression, or seal is not needed to accompany an electronic signature if the notary has attached an electronic notarial certificate that meets the requirement of the Chapter.

Acknowledgement of Online Notarization⁵

If the notarial act is an acknowledgement, a form must be produced to indicate the person signing appeared using communication technology.

Recordation of Electronic Records in Tangible Form

A paper copy of an electric document bearing an electric signature fulfills state law requiring the recording of the document be an original, on paper or other tangible medium, be in writing, or be signed.

The requirement that a document or signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is fulfilled by a paper copy of the electronic document bearing an electronic signature and is certified by the notary public to be the true and correct copy of the document

The notary public must provide a certificate attached to the document to verify the document is the true and correct copy of the original document. The certificate must be signed and dated by the notary public, identify the jurisdiction in which the certification is preformed, contain the notary's title, indicate the expiration date of the notary's commission, and include an official stamp of the notary public affixed to the certificate.

Subsection (d) provides an example of a certificate that would satisfy the requirements of this section.

The notary public certifying the document shall confirm that the electronic document contains an electronic signature that can be verified by an independent source, print or supervise the printing of the electronic document, not make any changes or modify the electronic document.

The attached certificate shall be conclusive evidence that state requirements have been satisfied with respect to the document.

⁴ Optional for states that have not adopted Uniform Real Property Recording Act

⁵ Optional

A document, recorded in the jurisdiction where the property is located, conveying or encumbering real property or any interest in the property by inadvertence or excusable neglect shall impart notice to third persons from the time of recording even if the document was not certified in accordance with this section.

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