
Online Notaries: Curse Or Cure During COVID-19 Crisis?

By Deborah S. Lapin

Every industry is finding new ways to work remotely during the current COVID-19 pandemic, and notaries are no exception to that rule. Remote notaries had already been on the rise, and over the last few years we've seen numerous items of state legislation that implement some form of online notarization. Given the COVID-19 pandemic, recent legislation has been introduced in the U.S. Senate and House of Representatives which would allow remote online notary services ("RON") in all 50 states.

The proposed Senate legislation would allow every notary in the United States to perform online transactions where they adhere to set minimum standards. This legislation would provide certainty for interstate RON, allowing notaries to operate online more easily nationwide. It would require tamper-evident technology and provide fraud prevention through use of multifactor authentication for identity proofing, and is intended to complement existing state RON laws. The Senate version of the proposed legislation would not preempt existing state laws that adhere to uniform consumer protections.

The proposed legislation in the House of Representative seeks to establish minimum standards for electronic and remote notarizations that occur in or affect interstate commerce. It would also require Federal courts in any state to recognize notarizations by a notary commissioned in another state and would similarly require states to recognize commissioned out-of-state notarizations affecting interstate commerce.

While the proposed federal legislation undoubtedly makes sense and could aid lenders and servicers in the short term, the risks associated with it must also be considered. Remote notarization has significant potential for fraud if the standards are loosened and safeguards are not implemented or adhered to. A loan closing that occurs with a RON during the pandemic may appear stable in the short term, but could be challenged based on fraud as part of a borrower's challenge to a foreclosure down the road.

Loosening regulations on notaries could also facilitate instances of all-out fraud, and all parties should stay watchful for these overreaches. As the pandemic progresses, we've heard stories of notaries' offers to allow borrowers to execute loan documents without a notary present physically or electronically, then borrowers would mail them back to be notarized. Such practice would violate many state notary laws, remote or otherwise. Opportunities for fraud also abound under the present circumstances, including relating to new legislation permitting drive-by property appraisals necessary for loan approval. Without appropriate safeguards and/or documentation, we may see instances of appraisers attesting to appraisals that they did not perform or which fail to meet minimum standards.

In short, RON services continue to provide an efficient and convenient option just as they did prior to COVID-19, but mortgage industry players must still stay alert to the possibility of fraud. Lenders and closing agents should understand that new legislation should work in combination with safeguards already in place to prevent fraud.

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