

WFG Underwriting Bulletin



To: All Massachusetts Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: May 1, 2020
Bulletin No: MA 2020-05
Subject: An Act Providing for Virtual Notarization to Address Challenges Related to COVID-19

Virtual Notarization has come to Massachusetts!

[Chapter 7 of the Acts of 2020 – An Act Providing for Virtual Notarization to Address the Challenges Related to COVID-19 \(the “Act”\)](#) - was signed into law by Governor Baker on April 27, 2020, and took effect immediately. It will be repealed three (3) business days after the termination of the Governor’s March 10, 2020 declaration of a state of emergency ([Executive Order No. 591](#)).

This is not RON (Remote Online Notarization), but a Virtual Notarization, a way in which the signer of a document can “personally appear”, as required by [M.G.L. c. 222](#), before a notary public but be in a different physical location than the notary. RON involves electronic documents, digital/electronic signatures and digital/electronic notarization, all done over an online platform, whereas Virtual Notarization, also referred to as Audio-Visual Online Notarization (AVON) or Remote Ink-Signed Notarization (RIN) involves wet-ink signatures and wet-ink acknowledgements, with both being done on paper.

Without oversimplifying the Act, for purposes of real estate closings, a Massachusetts commissioned notary public physically located within Massachusetts who is also a Massachusetts attorney or a paralegal under the direct supervision of a Massachusetts attorney may acknowledge the signatures of a person or persons, also physically located within Massachusetts, known to the notary or identified to the notary through two (2) forms of identification, one of which must be a government id with the photograph and signature of the signer, after conducting two (2) electronic audio video conferences, both of which must be recorded. During the first audio video conference, the notary would observe the execution of

the document by the signer and if the signer is not personally known to the notary, the notary would visually examine evidence of the signer's identity. The signer would then promptly deliver the original documents to the notary, as instructed by the notary. A second audio video conference would then take place during which the signer verifies to the notary that the documents received by the notary are the same documents executed by the signer during the first audio video conference and the signer then acknowledges the document for the notary. The notary may then affix their signature and stamp upon the document, making sure the acknowledgment states that it was done remotely pursuant to the Act, using the date on which the notarial act was completed (except for mortgage transactions, the date may be the date on which the signer executed the document) and the County in which the notary is located. The notary must also execute an affidavit under the pains and penalties of perjury stating the specifics of the acknowledgement and its compliance with the Act. The affidavit, the recordings of the audio video conferences and copies of the government identifications used by the signer must also be retained by the notary or the attorney who is supervising the paralegal notary for ten (10) years. Once acknowledged pursuant to and in compliance with the Act, the document is deemed to be validly executed, acknowledged and notarized, but in the event it is later determined that the signer was not physically located within Massachusetts at the time of either of the audio video conferences, the Act provides that it is not fatal to the validity of the notarial act.

In order for WFG to insure title created through documents which were notarized pursuant to the Act, the notary must comply with provision of the Act, including but not limited to the following:

1. The notarial act performed under the Act must be commenced and completed after April 27, 2020 and prior to 3 days after the termination of Massachusetts Executive Order No. 591;
2. The notary must be a Massachusetts commissioned notary public who is either an attorney licensed to practice law in Massachusetts or a paralegal who is acting under the direct supervision of a Massachusetts attorney;
3. The signer and notary must, through two (2) electronic audio video conferences, communicate simultaneously with each other by sight and sound. For more information on audio video conferencing technology providers please see attached Exhibit;
4. Both the signer and the notary must be physically located within the Commonwealth of Massachusetts during both audio video conferences, and the signer must, during each audio video conference, swear or affirm under the penalties of perjury that:

- the principal is physically located within the Commonwealth; and
 - make a disclosure of any person present in the room with the signer and make that person viewable to the notary;
5. Prior to the first audio video conference, the WFG agent (the “Agent”) must obtain the written consent of the signer to the use of virtual notarization pursuant to the Act, to the recording of both audio video conferences and the storage of the same for ten (10) years. Such consent can be in the form of an email or other written document and must be kept in the Agent’s file;
 6. If any document is being notarized in the course of a real estate transaction involving a mortgage, prior to the first audio video conference, the Agent must obtain the written approval of the mortgagee/lender to the use of virtual notarization pursuant to the Act, including the platform of the chosen technology vendor. Such approval can be in the form of an email from the lender or the lender’s closing instructions and must be kept in the Agent’s file;
 7. During the first audio video conference, if the notary does not have personal knowledge of the identity of the signer, the signer must prove their identity through, and the notary must visually examine, a government-issued identification credential bearing a photographic image of the signer’s face and signature of the signer (i.e., valid state driver’s license, valid passport) AND a secondary form of identification which must bear the name of the signer and either contain the signer’s photograph or signature or be issued by a government entity. Copies of the front and back of both forms of identification, and if a passport is being used, a copy the front cover and page displaying the signer’s photograph, name and signature, shall be delivered to the notary either electronically or with the original documents being delivered to the notary after the first audio video conference;
 8. During the first audio video conference, the notary must witness the signer placing his or her wet (original) signature on the documents, executing the documents;
 9. After the first audio video conference, the signer must deliver the original, signed documents, including copies of the satisfactory forms of identification visually examined by the notary and used to identify the signer (see 7, above) to the Agent such that the Agent receives the original, signed documents pursuant to the Agent’s written instructions as to the means of such delivery, but no later than two (2) business days following the first audio video conference;
 10. After the Agent’s receipt of the original, signed documents from the signer, a second audio video conference shall take place between the signer and the same notary who witnessed the execution of the documents during the first audio video conference such that the same notary would take the signer’s acknowledgement during the second audio video conference;
 11. During the second audio video conference, but prior to the notary taking the signer’s acknowledgement and affixing the notary’s certificate and seal to the document(s), the signer must verify that the documents received by the notary are the same documents executed by the signer during the first audio video conference;
 12. The notarial certificate must:
 - contain a recital that the document was notarized remotely pursuant to the Act;

- recite the County where the notary was located at the time of the second audio video conference (completion of the notarial act);
 - recite the date that the notarial act was completed, but in the event of a document being notarized in connection with a mortgage financing transaction, the date may be the date stated within the body of the document even if that date precedes the date of the completion of the notarial act; and
 - if the notary is a paralegal under the direct supervision of a Massachusetts attorney, recite that the notary is a paralegal supervised by a Massachusetts licensed attorney, the attorney's name and the attorney's BBO number. Examples of proper forms of acknowledgments can be found [here](#);
13. The notary must execute an affidavit under the penalties of perjury which states the notary has:
- received a copy of the signer's current identification credential (see 7, above) and visually inspected the credential during the first audio video conference, unless the signer was personally known to the notary;
 - obtained the signer's verbal assent to any recording of the video conferences;
 - taken the signer's affirmations as to physical presence of the signer within the Commonwealth; and
 - been informed of and noted in the affidavit any person present in the room during the audio video conferences, including a statement of relationship of any person in the room to the signer. When the affiant is a notary paralegal under the direct supervision of a Massachusetts attorney, the supervising attorney must execute an affidavit under the penalties of perjury certifying that the notary acted as a paralegal under the direct supervision of the attorney. Sample forms of the [Attorney Notary](#) and [Paralegal Notary](#) affidavits can be found here.
14. The Agent shall attach copies of the affidavits executed pursuant to the Act to the title policies issued.
15. Prior underwriting approval is required for any policy being issued in excess of \$1,000,000 if any transaction documents, including Seller documents, will be notarized pursuant to the Act.

A few things Agents should keep in mind if they choose to conduct a Visual Notarization:

First, Agents should verify with their E&O carriers that there is coverage under their policy when acknowledging documents using Virtual Notarization.

Second, FreddieMac has stated they do not restrict Sellers of mortgage loans from using the type of virtual notarization allowed under the Act (<https://sf.freddiemac.com/faqs/covid-19-selling-faqs#title-closing-and-notarization>) and FannieMae has issued a Job Aid regarding the use of RIN (<https://singlefamily.fanniemae.com/media/22666/display>) which puts RIN

under much less stringent standards than RON. However, we have heard reports that several lenders are not accepting any documents notarized using Virtual Notarization, including any seller document (i.e., the deed). Others, we have learned, are willing to approve on a “case-by-case” basis. Therefore, if an Agent is planning to conduct a Virtual Notarization, it is imperative they seek out guidance from the particular lender as soon as possible after receiving the title order to find out whether a virtual notarization will be allowed. The time to find out is not immediately prior to the first audio video conference.

Third, the Act and our underwriting requirements require that the Attorney Notary or the Attorney who directly supervised the Paralegal Notary, maintain the recordings, the affidavits and copies of the government-issued identification credential and the second form of identification for ten (10) years. While Freddie and Fannie announced earlier that they would require the video recording be maintained for “the life of the loan” for RON transactions, they do not have that same requirement for RIN transactions. Agents should check with the lender to make sure they do not have a lengthier requirement.

Lastly, just because the Act allows for Virtual Notarization does not mean a notary must conduct a Virtual Notarization. It is an option, not a requirement. As the Notary or as the Attorney directly supervising the Paralegal Notary, the Agent has to feel comfortable with the process and any liability the Agent feels they would assume by conducting a Virtual Notarization. If you, as the Agent, do not feel comfortable, then you do not have to conduct a Virtual Notarization.

As always, WFG is here for you and we appreciate you being an Agent.

If you have any questions, please contact:

Lisa Vesperman Still, Esq.

MA State Counsel

Direct: 781-293-3907 | Cell: 781-660-3078

Exhibit - Technology Providers

Ultimately, in looking at commercially available IT solutions for RON/RIN closings, WFG looks for certain features including, but not limited to:

- Authorized use in the property state, if the state has established such requirements
- State-authorized and/or certified notary utilized for service
- Specific lender approval for use in the transaction
- Agreement for use in the transaction by concerned parties
- Gramm-Leach-Bliley Act, state-specific privacy statute and HIPAA compliance
- MISMO-standard Knowledge Based Authentication (KBA)
- Robust credential/ID analysis, preferably available for driver's license, U.S. passport or U.S. government-issued ID
- Secure, encrypted video recorded from beginning to end of online transaction
- Adequate provisions for proper (per lender and regulations) storage of video
- eNotary journal and/or journal data provided at conclusion of online transaction
- Ease-of-use in document package tagging (for RON transactions)
- Facilitate the participation of multiple parties other than just Buyers/Borrowers, Sellers and Notary, both with KBA and credential analysis (e.g. witnesses if required in the state of property) and without KBA and credential analysis (e.g. Escrow Officer, attorney, loan officer, Realtor, etc.).

There are several vendors for RON/RIN that WFG has approved as specified in [NB 2020-05](#) (National Bulletin), and the list will continue to grow and change as more companies come out with this type of technology. As you can imagine, not every platform is appropriate for RIN closings, but of the platforms approved by WFG, the ones most appropriate for RIN with which we have a preferred vendor relationship and negotiated Agent pricing are [Nexsys® Clear Sign](#) and [Stavvy Notarize](#) (a MA company). For information on either and pricing, please reach out to your Agency Representative.

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.