

ONLINE NOTARY LEGISLATION Toward the Electronic Mortgage

Presented by
John Fleming
General Counsel
Texas Mortgage Bankers
Association

KEY TERMS

- **Principal**: The person signing a document.
- **Notary Public**: A public officer that is authorized under state law to perform a notarial act such as administering an oath or taking an acknowledgement. Typically licensed by a Secretary of State to perform notarial acts in *that* state.
- **Personal Appearance**: In this instance, the act of a Principal appearing “in person” before a notary to give an oath or acknowledgement. Personal Appearance is a statutory requirement to have a valid notarial act.
 - Physically appear?
 - Appear by phone?
 - Online appearance?

KEY TERMS

- **Remote notary**: Term may include online notary but can also include a mobile notary who is contracted to travel to the Principal's location and requires a physical appearance.
- **Electronic notary**: Term may include online notary but could also include a standard notary performing a notarial act for an electronic document where the Principal and the notary are in the same physical location; may also include a mobile notary using an electronic signature and stamp but in the physical presence of the Principal. 24 states permitted some kind of e-notary as of Feb 2017.
- **Online notary**: A notary that performs a notarial act by an internet connection generally by two way audio and video communication where the notary may be in one location and the principal in another. Virginia, Montana, Texas.

ARCANE BUT IMPORTANT

- A notarial acknowledgement is a requirement to validly record a real estate document in most if not all states.
- A notarial act that is not done in compliance with the statutes of the state of recording or a notarial acknowledgement form that is defective in many states will make the recording defective. This may impact lien priority for a mortgage.

Online notary: 2 contrasting approaches

- **Virginia:** Any document; any person; any where. Presumably authorized a Virginia notary to take an acknowledgement of a person in Seattle signing a mortgage on a vacation home in Maine to secure a loan made by a California lender. Caveat: Will Maine recognize a Virginia online notarial act?
- **Montana:** Permitted if: (a) the signer is personally known to the notary or identified by a credible witness; (b) the signer is a legal resident of Montana; and (c) the transaction involves real property located in Montana, involves personal property titled in Montana, is under the jurisdiction of any Montana court, or is pursuant to a proxy marriage

Evolving standards; No consensus

- Property Records Industry White Paper on Electronic Notarization, November 2015
- ULC Study Committee on Revising the Uniform Law on Notarial Acts recommends amendment to permit remote online notarization for foreign transactions but not domestic, March 2015
- National Association of Secretaries of State (NASS): Formed task force on e-notary in April 2016
- American Land Title Association: *Draft Principles for Remote Notarization* December 2016.
- National Notary Association Model e-Notary Act, published January 2017.
- American Land Title Association: Letter to NASS re elements for Remote electronic notarization (February 2017)

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Online Notary Legislation

Also available as part of the eCourse

[Electronic Notarization and Technology in Real Estate](#)

First appeared as part of the conference materials for the
51st Annual William W. Gibson, Jr. Mortgage Lending Institute session
"Electronic Notarization"