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## 50 State Survey

With COVID-19 social-distancing and stay at home orders, millions of Americans have been forced to adapt and find new ways to transact business. While people are generally familiar with receiving documents by email for review and signature, questions arise when they come to a notary acknowledgment block under their signature line. With in-person contact limited, most people no longer have access to a notary public at work, an attorney's office or a bank. While sometimes not legally required, state laws do typically require notary acknowledgments for recording of documents conveying interests in real property (such as deeds, mortgages and deeds of trust) and for various affidavits and other public documents. Though some states had already passed remote notary legislation prior to COVID-19 to facilitate electronic closings and provide access to notaries in rural locations (with many other states in various stages of drafting or considering legislation), the current COVID-19 business environment has resulted in many states adopting emergency measures to ensure legal transactions requiring notary acknowledgments for signatures can continue. Some of these emergency orders temporarily relax remote notarization requirements in states that were already allowing the same, while other orders introduce remote notarization de novo during the COVID-19 crisis.

### **Remote Online Notarization Generally**

Traditionally, state laws have required notaries to verify a signatory's identity and witness the signatory's signature in-person. With remote online notarization ("RON"), however, the notary is allowed to perform these mandated tasks through the use of remote real-time two-way audio-visual technology. In a RON session, the notary verifies the signatory's identity through government-issued photo identification presented on camera while otherwise satisfying any other requirements imposed by state law (which in some states may require use of third party vendor platforms allowing multi-factor authentication). Once the signatory's identity has been verified, RON permits the notary to observe the execution of the document, either by pen or electronically, by video. The notary then, depending on applicable state law, completes the notarization act by: (1) attaching an electronic signature and seal; (2) affixing a traditional notary seal and "wet signature" to an electronically delivered copy of the signed document, or (3) affixing a seal and "wet signature" to original executed document at some point after the RON video session upon receipt of the same from the signatory.

**Whether permitted by statute or emergency order, it is important to note that RON requirements and procedures vary across states.** While full statutes provide a more comprehensive framework, emergency orders provide varying levels of detail. Though some Secretaries of State have issued public guidance on RON to supplement statutes or emergency

orders, notaries in other states are left with unanswered questions. Some states require submission of special applications by notaries to perform remote notarizations as well as special training. Some state statutes and emergency orders require notaries to contract with third party vendors that provide the online platform for RON (“Third Party Platforms”), while other states may permit any technology allowing for real-time audio-visual communication such as FaceTime or Zoom. Although Third Party Platforms may arguably provide added layers of security and uniformity, the vendors have generally been overwhelmed during the COVID-19 crisis resulting in some states to relax such requirements temporarily. Further, some states impose recording and retention requirements upon notaries performing RON sessions. A major issue for multi-state transactions (e.g., where the parties, real property and notary could be in different states) exists as some states expressly permit their notaries to remotely acknowledge signatures taking place in other states, while other states either require the notary and signatory to be in the same state or require the transaction to have some connection to the state in which the notary is located. Lastly, even if the notary has complied with all applicable state requirements, a real estate transaction can come to sudden halt if a county recording office (by local rule or custom) refuses to record or if a title company refuses to insure an instrument that has been remotely acknowledged and/or electronically sealed by the notary.

In light of the foregoing, it is important for notaries and other parties involved in RON transactions (attorneys, lenders, title agents, etc.) to consult and understand state requirements and, in the case of COVID-19 emergency orders, understand that rules and guidance are constantly changing. Below, we provide a summary of the status of RON in all states as of April 20, 2020. This Bulletin will be updated as developments occur. Stay up to date by monitoring the latest COVID-19 resources on Burr & Forman’s [CORONAVIRUS RESOURCE CENTER](#).

## **FEDERAL RESPONSE**

[On March 18, 2020, Sen. Mark Warner \(D-VA\) and Sen. Kevin Cramer \(R-ND\) introduced legislation authorizing remote online notarizations across the country.](#) Titled the “Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020” (the “SECURE Act”), the bill proposes to permit every notary in the United States to perform remote online notarizations. Among other provisions, the bill requires use of Third Party Platforms. While intended as a rapid response to the COVID-19 crisis, at this point the bill has only been referred to the United States Senate Committee on the Judiciary.

## **STATE LAWS / ORDERS**

- **ALABAMA** – Permitted by the April 2, 2020 [Supplemental Emergency Proclamation](#). The Supplemental Emergency Proclamation permits RON by all state notaries and supersedes a previous proclamation allowing RON only by licensed attorneys or notaries operating under the supervision of a licensed attorney. RON sessions must be recorded and retained for at least 5 years. The Alabama Order also requires that the original executed documents be sent to the notary following the RON session to be signed and sealed.

- **ALASKA** – The Alaska House and Senate have both approved a bill, [Alaska House Bill No. 124](#), permitting RON. The bill is currently pending approval by the Governor.
- **ARIZONA** – Permitted by the April 8, 2020 [Executive Order. The Order](#) authorizes the early implementation of RON statute [A.R.S. § 41-371, et seq.](#), which was originally set to take effect July 1, 2020. Some requirements include that the notary must be physically located in Arizona and certified to perform RON by the Arizona Secretary of State
- **ARKANSAS** – Permitted by [Executive Order 20-12](#). Both the notary and signer must be in-state. Additionally, the notary must be either (i) licensed to practice law in the state; (ii) a licensed state title agent; (iii) supervised by an attorney or title agent; or (iv) employed by a financial institution registered with the Arkansas State Bank Department.
- **CALIFORNIA** – California law does not permit RON, but [California Civil Code 1189\(b\)](#) permits California citizens seeking to have documents notarized remotely to obtain notarial services in another state which permits RON.
- **COLORADO** – Permitted by [Executive Order D 2020 19](#). The Secretary of State’s [implementation rules](#) require that the signer and notary both be in-state. The new rules do not apply to certain types of wills and a record relating to the electoral process.
- **CONNECTICUT** – Permitted by [Executive Order No. 7K](#). Both the signer and notary must be in-state and additional requirements are in place for specific types of wills.
- **DELAWARE** – Permitted by the April 15, 2020 [Executive Order](#). The Order requires all parties to be in-state and that RON be performed by a licensed Delaware attorney in good standing with the Supreme Court of Delaware.
- **DISTRICT OF COLOMBIA** – D.C. has yet to pass legislation adopting RON.
- **FLORIDA** – Permitted by [Florida Statutes Chapter 2019-71](#). The Florida statute requires Third Party Platforms and permits Florida notaries to acknowledge signatures taking place out of state as long as the notary is located in Florida. On March 18, 2020, the Supreme Court of Florida issued [Administrative Order No. AOSC20-16](#) allowing notaries to use AV technology to swear witnesses and administer oaths.
- **GEORGIA** – Permitted by the April 9, 2020 [Executive Order Temporarily Allowing Remote Notarization and Attestation](#). The Order authorizes notaries who are either attorneys or working under the “supervision” of an attorney to utilize RON. The Order defines “supervision” as any employee of an attorney, so the attorney does not have to be physically present for the actual process. The Order further requires the signed document to be transmitted to the notary on the same day it was signed so that the notary can sign and seal.
- **HAWAII** – Permitted by [Executive Order No. 20-02](#). Both the signer and the notary must be in-state. Additionally, the notary public must specifically reference the Executive Order on the notarized document, record the interaction, and store it on a digital storage device such as a flash drive, DVD or hard drive.

- **IDAHO** – Permitted by [Senate Bill 1111](#). The Bill allows for in-state notaries to perform notarial services for both in-state and out-of-state signers.
- **ILLINOIS** – Permitted by [Executive Order 2020-14](#). Both the notary and signer must be in-state.
- **INDIANA** – Permitted by [Indiana Code § 33-42-17-1, et seq.](#) Subject to specific rules, the statute permits a remote notary public to lend their services to signers who are in-state, out-of-state, or outside the United States.
- **IOWA** – Permitted by the March 22, 2020 [Emergency Proclamation](#). The Proclamation temporarily suspends the in person requirements of Iowa’s notary services laws. A [media release](#) from the Secretary of State’s office notes that notaries must register with the Secretary of State’s office before performing remote services. A draft of the guidelines required for these services can be found in [ARC 4997C](#).
- **KANSAS** – Permitted by [Executive Order 20-20](#). Both the notary and the signing party must be physically in-state. Further, the Kansas House has approved a RON statute, [Kansas House Bill 2713](#). The bill is currently pending in the Kansas Senate.
- **KENTUCKY** – Permitted by [K.R.S 423.55](#). The notary must be in-state and make a recording of the act. The statute further permits services for individuals located out of the United States.
- **LOUISIANA** – Permitted by [Proclamation No. 37 JBE 2020](#). The RON process must be recorded and retained for a period of 10 years.
- **MAINE** – Permitted by the April 8, 2020 [Executive Order](#). Among other conditions, the Order requires both the signatory and the notary to be physically present in Maine. The Order is not applicable to solemnizing marriages, electoral matters, or absentee ballots in state and local elections.
- **MARYLAND** – Permitted by [Executive Order No. 20-03-30-04](#). The Order requires that the notary inform the Secretary of State of the RON, indicate on the certificate of the notarial act and in the notary’s journal that the signing individual was not in the physical presence of the notary, and retain a recording of the process. On April 10, 2020, the Secretary of State issued a [guidance](#) to supplement the RON Order.
- **MASSACHUSETTS** – The Massachusetts [Senate](#) and [House of Representatives](#) have both presented legislation authorizing RON during the COVID-19 state of emergency. Currently, no active legislation is in effect. On March 24, 2020, the Secretary of State issued an [Emergency Order](#) providing that the manual signatures or notarizations for securities registration applications, exemption filings, securities notice filings, and consent to service of process forms and related corporate resolutions will not be required. The Order further waives the notarization of forms used in connection with securities registration applications, exemption filings, securities notice filings, and consent to service of process forms and related corporate resolutions, including Forms U-1, U-2, and U-2A.

- **MICHIGAN** – Permitted by [Executive Order No. 2020-41](#) and [Act. No. 330](#). Detailed information on RON in Michigan can be found in Michigan’s [General Information Guide](#) for the Electronic and Remote Notarial Acts.
- **MINNESOTA** – Permitted by [Minn. Stat. Ann. § 358.645](#). The statute permits an in-state notary public, who has been authorized by the State of Minnesota to perform RON acts, to do so for a signer who may be either in-state or out-of-state subject to certain restrictions.
- **MISSISSIPPI** – Permitted by [Executive Order No. 1467](#). Executive Order 1467 requires a Third Party Platform. The Order provides that there are situations where the notary can notarize a signature of someone not signing in Mississippi, but the document or transaction has to have some connection to Mississippi. Additionally, the notary must also notify the State of Mississippi of any intent to remotely notarize. Secretary of State Michael Watson issued a [Remote Notarization Order Guidance](#) to supplement the Executive Order.
- **MISSOURI** – Permitted by [Executive Order 20-08](#).
- **MONTANA** – [Montana’s law on Remote Online Notarizations](#) authorizes notaries to utilize RON subject to specific guidelines.
- **NEBRASKA** – Permitted by [Executive Order No. 20-13](#). The Order authorizes the early implementation of the [Online Notary Public Act](#).
- **NEVADA** – Permitted by [Electronic Notarization Enabling Act](#). The Act requires that the notary register with the State as an electronic notary and complete a course of study.
- **NEW HAMPSHIRE** – Permitted by [Executive Order 2020-04](#). The Order requires the signatory to send the signed documents to the notary for certification and execution, however, the official date and time of the notarization would be the date and time of the signing during the AV communication.
- **NEW JERSEY** – Permitted by [A-3903/S-2336](#). The law temporarily authorizes notaries or “officer[s] authorized to take oaths, affirmations, and affidavits, or to take acknowledgments” to utilize RON. The law does not permit RON for certain family law documents and specific documents governed by the UCC.
- **NEW MEXICO** – Permitted by [Executive Order 2020-015](#). The Order waives disciplinary action for notaries who use audio-video technology rather than face-to-face meetings with clients for notary services.
- **NEW YORK** – Permitted by [Executive Order No. 202.7, “Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency.”](#) The Order also requires that the signing party to be physically located in New York
- **NORTH CAROLINA** – On March 19, 2020, Secretary of State Elaine Marshall released a [guidance](#) on how to comply with North Carolina’s in-person appearance requirements for notarizations. North Carolina permits the use of [eNotaries](#), however, the process requires the traditional safeguards of requiring the signer and eNotary to be in the same physical location.

- **NORTH DAKOTA** – Permitted by [North Dakota Century Code Chapter 44-06.1](#). Additionally, on April 2, 2020, the North Dakota Securities Department issued [Emergency Notice No. 2020-03](#) authorizing the Department to accept a signed unsworn declaration as an attachment to any document subject to notarization requirements, pursuant to Chapter 31-15 of the North Dakota Century Code. The unsworn declaration must include specific language noted in the Notice.
- **OHIO** – Permitted by [Ohio Rev. Code Ann. §§ 147.01 - 147.142](#). Notaries must be specially commissioned by the Ohio Secretary of State to perform such services.
- **OKLAHOMA** – Permitted by [Okla. Stat. tit. 49, §§ 201 – 214](#). Similar to other states, the Oklahoma notaries must be specially commissioned by the Ohio Secretary of State to perform such services. More information and FAQ on the Remote Online Notary Act can be found [here](#).
- **OREGON** – Oregon’s [electronic notarization](#) process requires the physical presence of both the notary and the signer using a Third Party Platform. The Secretary of State’s [Response to COVID-19](#) lists best practices when performing notarizations.
- **PENNSYLVANIA** – On March 25, 2020, the Pennsylvania Department of State issued a [release](#) suspending the in-person requirements for notaries in real estate transactions. On April 2, 2020, the Department of State issued another [release](#) stating that RON would be permitted for some documents during the COVID-19 crisis. The release also provides direction for notaries who seek to become approved electronic notaries along with a list of approved Third Party Platforms.
- **RHODE ISLAND** – Effective April 3, 2020, Rhode Island will [temporarily permit the use on remote online notarization](#) until the termination of the Rhode Island state of emergency. Standard notarizations are still permitted and valid during the state of emergency. A notary public choosing to perform RON in Rhode Island must complete the application process along with complying with the [Standards of Conduct](#) and the requirements of [R.I. Gen. Laws Chapter 42-30.1](#).
- **SOUTH CAROLINA** – Though [legislation has been introduced](#), South Carolina has yet to pass regulations permitting RON.
- **SOUTH DAKOTA** – [South Dakota’s law](#) on RON requires that the notary sign the original signed document and only permits RON if the notary personally knows the signer.
- **TENNESSEE** – Permitted by [T. C. A. § 8-16-301 et seq.](#) The legislation requires the use of Third Party Platforms and application to the Secretary of State. On April 9, 2020, however, Governor Bill Lee issued [Executive Order No. 26](#) permitting the use of RON for wills, power of attorney, deeds, or other legal documents and relaxing the Third Party Platform requirements of Tennessee’s statute. The Order requires that the signed document include a provision noting that it was “executed in compliance with Executive Order No. 26 by Tennessee Governor Bill Lee, dated April 9, 2020.”
- **TEXAS** – Permitted by [Tex. Gov’t Code § 406.110](#). The statute also allows the signing party (who can be either in-state or out-of-state) to use an electronic signature. The

notary must be officially commissioned by the Texas Secretary of State to serve as an Online Public Notary. On April 8, 2020, [Governor Greg Abbott temporarily suspended certain statutes](#) to allow for appearance before a notary public via videoconference to execute a self-proved will, a durable power of attorney, a medical power of attorney, a directive to physician, or an oath of an executor, administrator, or guardian.

- **UTAH** – Permitted by [Utah Code Ann. § 46-1-1 et seq.](#) The process on becoming a remote notary can be found [here](#).
- **VERMONT** – Permitted by the [Emergency Administrative Rules for Notaries Public and Remote Notarization](#). The Secretary of State’s corresponding [guidance](#) further permits the use of RON and offers in in-depth step-by-step walk through offering direction to both the notary and the signing party.
- **VIRGINIA** – Permitted by [VA Code § 47.1-14\(C\)](#).
- **WASHINGTON** – Permitted by [Proclamation 20-27](#).
- **WEST VIRGINIA** – Permitted by [Executive Order No. 11-20](#). In support of the Order, the West Virginia Secretary of State issued a notice of [Standards and Guidelines for Electronic Notarization](#).
- **WISCONSIN** – On March 18, 2020, the State of Wisconsin Department of Financial Institutions issued an [emergency guidance](#) instructing individuals on how to utilize remote notarization.
- **WYOMING** – The Wyoming Secretary of State's Office issued a [guidance](#) on the immediate availability of RON for Wyoming notaries and businesses.

**To discuss this further, please contact:**

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