

Remote Online Notarization (RON) – Update and Look Ahead

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RON – What you need to know

- Difference between RON and traditional notarization
- Difference between RON and electronic notarization
- When RON takes effect in Washington
- Multifactor identification – two of three
 - Knowledge based, Credential analysis, Biometric
- RON and the recording laws
- Electronic signatures in Washington
- The acronyms: RON, RULONA, UETA, ESIGN



Traditional Notarization

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



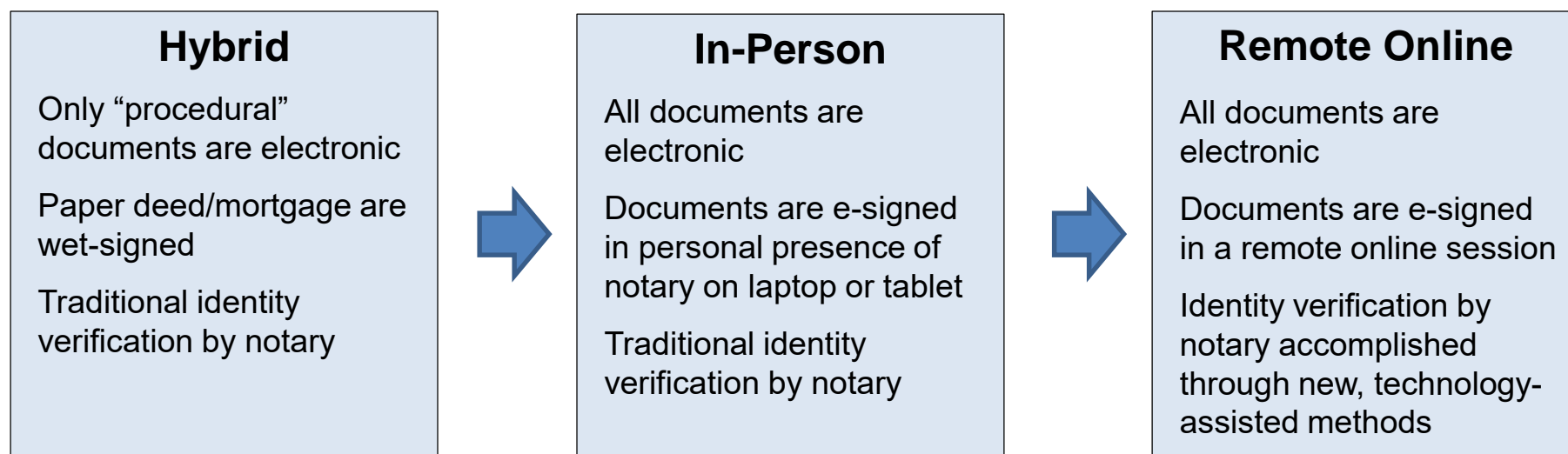
Remote Online Notarization

- Electronic documents
- Electronic signatures
- Remote appearance before notary via webcam
- Recordation of electronic documents



Transition to Full eClosing

- Three basic types along a continuum
- Each method incorporates varying amounts of four elements – docs, sigs, notary, recording



Washington Changes in 2017

- Adopted Revised Uniform Law on Notarial Acts (RULONA)
- RULONA adopted by Uniform Law Commission in 2010
- Took effect July 1, 2018



2017 Law – What Was New

RCW 42.45.010

- “Electronic Records Notary Public”

RCW 42.45.190

- “Notarial Acts with Respect to Electronic Records”
- IPEN – In-person Electronic Notarization



2017 Law – What Stayed the Same

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.



2017 Law – What Stayed the Same

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.



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An Example of RON in Texas



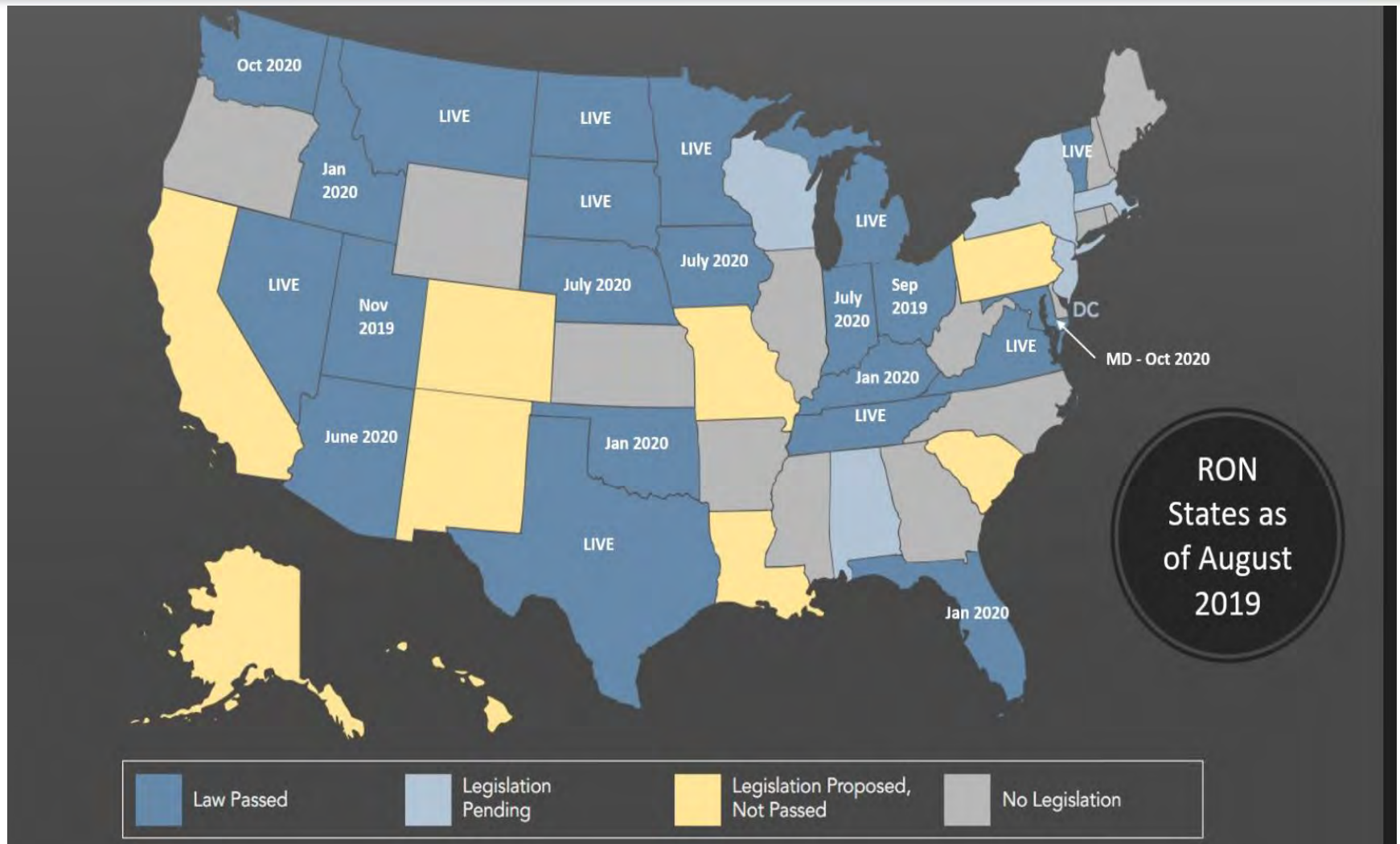
Trend toward RON Procedures

- 2010 – RULONA adopted by ULC
 - States with RON: Zero
- 2011 – Virginia statute
- 2015 – Montana statute
- 2017 – Texas statute

States Adopting RON

- Through 2015 – 2
- 2017 – +2
- 2018 – +6
- 2019 - +12 (including Washington)

RON States as of August 2019



Notary History

- Appointment of first American notary
 - A. 1639
 - B. 1790
 - C. 1871
 - D. 1903

Great Moments in Notary History #1

First Person Appointed a Notary in America

Thomas Fugill

New Haven Colony

1639

Great Moments in Notary History #2

First American Notary Removed from Office for Misconduct

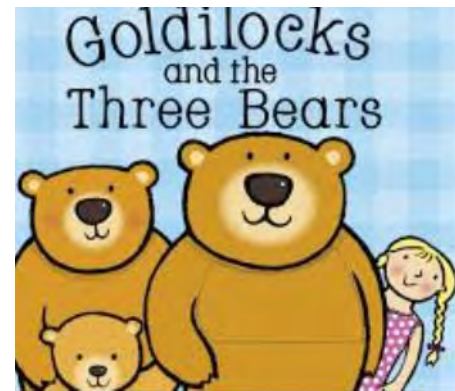
Thomas Fugill

New Haven Colony

1645

A Tale of Three Notary Statutes

- Virginia
 - Notary can be outside state requirement
 - Stamp not show remote procedures
- Montana
 - Can't use ID
 - Signer must be Montana resident
- Texas
 - Just right



Texas

- Enacted 2017, effective July 1, 2018
- Notary physically present in Texas
- Identity established by both credential analysis and knowledge-based authentication
- Audio/visual record
- Notary seal indicates that remote notary procedure was used

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



Multifactor Authentication in RULONA (2018)



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



General Principles – ALTA

- ***Adequate safeguards*** to protect against identity thieves, forgery and fraud.
- ***Multi-factor identification*** of the signer.
- ***Recordability*** in local land records, regardless of the capability to receive electronic recordings.
- ***A determination*** of whether the state will recognize remote notarial acts performed by out-of-state notaries and whether such acts are governed by the state.
- ***An indication*** the document was notarized remotely online.
- ***Tamper-evident technology*** used.
- ***Retention of records*** for a period of at least 7 years.
- ***Clarity and consistency*** within the statutes.

2019 Washington Law

- Based on 2018 amendments to RULONA
- Senate Bill 5641
- Chapter 154, Laws of 2019
- Code Reviser has added new sections to Revised Code of Washington – current law shown side-by-side with sections taking effect October 1, 2020

RCW 42.25.040 – Personal Appearance



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[RCWs > Title 42 > Chapter 42.45 > Section 42.45.040](#)[Print](#)

[42.45.030](#) << [42.45.040](#) >> [42.45.050](#)

RCW 42.45.040

Personal appearance. *(Effective until October 1, 2020.)*

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.

[[2017 c 281 § 6.](#)]

RCW 42.45.040

Personal appearance. *(Effective October 1, 2020.)*

Except as provided in RCW [42.45.280](#), 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.

[[2019 c 154 § 3](#); [2017 c 281 § 6.](#)]

RCW 42.45.280 – RON (sort of)

- “Electronic Records Notary Public”
- Definitions
- Notary licensed and located in Washington may use procedures in section to take acknowledgments and notarize documents for a “remotely located individual” anywhere in the world using “communication technology”

RCW 42.45.280 – RON Provisions

- Identity proofing is process by which third party provides notary with “means to verify the [signer’s] identity . . . by a review of personal information from public or private data sources.”
- Identity must be verified “by using at least two different types of identity proofing[.]”
- Retention of audio-visual record for 10 years

RCW 42.45.020

New subsection:

(3) A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

Allows for “papering out”

RCW 65.08.030 - Current

- “Recorded Irregular Instrument Imparts Notice”
- Recorded instrument conveying or encumbering real property
- Execution or acknowledgment not compliant with law
- Imparts same constructive notice to third persons as if had been properly executed, acknowledged, and recorded

RCW 65.08.030 – New Subsection

- Tangible copy of electronic record conveying or encumbering real property
- Recorded with auditor
- Tangible copy not certified in compliance with RCW 42.45.020(3)
- Imparts same constructive notice to third persons as if the tangible copy had been appropriately certified

RCW 65.08.070 - Current

- “Real Property Conveyances to be Recorded”
- Conveyance, when acknowledged by signer and certified by person authorized to take acknowledgments, may be recorded
- Unrecorded conveyance void against
 - subsequent purchaser/mortgagee
 - in good faith and for consideration
 - whose interest is recorded first

RCW 65.08.070 – New Subsection

- Auditor may accept for recording
 - Document that is tangible copy of electronic record
 - Certified by notary as accurate copy of electronic record pursuant to RCW 42.45.020(3)
- Document meeting these criteria satisfies any requirement for an original document

RCW 42.45.280 - Rulemaking

Rules adopted by Department of Licensing may:

- (a) Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;
- (b) Establish standards for communication technology and identity proofing;
- (c) Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and
- (d) Establish standards and a period for the retention of an audio-visual recording created under subsection (3)(c) of this section.

RCW 42.45.280 - Rulemaking

(9) Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the director must consider:

- (a) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual adopted by national standard-setting organizations and the recommendations of the national association of secretaries of state;
- (b) Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and
- (c) The views of governmental officials and entities and other interested persons.

Mortgage Industry Standards Maintenance Organization - MISMO



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MISMO® Releases Final Remote Online Notarization Standards

Sep 9, 2019

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WASHINGTON, D.C. (September 9, 2019) - MISMO®, the mortgage industry's standards organization, today announced the release of its finalized Remote Online Notarization (RON) standards. The RON standards allow the use of audio-visual communication devices to notarize documents in a virtual online environment.

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MISMO – Credential analysis

- Credential analysis
 - Notary must be able to compare ID photo with appearance of signer
 - Capture necessary portion of ID such as both front and back of driver's license
 - Evaluation of validity of credential to be done by provider, not notary
 - Capability to detect fraudulent credentials and inappropriately modified ones

MISMO – KBA

- Knowledge-based authentication
- Five questions
 - At least five possible answers per question
 - Require at least four questions answered correctly
 - Question process limited to two minutes
- Retests
 - Up to two within 48 hours, replacing at least two of the five questions each time

MISMO – KBA

- Confidentiality
 - KBA element may not be included in
 - Video recording
 - Part of person-to-person video interaction between notary and signer
 - System provider may not store KBA info
 - Notary gets score only

MISMO – Biometrics

- Facial, fingerprint, voice recognition
- “Have potential application to” RON
- But
 - “MISMO does not offer specific guidance in applying this type of authentication protocol due to the lack of available industry standards regarding biometric technology.”

MISMO – Audio-Visual Record

- Requires
 - Continuity – signer cannot leave the session
 - Association of session with “Audit Trail”
 - Confirmation that identity was verified
- Does not include
 - Copies of identification presented
 - Copies of documents signed

An Example of RON in Texas

The screenshot displays the NotaryCam web interface during a digital signing session. The browser's address bar shows the URL <https://notarycam.com>. The page title is "NotaryCam®". The main content area is titled "WD - Demo" and features a "Add Document" button. Below this, there are tabs for "Pick Signature", "Font Size", "Text", "Date", "Initials", and "Checkmark". The "Tags" section indicates "Active Signer: 0 of 1" and "Total Signed: 0 of 1", with a "Go To Next Tag" button. The central document is a "WARRANTY DEED" with the following text:

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

WARRANTY DEED

Date: January 11, 2019

Grantor: **EMILY REED ROBBINS**

Grantor's Mailing Address (including county):
123 Main Street, Broadway Texas, 12345, Harris County

Grantee: **BOB ROBBINS**

Grantee's Mailing Address (including county):
123 Wishful Thinking Lane, Broadway Texas, 12345, Harris County

Consideration: TEN AND NO/100 (\$10.00) DOLLARS and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Property (including any improvements):
All that certain lot, tract or parcel of land, situated in the ^{**} Survey, Abstract No. ^{**}, ^{**} County, Texas, and being more particularly described by metes and bounds on Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

Reservations from Conveyance: NONE

On the right side, there is a vertical stack of video feeds for participants. The top feed shows a woman with glasses, identified as "ccflowers@vix.com (387)". The second feed shows a man, identified as "henry.smith@notarycam.com (1995)". The third feed shows a woman, identified as "emilydawnreed@gmail.com (8586)". The bottom feed shows a woman, identified as "Archiving on".

On the left side, there is a sidebar with the following sections:

- ACTIONS:** A "Save Changes" button.
- SIGNING MEMBERS:** A list of participants: Henry Smith (henry.smith@notarycam.com), Emily Reed Robbins (emilydawnreed@gmail.com), Celia Flowers (ccflowers@vix.com), and Le-Lonnie Wooden (lelwooden@vix.com).
- CHAT:** A text input field with the placeholder "Type your message here" and a "Send Message" button.

Really?

WD - Demo 

Tags Active Signer: 1 of 1 Total Signed: 1 of 1

STATE OF Virginia §
COUNTY OF Chesterfield §

This instrument was acknowledged before me on the 11 day of January, 2019 by
EMILY REED ROBBINS.



NOTARY PUBLIC, STATE OF

PREPARED IN THE LAW OFFICE OF:
Celia C. Flowers
Attorney at Law
1021 ESE Loop 323, Suite 200
Tyler, Texas 75701

AFTER RECORDING RETURN TO:

xx





Electronic Signatures in Washington

- Electronic Authentication Act repealed by House Bill 1908
- As of July 28, 2019, Washington is the only state without a state electronic signature law
- 47 states have adopted the Uniform Electronic Transactions Act; NY and IL have local versions

Electronic Signatures in Washington

What about the federal ESIGN Act?

15 USC §7001(a)

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



Electronic Signatures in Washington

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

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