

Remote Online Notarization

(RON)



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HISTORY OF ELECTRONIC DOCUMENTS

ELECTRONIC SIGNATURE ACT OF 1996- §§668.001-668.006

- ❖ Purposes include enhancing public confidence in use of electronic signatures, minimizing fraud in electronic commerce, and fostering development of electronic commerce
- ❖ Unless otherwise provided by law, electronic signature may be used to sign a writing and shall have same force and effect as a written signature

FLORIDA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

- §668.50, FS- ADOPTED IN 2000

- ❖ Provides legal framework for the use of electronic signatures and records in government or business transactions
- ❖ Applies to electronic records and signatures when parties agree to use electronic means
- ❖ Provides legal recognition to electronic records, signatures and contracts, and precludes non-enforcement solely due to it is an electronic record

FEDERAL ELECTRONIC SIGNATURES IN GLOBAL & NATIONAL COMMERCE ACT (E-SIGN ACT, 15 U.S.C. §7001, ET. SEQ.

- ❖ Similar to UETA
- ❖ Consumer must affirmatively consent after written notice
- ❖ Consumer must be informed about how to withdraw consent
- ❖ Consumer must be informed about hardware and software requirements
- ❖ Consumer must demonstrate they understand hardware and software requirements
- ❖ Consents automatically used as part of electronic signing process

ELECTRONIC NOTARIZATION- §117.021- ADOPTED IN 2007 (IN-PERSON)

- * Participants in same place
- * All signatures are electronic
- * Notary uses electronic seal
- * Statute requires that tamper-proof technologies, as established by the state, be used
- * No requirement that journal be kept
- * Identity confirmed by personal knowledge or valid identification

ONLINE NOTARIZATIONS §§117.201- 117.305

Applicability and Requirements
Effective January 1, 2020

- * Notary must be physically located in Florida
- * Witnesses must be physically located in U.S. or with signatory
- * Signatory can be physically located anywhere
- * Any document that can be physically notarized or witnessed, on paper, may be notarized or witnessed remotely, except marital rites
- * Required to be in physical presence or able to see, hear and communicate through audio-video technology if outside of physical presence

❖ Change to Notary Acknowledgement and Jurat on all documents:

❖ STATE OF FLORIDA

❖ COUNTY OF _____

❖ The foregoing instrument was acknowledged before me by mean of [] physical presence or [] online notarization, this _____ day of _____, 20____, by _____.



[SEAL]



Online Notary

Signature of Notary Public

Personally Known ____ OR Produced
Identification ____ Type of Identification
Produced _____

ONLINE NOTARIZATION PROCESS

- * Documents signed, uploaded and tagged
- * Consent
- * Identity Proofing
 - * Credential Analysis
 - * Knowledge Based Authentication
- * Audio-Visual Communication-Electronic Record retained for 10 years
- * Electronic Signature
- * Affix Electronic Seal

RON service provider as described in law must be used (no Skype or Facetime)

- * Web based
- * Technology:
 - * Real time audio video connection among parties
 - * Documents, including consent, uploaded and viewed ahead of signing
 - * Documents signed electronically
 - * Affixing electronic signature and seal
 - * Identity proofing
 - * Credential analysis
 - * Tamper evident protection
 - * Videotaping of notarial session

EARLY RON SERVICE PROVIDERS

Website: <https://pavaso.com/>
Video: <https://pavaso.com/ron/>

Website: <https://www.notarycam.com/>
Video: <https://www.screencast.com/t/g6GXOSG7CGsn>

Website: <https://www.notarize.com/>
Video: <https://youtu.be/JvoMzllBJa0>

IDENTITY PROOFING

§117.295(3)(a) requires use of **knowledge-based authentication (KBA)**:

- * Principal presented with 5 or more questions with minimum of 5 possible answer choices per question
- * Each question drawn from a 3d-party provider of public and proprietary data sources, identifiable to the principal's SSN or other ID info, or principal's identity and historical events records
- * Responses made within a 2-minute time constraint
- * Minimum of 80% of questions correctly
- * May be offered one additional attempt, with no more than three repeated questions on second attempt

AUDIO-VIDEO RECORD RETENTION

§117.245(2) FS requires online notary to retain uninterrupted and unedited copy of recording, must include:

- * Appearance by the principal and any witness before the online notary
- * Confirmation of identity of the principal and any witness
- * General description of records to be signed
- * Recitation by online notary to identify notarial act
- * Declaration by the principal that signature knowingly and voluntarily made
- * All actions, including signing, of parties
- * Must be provided to parties, title agent, RON service provider, POA designee

ELECTRONIC JOURNAL

§117.245(1) FS requires that there be an electronic journal entry for each online notarization containing the following:

- ❖ Date and time of the notarization
- ❖ Type of notarial act
- ❖ Type, title, or description of electronic record or proceeding
- ❖ Satisfactory identity proofing of the principal
- ❖ Satisfactory credential analysis of government issued ID
- ❖ Name and address of each principal
- ❖ Evidence of identity of each principal, by a statement that the principal is personally known or presented a government-issued identification credential
- ❖ Fee, if any, charged for the notarization

MISCELLANEOUS

- ❖ Clerks must accept electronically signed documents for recording
- ❖ Printed copies of e-signed documents certified by notary to be true and correct copies
- ❖ Wills cannot be signed electronically until July 1, 2020
- ❖ Real estate documents can be notarized online, with remote witnesses, except that documents remotely notarized by notaries or officials of other countries cannot be recorded in Florida- §695.03(3) FS
- ❖ Powers of Attorney- cannot grant super powers if subscribing witnesses are not in physical presence of principal, but can remotely notarize if witnesses are in physical presence- §709.2202(6) FS

Sec. § 117.285(5) FS requires assessment of a “vulnerable adult” electronically signing and witnessing following electronic records:

- Will
- Trust
- Advance healthcare directive
- Power of Attorney

Vulnerable adult questionnaire given, and depending on result, remote witnesses may not be allowed.

BECOMING REMOTE NOTARY

- * Be a Florida notary public, Florida civil law notary or Florida commissioner of deeds
- * Submit signed and sworn registration to Florida Department of State
- * Pay \$10.00 registration fee
- * Choose RON service provider
- * Complete 2 hour in person or online course: FLTA/RPPTL, \$20 fee- <https://dos.myflorida.com/sunbiz/other-services/notaries/remote-online-notary-public/>
- * \$25,000 bond and \$25,000 Errors and Omissions insurance

BIG PICTURE

- * More than 20 states have RON laws
- * Enotes and Emortgages skyrocketed in 1st quarter 2019- 19,000 eNotes originated compared to 17,000 eNotes in 2017
- * RON dovetails into electronic originations
- * Process flow of eNote delivery (eMortgage would be recorded in county or local records to create the lien on the real property):
 - * eNote electronically signed by the borrower through use of an electronic closing system
 - * eClosing system secures electronically signed documents by applying a tamper-evident seal to the entire transferable record (eNote)
 - * eNote must be registered on MERS® eRegistry within one business day
 - * lender transmits eNote to eNote Vault
 - * lender submits a request to the MERS® eRegistry to transfer control of the eNote from the lender to the applicable GSE, if applicable

QUESTIONS?

More Resources:

- * <https://www.thefund.com/information-center/pdf/digital-closings/ron-faq-final-02-05-2020.pdf>
- * http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0117/Sections/0117.265.html
- * <https://www.notaries.com/articles/how-remote-online-notarization-works/>
- * <http://view.email.oldrepublictitle.com/?qs=9b9aa4f7b3947e026a230f0aa0ece8e7836ae42cae82994e4f37dd54f807988111e5bd4f735d1a0bdd09973be5ceb46995d6d0c42a2872c4aa71a2385c29da8fb4f79006c6c55fd07793ea7242801c88>