

# Remote Online Notarization: A Natural Evolution of E-Signature

How electronic signature laws and principles in the U.S. laid the foundation for the advent of remote online notarization

## Introduction

**A notarial act is the act of signing a document in the presence of a state-licensed individual known as a notary public. Notaries verify the signer’s identity, witness the document being signed, affix a notarial seal to the document and record the transaction in a journal. Notarizations have historically been conducted on paper and in person, but as electronic signature-related technologies and associated legal principles became more familiar, these traditional manual and paper-based processes are being replaced by digital remote solutions.**

As of the writing of this article, more than half of the states in the U.S. have passed legislation permanently enabling notaries to utilize electronic signature-related technologies to remotely notarize documents through a process called remote online notarization (“RON”). Most of the remaining states have similarly authorized notaries to perform RON through executive orders or temporary legislation.

Criteria for performing RON vary by state, but follow a general approach:

- Notary registration with the state
- Use of audio-visual communication technology
- Utilization of digital identity verification technology
- Application of electronic signatures and electronic seals
- Reliance on electronic journaling and storage
- Adherence to common data privacy principles

RON legislation follows in the footsteps of federal and state e-signature laws, which enabled broad industry acceptance and fostered technological innovation. These same laws provided the foundation for in-person electronic notarization (“IPEN”), which will be discussed further below. RON, currently gaining momentum across the country, represents the next phase of this evolution of law and technology; it utilizes similar e-signature technologies and principles to enable easier, more secure and more flexible notarization.

This paper will address the benefits of RON, the laws currently governing it—including related e-signature laws—and pending RON legislative initiatives at the U.S. state and federal level.

## What is RON?

As society and technology have progressed, the available means to complete notarial acts have likewise progressed. Electronic signature-related technologies have helped to significantly further the modernization of notarization in the form of RON.

At a high-level, RON is the use of electronic signature-related technologies—such as identity verification, fraud-evident encryption technology and digital audit trails—in conjunction with industry standard audio-visual technology. In combination, these technologies enable a notary to perform an efficient and secure electronic notarial act. The notary and the person seeking the notarial act can remotely communicate with one another without needing to be in physical proximity.

Most states that have enacted a RON law have followed common principles inspired by electronic signature processes, including:

- Expanding the concept of “personal appearance” before a notary to include appearance via qualifying audio-visual technology
- Specifying acceptable methods for reliably establishing the signer’s identity
- Preserving the integrity of the electronically signed documents
- Creating an electronic journal memorializing the notary’s RON transactions
- Creating an audio-visual recording of the notarial act to enhance the integrity of the process

Much like the foundational e-signature laws, RON laws generally reinforce the principle of technology-neutrality—that is, ensuring that no particular technology or process is accorded higher legal deference than any other. This approach helps ensure that technological innovation can flourish without the need for additional legislation or regulation.

## Benefits of RON vs. in-person notarization

RON provides numerous benefits to parties seeking notarial acts, thus furthering the vital societal function that notaries perform. These benefits include:

### Convenience and increased access to notarial services

At a basic level, RON is a more convenient method to receive notarial services because individuals can choose both a time and location that is convenient for them. Because of this convenience, more people—such as those who may work long hours and have difficulty scheduling during a traditional 9-5 workday—will have easier access to vital notarial services. In addition, during the COVID-19 pandemic, RON helps protect signers and notaries with high risk health issues, and prevent the spread of the virus.

### Fraud minimization

The cornerstone of any notarial act is verifying a person's identity. Compared to a traditional in-person notarial act, RON can help minimize fraud by better authenticating a person's identity. RON does this by utilizing well-established identity proofing technologies, which are regularly used by those who rely on electronic signatures for their digital transactions.

For example, credential analysis involves the signer presenting a government issued identification to the camera for image capture and verification. The ID is checked against public and private data sources to confirm its authenticity. Further, the ID's visual, physical and cryptographic security features are confirmed. Credential analysis provides a better and more sophisticated process for ensuring the legitimacy of the underlying credential than the traditional process of an in-person review of the credential performed by someone who may not have training or expertise in identifying fraudulent credentials.

Additionally, the use of a dynamic knowledge-based authentication ("KBA") process, which relies on information pulled from a third-party database, requires potential signers to answer multiple questions that draw from the signer's personal background and do not rely on the signer's relationship with any one person or entity.

RON provides the ability for notaries to apply innovative identity proofing technologies to increase the certainty and consistency of properly identifying the signer. Further, these identity verification methodologies will continue to evolve over time—and can be applied by notaries in reliable and auditable ways.

### Security and enforceability

A RON act is more secure than a traditional in-person notarization. The enhanced security used in a RON transaction relies upon electronic signature technologies that have been consistently and securely used for nearly two decades. Such technologies, like tamper-evident sealing of electronically signed and notarized documents, allow for parties to determine later whether the document has been altered. Further, RON relies upon electronic signature technologies to generate a digital audit trail called a journal. In conjunction with these mature technologies, RON also utilizes industry-standard audio-visual technology to:

- Protect both the notary and the signer by documenting the notarization session, making it easier to establish that neither party is signing or notarizing a document under duress; and
- Enhance the attribution and reliability of any signed document by documenting the RON session with a secure recording of the session that complements the journal record.

This multifaceted approach of securing and ensuring the auditability of a RON session provides the parties a heightened digital record that can be used as evidence to substantiate the authenticity of the signed and notarized document.

### Are all electronic or remote notarizations RON?

In short, no. As notarization continues to evolve from a traditional paper-based, in-person process, other variations have arisen over time.

	<b>In person transaction</b>	<b>Remote transaction</b>
<b>Paper document</b>	Traditional notarization	Remote ink-signed notarization (“RIN”)
<b>Electronic document</b>	In-person electronic notarization (“IPEN”)	Remote online notarization (“RON”)

IPEN, used across various states in recent years, involves a notary performing an electronic notarization while physically present with the signer(s). IPEN was the first foray into electronic notarization, however, unlike with RON, the notary is required to be in the same physical location as the signers to complete the notarial act.

There also is remote ink-signed notarization (“RIN”), which generally allows the signer and notary to appear over two-way audio-visual communication; however, the notary is required to watch the signer sign a paper document. The signer then must mail the signed document to the notary, who must then notarize and return the document as needed.

## Laws governing RON

Laws governing RON generally begin with the foundational laws established over the past 20 years, governing the use and validity of electronic records and signatures. These laws establish the core principles—such as technology neutrality, auditability, security and data privacy—for legally enforceable electronic transactions.

### ESIGN and UETA

In 1999, the Uniform Law Commission (“ULC”) approved for adoption by the states a model electronic signature law called the **Uniform Electronic Transactions Act (“UETA”)**. UETA provides that, in connection with most consumer and commercial transactions, e-signatures and electronic records cannot be denied legal effect solely because they are in electronic form.

In short, e-signatures and electronic records have the same legal effect as handwritten signatures on paper documents. Further, UETA enabled notaries to sign electronically, effectively removing the stamp and seal requirements. To date, 48 states plus Washington, D.C., Puerto Rico and the Virgin Islands have adopted UETA, with New York and Illinois separately adopting laws that are substantially similar to UETA.

In 2000, the United States Congress passed the **Electronic Signatures in Global and National Commerce Act (“ESIGN”)**, which like UETA, grants electronic signatures and records the same legal effect as handwritten signatures and paper documents for most consumer and commercial transactions, and permits a notary to sign electronically.

These two statutes provided the catalyst for notarial acts to utilize electronic processes—laying the foundation for IPEN transactions adopted across many U.S. states in recent years.

#### The key elements of ESIGN and UETA are:

- A contract may not be denied legal effect or enforceability solely because of its electronic form;
- If a law requires a record to be in writing, an electronic record satisfies the law;
- If a law requires a signature, an electronic signature satisfies the law; and
- No specific technology or process is accorded higher deference than another (technology neutral), thereby ensuring future technologies would not need to wait on legislative amendments in order to be used to perform electronic signing acts.

## URPERA

In 2004, the ULC approved another model law, the **Uniform Real Property Electronic Recording Act (“URPERA”)**, which authorizes county recorders and registrars to accept and register electronic real estate records and also recognizes the validity of electronic notarial acts associated with those records. URPERA has since been adopted by 37 jurisdictions.

## State RON law: RULONA

A notary's authority to perform notarial acts stems from the underlying law in the notary's state, and most state traditional paper-based notarial laws require the signer to “appear before” or be in the “physical presence” of the notary. Electronic-signature related laws provided the foundation to enable IPEN, electronic notarization on an in-person basis.

In 2011, Virginia became the first state to enact RON legislation permitting remote online notarization (with the law taking effect in 2012). Montana was the second state to adopt RON legislation in 2015, and Texas was the third in 2017. As of this writing, a total of 29+ states have enacted RON laws.

Similar to UETA for electronic signature, the ULC published the **Revised Uniform Law on Notarial Acts of 2018 (“RULONA”)** for states to adopt and enable RON in their state. RULONA updates the ULC's previously approved **Uniform Law on Notarial Acts of 2010** (the “**2010 ULONA**,” which in turn was an update to the 1982 Uniform Law on Notarial Acts). RULONA sought to update 2010 ULONA to reflect numerous societal and technological changes, including the need for remote electronic transactions and the need to further promote uniformity among the states with regard to their laws governing notarial acts.

RULONA implements structural and operational rules for those notarial acts that often were inconsistent or absent in prior state laws. RULONA provides certainty in the process of performing notarial acts regardless of whether: (i) the notarial act is completed on a tangible or an electronic record, and (ii) the signer appears before the notary physically or via audio-visual technology. As of this writing, RULONA has served as the template for RON laws in 12 states.

## Notarization requirements and tech provider support

Much as we saw with electronic signature laws over the past 20 years, state RON laws tend to align around a set of core principles designed to enable adoption of this highly valuable, secure and efficient technology. As described above, these principles include expanding (i) the concept of personal appearance, (ii) the method of establishing a signer's identity, (iii) the integrity of the document signed, and (iv) the creation of electronic journals.

RON laws—along with supplemental state agency regulations and guidance for these laws—do differ somewhat from state to state. States have adopted varying requirements around the following elements:

### **Notary registration**

Certain states require that the notary obtain a registration to act as an electronic notary in addition to the standard notarial registration. This requirement may entail additional education, training, and/or bond requirements.

### **Technology requirements**

For RON, the parties must use two-way audio-visual technology. States have adopted further requirements, such as (i) the recording must be continuous; (ii) the recording must be secure from unauthorized interception; (iii) there must be encryption or tamper-sealing; or (iv) when necessary, facilitate communication with a person who has a vision, hearing, or speech impairment.

### **Identity verification**

As noted above, identifying the signer is recognized as an important aspect of a notarial act. In a remote environment, states require that the person undergo “identity proofing,” which can mean (i) remotely presenting a government-issued credential to the notary, (ii) using a third-party vendor to perform “credential analysis” to confirm the credential's authenticity, and (iii) having the signer complete a dynamic KBA process in which the signer must correctly answer a specific number of personal questions that only the signer would know.

### **Electronic signature**

Most states require an electronic signature, but some states require digital signature. A certificate-based digital signature is a type of e-signature that provides the highest level of assurance of a signer's identity.

### **Electronic notarial seal**

States will frequently have requirements regarding the content and form for electronic seals. These requirements may include the type of information that must appear in the seal and where the seal must be displayed in the signed document as well as the notary's responsibilities regarding maintaining the notarial seal.

### **Journaling**

States typically require that notaries maintain an audit trail (journal) of their notarial acts. For RON, states may impose additional journal obligations such as the digital format that the journal must be in and what entries must be included in the journal to document the RON session, that the journal is digitally backed up, that the journal (and its backup) be maintained and retained for a specified period, and that the journal is secured by tamper-evident digital technology.

### **Session requirements**

States will have requirements governing the RON session itself, including whether the notary must be in-state to perform RON and where the signer can be located during the RON session.

### **Storage and retention**

States also have requirements that apply to maintaining the recording of the RON session. These requirements may include maintaining a backup recording as well as a specified period in which the recording (and if required, the backup recording) must be maintained. Additionally, states may impose security requirements, such as tamper-evident technology, on the stored recording.

## What is the future of RON?

### Expansion of RON legislation across the country

We anticipate seeing a marked expansion in the number of states adopting legislation, substantively similar to RULONA, authorizing RON. In addition to states that are currently in the process of evaluating new RON laws, some states have also enacted stop-gap COVID-19 executive orders enabling RON—however, these orders are temporary in nature. In some states, the authorization granted by these orders have specific termination dates. In others, the order remains in effect for the duration of the pandemic emergency, but it is not always clear how the end date will be determined. However, we expect many of these temporary orders will lead to the permanent adoption of RON laws over time.

### Further standardization of RON

Unlike with ESIGN, the federal government has not yet enacted legislation to help facilitate uniformity for RON, which is currently subject to a more state-centric approach than electronic signature. As noted above, the specific requirements for RON vary somewhat from state to state, and agency regulations and guidance supporting such laws often add further requirements which may be inconsistent.

This non-uniformity led to the introduction of a bipartisan bill—the “**Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020**” (“**SECURE Act**”)—to authorize notaries across the United States to perform RON, with an established set of standards. While the SECURE Act did not pass in 2020, we nevertheless anticipate continued bipartisan efforts at the federal level to attempt to help harmonize the varied state-by-state RON approaches.

Much as electronic signature law enabled widespread adoption of valuable technology across the United States on a consistent basis, it is natural to expect the law to similarly evolve to enable a reliably consistent nationwide approach to RON.

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