



Notarization in the Age of COVID

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As we continue to navigate changes posed by the COVID-19 pandemic, traditional methods of locating notaries have become less effective as businesses continue to work away from the physical office. CEB's guidebook, *Notarization in the Age of COVID*, has been developed to help attorneys navigate getting documents notarized virtually.

Overview

As we continue to navigate new changes posed by the COVID-19 pandemic, traditional methods of locating notaries have become less effective as businesses move away from the physical office. Options for notarization now include in-person and remote online notarization (RON), even in states which haven't passed legislation to allow it. RON may work for document signers with tech support via specialized notarization partners. Laws regarding RON are complicated and vary by state, so it is best to delegate or work closely with experts.

What are the challenges for notarization after COVID?

Traditionally, notarization is done in person with face-to-face interactions and the exchange of documents. However, although notaries are considered essential, many have chosen not to continue working in order to minimize exposure to COVID-19.

Some new challenges include:

- Danger posed to the health of people in high-risk categories
- Confusion about emergency laws passed to allow RON
- Law office and bank closures reduce available options
- Some clients are unfamiliar with using remote technology
- Difficulty finding notaries willing to meet in person
- Client frustration with inability to conduct the process in person

Where can I still find in-person notaries?

- Friends and colleagues
- Banks
- Mailbox stores
- Local Mobile Notaries
- Notary directories (e.g. 123notary.com)
- Local and nationwide notary companies

REMOTE ONLINE NOTARIZATION (RON)

What is RON?

Remote Online Notarization (RON) is the use of audio-video technology to facilitate notarization through a video conference. It requires identity authentication, and sessions are recorded and required to be stored for up to 10 years depending on the state.

- Signers receive a PDF copy of their documents
- No wet-signature (when a person physically marks a document) copy is provided but a physical copy can be printed
- Most California county recorders accept recording deeds notarized remotely out of state
- Some electronic signature/RON platforms include Zoom, DocVerify, SIGNiX, and Pavaso



REMOTE ONLINE NOTARIZATION (RON)

What technology is needed for RON?

The signer will need:

- A smartphone, tablet, laptop or desktop computer with a working speaker, microphone and video camera
- The latest version of their browser installed
- High speed internet

How do you authenticate the signer's identity?

- Signer has a current Passport, Driver License or state issued identification card
- OR -
- Signer uses their residential address and correctly answers 4 out of 5 timed questions for KBA (Knowledge Based Authentication) based on at least 3 years of historic U.S.-based public record

THE RON PROCESS

1. Documents are uploaded into the RON platform as PDFs.
2. The signer and documents are authenticated using valid ID or KBA.
3. The signer signs and the notary notarizes the document over a live two-way audio-video conference. Both parties receive a signed copy.
4. The authentication date and audio-video records are securely saved to the notary's electronic journal.



What can be challenging about RON, particularly for estate planning law firms?

- Laws differ by state
- Adapting to new technology and knowing which platform to use
- Varying costs per platform
- Passing the KBA
- Locating remote online notaries quickly

Working with experts can help streamline the process and make navigating these factors much easier.

How to make RON successful

- Exercise patience
- Screen to make sure the client has the technology available
- Have a technical assistance plan for clients who need additional technology support
- Recruit notaries and staff with expertise in state law, patience, and time to support the process

RON LAWS

Are electronic signatures legal?

Electronic signatures became legal in every state and U.S. territory where federal law applies with the passage of the United States (U.S.) Electronic Signatures in Global and National Commerce (ESIGN) Act in 2000. When federal law doesn't apply, most U.S. states have adopted the Uniform Electronic Transactions Act (UETA).

However, some limitations exist, including California law which excludes electronic signatures for **wills**, **codicils**, and **testamentary trusts** under the government code.

RON LAWS

Which states allow RON?

Each state has different regulations. Today, 28 states have officially authorized RON. Other states have emergency RON statutes and gubernatorial orders. It's recommended to check each state's website regularly to stay updated on changes.

Are RON notarizations completed in other states valid out of state?

Currently, ten states and the District of Columbia operate under the ULONA's (Uniform Law on Notarial Acts) interstate recognition statute. Twelve states have also adopted the Uniform Recognition of Acknowledgments Act (URAA). The following states have passed their own interstate recognition statutes:

- Alabama, California – **Cal. Civ. Code § 1189 (B)**, Florida, Georgia, Hawaii, Indiana, Mississippi, Missouri, New Jersey, New York, North Carolina, Rhode Island, Tennessee, Texas, Vermont

Is RON allowed in California?

Yes it is. As long as it is done legally with a notary in a state that allows it per Section 1189(b).

ESTATE PLANNING LAW AND RON

Trusts

Trusts do not need to be authorized or witnessed. However, notarization is a best practice. It is typical and expected for such documents to be notarized, and a lack of notarization may make third parties—such as banks and escrow companies—wary of honoring the instrument.

Witnessed Wills

Two independent witnesses are needed. The “present” requirement of § 6110(c)(1) requires “physical presence.” Remote “virtual” witnessing, if carefully documented, seems to provide clear and convincing evidence of the requisite testamentary intent, per Probate Code § 6110(c)(2), but that has not yet been judicially determined.

Holographic Wills

Probate Code § 6111 authorizes holographic wills. Requirements include:

- Signature and material provisions must be in testator's handwriting
- Date of execution is needed for validity in certain circumstances
- Statement of testamentary intent contained may be set forth in testator's own handwriting or part of a commercially printed form

“Pour Over” Wills

Pour over wills are “fallback” documents in trust-based plans. Where a living trust is a “will-substitute,” the will is mainly only needed if an asset is left out of the trust and requires probate court administration. The testator can write a short, pour-over holographic will with attorney guidance.

Durable Power of Attorney

- Must be acknowledged by a notary or signed by two witnesses
- Attorney-in-fact appointed by POA may not act as a witness
- Witnesses must each witness the principal signing the POA

ESTATE PLANNING LAW AND RON

Advanced Healthcare Directive

Electronic advanced healthcare directives (AHCDs) are authorized but must be acknowledged by a notary public (Probate Code § 4673(b)).

Deeds

Recorded documents generally require original signatures. Though California County Recorders traditionally require “wet” signatures notarized in the physical presence of the signer, some counties are now allowing title/escrow, law firms, and other authorized companies to electronically submit deeds that are validly notarized under the law of another state authorizing RON.

California counties which accept RON deeds from out of state include:

- Los Angeles, Riverside, Sacramento, Placer, Imperial, San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, and 30 other California counties

KEY TAKEAWAYS

- It is legal to use RON in California.
- Laws differ by state, but nearly every state accepts notarizations completed in another state.
- Technical support is crucial to a successful and smooth RON process.
- Work with providers who are familiar with estate planning documents and know how to prepare the documents accurately.
- Outsource document preparation before the notarization to facilitate a shorter, smoother experience for the client.



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