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# Remote Online Notarization Across State Lines

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**Digital technologies are paving the way for more convenient and efficient transactions. Paper documents and wet-ink signatures are being replaced by their electronic equivalents, and “in-person” appearances can now be facilitated by secure and remote audio-visual solutions. More than half of the states in the U.S. have adopted permanent remote online notarization (“RON”) laws, and most of the remaining states have approved RON by executive or emergency order. In this article, we summarize the U.S. legal framework for RON, explore why notarial acts conducted in compliance with a state RON law likely will be recognized in any other state (even those that do not have RON laws), and discuss some steps to take when relying on RON.**

Most of us are all too familiar with the challenges of finding and meeting with a notary when needed to witness the signing of official documents associated with real estate, family law, corporate, or similar matters. If you do not have a notary in house, the need to physically appear before a notary can frustrate the prompt finalization of important matters as parties and the notary attempt to schedule in-person meetings.

But like many other activities, digital technologies are paving the way for more convenient and efficient transactions. Paper documents and wet-ink signatures are being replaced by their electronic equivalents, and “in-person” appearances can now be facilitated by secure and remote audio-visual solutions. As a result, more than half of the states in the U.S. have adopted permanent remote online notarization (“RON”) laws, and most of the remaining states have approved RON by executive or emergency order.

In this article, we summarize the U.S. legal framework for RON, explore why notarial acts conducted in compliance with a state RON law likely will be recognized in any other state (even those that do not have RON laws), and discuss some steps to take when relying on RON.

## RON transactions across state lines

Many of the core elements of the notarial process have remained consistent for centuries. These elements include (i) verifying the identity of an individual appearing before a notary, (ii) witnessing the document being signed, and (iii) confirming that the execution was an informed and willing act.

At a high level, RON builds upon the traditional notarial process with industry-standard audio-visual technology and e-signature related technologies—such as identity verification, fraud-evident encryption, and digital audit trails. Together, these technologies enable a notary public to remotely perform an efficient and secure electronic notarization.

In states that authorize RON, most—but not all—agreements that can be notarized in person can also be notarized remotely. For example, some states that allow RON do not allow remote notarization of certain estate documents, such as wills. Specific RON requirements vary, but, where RON is authorized, a registered notary public relies on conventional audio-visual communication tools, and digital identity verification technologies to identify signers, acknowledge the signing of a document, and make an audio-visual recording of the execution by those individuals appearing before the notary.

Some states may require the notary public to be physically located in the state where the document is being executed. Other states provide that the notary need not be in the state of execution of the applicable parties.

Regardless of the state nuances, however, and as we have seen with traditional notarizations, there are strong arguments to support the claim that a RON transaction executed in accordance with state law should be recognized anywhere in the United States.

## RON recognition across state lines

There is well founded law and precedent recognizing the validity of notarizations validly performed in another state. So, there are strong reasons to believe that RON acts performed in compliance with the requirements of the notary's state will be afforded interstate recognition.

### Statutory support for interstate recognition

Interstate recognition laws range from full recognition of all out-of-state notarial acts to more limited recognition of out-of-state notarial acts in specific circumstances, such as recording deeds regarding real property.<sup>1</sup>

The first **Uniform Acknowledgments Act** ("UAA") was promulgated in 1894 and contained interstate recognition provisions. Since that time, several Uniform and Model Acts have been proposed and adopted, providing for interstate recognition of acknowledgments and other common notarial acts:<sup>2</sup>

- (1939) Replacement Uniform Acknowledgments Act ("RUAA") rendered the notarial seal self-authenticating.
- (1968) Uniform Recognition of Acknowledgments Act ("URAA") extended self-authentication to all notarial acts.
- (1982) Uniform Law on Notarial Acts ("ULONA") established uniform provisions for the regulation of notarial acts.
- (2010) Revised Uniform Law on Notarial Acts ("RULONA") expanded ULONA to support electronic notarizations.

More recently, the National Notary Association's **Model Electronic Notarization Act of 2017** ("MENA") includes provisions for the uniform interstate recognition of notarial acts:

With respect to the official electronic notarial acts of notaries and notarial officers of other U.S. states, Subparagraph (a)(1) states the general rule that **an out-of-state electronic act is to be recognized provided it was performed by a notary or notarial officer of that jurisdiction in compliance with the law of that jurisdiction**. This policy is consistent with existing laws on the recognition of acknowledgments and other notarial acts in jurisdictions of the United States.<sup>3</sup>

One or more of these Uniform or Model Acts have been adopted in 36 states.<sup>4</sup> The remaining states have adopted non-uniform provisions, recognizing all acknowledgments of notaries made under the laws of other states and providing varying levels of recognition for other notarial acts.<sup>5</sup>

## Interstate recognition statutes are procedurally neutral

A key characteristic shared by interstate recognition provisions is that they are procedurally-neutral, meaning that the receiving state does not condition or qualify acceptance of a notarial act conducted in another state based upon the procedures used to perform it. One reason for this procedural neutrality is that, given the differences in notary requirements across states, a notary in one state likely will not be familiar with the notarial requirements in other jurisdictions.

For example, some states require “biometric” identifiers such as fingerprints to confirm identity,<sup>6</sup> while other states may simply require the presentation of government-issued identification documents or the statement of a credible witness known to the notary.<sup>7</sup> It would be unreasonable to expect a notary in one state to be able to perform a notarial act in accordance with the laws of another state. This is particularly relevant because a notary does not “seek out” individuals to perform notarial acts for them. To the contrary, individuals seek out notaries, thereby invoking the notary’s power and jurisdiction.

Procedural neutrality also is necessary because a notary’s authority and power emanate solely from the laws of the state in which they are a licensed notary public. As a public official, a notary must comply with, and is regulated by, the laws of the state in which they are licensed—and its corresponding commissioning authority. Failing to do so can result in sanctions, discipline, or liability. A notary cannot “pick and choose” the laws governing the notarial act.

Interstate recognition is therefore more than simply a matter of convenience or even “comity” between states. It derives from the fundamental nature of the notary as a commissioned public official.<sup>8</sup> As a public official, the “choice of law” governing a notary’s acts are by necessity the laws of the state whose commission the notary holds.

This principle has been affirmed by courts repeatedly across the last century and is the foundational principle on which the regime of interstate recognition laws is based.<sup>9</sup>

## Judicial support for interstate recognition

As noted above, state notarization laws vary. But these variations have not historically been considered a valid basis for state courts to declare a notarization defective, as long as it was properly completed under the laws of another state. Courts routinely recognize notarizations as valid when they were properly performed under the laws of the notary’s commissioning state.<sup>10</sup>

In perhaps the most striking illustration of this principle, the North Carolina Supreme Court in 1912 was faced with a challenge to the validity of a Texas notarial act because the notary was a woman, which was not allowed at the time in North Carolina. In **Nicholson et al. v. Eureka Lumber Co.**, the court rejected the challenge, observing that the notary “having been intrusted [sic] by the state of Texas with a notarial seal and having acted and professed to act in that state as a notary public, it will be assumed that she was rightfully appointed to that office, and that she acted rightfully in taking this probate, until the contrary is made to appear.”<sup>11</sup>

Courts addressing the validity of out-of-state notarizations have generally recognized the following principles:

- A notary is a public official of his or her own commissioning state,<sup>12</sup> and must comply with his or her own state’s law in performing a notarial act.<sup>13</sup>
- A notary has no power to perform a notarial act under the laws of another state.<sup>14</sup>
- The validity of a notarial act is determined by the law of the state in which the notary is commissioned.<sup>15</sup>
- The fact that the notarial laws of a notary’s commissioning state are different from those of the receiving state—even if those distinctions are fundamental policy differences—does not make the notarization invalid or defective, so long as the notary complied with the law of his or her own commissioning state.<sup>16</sup>

Thus, if a RON is conducted in accordance with the law of a notary’s commissioning state, it likely will not be deemed invalid merely because the procedures in the notary’s state differ from those in another state.

## Constitutional support for interstate recognition

In addition to the statutory and judicial support for out-of-state notarizations, Article IV, Sec. 1 of the U.S. Constitution (the “Full Faith and Credit Clause”) provides strong support for interstate recognition:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Notaries are public officials whose authority and power emanates solely from the state in which he or she is commissioned. As a public official completing ministerial acts, a notary’s acts fall within the Full Faith and Credit clause. In fact, early usage of the phrase “full faith and credit” predates the Constitution, and a notary’s certificate of a document’s authenticity was said to deserve “full faith and credit” by virtue of the notary’s official position in 1750.<sup>17</sup> As far back as 1889, U.S. state courts have recognized that acts of a notary are entitled to full faith and credit.<sup>18</sup> And some commentators have argued that the Full Faith and Credit clause requires mandatory, non-discretionary recognition by each state of other states’ notarial acts.<sup>19</sup>

## Public Policy Exception to Full Faith and Credit

Some, however, might be concerned that the Public Policy Exception to the Full Faith and Credit Clause might be used to undercut interstate recognition of RON. The U.S. Supreme Court has held that the Full Faith and Credit Clause does not require a state “to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.”<sup>20</sup> This could be interpreted as supporting the claim that a state need not recognize a notarial act performed in another state if the act does not align with the receiving state’s law in matters of public policy (e.g., whether notarial acts should require physical appearances).

However, the Public Policy Exception does not authorize a court to reject or nullify another state’s statute or any element of that statute simply because it offends a general perceived “public policy.”<sup>21</sup> Rather, the exception authorizes state courts to apply local state laws to a controversy instead of a foreign state’s laws, when the laws address the same subject matter and are in conflict.<sup>22</sup> This should not apply in the context of notarial acts.

As stated above, the procedures required for notarial acts differ from state to state. Those differences may include the number of witnesses required, acceptable forms of identification, or the information contained in a notary seal. However, the mere fact that the legal requirements for a notarial act in Maryland differ from those for notarial acts in California does not establish that Maryland notarial requirements conflict with California requirements. Maryland notarial requirements apply to the acts of a Maryland notary. California requirements apply to California notaries.

Notaries are only subject to the requirements of the states of their commissions. There is no basis to invoke the Public Policy Exception since there is no conflict to resolve—therefore, notarial acts properly performed under one state’s law should be recognized as valid and enforceable by other states.

## Conclusion

In light of the statutory frameworks for notarization and judicial precedent, courts assessing the validity of notarizations are not likely to deem a notarial act invalid simply because it was performed in compliance with the laws of a state that differ from the laws in the state where the notarial act is being assessed. This holds true for RON as well as traditional notary processes, even in states that do not authorize RON by law. In other words, if a RON is conducted in compliance with the notary's state law, it appears likely that the RON will be recognized in any state, even if the receiving state has not adopted a RON law.

That said, the majority of states have now formally recognized RON by law, and it seems likely that more states will follow. Moreover, there appears to be a good chance that the federal government will take steps to create a national framework for RON, providing clear support for interstate recognition of RON.

At present, notarization procedures vary from state to state. As a result, parties seeking to utilize RON should assess applicable laws and confirm that the tools notaries use meet relevant state requirements. The parties to a notarization may also want to confirm that, if challenged, they will be able to produce audit trails or testimony to evidence the authenticity of the electronic records, and that the notarization was done in compliance with applicable law.

In sum, the current state of interstate RON recognition appears to be favorable, and RON transactions validly performed under the laws in one state likely will be recognized in other states without incident.

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### Notes

- 1 Ala. Code 1975 § 35-4-26 (recognizes out-of-state acknowledgments related to conveyances and the creation of estates); Alaska Stat. §§ 09.63.050 (recognizes all out-of-state notarial acts), 09.63.080 (requirements for out-of-state acknowledgments); Ariz. Rev. Stat. Ann. §§ 33-501 (recognizes all out-of-state notarial acts related to conveyances and deeds), 33-504 (requirements for out-of-state acknowledgments related to conveyances and deeds); Ark. Code Ann. §§ 16-47-103(a)(2) (recognizes out-of-state acknowledgments regarding real estate conveyances), 16-47-203 (recognizes out-of-state acknowledgments); Cal. Civ. Code §§ 1182, 1189(b) (recognizes out-of-state acknowledgments for recordation); Colo. Rev. Stat. § 24-21-511 (recognizes all out-of-state notarial acts); Conn. Gen. Stat. Ann. §§ 1-30, 1-57, § 1-60 (recognizes all out-of-state notarial acts); Del. Code Ann. tit. 29 § 4324 (recognizes all out-of-state notarial acts); D.C. Code Ann. § 1-1231.10 (recognizes all out-of-state notarial acts); Fla. Stat. Ann. § 92.50(2) (recognizes out-of-state oaths, affidavits, and acknowledgments); Ga. Code Ann. § 44-2-21 (recognizes out-of-state acknowledgments related to recordation of deeds and other real property transactions); Haw. Rev. Stat. § 502-45 (recognizes out-of-state acknowledgments for recordation); Idaho Code § 51-111 (recognizes all out-of-state notarial acts); 765 ILCS 30/2 (recognizes all out-of-state notarial acts related to real property), 30/5 (requirements for out-of-state acknowledgments related to real property); Ind. Code Ann. § 32-21-2-5 (recognizes out-of-state acknowledgments regarding conveyance of real property); Iowa Code Ann. § 9B.11 (recognizes all out-of-state notarial acts); Kan. Stat. Ann. § 53-505 (recognizes all out-of-state notarial acts); Ky. Rev. Stat. Ann. §§ 423.345 (recognizes all out-of-state notarial acts), 423.110 (recognizes all out-of-state notarial acts), 423.140 (requirements for out-of-state acknowledgments); La. Rev. Stat. Ann. § 35:6 (recognizes all out-of-state notarial acts performed in front of two witnesses except those performed by remote online notarization); Me. Rev. Stat. Ann. tit. 4, §§ 1011 (recognizes all out-of-state notarial acts), 1014 (requirements for out-of-state acknowledgments); MD Code, State Government § 18-210 (recognizes all out-of-state notarial acts); Mass. Gen. Laws Ann. ch. 183, § 30(b) (recognizing out-of-state acknowledgments related to deeds or other instruments required to be acknowledged by grantors); Mich. Comp. Laws § 55.285a(1) (recognizes all out-of-state notarial acts); Minn. Stat. Ann. § 358.61 (recognizes all out-of-state notarial acts); Miss. Code Ann. §§ 89-3-9 (recognizes out-of-state acknowledgments related to conveyance of lands or personal property)[Note: Act has been repealed effective July 1, 2021] [Effective July 1, 2021 – H.B. 1156, sec. 12 recognizes all out-of-state notarial acts; no statutory provision yet assigned]; Mo. Ann. Stat. § 442.150 (recognizes out-of-state acknowledgments related to conveyances of real property); Mont. Code Ann. § 1-5-605 (recognizes all out-of-state notarial acts); Nev. Rev. Stat. Ann. § 240.164 (recognizes all out-of-state notarial acts); N.H. Rev. Stat. Ann. § 456-B:4 (recognizes all out-of-state notarial acts); N.J. Stat. Ann. §§ 46:14-6.1 (recognizes out-of-state acknowledgments related to property), 41:2-17 (recognizes out-of-state oaths, affirmations, or affidavits related to suit or legal proceeding in New Jersey); N.M. Stat. Ann. § 14-14-4 (recognizes all out-of-state notarial acts); N.Y. Real Prop. Law §§ 299, 299-a (recognizes out-of-state acknowledgments related to conveyance of real property); N.Y. Civ. Prac. L.R. § 2309 (recognizes out-of-state oaths or affirmations if accompanied by certificate as would be required to entitle a deed to be recorded); N.C. Gen. Stat. § 47-2 (recognizes all out-of-state acknowledgments related to the execution of instruments permitted or required by law to be registered); N.D. Cent. Code § 44-06.1-10 (recognizes all out-of-state notarial acts); Ohio Rev. Code Ann. §§ 147.51 (recognizes all out-of-state notarial acts), 147.54 (requirements for out-of-state acknowledgments); 49 Okla. St. § 115 (recognizes all out-of-state notarial acts); Or. Rev. Stat. § 194.260 (recognizes all out-of-state notarial acts); 57 Pa.C.S.A. § 311 (recognizes all out-of-state notarial acts); R.I. Gen. Laws § 34-12-1, 34-12-2(2) (recognizes all out-of-state acknowledgments related to instruments required to be acknowledged); S.C. Code Ann. §§ 26-3-20 (recognizes all out-of-state notarial acts), 26-3-50 (requirements for out-of-state acknowledgments); S.D. Codified Laws §§ 18-5-3, 18-5-15 (recognizes all out-of-state acknowledgments); Tenn. Code Ann. §§ 66-22-103 (recognizes all out-of-state acknowledgments related to instruments), 66-22-115 (requirements for out-of-state acknowledgments related to instruments); VTCA, Civil Practice & Remedies Code § 121.001(b) (recognizes all out-of-state acknowledgments or proofs of a written instrument); Utah Code Ann. § 57-2a-3(2) (recognizes all out-of-state notarial acts related to real estate); Vt. Stat. Ann. tit. 26 § 5374 (recognizes all out-of-state notarial acts); Va. Code Ann. § 55-118.1 (recognizes all out-of-state notarial acts related to recordation of documents); Wash. Rev. Code Ann. § 42.45.090 (recognizes all out-of-state notarial acts); W.V. Code § 39-4-11 (recognizes all out-of-state notarial acts); Wis. Stat. Ann. § 140.11 (recognizes all out-of-state notarial acts); Wyo. Stat. Ann. § 34-26-104 (recognizes all out-of-state notarial acts related to property, conveyances, and security transactions).
- 2 Including the Uniform Acknowledgments Act (1892); the replacement Uniform Acknowledgments Act (1939) (rendering the notarial seal self-authenticating); the Uniform Recognition of Acknowledgments Act ("URAA") (1968) (extending self-authentication to all notarial acts); the Uniform Law on Notarial Acts ("ULONA") (1982) (establishing uniform provisions for the regulation of notarial acts); and the Revised Uniform Law on Notarial Acts (2010) ("RULONA") (supporting electronic notarizations).
- 3 Model Electronic Notarization Act at Sec. 6-3, <https://www.nationalnotary.org/file%20library/nna/reference-library/modelenotarization-act.pdf> (emphasis added).

- 4 See Nat'l Notary Assoc., *The Enduring Benefits of Interstate Recognition of Notarial Act Laws 7* (2017), available at [https://www.nationalnotary.org/file%20library/nna/knowledge%20center/special%20reports/interstate-recognition-whitepaper\\_170705.pdf](https://www.nationalnotary.org/file%20library/nna/knowledge%20center/special%20reports/interstate-recognition-whitepaper_170705.pdf).
- 5 *Id.*
- 6 See Illinois' requirement, 5 ILCS 312/3-102(c)(6), and California requirement, CA Gov't Code § 8206(a)(2)(G).
- 7 See, e.g., Mich. Laws § 565.262.
- 8 Michael Closen, *The Public Official Role of the Notary*, 31 J. Marshall. Law Rev. 651 (1998); Michael Closen, *Notaries Public — Lost in Cyberspace or Key Business Professionals of the Future?*, 15 John Marshall Journal of Infor. Tech. & Privacy Law 703 (1997).
- 9 See, e.g. *Era v. Morton Cmty. Bank*, 8 F.Supp.3d 66 (D.R.I. 2014); 71; *State v. Davis*, 700 S.E.2d 85, 89 (N.C. App., 2010); *Otani v. District Court in and for Twenty-First Judicial Dist.*, 662 P.2d 1088, 1090 (Colo. 1983). See also *Pierce v. Indseth*, 106 U.S 546 (1883).
- 10 See generally, RULONA; UAA; URAA; ULONA; *Apsey v. Memorial Hosp.*, 730 N.W.2d 695 (Mich. 2007) (uniform statute providing for recognition and acceptance of out-of-state notarial act provided a valid, non-conditional means of accepting other states' duly performed notarial acts);
- 11 *Nicholson et al. v. Eureka Lumber Co.*, 75 S.E. 730, 731 (N.C. 1912) (Conc. Stmt. Clark)
- 12 See, e.g., *NationsBank of N. Carolina, N.A. v. Parker*, 140 N.C. App. 106 (N.C. Ct. App. 2000) ("In North Carolina a notary public is a public officer."); *In re Gray*, 410 B.R. 270 (Bankr. S.D. Ohio 2009) (same); *In re Estate of Alfaro*, 301 Ill.App.3d 500 (2d Dist. 1998) (same).
- 13 See, e.g., *Tennessee Notary Public Handbook* (2006 ed.) at 1 ("A notary public is a public official whose powers and duties are defined by statute."); *Era v. Morton Cmty. Bank*, 8 F.Supp.3d 66 (D.R.I. 2014); *State v. Davis*, 700 S.E.2d 85 (N.C. App., 2010); *Otani v. Dist. Ct. in and for Twenty-First Judicial Dist.*, 662 P.2d 1088 (Colo. 1983).
- 14 See *In re Interest of Fedalina G.*, 272 Neb. 314 (Neb. 2006) ("[T]he power of a notary to perform notarial functions is limited to the jurisdiction in which the commission issued."); *State v. Haase*, 530 N.W.2d 617 (Neb. 1995) (Iowa notary could not legally notarize in Nebraska, a state in which he was not commissioned as a notary).
- 15 *Bradley v. Bradley*, 164 P.3d 357 (Utah 2007); *State ex rel. Albemarle Child Support Enf't Agency, ex rel. Johnson v. Eason*, 198 N.C. App. 138, 141 (N.C. Ct. App. 2009).
- 16 *Bradley v. Bradley*, 164 P.3d 357 (Utah 2007); *State ex rel. Albemarle Child Support Enf't Agency, ex rel. Johnson v. Eason*, 198 N.C. App. 138, 141 (N.C. Ct. App. 2009); *Rumph v. Lester Land Co.*, 205 Ark. 1147 (Ark. 1943); *Jorgensen v. Crandell*, 134 Neb. 33 (Neb. 1938).
- 17 Stephen E. Sachs, *Full Faith and Credit in the Early Congress*, 95 Va. L. Rev. 1201, 1218 (2009)
- 18 *Pape v. Wright*, 19 N.E. 459, 462 (Ind. 1889) ("all of [the notary's] official acts as such are entitled to full faith and credit.")
- 19 See e.g. Closen, *The Public Official Role of the Notary*, 31 J. Marshall. Law Rev. 651, 695 (1998). For other references to the Full, Faith and Credit clauses potential role in requiring such recognition, see NASS, *Issues and Trends in State Notary Regulation*, (Jan. 13, 2011); NNA's Model Act of 2010, at Sec. 11-2, Comment, p. 72.
- 20 *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 501 (1939).
- 21 See *Hughes v. Fetter*, 341 U.S. 609 (1951).
- 22 *Baker v. General Motors*, 522 U.S. 222, 234 (1998); see also *Alaska Packers Ass'n v. Industrial Accident Commission*, 294 U.S. 532 (1935).

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