

# ONLINE NOTARY LEGISLATION Toward the Electronic Mortgage

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## 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)

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