

PRACTICE FOCUS / CIVIL PROCEDURE

How Remote Online Notarizations Can Improve Lending Practices

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With 22 states, including Florida, now having remote online notarization (RON) laws, the lending industry finally has the legal tools to realize the dream of purely digital loan closings. RON laws allow documents to be notarized while the signer and the notary are sitting in different cities, states or countries. When done right, RONs have the ability to make lending safer and more efficient, which regulators such as the CFBP have recognized. And through a remote online closing office using RON capable notaries as closing officers, these laws allow lenders additional scalability.

For years, people have been allowed to electronically sign (e-sign) agreements, contracts and other documents. Through existing statutes, e-signed documents have the same weight

as their wet ink or paper equivalents. And e-signed documents are now commonplace. That is, unless a document has to be notarized. While documents can be e-notarized, oftentimes they are not, partially out of custom and because the notary and the signer are together in the same room, the perception has been that it is simply easier to have things signed the old fashioned way. Because of these reasons, documents that require notarization still largely use wet ink signatures with notary stamps or seals. The result being that what often starts off as an electronic transaction is forced back into a paper-centric world.

This, however, no longer should be the norm. Starting on Jan. 1, Florida began allowing RONs. The law, Florida Statutes Section 117.201 et. seq., coupled with newly released regulations, Florida Administrative Code Rule 1N-7001 (published Dec. 18,

2019), means that documents can now be remotely and electronically signed and notarized by a Florida notary when the notary is in the state.

The impact of RON laws for lenders and borrowers cannot be overstated, yet it is still underutilized, as these laws are fairly new. In many ways, RONs represent the final puzzle piece needed for a purely electronic and digital loan closing, changing how commercial, real estate and consumer loans are documented, closed and serviced. The ability to conduct RONs in Florida not only impacts the Florida real estate market, but those in other states.

Using a consumer mortgage loan as an example shows how powerful RONs can be. A lender based in Florida creates a “remote online closing office.” The closing office is based in Fort Lauderdale. Closing officers are Florida notaries. This centralized, remote online closing office can take

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the place of a title company, lawyer's office, or an at home or closing by mail. The remote online closing office eliminates the borrower or lender's agent having to travel to the closing office to close the loan. It reduces the time and expense associated with closings by mail and the associated paper that inevitably follows. When the proper policies and procedures are employed, loan closing officers become more efficient and can be more closely supervised when using RONs. Instead of traveling across multiple counties, a remote loan closing officer can be in a single location increasing their efficiency. Using RONs can also reduce the need for a power of attorney, giving borrowers additional control and allowing them to stay engaged in the process.

Loans closed using RONs through a remote online closing office located in Florida are also not limited to those in Florida. A lender, using a Florida remote online closing office, can remotely close a loan for a property located in California, while the borrower is in New York, and the Florida notary is sitting in Fort Lauderdale. This can be done, because the notary laws of Florida apply to the transaction. So even though California and New York law do not yet allow their notaries to remotely notarize documents, because

Florida law does allow remote notarization, a loan closing using a RON in accordance with Florida law is allowed for out of state transactions.

Although the process has some variation among the 22 states with RON laws (roughly half of these states have both regulations and laws in place allowing for RONs), a general outline of how RONs are conducted, which also applies to Florida, is outlined below. Five key components of RONs are:

- They must be conducted in real time with continuous audio and visual feeds;
- The transaction must be recorded;
- The borrower's identity is proven using approved ID software tools and correctly answering four to five background questions within a specified period of time (two minutes in Florida) that are pulled from private and public data sources (i.e., where the borrower has lived, car loan details and other personal information);
- The document is signed and notarized and the electronic original is "tamper evident" that is, it cannot be altered without showing that it has been modified; and
- The notary block states it was notarized remotely, there is a log entry detailing the notarization and that the notary keeps the log and video recording (10 years in Florida).

A third-party vendor can be used to assist with each step. Moreover, these requirements can be added to existing loan closing procedures, creating a seamless process that incorporates specific lender requirements and preferences.

Lenders must, of course, do the work before implementing to ensure compliance with laws and regulations, and ensure the integrity of electronic files. Whenever technology is used, risks can emerge, but these risks can be mitigated creating a better overall closing process that not only creates a fully digital loan, but one that reduces errors, forces compliance with laws and regulations, and prevents fraud—through powerful identity proofing tools and video recording of the transaction. Are you ready?

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