



**Mortgage Bankers Association – American Land Title Association
Model Legislation for Remote Online Notarization**

AN ACT

relating to appointment of and performance of notarial acts by a remote online notary public and the acknowledgment and proof of written instruments made by means of communication technology; authorizing a fee and creating a criminal offense.

Chapter ___ Remote Online Notary

Sec. 1. DEFINITIONS. In this (Chapter):

(1) “Appear” or “personally appear” or “in the presence of” means:

(a) being in the same physical location as another person and close enough to see, hear, communicate with, and exchange tangible identification credentials with that individual; or

(b) interacting with another individual by means of communication technology that complies with the provisions of this (Chapter).

(2) “Communication technology” means an electronic device or process that allows a notary public physically located in this state and a remotely located individual to communicate with each other simultaneously by sight and sound, and which, as

necessary, makes reasonable accommodations for individuals with vision, hearing, or speech impairments.

(3) "Credential analysis" means a process or service that meets the standards established by the Secretary of State through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

(4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) "Electronic record" means information that is created, generated, sent, communicated, received, or stored by electronic means.

(6) "Electronic seal" means information within a notarized electronic record that confirms the remote online notary public's name, jurisdiction, identifying number, and commission expiration date and generally corresponds to information in notary seals used on paper documents.

(7) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic document.

(8) "Identity proofing" means a process or service operating according to standards established by the Secretary of State through which a third person affirms the identity of an individual:

(a) by means of dynamic knowledge based authentication such as a review of personal information from public or proprietary data sources; or

(b) by means of analysis of biometric data such as, but not limited to, facial recognition, voiceprint analysis, or fingerprint analysis,

(9) "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(10) "Outside the United States" means outside the geographic boundaries of a state or commonwealth of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(11) "Principal" means an individual:

(a) whose electronic signature is notarized in a remote online notarization; or

(b) making an oath or affirmation or an acknowledgement other than in the capacity of a witness for the remote online notarization.

(12) "Remote online notarial certificate" is the form of an acknowledgement; jurat, verification on oath or affirmation, or verification of witness or attestation that is completed by a remote online notary public and:

(a) contains the online notary public's electronic signature, electronic seal, title, and commission expiration date;

(b) contains other required information concerning the date and place of the remote online notarization; and

(c) otherwise conforms to the requirements for an acknowledgement, jurat, verification on oath or affirmation, or verification of witness or attestation under the laws of this state; and

(d) indicates that the person making the acknowledgement, oath or affirmation appeared remotely online.

(13) "Remote online notarization" or "remote online notarial act" means a notarial act performed by means of communication technology that meets the standards adopted under this Chapter.

(14) "Remote online notary public" means a notary public who has been authorized by the Secretary of State to perform remote online notarizations under this Chapter.

(15) "Remote presentation" means transmission to the remote online notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the remote online notary public to:

(a) identify the individual seeking the remote online notary public's services;

and

(b) perform credential analysis.

(16) "Remotely located individual" means an individual who is not in the physical presence of the notary.

Sec. 2. RULEMAKING. The Secretary of State is authorized to adopt rules necessary to implement this (Chapter), including rules to facilitate remote online notarizations.

Sec. 3. STANDARDS FOR REMOTE ONLINE NOTARIZATION. (1) The Secretary of State by rule shall develop and maintain standards for remote online notarization in accordance with this subchapter, including but not limited to standards for credential analysis and identity proofing.

(2) In developing standards for remote online notarization, the Secretary of State shall review and consider standards established by the National Association of Secretaries of State (NASS), and national standard setting bodies such as the Mortgage Industry Standards and Maintenance Organization (MISMO).

(3) The rules shall be adopted not later than twelve months from the date of the enactment of this Chapter, and may thereafter be modified, amended or supplemented.

Drafters Note: This Model Act provides two optional approaches to qualifications for a remote online notary. States enacting this Model Act may select the optional approach that is preferred by the Secretary of State and notary stakeholders.

Option One: Requires a Separate Notary commission and separate application process.

Sec. 4. APPLICATION; QUALIFICATIONS.

(1) A notary public or an applicant for appointment as a notary public under this subchapter may apply to the Secretary of State to be appointed and commissioned as a remote online notary public in the manner provided by this section.

(2) A person qualifies to be appointed as a remote online notary public by:

(a) satisfying the qualification requirements for appointment as a notary public under this subchapter;

(b) paying the application fee described by Subsection (d); and

(c) electronically submitting to the Secretary of State an application in the form prescribed by the Secretary of State that satisfies the Secretary of State that the applicant is qualified.

(3) The application required by Subsection (b) must include:

(a) the applicant's name to be used in acting as a notary public;

(b) a certification that the applicant will comply with the Secretary of State's standards developed under this Chapter and

(c) an e-mail address of the applicant.

(4) The Secretary of State may charge a fee for an application submitted under this section in an amount necessary to administer this subchapter.

(5) The technology selected by a remote online notary public for remote online notarizations must conform to the Secretary of State's standards developed under this Chapter.

(6) A remote online notary public:

(a) is a notary public for purposes of (citation to general notary Chapter) and is subject to that (Chapter) to the same extent as a notary public appointed and commissioned under that Chapter;

(b) may perform notarial acts as provided by (citation to general authority) in addition to performing remote online notarizations; and

(c) may perform an remote online notarization authorized under this Chapter.

Option Two: Provides that a commissioned notary public may register as a remote online notary and no separate commission is required.

Sec 4. Registration Required.

(1) A notary public commissioned in this state may become a remote online notary public in accordance with this Section. Before a notary performs a remote online notarization he or she must register with the Secretary of State in accordance with rules for registration as a remote online notary and identify the technology that the electronic notary public intends to use, which must conform to any rules or regulations adopted by the Secretary of State.

(2) Before each registration to perform electronic notarial acts, an individual shall complete a course of instruction of [_____] hours approved by the Secretary of State and pass an examination based on the course. The content of the course shall include notarial rules, procedures, and ethical obligations pertaining to electronic notarization in this [Chapter] or in any other law or official guideline of this [State]. The course may be taken in conjunction with any course required by [the Secretary of State] OR [Section [_____] of [_____]] for a notary public commission.

(3) Unless terminated pursuant to this [Chapter], the term of registration to perform electronic notarial acts shall begin on the registration starting date set by the Secretary of State and shall continue as long as the notary public's current commission remains valid.

(4) An individual registering to perform electronic notarial acts shall submit to the Secretary of State an application in a format prescribed by the Secretary of State which includes:

(a) proof of successful completion of the course and examination required under subsection (b);

(b) disclosure of any and all license or commission revocations or other disciplinary actions against the registrant; [and]

(c) any other information, evidence, or declaration required by the Secretary of State; and

(d) evidence that the surety bond prescribed by Section _____ for performance of electronic notarial acts by communication technology has been issued.

(5) Upon the applicant's fulfillment of the requirements for registration under this Chapter, the Secretary of State shall approve the registration and issue to the applicant a unique registration number.

(6) The Secretary of State may reject a registration application if the applicant fails to comply with any section of this Chapter.

Sec. 5. AUTHORITY TO PERFORM REMOTE ONLINE NOTARIZATIONS.

A remote online notary public physically located in this state may perform a remote online notarial act using communication technology in accordance with this Chapter and any rules or regulations adopted by the Secretary of State for a remotely located individual who is physically located:

(1) In this State;

(2) Outside this State but within the United States; or

(3) Outside the United States if:

(a) The remote online notary public has no actual knowledge that the act of making the statement or signing the record is prohibited in the jurisdiction in which the person is located; and

(b) The person placing his or her electronic signature on the electronic record confirms to the remote online notary public that the requested remote online notarial act and the electronic record:

(i) are part of or pertain to a matter that is to be filed with or is currently before a court, governmental entity or other entity in the United States;

(ii) relates to property located in the United States; or

(iii) relates to a transaction substantially connected to the United States

Sec. 6. ELECTRONIC RECORD OF REMOTE ONLINE NOTARIZATIONS.

(1) A remote online notary public shall keep a secure electronic journal of each remote online notarial act performed by the remote online notary public. The electronic journal must contain for each remote online notarization:

(a) the date and time of the notarization;

(b) the type of notarial act;

(c) the type, the title, or a description of the electronic record or proceeding;

(d) the printed name and address of each principal involved in the transaction or proceeding;

(e) evidence of identity of each principal involved in the transaction or proceeding in the form of:

(i) a statement that the person is personally known to the remote online notary public;

(ii) a notation of the type of identification document provided to the remote online notary public;

(iii) a record of the identity verification made under this Chapter, if applicable; or

(iv) the following:

(1) the printed name and address of each credible witness swearing to or affirming the person's identity; and

(2) for each credible witness not personally known to the remote online notary public, a description of the type of identification documents provided to the remote online notary public; and

(f) the fee, if any, charged for the notarization.

(2) The remote online notary public shall create an audio and video copy of the performance of the notarial act.

(3) The remote online notary public shall take reasonable steps to:

(a) insure the integrity, security, and authenticity of remote online notarizations;

(b) maintain a backup for the electronic journal required by Subsection (1) and the recording required by Subsection (2); and

(c) protect the backup record from unauthorized use.

(4) The electronic journal required by Subsection (1) and the recording required by Subsection 2 shall be maintained for at least ten years after the date of the transaction or proceeding.

(a) The remote online notary public may designate as custodian of the recording and the electronic journal:

(i) the employer of the remote online notary public if evidenced by a record signed by the remote online notary public and the employer; or

(ii) a repository meeting the standards established by the Secretary of State.

(b) The Secretary of State shall establish;

(i) standards for the retention of a video and audio copy of the performance of the notarial act;

(ii) procedures for preservation of the audio and video copy and the electronic journal if the remote online notary public dies or is adjudicated incompetent or if the remote online notary public's commission or authority to perform notarial acts is otherwise terminated; and

(iii) standards for third party repositories for the retention of the audio and video copy of the performance of the notarial act.

Sec. 7. USE OF ELECTRONIC JOURNAL, SIGNATURE, AND SEAL.

(1) A remote online notary public shall keep the remote online notary public's electronic journal, electronic signature, and electronic seal secure. The remote online notary public may not allow another person to use the remote online notary public's, electronic signature, or electronic seal.

(2) A remote online notary public shall attach the remote online notary public's electronic signature and seal to the remote online notarial certificate of an electronic record in a manner that renders any subsequent change or modification to the electronic record to be evident.

(3) A remote online notary public shall immediately notify an appropriate law enforcement agency and the Secretary of State of the theft or vandalism of the remote

online notary public's electronic journal, electronic signature, or electronic seal. A remote online notary public shall immediately notify the Secretary of State of the loss or use by another person of the remote online notary public's electronic journal, electronic signature, or electronic seal.

Sec. 8. REMOTE ONLINE NOTARIZATION PROCEDURES.

(1) A remote online notary public may perform a remote online notarization authorized under this Chapter that meets the requirements of this Chapter and rules adopted under this Chapter regardless of whether the principal is physically located in this state at the time of the remote online notarization.

(2) In performing a remote online notarization, a remote online notary public shall verify the identity of a person creating an electronic signature at the time that the signature is taken by using communication technology that meets the requirements of this subchapter and rules adopted under this subchapter. Identity may be verified by:

(a) the remote online notary public's personal knowledge of the person creating the electronic signature; or

(b) each of the following:

(i) remote presentation by the person creating the electronic signature of a government-issued identification credential, including a passport or driver's license, that contains the signature and a photograph of the person:

(ii) credential analysis; and

(iii) identity proofing.

(3) The remote online notary public shall take reasonable steps to ensure that the communication technology used in a remote online notarization is secure from unauthorized interception.

(4) The remote online notarial certificate for a remote online notarization must state that the person making the acknowledgement or making the oath appeared remotely online.

(5) A remote online notarial act meeting the requirements of this Chapter satisfies the requirement of any law of this state relating to a notarial act that requires a principal to appear or personally appear before a notary or that the notarial act be performed in the presence of a notary.

Sec. 9. FEES FOR REMOTE ONLINE NOTARIZATION.

A remote online notary public or the remote online notary public's employer may charge a fee for performance of remote online notarization.

Sec. 10. TERMINATION OF REMOTE ONLINE NOTARY PUBLIC'S COMMISSION.

(1) Except as provided by Subsection (b), a remote online notary public whose commission terminates shall destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the remote online notary public's official electronic signature or seal. The remote online notary public shall certify compliance with this subsection to the Secretary of State.

(2) A former remote online notary public whose commission terminated for a reason other than revocation or a denial of renewal is not required to destroy the items described by Subsection (1) if the former remote online notary public is recommissioned as a remote online notary public with the same electronic signature and seal within three months after the former remote online notary public's former commission terminated.

Sec. 11. WRONGFUL POSSESSION OF SOFTWARE OR HARDWARE; CRIMINAL OFFENSE.

(1) A person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling a remote online notary public to affix an official electronic signature or seal commits an offense.

(2) An offense under this section is a (specify level of offence, i.e. class of misdemeanor, etc.)

Sec. 12. CONFLICT. In the event of a conflict between the provisions of this Chapter and any other law in this state, the provisions of this Chapter shall control.

SECTION 13. This Act takes effect _____.

The Following provisions are not part of the MBA-ALTA Model Act. These provisions are recommended for consideration to address recording in those states that have not adopted the Uniform Real Property Electronic Recording Act (URPERA) or to address recording in local recorder offices that do not have electronic recording capability.

Possible addition for non-URPERA states.

Sec. ____ RECORDING OF AN ELECTRONIC RECORD.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by paper copy of an electronic record that complies with the requirements of this chapter.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature if the notary has attached an electronic notarial certificate that meets the requirements of this Chapter.

SECTION¹ __. _ If the remote online notarial act is an acknowledgment, then the acknowledgement form shall indicate that the person signing the document appeared using communication technology. The Secretary of State by rule shall promulgate forms of acknowledgement for an acknowledgement performed online.

SECTION __. _ RECORDATION OF ELECTRONIC RECORDS IN TANGIBLE FORM.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, be in writing, or be signed, the requirement is satisfied by a paper copy of an electronic document bearing an electronic signature that a notary public has certified to be a true and correct copy of a document that was originally in electronic form and bearing an electronic signature pursuant to subsection (c).

(b) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied by a paper copy of an electronic document bearing an electronic signature of the person authorized to perform that act, and all other information required to be included, that a notary public has certified to be a true and correct copy of a document that was originally in electronic form and bearing an electronic signature of the person pursuant to subsection (c). A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

(c) A [recorder] shall record a paper copy of a document that was originally in electronic form and that is otherwise entitled to be recorded under the laws of this [state], provided that the paper copy has been certified to be a true and correct copy of the electronic original by a

¹ Optional paragraph relating to acknowledgement of remote online notarization

notary public duly commissioned under the laws of this [state] as evidenced by a certificate attached to or made a part of the document. The certificate must:

- (1) be signed and dated by the notary public, and be signed in the same manner as on file with the [commissioning officer or agency];
- (2) identify the jurisdiction in which the certification is performed;
- (3) contain the title of the notary public;
- (4) indicate the date of expiration, if any, of the notary public's commission; and
- (5) include an official stamp of the notary public affixed to or embossed on the certificate.

(d) The following form of certificate is sufficient for the purposes of this section, if completed with the information required by subsection (c):

State of _____

[County] of _____

I certify that the foregoing and annexed document [entitled _____ [document title, if applicable],] [dated _____ [document date, if applicable], and] containing _____ pages is a true and correct copy of an electronic document bearing one or more electronic signatures this _____ [date].

Signature of notary public

Stamp

[_____]

Notary Public

[My commission expires: _____]

[My notary registration number is: _____]

(e) A notary public duly commissioned under the laws of this [state] has the authority make the certification provided in this section.

(f) A notary public making the certification provided in this section shall

(1) confirm that the electronic record contains an electronic signature that is capable of independent verification and renders any subsequent changes or modifications to the electronic record evident,

(2) personally print or supervise the printing of the electronic record onto paper, and

(3) not make any changes or modifications to the electronic record other than the certification described in subsection (c).

(g) If a certificate is completed with the information required by subsection (c) and is attached to or made a part of a paper document, the certificate shall be conclusive evidence that the requirements of subsection (f) have been satisfied with respect to the document.

(h) A document purporting to convey or encumber real property or any interest therein that has, by inadvertence or excusable neglect, been recorded by a [recorder] for the jurisdiction in which the real property is located, although the document may not have been certified in accordance with the provisions of this section, shall impart the same notice to third persons and be effective, from the time of recording, as if the document had been certified in accordance with the provisions of this section.

(i) This section does not apply to a [plat, map or survey of real property] if under another law of this [state] or under a rule, regulation or ordinance applicable to a [recorder]

(1) there are requirements of format or medium for the execution, creation or recording of such [plat, map or survey] beyond the requirements applicable to a deed to real property, or

(2) such [plat, map or survey] must be recorded in a different location than a deed to real property.

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