
Remote Online Notarization: One Year Later

Legal Alert

April 12, 2021

Kelly Barry

The introduction of virtual notarization (aka remote online notarization, or “RON”) has recently been a hot topic thanks to the barriers created by the COVID-19 pandemic. Now that it’s been over since the pandemic began, where does virtual notary law stand? Some states have embraced RON, whereas others are more hesitant to codify RON into law.

Set forth below is a quick summary of the respective New Jersey, New York, Pennsylvania and Florida laws surrounding remote online notarization, an essential tool during the pandemic.

New Jersey

New Jersey had entertained permitting RON access in 2019, before the pandemic struck, but has declined to impose permanent virtual notarization laws since then. As a result of the pandemic, the New Jersey legislature enacted a temporary RON statute on April 14, 2020. Under New Jersey’s temporary law, a notary public or notarial officer must authenticate the identity of the remotely located individual, which can be established (i) if the remotely located individual is personally known to the notary official, (ii) if a credible witness known to the notary official swears to the identity of the remotely located individual, or (iii) if the remotely located individual provides at least 2 forms of identification. Additionally, the notary official must be reasonably able to confirm the document before the notary official is the same document that the remotely located individual signed and the notary official must create an audiovisual recording of the notarization, which recording must be retained for a period of at least 10 years.

New York

New York Governor Andrew Cuomo issued an executive order temporarily permitting notarization of documents via “audio-video technology”, provided that:

- The person seeking the notary official’s services, if not personally known to the notary official, must present valid photo ID to the official during the video conference;
- The video conference must allow for direct interaction between the person and the notary official (e.g., no pre-recorded videos of the person signing.);
- The person must affirmatively represent that he or she is physically located in the State of New York;
- The person must send by fax or electronic transmission a legible copy of the signed document directly to the notary official on the same date it was signed;
- The notary official may notarize the transmitted copy of the document and transmit the same back to the person; and

Continued

- The notary official may repeat notarization of the original signed document as of the date of execution, provided the notary official receives such original signed document together with the electronically notarized copy within 30 days after the date of execution.

Executive Order No. 202.7. Originally, this Order lasted only through April 18, 2020, but has been continuously extended as the pandemic has worn on, most recently through April 25, 2021, and will likely continue to be extended.

Pennsylvania

Beginning on March 25, 2020, RON is permitted temporarily in the Commonwealth, but with the passage of Act 97 in October 2020, it is now permanently codified in Pennsylvania law in 57 Pa.C.S. Section 306.1. Virtual notarization is permissible in Pennsylvania if the electronic signature of the notary official, together with all other information required to be included by other applicable law, is attached to or otherwise associated with the signature or record. Notary officials are required to notify the Pennsylvania Department of State that they will virtually notarize certain documents. Once the notification is approved by the Pennsylvania Department of State, the notary official must disclose the specific tamper-resistant technology he or she intends to use.

Florida

Florida's RON statute permits a notary official physically located in the state to perform an online notarization regardless of whether the person or witnesses are physically inside the state. The notary official must record the online notarization session and confirm the identity of the person and any witnesses. If the person is not located in the state at the time of the online notarization, the notary official must confirm (verbally or in writing), that the person desires the notarial act be performed by a Florida notary public. Florida's RON statute has specific safeguards for more vulnerable people, such as the elderly residing in nursing homes, to help ensure the competence of the person executing the document. An example of such safeguards is the requirement for the notary official to have the person answer at least five questions relating to the person's identity and historical events records within a limited time frame and with high degree of accuracy. Fl. Stat. 117.295.

Before you virtually notarize any document, make sure you are in compliance with your state's virtual notary rules. If you or your business need legal advice, please consider contacting any member of Flaster Greenberg's Business & Corporate Department.