

## WFG Underwriting Bulletin



To: All Florida Policy Issuing Agents of WFG National Title Insurance Company

From: WFG Underwriting Department

Date: June 10, 2019

Bulletin No.: FL 2019-04

Subject: Remote Online Notary Bill

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On June 7, 2019, Governor DeSantis signed the Remote Online Notary Bill<sup>i</sup> (hereinafter referred to as the “Bill”). The effective date of the Bill has been delayed to January 1, 2020<sup>ii</sup> to provide time to implement the procedures set forth in the Bill and to allow the Florida Department of State time to adopt Rules mandated by the Bill.

Electronic notarizations have been authorized in Florida for more than 10 years but the huge change made by the Bill is that it authorizes the Principal (the person whose electronic signature is being notarized) and the witnesses to be in different locations than the online notary public at the time of notarization. Currently, Florida Statutes require the Principal and the witnesses to be in the physical presence of each other and the notary public at the time of notarization. However, when the Bill goes in to effect, a Florida online notary public<sup>iii</sup> - while physically located in Florida<sup>iv</sup>, may perform a notarial act regardless of whether the Principal and the witnesses are physically located in the State of Florida and regardless of whether the Principal and the witnesses are in the physical presence of each other.

When performing a remote online notarization (hereinafter referred to as “RON”) of a Principal not located in Florida, the online notary public must require the Principal to affirm that he/she desires the notarial act be performed by RON under the laws of the State of Florida. During the RON session, the Principal appears before the online notary public via two-way audio-video communication technology. That audio-video RON session must be recorded. The online notary public must confirm on video the identity of the Principal either by personal knowledge of the online notary public, or by presentation on the video of the Principal’s driver’s license or other authorized governmental identification. The ID presented on the video is described in the Bill as a “credential”. The authenticity of the “credential” presented on video must be verified by a procedure described in the Bill as “credential analysis”. Credential Analysis is a process or service in which a third party aids the online notary public to confirm the validity of the ID (the credential) through the use of public or proprietary data sources. The “credential analysis” is performed by software of the Remote Online Notarization Service Provider used by the online notary public. While “credential analysis” will be performed online by or on behalf of the online notary public, due to privacy concerns, the recording of the RON session will commence after the “credential analysis” is completed.

In addition to the credential analysis of the ID presented, the remote online notary public must ask the Principal knowledge-based questions to verify the identity of the Principal. The Bill refers to this procedure as “Identity Proofing”. Identity Proofing is a process or service in which a third party affirms the identity of the Principal through the use of public or proprietary data sources. Identity Proofing may include knowledge-based authentication questions or biometric verification. “Knowledge-based authentication” is a set of questions posed to a Principal to confirm that person’s identity. The questions and answers thereto are derived from public or proprietary data sources that pertain to the Principal. “Knowledge-based” questions are sometimes referred to as “out of wallet questions” because they are questions that cannot be answered from information obtained from a lost wallet such as: *“What was your childhood address in the 1973?”*

A Principal signs an electronic document by affixing his/her signature to the electronic document. That signing may consist of an electronic signature on a pad or the “click of a mouse” on a computer. Persons acting as witnesses of the Principal’s signature on the electronic document may perform the act of witnessing by either being physically present with the Principal when the Principal affixes his/her signature on the electronic document; or by appearing before the Principal remotely via audio-video technology at the time the Principal affixes his/her electronic signature to the electronic document. For any witness appearing remotely, the online notary public must verify the witnesses’ identity by credential analysis and identity proofing under the same procedures used to identify a Principal. If a witness is in the physical presence of the Principal when the Principal affixes his/her signature to the electronic document, the witness must confirm his/her identity by stating his/her name and current address on the audio-video recording. After the Principal affixes his/her signature to the electronic document, the Principal must verbally affirm on the video that he/she signed the electronic document. Then the witnesses, whether in the physical presence of the Principal or appearing remotely, must verbally confirm on the video that they heard the Principal affirm that he/she signed the electronic document. After that verification, the witnesses affix their signatures to the witness portion of the electronic document. Any witness appearing remotely must also verbally affirm on the video that he/she is a resident of and is physically located within the United States or a territory of the United States at the time of witnessing.

The Bill requires the Florida Department of State to adopt rules by January 1, 2020 to implement the requirements of the Bill and to establish standards for RON to assure the identity of Principals and witnesses, and to assure the security of electronic records including tamper-evident technologies that will indicate a change or alteration to an electronic record after completion of the notarial act. Until the Florida Department of State adopts Rules, the Bill sets forth minimum standards that apply to any RON performed by a Florida online notary public and his/her RON Service provider. Those minimum standards are as follows:

1. Use of identity proofing by means of knowledge-based questions which comply with the following:
  - a. The Principal must be presented with five or more questions with a minimum of five possible answer choices per question;

b. Each question must be drawn from a third-party provider of public and propriety data sources and be identifiable to the Principal's social security number, other identification information pertaining to the Principal, and historical records;

c. Responses to all questions must be made within a 2-minute time frame;

d. The Principal must answer a minimum of 80% of the questions (4 questions) correctly;

e. The Principal may be offered one additional attempt to answer questions after a failed attempt;

f. During the second attempt, the Principal may not be presented with more than three questions from the first attempt.

2. Use of credential analysis by automated software or hardware processes that aid the online notary public to verify the authenticity of the credential (the ID presented) by analyzing the integrity of the visual, physical, or cryptographic security features of the credential to determine that the credential is not fraudulent. The credential analysis produced must be provided to the online notary public performing the online notarization.

3. Use of audio-video technology to perform online notarizations that meets the following criteria:

a. The signal transmission must be reasonably secure from interception, access, or viewing by anyone other than the participants;

b. The technology must provide sufficient audio clarity and video resolution to enable the notary to communicate with the Principal and any witnesses, and to confirm the identity of the Principal and any witnesses as required by the Bill.

4. A RON Service Provider is required to use tamper-evident technology that reveals any subsequent change or modification to the electronic record.

5. A RON Servicer Provider must maintain E&O coverage in the amount of \$250,000 for potential errors or omissions relating to the technology and processes provided by the RON Service Provider.

6. A 2-hour seminar or webinar course addressing the duties, obligations, and technology requirements for serving as an online notary public must be offered by the FLTA; the Real Property, Probate and Trust Law Section of the Florida Bar; the Florida Legal Education Association, Inc.; the Department of State; or a vendor approved by the Department of State.

The following are additional requirements and provisions contained in the Bill:

1. To become a Florida Online Notary Public, a current Florida notary public, a Florida civil-law notary, or a Florida commissioner of deeds must submit an application to the Florida Department of State to register as a Florida Online Notary Public.

2. An online notary public is required to keep one or more secure electronic journals of all online notarizations performed by the online notary public.

3. An online notary public is required to retain unedited copies of all audio-video recordings of all online notarizations performed by the online notary public.

4. An online notary public is required to take reasonable steps to ensure the integrity, security, and authenticity of his/her online notarizations; to maintain a backup of the electronic journal; and to protect the electronic journal, the backup record, and of all other records received by the online notary from unauthorized access or use.

5. An online notary public is required to maintain the electronic journal and audio-video recordings for at least 10 years after the date of the notarial act.

6. Upon request, an online notary must provide electronic copies of pertinent entries in the electronic journal and access to related audio-video recordings to the following persons:

- a. Parties to an electronic record notarized by the online notary public;
- b. Qualified custodian of an electronic Will notarized by the online notary public;
- c. Title agent, settlement agent, or title insurer who insured the electronic record or engaged the online notary public for a real estate transaction;
- d. The online notary public's RON Service Provider whose services were used to notarize the electronic record;
- e. The Florida Department of State;
- f. Others persons pursuant to a subpoena.

7. An online notary may charge a fee not to exceed \$25 for performing an online notarization.

8. An online notary may charge a fee not to exceed \$20 per transaction record to make and deliver electronic copies of electronic records unless requested by:

- a. A party to the electronic record;
- b. In a real estate transaction, the title agent, settlement agent, or title insurer who insured the electronic record or engaged the online notary public for the transaction;
- c. The Florida Department of State.

Any fee charged by the online notary public must be disclosed to the requester before making the electronic copies.

9. If a County recorder is not setup to record an electronic document, the Bill authorizes the Clerk to record a printed copy of an electronic document that has been certified by the online notary public as a true and correct copy of the electronic document.

10. Revises the statutory notary forms to set forth whether the Principal physically appeared before the notary or appeared by remote online notarization.<sup>v</sup>

11. An online notary public may perform most notary functions with RON except rites of matrimony, and there are limitations regarding the use of remote witnesses on Wills and Powers of Attorney acknowledged by RON.

12. Florida Statute 695.03 pertains to acknowledgments performed inside and outside of the United States. The Bill revised F.S. 695.03 to add new subparagraph "(4)". New F.S. 695.03(4) provides that affixing an official seal or the electronic equivalent to an acknowledgement or other notarial act:

***"Conclusively establishes that the acknowledgment or proof was taken, administered, or made in full compliance with the laws of this state or, as applicable, the laws of the other state, or of the foreign country governing notarial acts. All affidavits, oaths, acknowledgments . . . are hereby validated and upon recording may not be denied to have provided constructive notice based on any alleged failure to have strictly complied with this section".***

Click [HERE](#) for a copy of the CS/CS/HB 409

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<sup>i</sup> CS/CS/HB 409

<sup>ii</sup> The effective date of provisions in the Bill regarding the acknowledgment of electronic Wills and related affidavits is delayed to July 1, 2020.

<sup>iii</sup> Under new F.S. 117.225, to become a Florida Online Notary Public, a current Florida notary public, a Florida civil-law notary, or a Florida commissioner of deeds must submit an application to the Florida Department of State to register as a Florida Online Notary Public.

<sup>iv</sup> A Florida Commissioner of Deeds that registers as a Florida online notary public may perform RON while physically located in Florida or outside Florida within his/her territorial limits as a Florida Commissioner of Deeds.

<sup>v</sup> Under new F.S. 117.265(7), the electronic notarial certificate for an online notarization must include a notation that the notarization is an online notarization. This provision may be satisfied by placing the term “online notary” in or adjacent to the online notary public’s seal on the electronic document.

NOTE: 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.**