

Practice Update

Remote Online Notarization: Possible Solution for Distance Document Execution

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Our industry's commitment to the health and safety of its workforce and the CDC's social distancing recommendations require we explore ways to minimize physical proximity in employees' daily tasks. For those in our clients' default servicing departments, legal departments or witness teams, executing affidavits in the presence of a notary can be common. Social distancing makes in-person notarization undesirable. The transition of many employees to working from home makes it almost impossible.

The MBA defines remote online notarization (RON) as "the use of audio/video technology to complete a notarial act when the principal is not in the same physical location as the notary public." Virginia was the first state to enact a law authorizing RON in 2011. More than 20 states now have them, including Texas, Florida, and Nevada. *See* Tex. Gov't Code § 406.101, *et seq.*; Fla. Stat. § 117.265; Nev. Rev. Stat. § 240.181, *et seq.*; Va. Code § 47.1-1, *et seq.*

Historically RON was used for real estate closings. Several vendors now advertise RON services to the general public on a single document basis. There are reports of recent hiring spikes among these vendors to accommodate expected volume.

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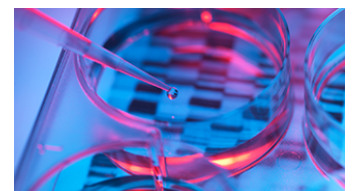
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In practice a RON begins with the signer transmitting documents to the RON vendor. The signer then logs into the RON vendor's interface and provides a photo of their identification, and often the last four digits of their social security number. The signer answers knowledge-based authentication questions related to facts like cars previously owned or the address of prior residences. Once authenticated the signer is connected to a remote notary via video and audio. Their interaction is recorded and archived. The signer affixes an electronic signature and the notary affixes an electronic seal. The notary then returns the documents to the signer.

A RON process may mitigate social distancing based disruptions to the document execution process. Before implementing RON, clients should consider the anticipated duration of COVID-19's impact on its business process—including whether government and regulatory actions might diminish the client's affidavit volume. At a practical level, RON requires video and audio conferencing capability from an employee's home workstation. From a business process perspective, there are financial costs and vendor management concerns. Clients will also want to be sure a RON process aligns with the best practices and lessons learned from the foreclosure crisis.

Early challenges to affidavits executed through a RON process are expected. These could be anticipated by motions for leave to use a RON affidavit. We also expect courts to be more accepting of novel, but trustworthy, authentication options in this "new normal." In response to the COVID-19 outbreak, Pennsylvania's supreme court, western district—a state without a remote notarization statute—issued a declaration permitting individual court districts to adopt means necessary to address the crisis, including authorizing additional uses of advanced communication technology.

RON may minimize challenges and delays to document execution during this crisis and could be worth exploring in a post-COVID-19 environment.

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