

WFG Underwriting Bulletin



To: All Indiana Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: December 16, 2019
Bulletin No.: IN 2019-09
Subject: Update on Indiana Electronic Notary Laws and Regulations

To All WFG Agents doing business in Indiana,

The purpose of this Bulletin is to provide guidance and establish requirements for transactions involving electronic and online ("remote") notarizations.

History/Background: In 2000, Indiana passed the **Uniform Electronic Transactions Act ("UETA")** paving the way for utilizing electronic records in real estate transactions. **IC 26-2-8**. Since UETA's adoption, various technology providers, customers, settlement providers, and some Indiana recorders employed technology for the use, execution, and recording of electronic records. In 2017, Indiana passed the **Uniform Real Property Electronic Recording Act ("URPERA")**, **IC 32-21-2.5**, to further address the recording of electronic documents. In 2018, Indiana passed **SEA 372** that updated various aspects of **Indiana's Notaries Public Article at IC 33-42** including notarial acts (for tangible or electronic records) and remote notarial acts. A remote notary public is authorized by the Indiana Secretary of State under **IC 3342-17** to perform a remote notarial act (as defined in **IC 33-42-0.5-26**). Among the many requirements of SEA 372 as to remote notarial acts throughout **IC 33-42, SEA 372** indicates:

1. "The administrative rules for remote notarial acts must be in effect before the secretary of state approves vendors of technology under **IC 33-42-17-6**" (**IC 33-42-16-2(c)**); and
2. "Remote notary public applications will not be accepted for processing until the administrative rules are in effect and vendors of technology are approved by the secretary of state" (**IC 3342-16-2(d)**).

Most recently, Indiana passed **HEA1487**, which delays implementation of remote notarial acts until the earlier of: (1) adoption of administrative rules by the Secretary of State pursuant to **IC 33-42-16-2**; or (2) July 1, 2020. Section 12 of the Indiana Code chapter on remote notarial acts, **IC 33-42-17-12(a)**, indicates "[a]n individual performing a notarial act as described in **IC 33-42-9-8, IC 33-42-9-9, IC 33-42-9-10, or IC 33-42-9-11** may not perform the notarial act as a remote notarial act unless:

- (1) The individual performing the remote notarial act is:
 - (A) A notary public commissioned by the secretary of state under **IC 33-42-2**; and
 - (B) Registered as a remote notary public under section 2 of this chapter;
- (2) The remote notarial act is performed in accordance with this chapter; and
- (3) The individual performing the remote notarial act complies with this chapter."

STANDARD

Remote notarial laws as well as laws and/or regulations regarding notarization of electronic records are now being adopted by various states. WFG has carefully crafted underwriting rules regarding the acceptability of electronic records. Before closing any deal involving an electronic record or electronic document for recording in Indiana, you should thoroughly review applicable Indiana notarial and recording statutes, applicable administrative rules, WFG underwriting communications, supplemental or amended underwriting communications to previous underwriting communications in the areas of electronic records, electronic notarization, electronic notarial acts, electronic recording, remote notarial acts, or remote notarization (sometimes also referred to as remote online notarization or “RON”).

As of the publication date of this Bulletin and subject to satisfaction of all other underwriting requirements, WFG will insure a transaction involving Indiana Land where the recordable documents are notarized by an in person electronic notarization (defined below). WFG will not insure a transaction involving Indiana Land and involving remote online notarization until the Secretary of State issues regulations. A supplemental communication will be issued when the Secretary of State promulgates regulations.

IN PERSON ELECTRONIC NOTARIZATION

1. An “In Person EClosing” involves all closing documents in a digital form and electronically signed where:
 - A. The documents requiring notarization are electronically signed and electronically notarized in the physical presence of a notary public or notarial officer authorized to perform in person electronic notarizations (this process is known as “In Person Electronic Notarization” or “IPEN”);
 - B. After being fully executed and notarized, the recordable documents are submitted for electronic recording where the Land is located; and
 - C. If electronic recording is not available for that digital document in the jurisdiction where the Land is located, you must confirm that papering out of a tangible record is permissible for submission to the recorder before agreeing to insure an IPEN and an Indiana real property interest generated from an IPEN.

2. The notarial officer conducting the IPEN must be authorized:
 - A. as a notary public commissioned by the Indiana Secretary of State or appointed by the Indiana governor; or
 - B. as a notarial officer identified in **IC 33-42-9-7(a) (2)-(14)**.

3. The authorized notarial officer conducting the IPEN must have the signer “appear” as defined in **IC 33-42-0.5-3(1)** (effective July 1, 2019) before the notarial officer by being:
 - A. physically present before the notarial officer;
 - B. able to interact with the notarial officer; and
 - C. able to physically exchange tangible credentials or other documentation with the notarial officer. **IC 33-42-0.5-3(1)**.

4. When conducting an IPEN, the Indiana notary public or the Indiana notarial officer, as identified in **IC 33-42-9-7(a) (2)-(14)**, must comply with the authentication, electronic notarial certificate, and performance requirements at **IC 33-42-9-2**, **33-42-9-4**, and **33-42-9-12**.

NOTE: This Bulletin should not be interpreted as reflecting negatively upon the character of an individual or entity mentioned herein and 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.

REMOTE NOTARIZATION

The general background and rules below relate to remote notarization. As noted above, the regulations for remote notarization have not been issued. A supplemental communication will be issued when the Secretary of State promulgates regulations.

1. Besides the definitions and requirements in **IC 33-42** as to remote notarial acts, “Remote Notarization” or “Remote Online Notarization” (“RON”) involves all closing documents in a digital form and electronically signed where:

- A. The documents requiring notarization are electronically signed as part of an online interactive two-way audio video communication with a remote notary public;
- B. The remote notary public notarizes these documents with an electronic signature and an electronic notary seal;
- C. Remaining documents are electronically signed which may or may not occur during the online audio video session;
- D. After being fully executed and notarized, the recordable documents are submitted for electronic recording where the Land is located; and
- E. If electronic recording is not available for that digital document in the jurisdiction where the Land is located, you must confirm that papering out or a tangible record is permissible for submission to the recorder before agreeing to insure a RON and an Indiana real property interest generated from a RON.

2. WFG continues to closely monitor the development of RON in Indiana including the completion of administrative rulemaking, technology provider approvals, and remote notary public approvals. It is possible that future legislation and/or administrative rulemaking in Indiana and other states will address practice standards, approval rules, and interstate recognition of remote notarial acts. It is also possible that remote notary providers or industry groups will develop and implement practice standards that better address the challenges of identifying and verifying the capacity of persons in a remote context. However, these challenges have not yet been fully addressed with Indiana’s standards as of the date of this underwriting communication. All uses of remote notarization in relation to Indiana land remain subject to underwriting approval.

3. If your search and exam of title to Indiana Land discloses a deed, lease interest to be insured, easement to be insured, or power of attorney in the back chain of title that was notarized remotely, you must raise an exception for each such instrument that was remotely notarized that is substantially similar to the following form:

EXCEPTION

“Any matter arising out of the remote online [notarization/acknowledgment/witnessing] of a [deed, power of attorney, lease, or easement] executed by [grantor(s) or principal], recorded [insert recording reference for deed, power of attorney, lease, or easement].”

If the parties to your transaction are willing to clear the exception (for example, by getting the remotely notarized document re-executed or re-acknowledged), contact underwriting to discuss.

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Bear in mind that it may be difficult to determine whether a document was remotely notarized. Although some states require a RON disclosure in the document itself, others do not (notably Virginia and Montana). In some cases, you may see the words “electronic notary” contained in the notarial seal, stamp, or acknowledgment. For purposes of this Bulletin, you should consider any notarization performed by an “electronic notary” as a possible RON necessitating further investigation. Note that you will likely need to advise your abstractors, searchers, and examiners of this issue in advance in order to ensure that it is properly addressed.

If you have any questions regarding this bulletin or if you need any additional information, please contact WFG’s Indiana state underwriting counsel, Stanley J. Czaja, at (773) 706-3779 or sczaja@wfgnationaltitle.com.

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