

WFG Underwriting Bulletin



To: All Policy Issuing Agents and Direct Operations of WFG National Title Insurance Company

From: WFG Underwriting Department

Date: March 23, 2020

Bulletin No.: NB 2020-04

Subject: Temporary Underwriting Standards for Remote Online Notarizations; COVID-19

WFG National Title Insurance Company has approved the following TEMPORARY UNDERWRITING STANDARDS for the insurability of Remote Online Notarization transactions whether residential or commercial.

The following must be adhered to:

1. With certain exceptions found below, you may insure a transaction in which documents are acknowledged before a remote online notary (RON) provided the state where the property is located has enacted a remote online notary (RON) statute effective as the closing date. A list of such states is in Exhibit A.

You may be asked to insure a transaction in a state without an effective RON statute by taking exception to potential defects in the RON acknowledgement. Secondary Market Guidelines from the GSEs (Freddie/Fannie) prohibit such an exception for a RON acknowledged loan document. No lenders will accept such an exception in their policy.

2. Exceptions to Number 1:

- a. State law limiting certain transactions to “in person” or place specific closing locations must be followed. Additionally, some states prohibit the use of a RON for certain transactions. (Texas home equity loans aka HEL, powers of attorney for HEL, and reverse mortgages are examples of such laws).
- b. In states where there is not an effective RON statute or regulations and for cash purchases or purchases where you are not issuing a loan policy, you may issue a policy to the buyer provided you take exception in your commitment and the subsequent policy issued. You must disclose the exception and obtain the consent of the buyer to close (In writing) using this exception:

“The Company will not pay loss, damage, attorneys’ fees or costs for any reason as a result of the use of a remote online notary.

- c. For the states of Washington and Illinois, you may insure a transaction using a RON acknowledgment even though these states have not enacted RON legislation. See National Bulletin 2018-06:

<https://wfgunderwriting.com/wp-content/uploads/filebase/national/bulletins/NB%202018-2019/NB%202018-06%20RON%20Underwriting%20Standards,%20Remote%20Online%20Notarization.pdf>

However, you must ensure that the clerk/recorder for the Washington or Illinois county where the property is located will accept your documents for recording prior to closing. If they won't, you may not close using a RON.

- d. You may not insure a transaction where a Virginia RON is used unless the property is in Virginia or Florida. The Virginia statutes/regulations for RON are vague and confusing as to whether a Virginia RON has to conduct an in-person verification of the person's identity prior to taking their acknowledgment and affixing their signature/seal.
 - e. South Dakota RONs are not recommended, but may be used for South Dakota property. By statute, a South Dakota RON can only take the acknowledgment on a paper document and must personally know the party acknowledging execution.
3. Each person who will be executing an instrument acknowledged before a RON must be a United States Citizen or a Resident Alien. Non-US Citizens may not have enough credit information to generate the multi-factor authentication questions administered by the RON platform vendor.
 4. The RON platform vendor must be approved by the Secretary of State or other State Agency which regulates Notary Publics of the state where the RON is licensed/commissioned. If the state regulator has not implemented rules approving vendors, contact the Underwriter for the state where the RON is appointed/commissioned.

The RON may not use Skype, Facetime, Zoom or similar video conferencing software for RON notarizations. All documents to be notarized must be executed and acknowledged via a RON platform which includes Knowledge Based Authentication, Credential capture and analysis, signing, and notarization with a recorded video of the notarial acts.

5. The County where the real estate is located must accept electronically executed documents for filing, i.e., must accept "e-recordings" except as noted in Item 6 and 7 below.
6. Florida, Idaho, Kentucky, Montana, Minnesota, North Dakota, Oklahoma, Tennessee, and Texas:

A paper copy of the electronically executed document may be filed in counties without e-recording capability.

7. Ohio:

You may not insure a RON transaction unless the county accepts e-recordings.

While Ohio has a statute permitting a paper copy to be recorded in counties that lack e-recording capability, this statute was passed as part of the State of Ohio's Budget Bill. Ohio's constitution prohibits legislation that has more than a single topic making Ohio's "papering out" statute unconstitutionally void.

8. If the state where the property is located requires witnesses to execute the deed or mortgage, the witnesses must be in the physical presence of the parties executing the document when it is executed, unless the state has a specific statute allowing remote witnessing. (Florida has such a statute.) The witness(s) may utilize an electronic signature and the RON vendor platform must support the use of remote witness signatures and compliance with any additional requirements.
9. All parties to the transaction: buyer/borrower, seller and lender must agree, in writing, to the use of a RON.

The lender's closing instructions must be reviewed carefully to ensure the closing instructions permit a RON acknowledged document(s). Many "standard" closing instructions are vague and/or inconsistent in a RON context.

10. You may be asked to insure a transaction where the parties have executed paper documents, delivered them to the remote online notary, and then the acknowledgment is taken remotely.

You may not insure such a transaction unless the property and RON are in South Dakota.

Many states are contemplating Executive Orders or emergency legislation to enable RON acknowledgements. As these are issued/passed, WFG will issue Underwriting Bulletins supplementing this Bulletin.

These guidelines apply for any closing that occurs prior to May 1, 2020. Any closings using a RON on or after that date must comply with either National Bulletin 2018-06 or an Underwriting Bulletin for Remote Online Notarizations issued for the state where the real estate is located.

Exhibit A

States with effective RON Legislation as of March 22, 2020:

Arizona
Florida
Idaho
Indiana
Kentucky
Michigan
Minnesota
Montana
Nevada
North Dakota
Ohio
Oklahoma
South Dakota
Tennessee
Texas
Utah
Virginia

States with enacted, but not yet effective RON Legislation as of March 22, 2020:

Iowa Effective 7/1/2020

Maryland Effective 10/1/2020

Nebraska Effective 7/1/2020

Vermont Effective on adoption of Rules by Secretary of State

Washington Effective 10/1/2020

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.