

Remote Online Notarization (RON) – National and Washington Developments

Sean Holland
Regional Underwriting Counsel

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Overview

- Challenges when using historical procedures
- An alternative: the eClosing
- Developments in notary law and the advent of remote online notarization (RON)
- A way ahead for Washington



Handouts – sorry, but . . .



WLTA Education Seminar Materials

2017 Seminar Materials

2016 Seminar Materials

2015 Seminar Materials



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Historical procedures

- Paper conveyance documents
- Physically signed by grantors
- Personally appearing before notary
- Originals manually delivered to county auditor for recording



Challenges – Scenario #1

Your transaction is all set to close, you have documents ready to sign, and then you find out . . .

. . . the buyers are off travelling around England.



Current Challenges – Scenario #1



Current Challenges – Scenario #1

As of
October 19

October 2018

U.S. EMBASSY, LONDON
33 Nine Elms Lane
London
SW11 7US

NOTARIAL and OTHER SERVICES Appointment

Please click the underline or hyperlink date below.

October ▼ 2018 ▼

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			



Date already passed or not yet open for appointments

Appointment Date Fully Booked

Appointment Date Available



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Current Challenges – Scenario #1

Nov. 15
2 available

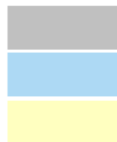
November 2018
U.S. EMBASSY, LONDON
33 Nine Elms Lane
London
SW11 7US

NOTARIAL and OTHER SERVICES Appointment

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November ▼ 2018 ▼

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	<u>15 Available (2)</u>	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	



Date already passed or not yet open for appointments

Appointment Date Fully Booked

Appointment Date Available



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Current Challenges – Scenario #2

It's another deal on a short fuse, you are ready to schedule signing, when the realtor mentions "by the way . . .

. . . the sellers are visiting family in the Philippines."

"That's not a problem, right?"



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Current Challenges – Scenario #2

COLET BINCE ROSARIO & VIRAY ASSOCIATES LAW OFFICES in ...
www.yellow-pages.ph/business/colet-bince-rosario-viray-associates-law-offices ▼
 Find reviews, photos, videos, articles, maps and contact information for COLET BINCE ROSARIO & VIRAY ASSOCIATES LAW OFFICES in Mc Arthur Hwy, ...

Colet Bince Rosario & Viray Associates Law Firms| Lawyers ...
<https://attorney.org.ph/.../entry/.../598-colet-bince-rosario-viray-associates-law-offices> ▼
 About Colet Bince Rosario & Viray Associates Law Offices | Attorneys & Lawyers. We are a law office located at Mc Arthur Hwy, Urdaneta, Pangasinan. We offer ...

COLET BINCE ROSARIO & VIRAY ASSOCIATES LAW ... - PhiliPhone
www.philiphone.com > Attorneys - Notaries - Conveyancers > Pangasinan ▼
 COLET BINCE ROSARIO & VIRAY ASSOCIATES LAW OFFICES Phone and Map of Address: Mc Arthur Hwy Urdaneta Pangasinan, Pangasinan, Business ...

Colet Bince Rosario & Viray Associates Law Offices (Legal Services ...
<https://nearbyph.com> > Legal > Legal Services ▼
 Colet Bince Rosario & Viray Associates Law Offices (Legal Services) is located at Mc Arthur Hwy, Urdaneta, Pangasinan, Philippines. More information on this ...

Colet Bince Rosario and Viray Associates Law Offices
 Legal services in Urdaneta, Pangasinan, Philippines
 Address: Mc Arthur Highway, Urdaneta City, 2428, Philippines
 Phone: +63 75 568 5672

Current Challenges – Scenario #2



What is eClosing?

- Straightforward question, no straightforward answer
- Electronic, paperless closing, but what's that mean?
- No agreed-upon definition, depends who you ask
- Focus on the elements...



What are the elements of eClosing?

1. Electronic Documents

A “native digital” document. NOT a scanned-in image of a paper document.

2. Electronic Signatures

A sound, symbol, or process applied by the signer to an electronic document in place of a wet-ink signature. Most common versions are holographic (aka hand-drawn), cursive typeface, and standard typeface.

3. Electronic Notarization

The process of applying the notary’s electronic signature and notarial stamp/seal to an electronic document.

4. Electronic Recording

The process of recording the electronic document in the county records in digital form.



Types of eClosing?

- Three basic types along a continuum
- Each method incorporates varying amounts of the elements discussed on the last slide

Hybrid

Only “procedural” documents are electronic
Paper deed/mortgage are wet-signed
Traditional identity verification by notary



In-Person

All documents are electronic
Documents are e-signed in personal presence of notary on laptop or tablet
Traditional identity verification by notary



Remote Online

All documents are electronic
Documents are e-signed in a remote online session
Identity verification by notary accomplished through new, technology-assisted methods



Benefits of eClosing

- The push for eClosing is driven by three C's:
 - Competition, Cost, and Consumers.
- Expected Benefits:
 - Faster liquidity in the secondary market
 - Operational efficiencies
 - Increased data quality
 - Increased consistency and accuracy
 - Better collateral control (no lost paper notes)
 - Improved risk management/security
 - Environmentally friendly
 - Reduced courier, mobile notary, and shipping fees



What is necessary to eClose?

FOLLOW THE ROADMAP

To complete a “true” online, remote eClosing, we must have legality, capability, and willingness to use and accept each of the following:

- Electronic Documents
- Electronic Signatures
- Electronic Notarization
- Electronic Recording



Legality, Capability, and Willingness

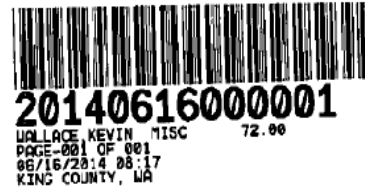
Yes. In other words, we must answer three questions:

1. **Legality** – Is the use of electronic documents, signatures, notarizations (in-person and remote), and recording legal?
2. **Capability** – Is the county auditor capable of accepting electronic documents with electronic signatures and notarizations for electronic recording?
3. **Willingness** – Is the county auditor willing to accept electronic documents with electronic signatures and notarizations for electronic recording?

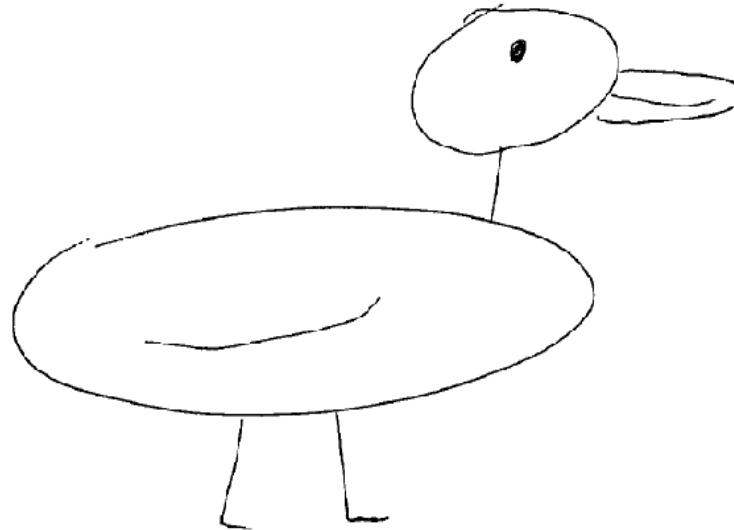


As to Willingness . . .

After recording please return to:
Kevin Wallace
PO Box 17459
Seattle, WA 98127



Duck
Grantor: Kevin Wallace
Grantee: The Public



Necessity of Notarization

Four distinctive features of the American recording system:

- *Can be traced to the Massachusetts Bay colony recording act of 1640 and 1647 (and to old English borough custom)*
- 1. **Acknowledgment** – Before being recorded, the instrument must be acknowledged before some public officer.
- 2. **Entire Instrument** – The whole instrument must normally be recorded, not merely a summary or memorandum (except when provided by statute, e.g., a memorandum of lease).
- 3. **Recording Affects Priority** – The legal priority of the grantee's interest against others is generally made good by the act of recording.
- 4. **Instrument Operative Without Recording** – Title usually passes before recording. In other words, an unrecorded instrument is generally still valid as between—and binding on—the parties.



Acknowledgments and Notaries: Early American Practice

Acknowledgments & Deed Recording Acts

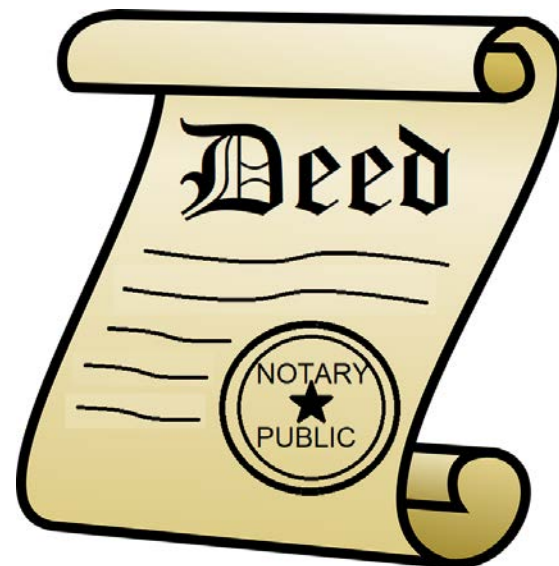
Plymouth Code of 1636

"...that all sales exchanges
giftes morgages leases or
other Conveyances of howses
& landes the sale to be
acknowledged before the
Governor or any one of the
Assistants & committed to
publick Record and the
fees to be payd."

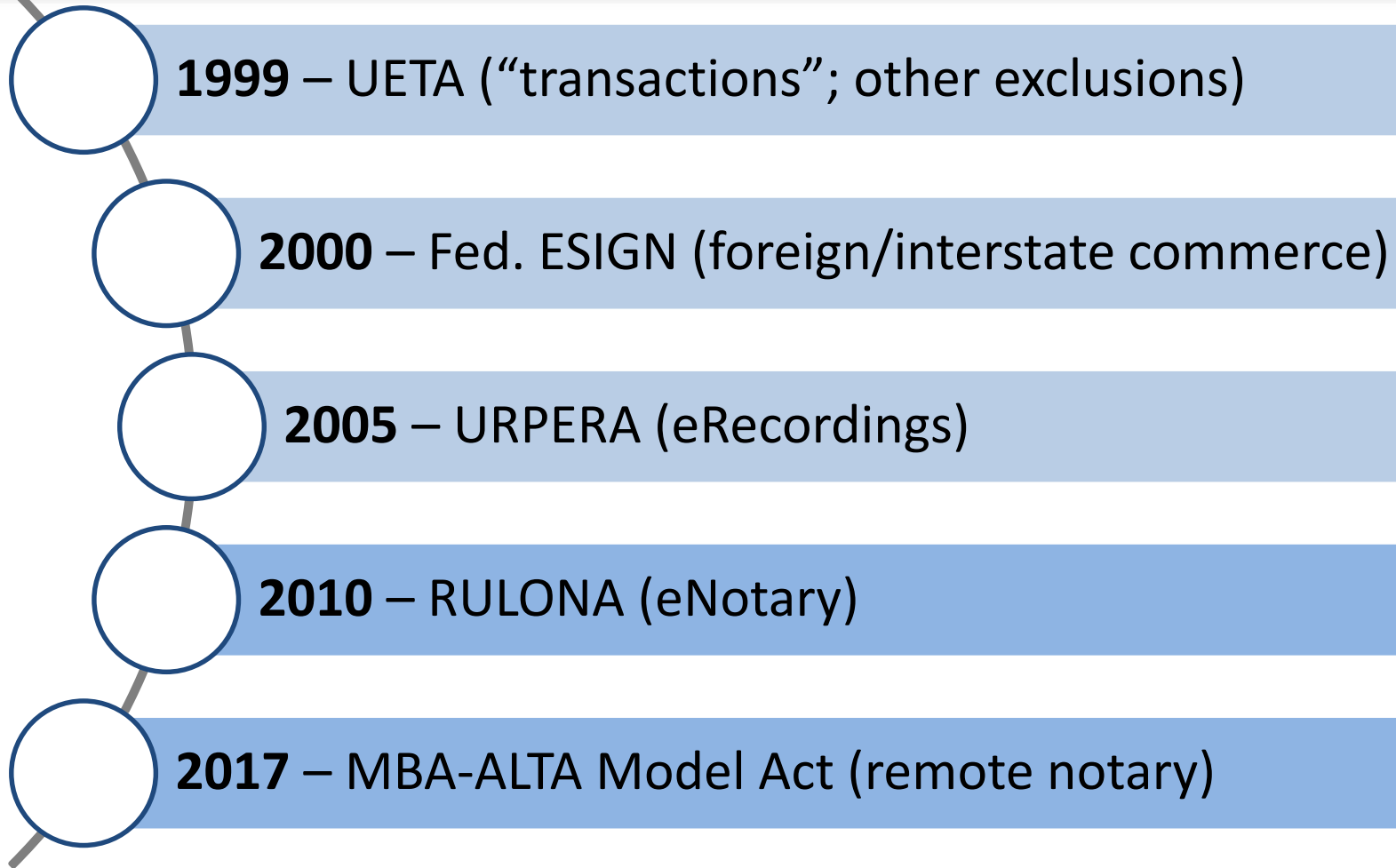


Acknowledgments and Notaries: 19th Century Evolution

- **States Begin to Authorize Notaries to Take Acknowledgments of Deeds:**
 - Illinois (1829)
 - Republic of Texas (1840)
 - Virginia (1849)
 - New York (1859)
 - Massachusetts (1867)



Major Laws Addressing eNotary

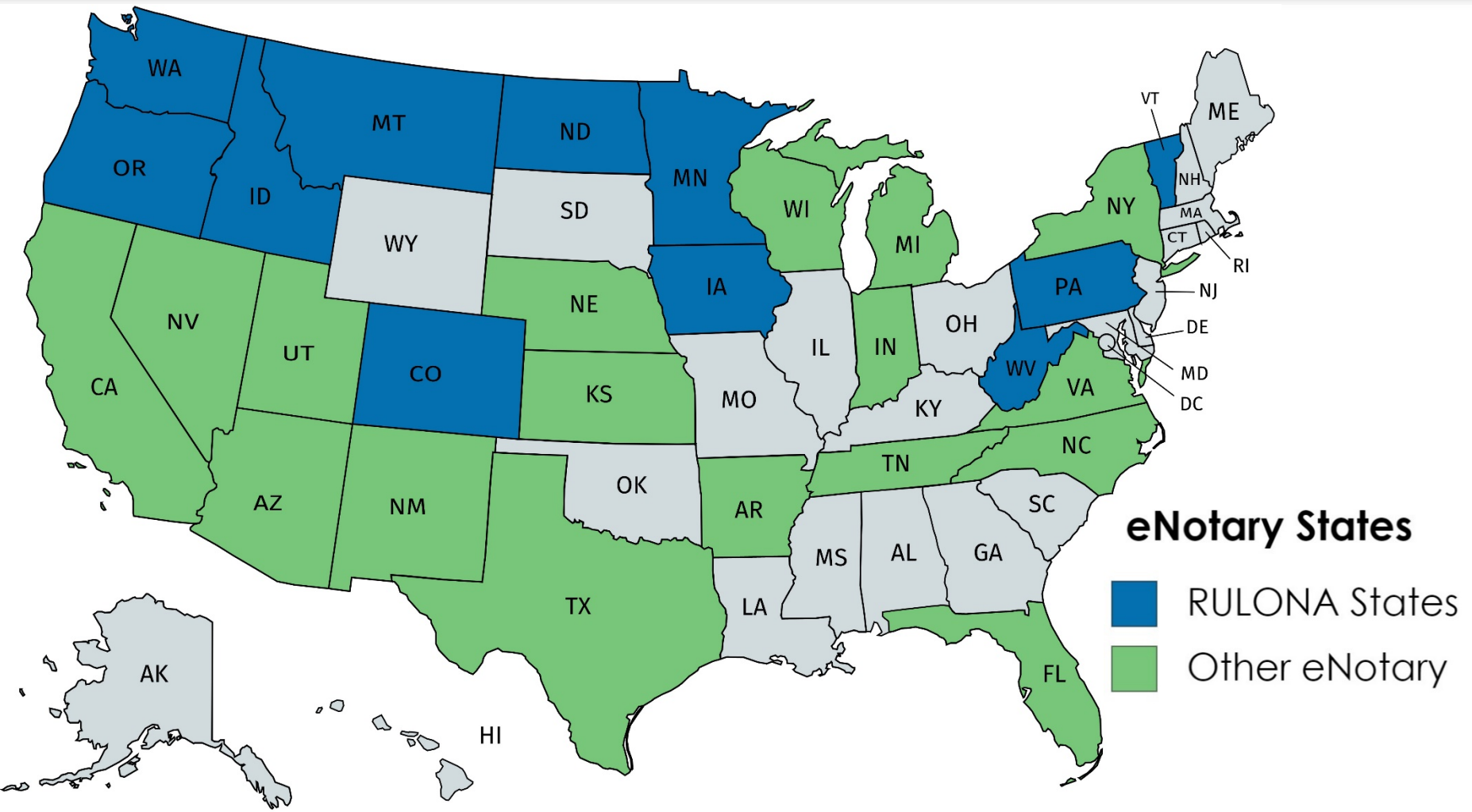


Legality of eNotarization

- eNotarization is recognized in most states and in most circumstances:
 - E-SIGN (federal); UETA (47 states); URPERA (31 states)
- BUT legal **recognition** ≠ **authorization** for state's notaries
- AND **eNotarization** ≠ **remote online notarization**
 - Electronic: in-person electronic notarization
 - Remote Online: notarization conducted over the internet (this is necessary for remote online eClosing)



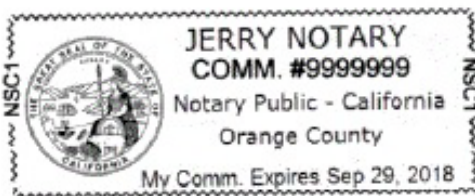
eNotarization States



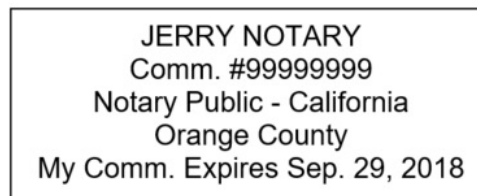
eNotarization Models

- Electronic notary seal not always required for legal recognition (UETA/ESIGN) or for recordability (URPERA)
 - Notary's name, title, jurisdiction, expiration date and sometimes a commission number

Traditional



Box Format



Information Only

WITNESS my hand and official seal.

Signature Jerry Notary

_____(NOTARY)

My Commission Expires: 09/29/2018

Notary Commission Number: 99999999

Notary Public - California - Orange County



Legality of Remote Online Notarization

- Explicitly authorized in 9 states:
 - **Virginia** (2011) – Broad approach
 - **Montana** (2015) – Restrictive approach
 - **Texas** and **Nevada** (passed 2017)
 - **Indiana, Tennessee, Minnesota, Vermont***, **Michigan** (passed 2018)
- Explicitly rejected in some states: IA, UT, WV
- Exploratory: CA, CO, DC, FL, KY, LA, MD, MO, OH, OK, PA, SD...
- MBA-ALTA Model Legislation (2017)
- ULC proposed RULONA (2018)



RULONA

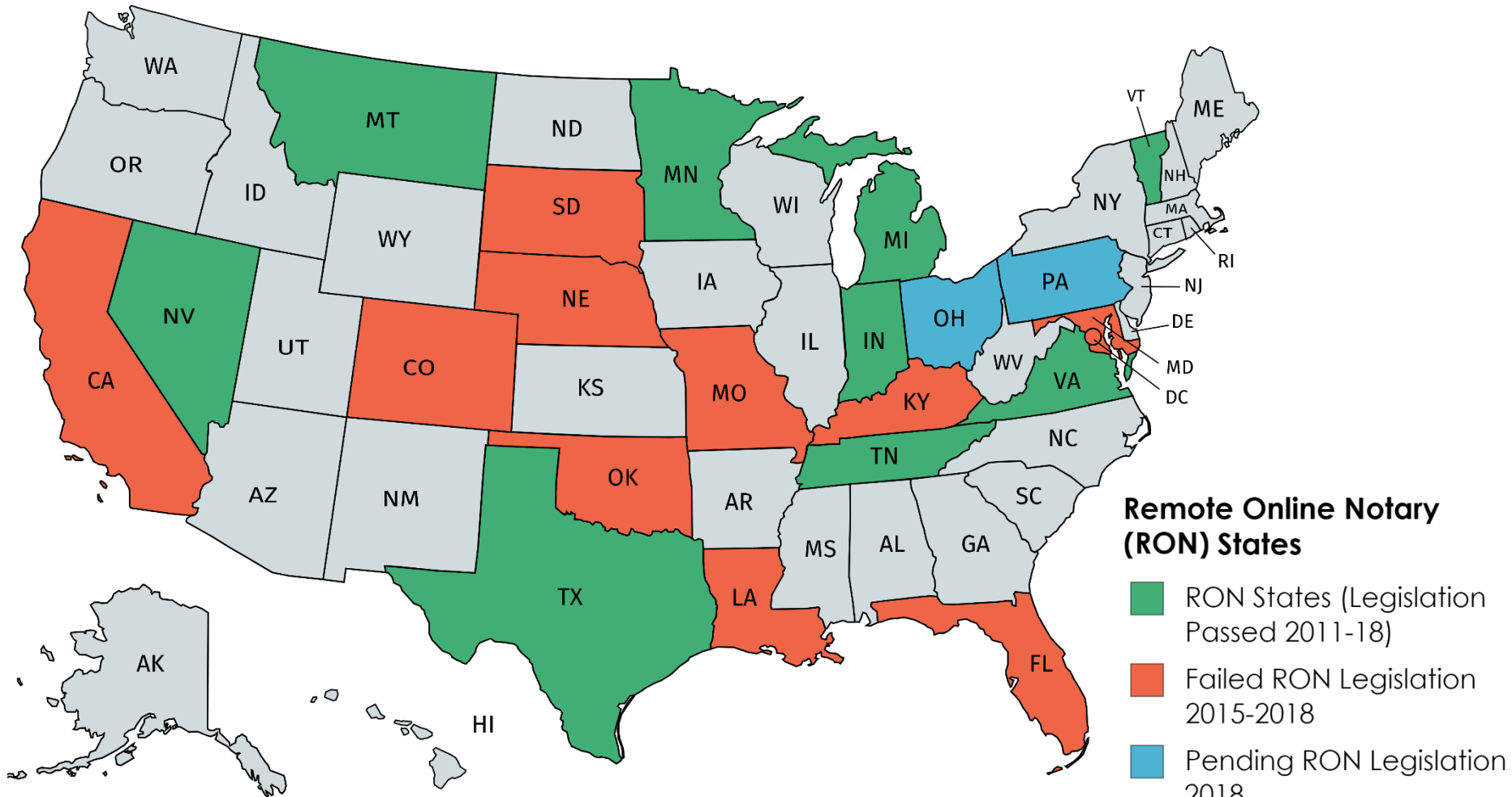
Revised Uniform Law on Notarial Acts

Amendment proposed in July 2018:

“The 2018 Amendment to RULONA authorizes notaries public to perform notarial acts in the state in which they are commissioned for remotely located individuals using audio-visual communication technology regardless of where the individual may be located. . . This amendment was prepared in response to a rapidly emerging trend among the states to authorize the performance of notarial acts by means of audio-visual technology.”



RON States as of July 2018



Montana

Starting October 1, 2015 – Remote notarization authorized via real-time, two-way audio-video communication – web cam

- Identification: signer personally known to notary, or identified by credible witness
 - Documentary evidence to identify signer is NOT OK
- Location of notary - Montana
- Signer is legal resident of Montana (except proxy marriage)
- Transaction type (only four authorized)
 - Real property located in Montana

Because of location limitation, not likely to encounter.



Virginia

- Since 2011
- Electronic notarization vs. Remote notarization
- Permits Virginia notaries to perform notarial acts via live-feed videoconference
- No requirement that signer be in Virginia
- No requirement that notary be in Virginia
- No requirement that seal disclose remote notarization process used



Virginia

Code of Virginia § 47.1-13 Jurisdiction; powers outside the Commonwealth

...

B. Any notary commissioned pursuant to this title may likewise perform notarial acts outside the Commonwealth, where such notarial acts are performed in accordance with this chapter.

...

D. An electronic notarial act performed in accordance with this chapter shall be deemed to have been performed within the Commonwealth and is governed by Virginia law.

Notarial Act “Shall be Deemed” to Have Been Performed in Virginia?



Texas

- Enacted 2017, effective July 1, 2018
- Notary physically present in Texas
- Identity established by both credential analysis and identity proofing
- Audio/visual record covering both establishing identity and acknowledgment
- Notary seal indicates that remote notary procedure used

Texas

Features form basis for Model Bill
Mortgage Bankers Association
American Land Title Association



RULONA

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NASS eNotary Standards

- Originally adopted July 2006 for eNotary
- Amended and readopted February 2018:
 - Sets standards for eNotarizations using “audio-video communication” in real time
 - Defines parameters for the authority of a notary to perform remote eNotarizations
 - Establishes requirements for Remote Electronic Notarization Systems



Key Principles from NASS Standards, MBA-ALTA Model & RULONA (2018)

- **Technology Neutrality** as to means of eNotarization and authentication processes
- **Mandatory Disclosure** in the notarial certificate
- **Multifactor Authentication** to identify signer
- **Robust Audit Trail** including audio-video recording
- **Notary Located in State** at time of notarial act; overseas signer rule



Multifactor Authentication in MBA-ALTA Model Legislation

1) Remote Presentation of ID credential



2) Credential Analysis of ID credential



3) Identity Proofing of individual



Multifactor Authentication in RULONA (2018)



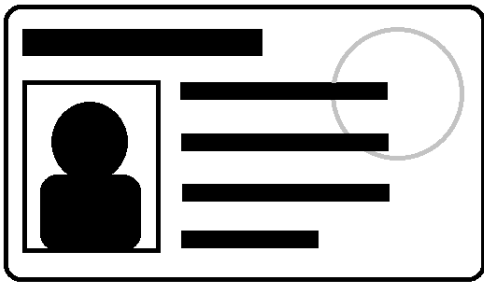
“... at least two different types of **Identity Proofing** processes or services.”



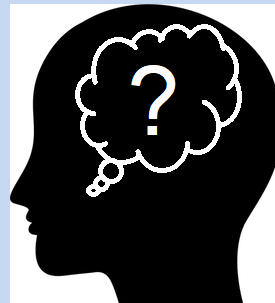
Regulatory Standards for RON

- **Texas Draft Regulations (1 TAC Chap. 87)**
Next generation standards, adopted August 2018
- **Regulations Needed for: NV, IN, TN, MI**
- **Draft MISMO[®] Standards**

Something You
HAVE



Something You
KNOW



Something You
ARE??



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Title Concerns Associated with RON

- Three primary concerns:
 1. Intrastate validity
 2. Interstate recognition
 3. Fraud, undue influence, and capacity of signer
- Associated risks:
 - Document may not give constructive notice
 - Document may not get evidentiary presumptions
 - Document may be set aside
 - Bankruptcy: Trustee “strong arms” mortgage
 - Foreclosure: Borrower may challenge mortgage



Interstate Recognition

- State notarial reciprocity statutes?
 - Nearly all states accept documents notarized by notaries “in” other states, but *where did something happen when it happened online?*
 - The idea of “personal appearance” via a “remote appearance” overturns centuries of legal and commercial tradition
- Full Faith and Credit clause of the US Constitution?
 - No known case holds that states *must* recognize notarial acts
 - Limits and “the land taboo”
 - Interstate Recognition of Notarizations (IRON) Act of 2010 (vetoed)
- Dormant Commerce clause?
 - Prohibits economic protectionism by states, but permits legitimate local purposes that cannot be served by other means
 - Preserving integrity of public records seems like a legitimate local purpose
 - Otherwise innocuous state laws, but for the invention of new technology



Interstate Recognition (cont.)

- Why not just have express recognition for everything?
 - Internet does not recognize state borders
 - Enormous economic incentive for tech companies to “disintermediate and consolidate” nationwide notary business into one centralized location
 - States likely to compete to be host of that centralized business – “the Delaware of notaries”
 - Significant portion of tech companies’ cost of doing business is authentication requirements
 - Reducing authentication requirements leads to increased fraud risk

Race to the Bottom



Washington

- ULNA → Laws 1985, Chapter 156
- Codified as Chapter 42.44 RCW

- RULONA → Laws 2017, Chapter 281
- Codified as Chapter 42.45 RCW
- Effective July 1, 2018



Washington – New Concepts

RCW 42.45.010

- “Electronic Records Notary Public”

RCW 42.45.190

- “Notarial Acts with Respect to Electronic Records”



Washington – Personal Appearance

RCW 42.45.040 Personal Appearance

If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.



Washington – Personal Appearance

WAC 308-30-020 Definitions

"Appear personally" means being in the same physical location as another individual and close enough to see, hear, communicate with, and exchange tangible identification credentials with that individual.



Washington – Electronic Signatures

Electronic Authentication Act

- Chapter 19.34 RCW – enacted 1996
- Secretary of State to license certification authorities
- Trend that went nowhere
- Status in 2018: ZERO licenses in effect
- 2018 Legislative session: HB 2643 would have repealed



Washington – Electronic Signatures



Secretary of State
Kim Wyman

Digital Signatures



ACT & RULES

CA LICENSING REQUIREMENTS

REPOSITORY RECOGNITION

FAQ

PUBLIC NOTICES

Licensed Certification Authorities

Information regarding Licensed Certification Authorities

None at this time.



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Washington – Electronic Signatures

Uniform Electronic Transactions Act

- Introduced multiple times in past, but never enacted.
- Trend that succeeded nearly everywhere else – 47 + 2 (IL & NY)
- WLTA requested that HB 2643 include enactment of UETA. No luck.



Washington – Electronic Signatures

What about the federal ESIGN Act?

15 USC §7001(a)

Applies to “any transaction in or affecting interstate or foreign commerce[.]”



Washington – Electronic Signatures

Interstate commerce connection

Deeds of trust to secure loans

Where's the commerce connection with:

Deeds to establish community property

Transfer on death deeds

Deeds to resolve boundary disputes



Washington – what we need

- Statutory authorization for remote notarization
- Multi-factor identification: credential analysis and identity proofing
- Audio/visual recording
- Notary physically present in Washington
- Notary seal indicates use of remote procedures

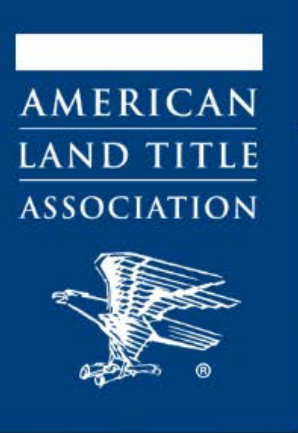
Washington – what we need

- Statutory basis for use of electronic signatures on conveyance documents and all other documents used in real property transactions
 - Repeal Electronic Authentication Act
 - Adopt Uniform Electronic Transactions Act
 - Adopt statute modeled on UETA that specifically deals with real property conveyances and other closing documents

Washington – way ahead

- Washington Land Title Association has draft bills
 - RON and Electronic Closing and Conveyancing Act
 - Repeal EAA, enact UETA
- Beginning process of contacting legislators, other interest groups

Washington – what we need



AMERICAN
LAND TITLE
ASSOCIATION

Business Tools **Advocacy** Education News Events

Title Action Network

■ **About TAN**

Be an advocate for the land title industry [Join TAN Today](#)

Questions?



Sean Holland
Regional Underwriting Counsel
First American Title
sholland@firstam.com

Thank you to **Michael P. O'Neal**, Vice President, Corporate Underwriting, First American Title, for graciously sharing his materials on Remote Online Notarization.



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