

Pandemic speeds remote online notarization

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Given the increase in virtual working environments due to COVID-19, many lenders are exploring electronic notarization, remote online notarization (RON), and even electronic signatures. While the pandemic may have spurred auto finance companies to move toward electronic notarization, electronic processes for notarization, signature verification and filing may quickly become the new normal.

Electronic notarization happens when a notary affixes an electronic notary signature and seal to an electronic document, such as a PDF or Word document. All other elements of a traditional paper notarization apply to electronic notarization, including the requirement for the signer to physically appear before the notary.

State remote online notarization laws generally permit parties to rely on interaction via live two-way audio-video communication — while the principal and notary are in different physical locations — to satisfy the personal appearance requirement. State RON laws and regulations vary on the type of technology, security measures and verification procedures for RON. Some states have even put out a list of approved and RON service providers.

To date, 26 states have authorized some form of RON legislation. The **Mortgage Bankers Association** and **American Land Title Association** have championed uniform RON legislation, which includes a model bill. Due to the pandemic, several states have temporarily authorized RON or accelerated the implementation of enabling legislation. While state law has historically governed RON, recent federal legislation spurred by COVID-19 seeks to provide a uniform landscape. However, as of Sept. 21, Congress has not enacted any federal law on the matter.

For auto lenders, the question of RON, electronic notarization and electronic signatures often comes up within the context of lien and title filings, which may require notarization. Some states have put out laws, regulations or policies on lien and title filings that specify the authentication, security, procedure or certificate requirements for electronic notarization, RON or electronic signatures. But other states may rely on laws of general applicability or desk drawer policies.

There are a number of technology companies that provide complete RON solutions. Lenders may find RON service providers helpful in providing desktop or smartphone applications that facilitate signing; performing identity proofing and credential analysis; setting up, capturing and storing the audio-video recording and digital document; and collecting payment from the signer.

Electronic notarization is authorized by the federal Electronic Signatures in Global and National Commerce Act (ESign), state adoptions of the Uniform Electronic Transactions Act (UETA), state statutes that permit electronic notarization, and state statutes that recognize the validity of acts

performed under, and in compliance with, the laws of another state. In addition, the Uniform Commercial Code (UCC) governs certain types of electronic signatures.

As we've seen in many other applications, the pandemic has catapulted the need for widespread adoption and acceptance of electronic notarization, RON and electronic signatures. While the legal framework for remote online notarization varies from state to state, we can expect continued advances in this arena in coming months and years.

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