

What To Know About NJ's Remote Notarization Law

By **Bob Jaworski** (April 17, 2020)

New Jersey Gov. Phil Murphy signed A.B. 3903 on April 14, immediately but only temporarily authorizing the conduct of remote online notarizations, or RONS, by New Jersey notaries. This bill is a stripped down version of a prior bill, S.B. 3147,[1], and similar to another bill, A.B. 3864, which was passed by the legislature on March 19 and is as yet unsigned.

Both A.B. 3864 and A.B. 3903 were introduced in response to the current COVID-19 crisis and the need for people all over the state to work from home and to practice social distancing. They differ in that A.B. 3864 would have become effective 90 days following enactment and would have provided permanent authority to conduct RONS whereas A.B. 3903 is effective immediately but expires as soon as the governor rescinds his emergency order declaring the COVID-19 pandemic a public health emergency in the state.



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What does the new law do?

The new law allows a notary located in New Jersey, using communication technology to notarize the signing of a document or perform any other notarial act for an individual who is not at the same physical location as the notary, provided that:

- The notary has personal knowledge of the identity of the remote individual or has obtained satisfactory evidence of his/her identity either by (1) oath or affirmation from a credible witness appearing before the notary, or (2) using at least two different types of identity proofing.
- The notary is reasonably able to confirm that a record before him/her is the same record the remote individual signed or in which the remote individual made a statement,
- The notary, or a third party on his/her behalf, creates an audio-visual recording of the performance of the notarial act.

If the remote individual is located outside the U.S., two additional conditions must be met:

- The record is to be filed with or must relate to a matter before a public official or court, governmental entity or other entity subject to U.S. jurisdiction, involve property located in the territorial jurisdiction of the U.S. or involve a transaction substantially connected with the U.S.; and

- The act of making the statement or signing the record must not be prohibited by the foreign state in which the remote individual is located.

Are there any other requirements?

Yes. The required notarial acknowledgment or seal must indicate that the notarial act was performed using communication technology, and the notary, or a third party on his/her behalf, must retain that recording for at least 10 years.

What is communication technology?

Communication technology is defined to mean an electronic device or process that allows a notary and a remote individual to communicate with each other in real time by sight and sound. Picture a notary and a remote individual, each sitting in front of a computer screen in their respective locations, seeing and talking to each other using the computers' audio and visual capabilities.

When necessary and consistent with other applicable law, an acceptable communication technology must also facilitate communication with a remote individual who has a vision, hearing or speech impairment.

What is identity proofing?

Identity proofing is a process or service by which a third party provides a notary with a means to verify the identity of a remote individual by a review of personal information from public or private data sources.

The most common identity proofing process is known as knowledge-based authentication, or KBA, by which remote individuals are required to provide some basic personal information about themselves (e.g., name, address and date of birth) and must then correctly answer, typically, at least four of five dynamic questions, which are generated in real time from the data records corresponding to the personal information provided, and to do so within a short period of time, for example, two minutes, short enough to make it nearly impossible for the remote individual to research the answers.

Can RONS be used to notarize any record?

No. Records governed by the Uniform Commercial Code (with certain exceptions) — or by a statute, regulation or other rule of law governing adoption, divorce or other matters of family law — are excluded.

What steps must New Jersey notaries undertake before they may conduct RONS?

Before notaries may conduct their first RON, they must notify the state treasurer of their intention to do so and identify the communication technologies they intend to use. In addition, if the state treasurer has established standards for acceptable communication technologies or identity proofing, the communication technologies and identity proofing that the notaries identify must conform to those standards.

Are regulations required to be adopted by the state treasurer before New Jersey notaries may begin conducting RONS?

No. Unlike many states laws that authorize RONS, and no doubt because of the urgency presented by the COVID-19 crisis, while the law gives the state treasurer the authority to adopt implementing regulations, it does not require the treasurer to exercise that authority.

Do RONS increase the risk of fraud?

This is an issue with which all states that have authorized RONS, either on a permanent or temporary/emergency basis, have had to grapple. The general consensus is that RONS do not increase the risk of fraud and may in fact reduce that risk.

First, it seems logical to think that people are less likely to use RONS as a way to commit fraud when they are being recorded doing it.

Second, the KBA process used in RONS to authenticate the individual's identity seems significantly more robust than the process used in traditional notarizations, which is simply to check the person's ID.

Third, although not addressed in the new law, a process known as credential analysis is typically used in RONS conducted by notaries in other states (in addition to KBA).

This is a process by which a third party (1) uses technology to confirm the ID's security features and that it is not fraudulent, (2) uses information from the issuing source or other authoritative source to confirm the details on the ID, and (3) provides its authenticity findings to the notary and enables the notary to visually compare the ID with the signer who appears before the notary via the audio-visual transmission. Credential analysis is yet another risk-reduction feature of RONS.

On the other hand, there is a belief in some circles that a notary's ability to judge whether an individual understands the significance of the document he/she is signing and is signing it of his/her own free will is compromised when the notary is observing the individual only on a computer screen rather than in person across a desk or table. Time will tell.

However late in coming, enactment of this law should be welcome news to the financial services industry in these perilous times. RONS can play a big role in helping financial service companies, big and small, to provide essential products and services to their New Jersey customers without endangering their customers' health and safety or the health and safety of their employees or the notaries they engage for this purpose.

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[1] <https://www.hklaw.com/en/insights/publications/2019/02/remote-enotarization-are-new-jersey-and-pennsylvan>.