

WFG Underwriting Bulletin



To: All PA WFG Policy Issuing Agents; all PA WFG Title Examiners and Offices
From: WFG Underwriting Department
Date: April 23, 2020
Bulletin No. PA-2020-06
Subject: Remote Notarizations Update; Temporary Legislation

On April 20, 2020 Governor Wolf signed temporary legislation that codified the terms of his earlier Executive Order, with minor changes. The legislation is effective immediately and expires 60 days after the expiration of the Covid-19 Disaster Emergency under Section 7301 (c).

Unlike the Executive Order, the legislation does not distinguish between residential and commercial transactions, and is not limited to orders placed on or before any specific date. It applies immediately and expires as noted above.

1. THE NOTARY must be approved as an Online ENotary Public ([application here](#)) and once approved, the notary must identify to the Department of State each technology the notary public intends to use.
2. THE TECHNOLOGY PLATFORMS. The notary must use a communication and identity proofing technology designated by the Department of State. The current list as updated can be found on their [website](#).
 - a. Alternative technologies may be acceptable, but only as outlined in the new statute ([Section 5731](#)): "A notary public may use any other technology within 30 days of giving notice as required by subsection (g)(1), unless the Department for good cause prohibits the use of the technology for failure to satisfy the requirements of this section or determines that use of the technology should be delayed pending an evaluation of the technology."
 - b. WFG requires only that you comply with the statute as enacted in this regard. You must use an approved vendor, or demonstrate that you have received approval from the Department of State for an alternate vendor.
 - c. Note that a notary who does not comply with the statutory requirements is subject to sanction as outlined in [Title 57 Pa.C.S. §323](#).
 - d. Skype, Zoom, and FaceTime alone are NOT acceptable, according to the Department and WFG, as outlined in our [NB 2020-04](#).

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.

- e. When using approved and alternative technologies, please be alert to possible state and Federal privacy laws as well as the risk from potential data breaches, especially if you are using a technology that was not designed specifically for these situations.
3. REMOTE INK NOTARIZATIONS (“RIN”) offer more flexibility for lenders and agents than RON. Unfortunately, RIN transactions are not approved by the PA Department of State and may subject the notary to sanctions as mentioned earlier. The PA Land Title Association has written to Governor Wolf encouraging him to issue an executive order approving such transactions. You can read the letter [here](#). Feel free to contact WFG to discuss this further.
4. OUT OF STATE NOTARIES may be a viable option for you. Under [57 Pa. C.S. § 311](#), “a notarial act performed in another state has the same effect under the law of this Commonwealth as if performed by a notarial officer of this Commonwealth if the act performed in that state is performed by ... An individual authorized by the law of that state to perform the notarial act.” Feel free to contact WFG with details of your proposal to discuss this further.
5. At this time, when utilizing remote notarization, we are insuring only residential transactions under \$1 million.
6. Execution of a POA by remote notarization should not be necessary, and we decline to insure transactions executed by an attorney in fact contemporaneously with the signing of a POA. If the technology is in place for execution of the POA, then the principal should also sign the closing documents. Contact us with questions or specific fact patterns if necessary.
7. All RON notaries must indicate in the notary certificate that the notarial act was performed by means of communication technology. The following statement will satisfy that requirement – “This notarial act involved the use of communication technology.”
8. Agents are responsible to confirm, prior to closing, that the County where the real estate is located accepts electronically executed documents for filing, i.e., must accept “e-recordings.”
9. All parties to the transaction: buyer/borrower, seller, and lender must agree, in writing, to the use of your specific remote technology procedure. The lender’s closing instructions must be reviewed carefully to ensure the closing instructions permit remotely acknowledged documents. Many “standard” closing instructions are vague and/or inconsistent when viewed in the context of remote operations.
10. You may want to check with your E&O carrier to be sure that you are covered when using remote notarizations and any resulting data breaches.

As always, the WFG underwriting team is available to assist with any questions you may have.

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