

# Remote Online Notarization – Update

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On March 30, 2020, [we released an article](#) which provided a brief overview of Remote Online Notarization (RON). That article also links to several resources that provide updates on the adoption and implementation of RON measures throughout the United States, as well as information on emergency actions taken by state governors allowing for notarization without an in-person interaction between the signatory and the notary.

We want to keep our readers directly informed as to recent legislative and executive actions concerning RON and remote notarial acts, both on an emergency basis and via formal legislative and executive processes. To that end, [we have included a chart](#) prepared by our office which provides a snapshot of legislative and executive updates for remote notarial throughout the United States.

In addition, we would like to highlight the executive action taken by Governor Greg Abbott in Texas. As mentioned in our original article, Texas has adopted a RON statute, which statute has been implemented via state regulations, and this statute and accompanying regulations remains in force. In addition, on April 29th the Office of the Governor temporarily suspended the requirement to physically appear before a notary public in Section 121.006(c)(1) of the Texas Civil Practice & Remedies Code, as necessary to allow for appearance before a notary public (for the purpose of acknowledging real-estate instruments) via videoconference.

This suspension of the in-person “appearance” requirement and accompanying guidance from the Texas Attorney General (the “AG Guidance”) differs from RON (as adopted in Texas) in the following respects:

- While RON in Texas requires the use of very specific two-way audio-video technology, the AG Guidance specifies only that the notary public use two-way audio-video communication technology that permits direct and contemporaneous interaction between a person signing a document and a notary public by sight and sound. In theory then Zoom, WebEx, FaceTime and other widely-used audio-video communication technology could be utilized for this purpose.
- While RON in Texas has very specific technology and requirements for verifying the identity of the signatory, the AG Guidance permits either of the following: a signatory may hold up to a video camera his or her Driver’s License, passport or other government-issued identification (so long as it contains the signature and a photograph of the signatory, and is of sufficient quality to allow for identification via the two-way audio/video communication) or the introduction of a signatory by oath of a credible witness who personally knows the signatory and is personally known to the notary public.
- The AG Guidance requires that the notary public keep a recording of the audio-video communication for two years, but the record-keeping and encryption requirements under the AG Guidance are not as strict (and do not require any particular type of technology) as RON in Texas.
- RON is purely electronic in form – the documents are executed, notarized, and stored electronically. The conditions under the AG Guidance permit the signatory to sign and send tangible documents by courier, U.S. Mail, or overnight carrier to the notary public for the notary public to sign and affix the notary public’s official stamp and seal. Hence, under the AG Guidance any recording of the remotely notarized document would be in tangible (and original) form, not electronic documents produced using tamper-seal technology.
- Unlike for RON, the AG Guidance does not include any specific requirement (or criteria) for a Texas-licensed notary public to be certified or further trained for purposes of conducting a notarial act in Texas pursuant to the AG Guidance.
- Unlike for RON, where a notary public licensed (and physically located) in Texas is authorized to perform RON for a signatory located outside of Texas, the AG Guidance only applies where both the notary and the signatory are physically located in Texas.

It is important to note that all documents signed under the conditions of the AG Guidance require that the notarial certificate, jurat, or acknowledgement affixed to such documents include language substantially similar to the

following: "This notarization involved the use of two-way audio-video communication pursuant to the suspension granted by the Office of the Governor on April 27, 2020, under section 418.016 of the Texas Government Code."

Keep in mind that the suspension of the in-person "appearance" requirement will expire upon the earlier of May 30, 2020, or the termination of the Governor's March 13, 2020 disaster declaration, so time is of the essence for parties to commercial real estate transactions that wish to afford themselves of the relaxed standards of the AG Guidance. This suspension does nothing to hinder traditional notarization or a standard RON notarization, but rather provides an alternative, flexible option to notarize commercial real estate documents while the AG Guidance is in effect.

**Helpful Resources and Links:**

The announcement from the Texas Secretary of State, along with the AG Guidance, can be found here:

<https://www.sos.state.tx.us/statdoc/notary-public.shtml>

Information as to emergency orders nationwide for "remote notarization" can be found on the website of the National Notary Association here: <https://www.nationalnotary.org/notary-bulletin/blog/2020/03/states-emergency-action-remote-notarization>

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