



ELECTRONIC AND REMOTE ONLINE NOTARIZATION

Overview

More than 1.25 billion documents are notarized each year¹ by the approximately 4.5 million notaries in the United States.² Notaries witness signatures on important legal documents, such as deeds, titles and contracts, and contracts and disclosures related to mortgage lending and the extension of other forms of credit, as required by certain laws. Without a properly notarized signature, a contract or disclosure may not be legally binding, and a transfer of real property or lien priority may be significantly delayed. With business increasingly being conducted online, one credit transaction may involve individuals across multiple jurisdictions, complicating the notarization process.

When these documents are to be signed, the notary verifies the identity of the person or persons signing the documents and ensures that they do not appear to be coerced or of an unsound state of mind.³ They check the identity of the signer or signers by either affirming that they personally know who the signer is, or in most cases, by checking the person's identity through a photo ID, such as a driver's license or passport. Traditionally, the notary then seals that document with a notary stamp or seal after it has been signed in the notary's presence. Notaries carry the status of a public official to provide their seal on the document to prevent the forgery or fraudulent signing of otherwise legally-binding documents.

All states – except **New York** – have made electronic transactions, signatures and notarizations legal by enacting the Uniform Electronic Transactions Act (UETA).⁴ The act was most recently

¹ Notarize, *A Peek Inside the US Economy: Here's What America Notarized in 2020*, at <https://www.notarize.com/blog/2020-year-in-review#:~:text=Each%20year%2C%20more%20than%201.25,Americans%20notarized%20online%20in%202020> (January 8, 2021).

² The Northern Kentucky Tribune, *Sec. of State Grimes led national task force on remote notary standards being considered by states*, at <http://www.nkytribune.com/2018/02/sec-of-state-grimes-led-national-task-force-on-remotenotary-standards-being-considered-by-states/> (February 20, 2018).

³ WRAL.com, *Elaine Marshall: N.C.'s notary program among the best in the nation*, at <https://www.wral.com/elaine-marshall-n-c-s-notary-program-among-best-in-nation/16831667/> (July 20, 2017).

⁴ Uniform Law Commission, *Electronic Transactions Act*, at <https://www.uniformlaws.org/committees/community-home?CommunityKey=2c04b76c-2b7d-4399-977e-d5876ba7e034> (June 28, 2022).

adopted by **Washington** in March 2020⁵ and by **Illinois** in June 2021.⁶ The federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies many of the same provisions as the UETA to interstate and national commerce.⁷ The first standards for electronic notarization, verification of an electronic signature on a digital document in the physical presence of a notary, were adopted in the United States in 2006.⁸ Since then, the daily use of electronic notarization has increased, and the states and their respective notaries are trying to keep up with the rapidly changing landscape. One significant change has been the increasing authorization of remote online notarization, or the process of a person “appearing” before a notary using audio-visual tools.

Electronic notarization mirrors traditional notarization practices that date back centuries in that the notary and the person(s) signing the document are in each other’s physical presence. However, as digital technology evolves, the Uniform Law Commission (ULC) and others have reconsidered the long-held principle that “personal appearance” means physical presence.⁹ A handful of jurisdictions now allow for remote online notarization (RON). The first state to allow remote online notarization was **Virginia**, which had its law authorizing such acts go into effect in 2012. Virginia was followed by **Montana** in 2015—whose law is stricter than what was enacted in Virginia—and then **Texas**, which enacted an online notarization law in 2017, with an effective date of July 1, 2018.¹⁰ In these states, a person must be commissioned as a regular notary public of the state first and then obtain a separate commission to perform online acts.¹¹ The COVID-19 pandemic and the resulting state restrictions on in-person activities spurred the authorization of remote notarization across the country.

Current RON Landscape

As of August 1, 2022, 40 states permanently allow RON or have passed legislation that will permanently authorize RON before temporary authorization expires. In addition, five states grant temporary authorization. **California, Delaware, the District of Columbia, Georgia,**

⁵ DLA Piper, *eSignature and ePayment News and Trends COVID-19 Alert*, at <https://www.dlapiper.com/en/us/insights/publications/2020/04/esignature-and-epayment-news-and-trends/> (March/April 2020).

⁶ DLA Piper, *With Illinois's adoption of UETA, United States near full adoption*, at <https://www.dlapiper.com/en/us/insights/publications/2021/07/with-illinois-adoption-of-ucta-united-states-near-full-adoption/> (July 2, 2021).

⁷ National Notary Association, *What Businesses Need to Know About eNotarization*, at https://www.nationalnotary.org/file%20library/nna/knowledge%20center/special%20reports/enotarizationwhitepaper2016_161109.pdf (2016).

⁸ Red Herring, *Finally, After Years of Legislation and Mistrust, eNotary is Becoming Big Business*, at <https://www.redherring.com/north-america/finally-years-legislation-mistrust-enotary-becoming-big-business/> (October 22, 2017).

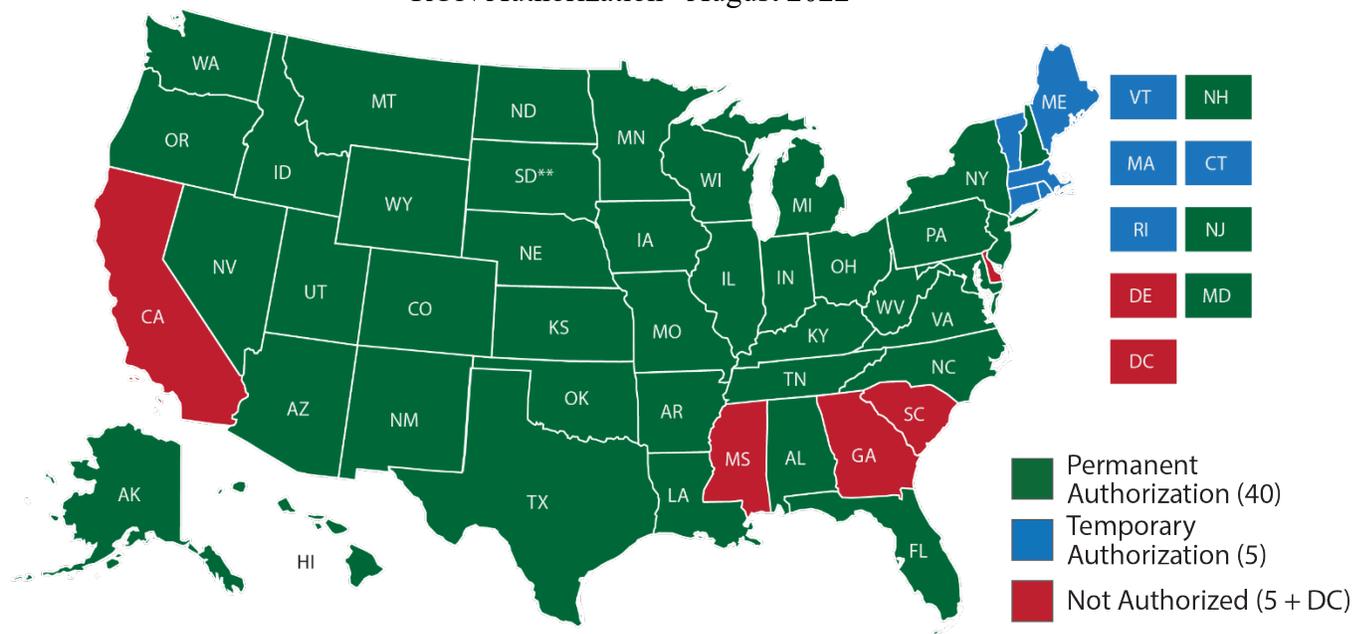
⁹ National Association of Secretaries of State, *Remote Electronic Notarization Task Force*, at <http://www.nass.org/initiatives/remote-electronic-notarization-task-force> (Accessed June 28, 2022).

¹⁰ Lexology.com, *New Texas Online Notarization Law Allows Remote Acknowledgment in Domestic and CrossBorder Transactions*, at <https://www.lexology.com/library/detail.aspx?g=76454f66-4681-4841-b426-127ba36726c9> (April 13, 2018).

¹¹ *Ibid.*

Mississippi, and South Carolina do not currently allow for remote online notarization either permanently or temporarily.¹²

RON Authorization– August 2022



Effects of COVID-19 Pandemic

At the beginning of 2020, only 16 states allowed remote online notarization.¹³ During the COVID-19 pandemic, industry and lawmakers concluded that additional flexibility was needed for day-to-day business to continue.¹⁴ Businesses nationwide began pressuring states to adjust

¹² AFSA, *State E-Notary Laws*, at https://afsaonline.org/afsa_resource/e-notary-laws-50-state-survey/ (August 2022).

Vermont currently authorizes RON until September 10, 2022. In 2018, the legislature passed legislation to institute permanent RON authorization, but it does not take effect until the Secretary of State issues formal rules. As the Secretary of State has not yet started the rulemaking process, authorization is still temporary.

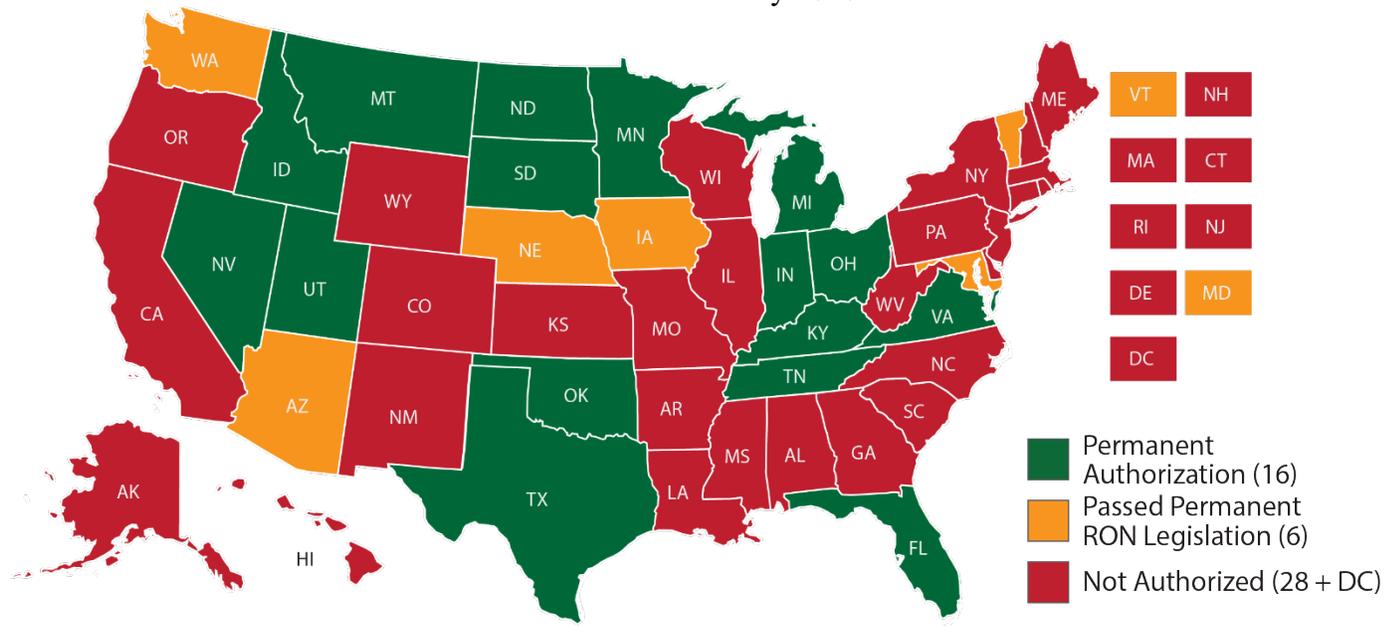
The Delaware legislature passed a bill permanently authorizing remote notarization on June 30 (see section on legislation). However, it is unclear if the governor signed the bill. If the bill was signed, it will immediately authorize remote notarization. If the bill was not signed, it would be pocket vetoed and remote notarization would be prohibited since temporary authorization expired on June 30.

¹³ AFSA, *State E-Notary Laws (Archived)*, at https://afsaonline.org/afsa_resource/e-notary-laws-50-state-survey-january-2020/ (January 2020). As of January 1, 2020, 16 had remote notarization in effect. In addition, 5 states – Arizona, Iowa, Maryland, Nebraska, and Washington – passed legislation in 2019 authorizing remote notarization, but did not take effect until later in 2020. See note above on Vermont.

¹⁴ DLA Piper, *Coronavirus: Federal and State Governments Work Quickly to Enable Remote Online Notarization to Meet Global Crisis*, at <https://www.dlapiper.com/en/us/insights/publications/2020/03/coronavirus-federal-and-state-governments-work-quickly-to-enable-remote-online-notarization/> (August 25, 2021).

and remove limitations to perform notary work so some commerce could move forward.¹⁵ By the end of 2020, 48 states and the **District of Columbia** had authorized RON on at least a temporary basis, with only **California** and **South Carolina** prohibiting RON. Since then, some states that only allowed RON on a temporary basis enacted laws to permanently authorize it. Authorization has since lapsed in **Delaware, Georgia, Mississippi** and the **District of Columbia**.

RON Authorization – January 2020



In addition to COVID-19, the willingness of more states to adopt laws allowing remote online notarizations is likely due, in part, to the National Association of Secretaries of State (NASS) adopting nationwide standards for these acts in February 2018.¹⁶ In most states, the secretary of state is the commissioning authority for notaries. Fannie Mae and Freddie Mac had previously endorsed remote notarization for their mortgage closings.¹⁷ The ULC has also adopted an amendment to the Revised Uniform Law on Notarial Acts (RULONA) that allows U.S. citizens living overseas to use remote methods for both traditional and electronic notarizations.¹⁸

¹⁵ The National Notary Bulletin, *2022 Business Prospects Look Strong as Notaries Find New Ways to Serve Customers*, at <https://www.nationalnotary.org/notary-bulletin/blog/2022/01/2022-business-prospects-strong-notaries-serve-customers> (January 6, 2022).

¹⁶ HousingWire.com, *Tennessee notaries will soon be able perform online notarizations nationwide*, at <https://www.housingwire.com/articles/43156-tennessee-notaries-will-soon-be-able-perform-online-notarizationsnationwide> (April 19, 2018).

¹⁷ HousingWire.com, *2017 poised to be landmark year for e-notarization adoption*, at <https://www.housingwire.com/blogs/1-rewired/post/40060-poised-to-be-landmark-year-for-e-notarization-adoption> (May 5, 2017).

¹⁸ National Association of Secretaries of State, *Remote Electronic Notarization Task Force*

For the real estate industry, the popularity of RON has exploded,¹⁹ as evidenced by survey results that found usage spiked 547 percent from 2019 to 2020.²⁰ At the start of 2020, 10 states had RON laws that were slated to go into effect that year, which would bring the total number of states authorizing remote notarization to 22.²¹ Today, 39 states have permanent RON statutes and five states have temporary authorizations.²² Remote online notarization is also expanding beyond real estate, including to execute affidavits, powers of attorney, living trusts and advanced health care directives.²³

Benefits and Risks of Remote Online Notarization

State laws that authorize notaries to perform remote notarizations expedite routine banking and finance transactions and real estate closings, since they give greater flexibility in times and places to acknowledge documents.²⁴ Such laws also may bolster efficacy of cross-border transactions; currently persons located in foreign countries are typically required to make an appointment with the U.S. Embassy or consulate in the foreign country to appear in person in order to obtain a notarized signature.²⁵ Even when the remote online notarization takes place entirely in the same country and/or state, it still saves on costs such as fuel and extra fees charged by notaries when they must travel.²⁶ Companies that need a large number of documents notarized could use it to consolidate their operations. Some companies could even outsource their notarial needs to remote notary call centers.²⁷

Business advantages of RON, which it shares with electronic notarization over traditional practices in general, includes that hard copies are not required to authenticate signatures, so companies would not incur the expense, inconvenience or risk associated with having to warehouse such documents.²⁸ In addition, some proponents argue that electronic notarization—whether done remotely or in person—can help prevent fraud because they claim digital documents cannot be altered after they are notarized electronically, and that this “nonrepudiation” feature is a safeguard with many applications beyond the traditional use of notarization for legal documents.²⁹

¹⁹ Forbes, *The Digital Difference: Why E-Closing Technology is Gaining In Popularity*, at <https://www.forbes.com/sites/forbestechcouncil/2022/06/15/the-digital-difference-why-e-closing-technology-is-gaining-in-popularity/?sh=c0ac9548f7b3> (June 16, 2022).

²⁰ American Land Title Association, *ALTA Vendor Survey Shows 547 Percent Spike in RON Use*.

²¹ National Mortgage News, *Opinion RON: The Mortgage Industry’s Field of Dreams*.

²² AFSA, *State E-Notary Laws*.

²³ *Ibid.*

²⁴ Lexology.com, *New Texas Online Notarization Law Allows Remote Acknowledgment in Domestic and CrossBorder Transactions*

²⁵ *Ibid.*

²⁶ Red Herring, *Finally, After Years of Legislation and Mistrust, eNotary is Becoming Big Business*

²⁷ National Notary Association, *Webcam Notarizations: Redefining Personal Presence Or Opening The Door To Fraud?*

²⁸ Delaware.gov, *Delaware Secretary of State Announces Administrator for E-Notary Service*, at <https://news.delaware.gov/2015/07/27/delaware-secretary-of-state-announces-administrator-for-e-notary-service/> (July 27, 2015).

²⁹ *Ibid.*

However, banks and title companies may be reluctant to accept electronic notarizations because of the ever-existing potential for fraud.³⁰ The National Notary Association (NNA) stated in its foreword written for the Model Electronic Notarization Act of 2017 (MENA) that “remote electronic notarization carries a high potential for fraudulent exploitation and legal challenge unless the governing rules are carefully crafted and enforced.”³¹ Also, most states still need policymakers to address the potential validity and interstate recognition of remotely notarized documents.³² Proponents of remote online notarization say that fraudulent acts are just as likely, if not more likely, to occur when a person physically appears before a notary. They argue that notaries are “not forensic experts” – meaning a notary could accept a fake ID and not realize it—and that “if someone really wants to commit fraud, nothing is going to stop them.”³³

Opponents to remote online notarizations contend that because the notary is only viewing the signer through a camera, it would be easier for a person committing fraud to use a fake ID.³⁴ They only need to hold up the ID to the camera and the notary is unable to inspect it physically for signs of tampering. Yet proponents claim remote notarization is still superior because instead of merely checking an ID, the notary uses a third-party database (KBA system) to verify the identity of the person signing the document.³⁵ A person using the services of a notary online must provide the last digits of her or his social security number, date of birth and correctly answer questions that affirm specific personal facts that could not be easily researched online.³⁶ However, KBA has its own limitations. One issue is that databases that supply information to KBA systems are vulnerable to breaches.³⁷ Existing KBA systems are also only useful for identifying residents of the United States, Canada and a few European countries who already have established credit histories.³⁸

Proponents of remote online notarizations say that it also helps to deter fraud because the entire event is recorded on video which could later be reviewed by law enforcement.³⁹ Yet even this is not a guarantee, since existing technology can alter the images and sounds of audio-visual recordings.⁴⁰ There is also a concern that persons may be more likely to be forced to sign documents under duress using RON.⁴¹ Here, the problem is that the notary’s view of the room is

³⁰ Lexology.com, *New Texas Online Notarization Law Allows Remote Acknowledgment in Domestic and CrossBorder Transactions*

³¹ National Notary Association, *The Model Electronic Notarization Act*, at <https://www.nationalnotary.org/file%20library/nna/reference-library/model-enotarization-act.pdf> (January 2017).

³² National Association of Secretaries of State, *Remote Electronic Notarization Task Force*

³³ Red Herring, *Finally, After Years of Legislation and Mistrust, eNotary is Becoming Big Business*

³⁴ The New York Times, *The E-Notary Public Is Slow to Catch On*, at <https://www.nytimes.com/2015/05/24/realestate/the-e-notary-public-is-slow-to-catch-on.html>, (May 22, 2015).

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ National Notary Association, *Webcam Notarizations: Redefining Personal Presence Or Opening The Door To Fraud?*, at <https://www.nationalnotary.org/notary-bulletin/blog/2016/07/webcam-notarizations-redefining-presence-or-fraud> (July 13, 2016).

³⁸ *Ibid.*

³⁹ Red Herring, *Finally, After Years of Legislation and Mistrust, eNotary is Becoming Big Business*

⁴⁰ National Notary Association, *Webcam Notarizations: Redefining Personal Presence Or Opening The Door To Fraud?*

⁴¹ The New York Times, *The E-Notary Public Is Slow to Catch On*

limited to what is shown on the camera and is unable to see if there is anyone else in the room that could be—figuratively or literally—pointing a gun at the signer’s head and telling that person what to do.⁴² Proponents for remote online notarizations say this issue is easily solved simply by asking the signer to move the camera around so that the notary can look at the entire area the signer is occupying.

Differing Model Legislation

National Notary Association Model Legislation

The NNA released its model legislation, known as the Model Electronic Notarization Act of 2017 (MENA) late in 2016.⁴³ MENA is meant to serve as a “comprehensive standard and guide for public officials who are establishing rules to govern the notarization of electronic records.” This is the fifth model act released by the NNA in the last 50 years and is an update to the model legislation released by the NNA in 2010. Its purpose is to “wed proven best-practice rules for reliable authenticity and fraud deterrence to the high ethical norms expected of an impartial public officer.” The NNA states that the primary intended purpose of the MENA is to set forth a progressive model for state and territorial officials to weave electronic notarization provisions into an existing paper-based regime to “form an integrated, single system for both electronic and non-electronic notarial acts.”⁴⁴

The focus of MENA is centered on electronic notarization and, while it does contain provisions concerning remote electronic notarization, it neither unconditionally endorses nor affirmatively bans it. The NNA approaches remote notarizations cautiously and “posits that remote electronic notarization executed via “audio-video communication” only is advisable and in the public interest when governed by rigorous rules to ensure trustworthy notarizations.”⁴⁵

ALTA & MBA Model Legislation

The American Land Title Association (ALTA) and the Mortgage Bankers Association (MBA) collaborated to prepare model legislation that would provide a framework for states to adopt an online notarization process.⁴⁶ The associations believed it was necessary to create this model legislation because of the widely different approaches to remote online notarization taken by the

⁴² National Notary Association, *Webcam Notarizations: Redefining Personal Presence Or Opening The Door To Fraud?* See also, NPR.org, *Notaries Are Starting to Put Down the Stamp and Pick Up a Webcam*, at <https://www.npr.org/sections/alltechconsidered/2017/06/12/532586426/notaries-are-starting-to-putdown-the-stamp-and-pick-up-a-webcam> (June 12, 2017).

⁴³ National Notary Association, *Model eNotarization Act of 2017*, at <https://www.nationalnotary.org/knowledgecenter/reference-library/model-notary-act/model-electronic-notarization-act> (Accessed April 23, 2018).

⁴⁴ *Ibid.*

⁴⁵ National Notary Association, *The Model Electronic Notarization Act*

⁴⁶ ALTA.org, *Remote Online Notarization*, at <https://www.alta.org/advocacy/online-notarization.cfm> (Accessed June 29, 2022).

states up to that point.⁴⁷ For example, the Virginia law is more permissive about where lenders, customers and property can be located, while Montana’s law is more conservative in establishing a very state-specific nexus in the transaction.⁴⁸ This gave rise to a concern for legal uncertainty for transactions entered into by ALTA and MBA members with consumers across the states. ALTA and MBA, which represent some of the biggest consumers of notarial services, believe that the lending and title industries have a “unique vantage point for drafting standards,” and that “policy makers will benefit from a consensus industry view.”⁴⁹

The ALTA-MBA model legislation is based on the law enacted in Texas during its 2017 legislative session.⁵⁰ ALTA and MBA consider three points to be of primary importance for any legislation that would authorize remote online notarization: 1) mandatory disclosure; 2) multifactor authentication; 3) audio-video recording.⁵¹ Other principles for state legislation concerning remote online notarizations that are advocated for by ALTA and MBA include that it must:

- Have robust provisions requiring multilayers of identity verification;
- Provide that acknowledgements that are performed online can be readily identified and distinguished from “in person” acknowledgement;
- Not provide a competitive advantage to any company;
- Direct secretaries of state, in their promulgation of regulations to implement the law, to use data standards developed by the Mortgage Industry Standards Maintenance Organization (MISMO);
- Conform to UETA and Uniform Real Property Electronic Recording Act (URPERA), and to the maximum extent possible with RULONA.

Recent State Legislation

Enacted

Delaware [HB 216](#) was signed into law by Democratic Governor John Carney on June 30, 2021. Effective upon enactment, the law extended the remote notarization provisions until June 30, 2022.

Illinois [SB 2664/Public Act 102-0160](#) was signed into law by Democratic Governor J.B. Pritzker on June 23, 2021. Effective July 1, 2022, this law permanently allows for remote notarizations and authorizes and establishes requirements for electronic notarizations and licensure requirements for electronic notaries public.

⁴⁷ Mortgage Bankers Association – American Land Title Association, *Model Legislation for Remote Online Notarizations Frequently Asked Questions (FAQs)*, at <http://www.alta.org/file.cfm?name=Model-Bill-FAQs> (Accessed June 29, 2022).

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ ALTA, *Checklist for Conforming Laws Related to Remote Online Notarization (“RON”)*, at <https://www.alta.org/media/pdf/ron/remote-online-notarization-checklist.pdf> (Accessed June 29, 2022).

⁵¹ Ibid.

Maine [LD 2023/Chapter 651](#) was signed by Democratic Governor Janet Mills on April 21. Effective July 1, 2023, this new law permits notarial officers to perform notarizations for a remotely located individual. The law also provides for security measures, including identity proofing and recording requirements.

New York [SB 7780/Chapter 104](#) was signed into law by Democratic Governor Kathy Hochul on February 24. Effective January 31, 2023, the act authorizes qualified notaries public in the state to perform remote notarizations using two-way audio video technology.

North Carolina [HB 776/Chapter 2022-54](#) was signed by Democratic Governor Roy Cooper on July 8. Effective immediately, the law authorizes remote notarization on a permanent basis.

Pending

California [AB 1093](#) was amended in the Senate Judiciary Committee on June 13. Titled the “California Notary Protection Act”, the bill would authorize a notary public to apply for registration with the secretary to be a remote online notary public.

Delaware [SB 262](#) would extend remote notarization permanently. The bill passed the House on June 30. Governor Carney had until July 30 to sign the bill or it is pocket vetoed. As of August 1, 2022, the bill has not been reported as signed.

District of Columbia [B24 457](#) was sent to Democratic Mayor Muriel Bowser, who will have until August 4 to act on the bill or it will become law without signature. Effective immediately after the Congressional Review period, this bill would authorize and regulate remote online notarizations in the district, including for both electronic documents and paper documents, or remote ink notarizations.

Failed

Georgia [HB 334](#) died pursuant to the legislature’s adjournment on April 4. The bill would have provided new guidelines for remote notarization in the state and further requirements for its employment. The bill had passed both chambers and went to a conference committee before the legislature adjourned. Georgia is one of the five states that currently does not allow for remote notarization.

Mississippi [HB 1322](#) died in the House Judiciary Committee after the legislature adjourned on April 5. The bill, titled the Remote Online Notarization Act, would have authorized remote notarization in the state. Mississippi does not either permanently or temporarily allow for remote notarization.

Similar bill [SB 2622](#) died in the Senate Judiciary Committee after the legislature adjourned on April 5.

Conclusion

Notarization is a vital part of many major transactions, including obtaining mortgages. Traditional notarization methods have not changed significantly for centuries, but there is reluctance both on the part of notaries and policymakers to adapt notarial acts, despite advances in technology. The potential for fraud is the primary concern, though each method of notarization – traditional, electronic or online – has its own protections against and vulnerabilities to fraud. With the vast majority of states currently authorizing some form of RON it is clear that these practices are only becoming more commonplace. Despite a handful of holdout states, it seems that remote online notarization will soon be as ubiquitous as electronic notary practices.

A patchwork of laws remains, however, with the continued temporary authorizations, and each state is approaching the practice from a slightly different perspective. AFSA is concerned that the current lack of uniformity may be exacerbated by differing model legislation from the NASS and the collaboration between ALTA and MBA. AFSA is committed to monitoring this issue closely on behalf of its members.

Appendix of Key Terms

There are several key terms to understand when referring to the various emerging forms of notarization along with the continuing evolution of available technologies. Though they may sound similar, these terms address very different things. These terms include:

- **Electronic Signature:** Also referred to as “eSignature,” “esignature,” or “e-signature,” it is the functional equivalent of a signature on a paper document. Like a traditional signature, an electronic signature expresses a person’s intent to be bound by what he or she is signing.⁵²
- **Electronic Notarization:** Also known as “eNotarization,” “enotarization,” or “enotarization,” this includes all the elements of, and provides the same function as, a paper notarization except the document being notarized is digital and the notary uses an electronic signature. Depending upon state law, the notary’s seal may be placed on the electronic record as a graphic image, or the information from the seal may be added to the record. But all other elements of a traditional, paper notarization remain, including the requirement for the signer to physically appear before the notary.⁵³
- **Remote Online Notarization (RON):** Also referred to as “online notarization,” “remote notarization,” “remote electronic notarization,” “remote enotarization” or “webcam notarization,” here the person signing a document or electronic record appears before a notary using audio-video technology. Depending on state law, the document can be paper or digital, but the signer and the notary are in two different places, often across state or international borders. Since remote online notarizations alter the traditional requirement that the signer physically appear before the notary, extra security measures must be taken to establish a signer’s identity.⁵⁴
- **Knowledge-Based Authentication (KBA):** This is a method of verifying a signer’s identity for online notarizations under a state’s laws. KBA compiles and poses questions from an individual’s life and credit history. The idea is to make the questions so specific that only the signer would know the answers. A certain number of questions must be answered correctly within a stated amount of time to pass.⁵⁵

⁵² National Notary Association, *What Businesses Need to Know About eNotarization*.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.