

# WFG Underwriting Bulletin



To: All WFG Policy Issuing Agents; All WFG Title Examiners and Officers  
From: Underwriting Department  
Date: August 16, 2018  
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Subject: RON Underwriting Standards

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WFG has long believed that “RON”, Remote Online Notarization, will fundamentally change real estate transactions. For the right customer and when used properly, we believe it can lower costs for our lenders, take days off the closing process, increase security and certainty, and actually improve the overall customer experience in a closing. As RON is implemented, it is going to take some changes in our operations and in our workflows.

WFG has been actively encouraging the drafting and adoption of legislation to allow remote online notarization and to broadly recognize RON when performed by notaries in other states.

In each state, real estate is governed by sets of laws that often date back a hundred years or more. When those laws were drafted, no one was thinking about telephones, the internet, e-documents, or video conferencing.

In each state, we examine and consider a number of areas of law before determining if it is safe for our agents and our customers to rely on RON for property transactions in those states.

- Does the law of a state authorize its own state’s notaries to perform a remote online notarization, and if it does, does that law provide sufficient safeguards for real estate transactions?
- Does the law of a state authorize recording of an e-signed, remotely notarized deed, mortgage or other e-document?
- Does the law of a state recognize an out-of-state notarization if performed remotely?
  - A number of recording statutes and recognition statutes use phrases like “appeared before,” “in the presence of” and “has the same effect as [a notary in this state]” which can be argued to invalidate the recording of or recognition of a RON transaction.
- Does the law of the state provide safeguards or curative acts that prevent challenges to the validity of a notarization or recording based on technical “foot faults” – say the right person signed, but the notary didn’t use the “right” electronic seal technology?

- If witnesses are required for certain documents, how does the state define “witnessing”? May the requirement be satisfied by a person observing the execution over an AV link?

If each of these laws don’t fit together properly, your deed or mortgage may be invalid or not legally eligible for recording.

It is a slow process making changes to the laws in 50 states, but we’re making good progress.

Three years ago, only two states had adopted RON laws – Virginia and Montana. Both of those laws had issues that prevented widespread adoption for real estate transactions.

In 2017, Texas and Nevada passed RON laws. In 2018, 16 more states and the District of Columbia introduced RON bills. A number of those have passed, bringing the current count to 8 states. Texas is furthest along in adopting rules to implement its laws, and we expect final rules by August 1, 2018.

### **The Underwriting Standards for RON**

Which brings us to our still conservative underwriting standards. WFG will insure documents executed using RON when **EACH** of the following requirements are met:

- 1. The property to be insured is in one of the following states: Texas, Washington, Virginia, Nevada, Illinois**
  - Why these states? WFG has completed a deep dive into the laws of these states and considered the questions above. In these states, we found their combination of laws provide enough certainty to safely close and insure our customer’s biggest purchases.
- 2. The property is located in a county that is ready, willing and able to accept a remotely executed, e-signed, e-document.** For the time being, the phone call needs to be made to the recorder rather than relying solely on the lists published by [Simplifile](#), eRecording Partners Network, or others. We have found some counties which accept e-recordings, but decline to accept e-signed instruments. So ASK FIRST!
- 3. The RON Notary is appointed by and operating under the Texas law.**
  - Why not Virginia or other state’s notaries? Although 8 states have laws authorizing their notaries to perform RON, it has only been implemented by Virginia, Montana and Texas at this point. Montana’s law simply doesn’t work well for consumer transactions.  
  
Virginia’s statute requires that identification for RON be confirmed by “an antecedent in-person identity proofing process in accordance with the specifications of the Federal Bridge Certification Authority....” There are lots of opinions, but no-one quite knows what that means. So far, no judge has clarified it. Since the Texas law is clearer, we see no reason to subject our customers to that uncertainty.

As other states adopt rules for RON, we expect to expand this list.

**4. The Settlement Agent contracts with one of the following RON providers: Notarize and Notary Cam.**

- Will you approve other remote notary service providers? Almost certainly. Others will almost certainly create new and better technology solutions to facilitate RON. We're happy to evaluate other service providers in this space. If you see a system that impresses you, please let your agency rep know. We will update the list as we approve new vendors.
- Why Can't I set up my own Remote Online Notary? The Texas law permits any notary to set up their own RON system. The system requirements are highly technical, and require contracting with other parties to handle "identity proofing" and "credential analysis."

In our estimation, it is not yet practical for an individual agent to put together all the technologies required to implement RON for themselves. At some point, other vendors will offer a package that meets the RON standards and allows a RON notary employed by you to handle the closing. If you desire to put together your own system, we'd be happy to discuss it with you.

**5. The party signing agrees to electronically execute documents**

- E-Sign and UETA required consents are handled automatically in the RON Software platform.

**6. The party signing may be located anywhere in the world at the time of signing.** The suitability of RON for non-US citizens and resident aliens will, as a practical matter, be limited by the availability of sufficient data base information to create a robust knowledge based authentication.

**7. The lender (if one is involved) expressly approves your use of RON technology for all or part of the execution.**

- Caution, not all lenders are set up to produce or receive a completely electronic loan package. If the lender wants a "hybrid" closing, where only certain documents are to be signed electronically, and others are "wet" signatures, the use of RON will usually not generate time and cost savings for you or them. Since RON is only effective for e-documents, its use in a hybrid closing may require a second in-person notary or person to control documents, so may even add costs.

**8. The settlement agent has carefully reviewed all written closing instructions, and had changes made appropriate to an e-signed, e-notarized, e-recorded and RON transaction.**

- Many of the closing instructions we've seen include instructions which are simply not appropriate for an electronic transaction. For example, requirements that each document be signed in blue or black ink, or for a certain number of certified copies of the mortgage instrument.

**Restrictions: RON may NOT be used:**

- 1. Remote witnessing of insured documents or powers of attorney is NOT approved.**

- The law concerning witnesses, and what it means to “witness” something have not been modified to expressly allow witnessing an act over an audio-video link. To avoid potential challenges, we still require the witnesses to be in the physical presence of the signor at the time the document is e-signed. The witness may document their act of witnessing with an e-signature.
  - The good news is that in the states where we have currently authorized reliance on RON do not require witnesses on deeds, mortgages or deeds of trust.
- 2. Without express underwriter approval, RON may not be used for execution of a power of attorney that will then be used to execute other transaction documents.**
- If the principal is available to execute a POA by RON, we want to understand why the entire transaction can’t be executed by the principal using RON.
- 3. RON may not be used for signatures by non-US persons (someone not a US citizen or resident alien with a Social Security Number) without express underwriter approval.**
- Each of the identity verification systems we’ve seen to date starts by using a social security number as an identifier. As a practical matter, few foreign nationals will have sufficient data available to satisfy knowledge based authentication required for the use of RON. Use of RON for European Union citizens may trigger application of the EU’s General Data Protection Regulation (GDPR), a discussion of which is beyond the scope of this bulletin.
- 4. E-signatures generally may not be used for a will, codicil or document regarding a testamentary trust. Nor for adoption, divorce or family law paperwork.**
- Although, we don’t insure such instruments, our attorney-agents are often called upon to prepare wills and trusts and transfer properties in conjunction with estate planning. The various state law versions of the Uniform Electronic Transactions Act and the federal E-SIGN Act 15 USC 7001, *et seq.* are both inapplicable to laws governing the creation and execution of wills, codicils and testamentary trusts. The E-SIGN act also excludes matters relating to adoption, divorce and family law.
  - To be clear, WFG WILL insure deeds, mortgages and deeds of trust to or from an estate or trust, which have been E-signed (whether or not acknowledged by RON). WFG will rely upon a Trustee’s certificate which has been E-signed and acknowledged by RON.
  - WFG will NOT rely for vesting of property on a will, trust agreement or termination of trust which has been e-signed, whether or not acknowledged by RON, without express underwriter approval.
- 5. E-signatures may NOT be used for documents governed by the U.C.C. without underwriter approval – except e-signatures and RON may be used for “Transferrable records” (an e-note), and security agreements, whether or not part of the mortgage.**
- The state law Uniform Electronic Transactions Acts (UETA) and the federal E-SIGN Act 15 USC 7001, *et seq.* are inapplicable to most parts of the Uniform Commercial Code.

- The restriction against E-signing applies to paper promissory notes – but e-signing is expressly permitted for an e-note under the terms of UETA – where the note is redefined as a “transferrable record.” Under E-SIGN, an e-note is only a transferrable record if it relates to a loan secured by real estate so additional care is required in Washington, Illinois and New York (which didn’t adopt UETA).
- Revised Article 9 of the Uniform Commercial Code includes e-signing authority within the definition of “authenticate.” UCC 9-102(7) This allows reliance on an e-signed security agreement (such as an assignment of fixtures or leases and rents) UCC 9-203 (b)(3).
- With revised Article 9, signatures are no longer required on financing statements, if authorized in an authenticated security agreement UCC 9-509. Occasionally, you will find an old form of financing statement calling for a signature. These may also be e-signed.

#### **6. Texas specific restrictions.**

- Texas places additional restrictions on home equity loans and reverse mortgage transactions. As to Texas properties, RON may NOT be used for:
  - A Texas home equity loan closing.
  - A power of attorney that will be used in connection with a Texas home equity loan closing.
  - Any document to be used in connection with a reverse mortgage.

The mechanics of the transaction will change if a RON closing is to be used. It will change your workflow, your timing, timing of disclosures, what it takes to prepare a file for closing, and your quality control review process. We’re finding that the first few RON closings with any lender, take significant extra work. Almost every step of the transaction must be carefully evaluated and all lender and closing instructions carefully reviewed for consistency.

In spite of the extra work, it is worth becoming familiar with the RON tool and starting to explore how RON may be incorporated into your day-to-day business.

**NOTE: This Bulletin is for the sole purpose of establishing underwriting positions and policies reflecting WFG National Title Insurance Company’s best business judgment. The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company’s Underwriting Department.**

**The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.**