



To: All Texas Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: July 16, 2018
Bulletin No: TX 2018 - 06
Subject: Texas Remote Online Notaries

1. Scope of this Bulletin.

This Bulletin applies to:

1. Obtaining a license to be a Texas remote online notary;
2. conducting a remote online notarization of documents which will be used in a Texas real estate transaction; and,
3. filing the documents with the county clerk.

2. Introducing “RON”.

The statute which specifically authorizes and regulates the use of remote on line notaries (the acronym is **RON** for **R**emote **O**nline **N**otary) Texas Government Code, Ch. 406, took effect on July 1, 2018. That is also the date when the Texas Secretary of State began processing applications for a RON license. All applications to be a Texas RON must be submitted on line, and only someone who already holds a “traditional” Texas notary license can become a RON. The Secretary of State’s rules regarding RONs will not be finalized until August 1, 2018.

3. Complex legal framework.

The laws and regulations which address the issues of electronic filing, electronic signatures and remote notaries are complex and are spread across the Texas Administrative Code, the Property Code, the Local Government Code, the Government Code, the Business and Commerce Code and the Civil Practice and Remedies Code.

4. So you want to be a RON?

There are hundreds of traditional Texas notaries working for our Texas agents. Any of you can apply for a license as a Texas RON. Our advice is to visit the Secretary of State’s web site and begin the licensing process. You will also need to contract with a third party vendor who will be in charge of establishing and maintaining the **online notarization system**; this vendor will provide the telecommunications system which will enable you to engage in 2 way audio and

visual conversations with the principal whose signature you are notarizing. The vendor will also be charged with providing **identify proofing** and **credential analysis**; those terms are discussed below.

5. It's not all on your shoulders.

Please take note that a lot of the technical work discussed in sections 6, 8 and 9 of this Bulletin is the obligation of the vendor who provides the online notarization system. Most of this is not the responsibility of the RON.

6. A RON must contract with a third party vendor to provide an "online notarization system."

An online system used to perform online notarial acts by means of audio-video communication shall:

1. Provide for continuous, synchronous audio-visual feeds;
2. provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak to each other simultaneously through live, real time transmission;
3. provide sufficient captured image resolution for credential analysis to be performed in accordance with Chapter 406 of the Texas Government Code.
4. include a means of authentication that reasonably ensures only the proper parties have access to the audio-video communication;
5. provide some manner of ensuring that the electronic record that is presented for online notarization is the same record electronically signed by the principal;
6. be capable of securely creating and storing or transmitting securely to be stored an electronic recording of the audio-video communication, keeping confidential the questions asked as part of any identity proofing quiz, and the means and methods used to generate the credential analysis output; and
7. provide reasonable security measures to prevent unauthorized access to:
 - A. the live transmission of the audio-video communication;
 - B. a recording of the audio-video communication;
 - C. the verification methods and credentials used to verify the identity of the principal; and
 - D. the electronic documents presented for electronic notarization.

[1 TAC §87.71]

Note: Merely establishing a Skype or similar connection with the principal does not constitute a remote on line notarization system.

7. You've done "identify proofing" and "credential analysis" hundreds of times.

These are new terms for the processes of determining that the principal is indeed the person whose signature you need to notarize (identity proofing), and that the ID itself is genuine (credential analysis).

8. Satisfactory “identity proofing” [done by a 3rd party vendor] includes the following:

1. The principal must answer a quiz consisting of a minimum of five questions related to the principal’s personal history or identity, formulated from public and proprietary data sources;
2. each question must have a minimum of five possible answer choices;
3. at least 80% of the questions must be answered correctly;
4. all questions must be answered within two minutes;
5. if the principal fails their first attempt, they may retake the quiz one time;
6. during the retake, a minimum of 40% of the prior questions must be replaced; and
7. if the principal fails their second attempt, they are not permitted to retry with the same online notary public for 24 hours.

9. “Credential analysis” [done by a 3rd party vendor] means the process by which the identification document such as the driver’s license or passport is verified, and shall include:

1. The use of automated processes which include, but are not limited to:
 - A. Image correction and edge detection;
 - B. credential type classification based on format, style, layout and other identifying features;
 - C. data extraction, when possible, using optical character recognition (OCR) for text, and barcode scanning when necessary; or
 - D. forensic inspection to identify expected security features based on credential type.
2. Confirmation that the data on the credential is valid and matches the principal’s claimed identity; and
3. Enable the online notary public to visually compare the following for consistency:
 - A. available credential analysis automated process output;
 - B. the credential itself; and
 - C. the principal.

10. The Process of Online Notarization.

1. A Texas RON may perform an online notarization regardless whether the principal is physically located in Texas at the time of the notarization.
2. A Texas RON must be physically located in Texas at the time of the notarization.
3. In performing an online notarization, an online notary public shall verify the identity of a person creating an electronic signature at the time that the signature is taken by using two-way video and audio conference technology that meets the requirements of the regulations. Identity may be verified by:

A. The online notary public's personal knowledge of the person creating the electronic signature; **or**

B. each of the following:

- i. Remote presentation by the person creating the electronic signature of a government-issued identification credential, including a passport or driver's license, that contains the signature and a photograph of the person;
- ii. credential analysis of the credential; **and**
- iii. identity proofing of the person.

4. The online notary public shall take reasonable steps to ensure that the two-way video and audio communication used in an online notarization is secure from unauthorized interception.

5. The electronic notarial certificate for an online notarization must include a notation that the notarization is an online notarization. Texas Government Code, Sec. 406.110.

11. Do not accept or perform remote online notarizations of the following:

1. Any document to be used in connection with a home equity loan closing;
2. a power of attorney to be used in connection with a home equity loan;
3. a will, codicil or a document regarding a testamentary trust; or,
4. any document to be used in connection with a reverse mortgage unless you have first secured the lender's consent to do so and to make the required deletions in coverage on the reverse mortgage endorsement.

Note: Please contact Underwriting before using a RON to acknowledge any other type of power of attorney.

12. Do we have to do this?

1. Remember that using a RON is an option, it is not mandatory. Even if a customer authorizes it, you as the notary may elect to decline to use or accept a RON. If your customer requires that a RON be used but you see a problem with doing so, discuss your concerns directly with your customer. See the discussion below about recording documents.

2. A RON should follow his/her instincts when remotely notarizing a document, the same as when witnessing a signature in person. You should refuse to proceed with an online notarization if you suspect that fraud, forgery or duress is present. Additionally, by statute, a RON may refuse to perform an online notarization if:

- A. The online notary public is unable to verify the identity of the principal using an acceptable means of identification;
- B. the online notary public is unable to verify the security of the two way audio visual transmission;
- C. the online notary public has reasonable grounds to believe the signing party does not have the capacity to understand the contents of the document;
- D. the signature of the principal cannot be attached to the electronic document; or
- E. the signature or seal of the online notary public cannot be attached to the electronic document in a manner that renders any subsequent change or modification to the document evident. [1 TAC, §87.42-87.43]

3. Remember, if a RON refuses to remotely notarize a document or if the process fails for technical reasons that does not mean the deal is dead. We will simply fall back to the previous way of doing things and ask the principal to come in to your office or we can dispatch a mobile notary.

13. When reviewing a document which was notarized by a Texas RON other than by your company's employee examine the RON certificate and confirm that it contains:

1. The notary's electronic signature and electronic seal, title and commission expiration date;
2. the date and place of the online notarization;
3. a statement of the facts attested to,
4. the name of the principal,
5. the state and county in which the notarization was performed, and,
6. a statement that it was an online notarization.

NOTE: Contact Underwriting if for any reason you are uncertain about accepting a RON document.

14. RONs that are licensed by states other than Texas.

1. The states which now issue RON licenses laws are: Texas, Virginia, Montana, Nevada, Indiana, Minnesota, Tennessee and Vermont.
2. We are analyzing the RON laws of the other states and will issue subsequent bulletins about them as we go along. **For now, do not accept any documents notarized by a RON unless the notary holds a Texas RON license.**

15. Recording the document with the county clerk.

1. Any law that requires a wet signature and seal before a document can be recorded is satisfied by using an electronic signature and seal. We do not anticipate any major issues when filing RON documents with the county clerks who already accept electronic filings.

2. If you routinely file with county clerks who do not accept electronic filing, now is the time to check with them and determine their position on recording RON documents. A popular suggestion is to “paper out” the transaction. This refers to printing out a hard copy of the RON document and presenting that for filing. Note that such a document will be a copy of a document that does not itself contain wet signatures or an original seal. The Guadalupe County Attorney has requested an Attorney General’s Opinion on this issue; we will keep you advised of developments.

3. If you know that a county clerk will not accept a “papered out” RON document you would be justified in advising your customer that RON is not an option for documents to be filed in that county.

Note: Please advise Underwriting promptly if you know of a county clerk who does not intend to accept RON documents.

16. The future.

All of us are stepping into the new world of RONs. Rest assured that your WFG Underwriting and Agency teams will be with you as we all learn about the new processes.

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.