



FAQ: RON and 2020 changes to Notarial Certificates

Introduction

1. What is RON?

Answer: It is an acronym for remote online notarization. RON is the means used to electronically notarize a document using a third-party (i.e. vendor) software platform which records the visual and audio communications of participants to the signing of a document even when the participants are not physically located in the same place. The practice was authorized in Florida on Jan. 1, 2020.

2. How does RON differ from “electronic notarization?”

Answer: Electronic notarization, first authorized in Florida in 2007, allows for the notarization of electronic documents by a notary public using an electronic signature and applying an electronic seal. Unlike RON, the principal must be in the same location as the notary public, the computer or other electronic device need not be connected to the internet, and there is no requirement that the notarization procedure be recorded. Also, unlike RON, the notary need not maintain an activity journal and identity is confirmed by the notary through personal knowledge or presentation of a valid form of identification. Electronic notarization is governed by Sec. 117.021, F.S.

3. Can a duly commissioned Florida notary public perform RON?

Answer: A Florida notary public may not perform a RON prior to registering as an “online notary public” with the Florida Department of State in accordance with the requirements of Chapter 117, F.S. and Rule 1N-7, F.A.C. Registration includes the payment of an additional fee, certification as to completing a 2-hour instructional course, evidence of additional insurance and bond coverage, and designation of a qualified RON vendor.



Complying with the Law

1. **Can a Florida online notary public notarize the signature of someone signing outside the State of Florida?**

Answer: Yes. Pursuant to Sec. 117.265(1), F.S., an online notary public physically located in this state may perform an online notarization regardless of whether the principal or any witnesses are physically located in this state at the time of the online notarization. Note, however, that Sec. 117.285(4), F.S., requires that a witness remote from the principal must verbally confirm on the recording that he or she is a resident of the United States and physically located within the United States or a territory of the United States at the time of witnessing.

2. **Does the notary block need to be updated for all notarized documents in Florida, or only those for the transfer of real estate/closings?**

Answer: All notarized documents. Sec. 117.05, F.S. now requires a notary public to include, among other things, the following information when completing a jurat or certificate of acknowledgment: “Whether the signer personally appeared before the notary public at the time of the notarization by physical presence or by means of audio-video communication technology.” Under Sec. 117.01(4)(h) an intentional violation of the statute can result in the suspension of a notary public.

From a practical standpoint a notarization which fails to include this element risks being rejected for recording by the clerk and makes the document subject to challenge when enforcement is sought. In addition, Sec. 117.05(6), F.S. makes the employer of a notary public liable to all persons involved for damages proximately caused by a notary’s misconduct.

3. **Will my current notary public certificate be invalid if I do not obtain a RON certification?**

Answer: No. A Florida notary public does not have to become an “online notary public.” RON certification simply expands the authority of an appointed notary public to include remote online notarization.



4. **May the signatures of foreign nationals be notarized remotely or is it only available to U.S. citizens?**

Answer: Although the RON law allows for the notarization of foreign nationals, the identity verification process for those individuals is currently problematic because of the “knowledge-based authentication (KBA)” and credential analysis requirements of the statute. All signers must present a form of identification subject to verification and current technology cannot verify foreign passports. The principal must also go through KBA, which currently requires a U.S. tax identification number and U.S. credit history. It may therefore be difficult to qualify foreign nationals for RON until sometime in the future.

5. **If the signer is personally known to the RON notary, may the KBA process be skipped to allow for the remote notarization of a foreign national?**

Answer: Apparently not. Unfortunately, RON platform providers so far seem to be requiring the KBA process in all cases, even for U.S. citizens.

6. **Do I, as a closing agent, need to get the original signatures post-signing or is the digitally-signed version sufficient?**

Answer: Under the law, the digital signature is the original signature. A copy of the signed document may be printed and certified to be a true and correct copy, but it is still just a copy.

7. **Can the notary also serve as a witness?**

Answer: Yes, but the notary must sign both as the notary and again separately as a witness just as has always been the case. See TN 10.07.04.

8. **Who is required to store the RON recording for 10 years?**

Answer: The notary is responsible for maintaining the recordings as well as the required electronic journal for a period of 10 years after the date of the notarial act. However, Sec. 117.245(4), F.S. allows the notary to delegate that responsibility by contract to a secure repository provided the Department of State is notified of the delegation within 30 days. (Note: the rules are slightly different for electronic will signings as the recording must be maintained by a “qualified custodian” in accordance with chapters 731 and 732, F.S.).



9. Is a digitally signed note acceptable to a lender? Can an electronic note be the basis of a foreclosure action?

Answer: Yes, that has been the case since the advent of electronic notarization in Florida. See *Rivera v. Wells Fargo Bank, N.A.*, 189 So.3d 323 (Fla 4th DCA 2016).

10. What if an instrument is notarized by an online notary from another state?

Answer: Old Republic National Title will insure transactions involving Florida property where the instrument(s) to be insured or any deed in the back chain were acknowledged by either a Florida or other state RON if the principal is a U.S. citizen. Due to the higher risk and potential for fraud, you must contact underwriting to discuss the circumstances prior to insuring any transaction which utilizes RON for a non-US citizen or other person without a U.S. social security number.

Procedures

1. What if the loan documents prepared by the mortgage lender do not have the new notarial certificate?

Answer: Coordinate with the lender as you would if the certificate lacked the name of a spouse needing to sign to satisfy Florida's homestead joinder requirements. They may send you a revised document, allow you to handwrite the change, or agree with your suggestion to add a separate notarial certificate page you will prepare and attach. Do not insure a transaction lacking a valid certificate without first discussing it with Fund underwriting counsel.

2. Do we need a separate E&O policy or is our Law Firm E&O sufficient?

Answer: The statute (Sec. 117.225(7), F.S.) simply requires an online notary public to provide evidence of coverage satisfactory to the Department of State. You may wish to check coverage under your firm's overall policy, but a standalone policy, which is not cost prohibitive, will likely best meet this requirement.



3. What notarial certificate do we use for a notarization by a consul or embassy?

Answer: Since the statute only establishes the requirements to be followed by a Florida notary public nothing has changed insofar as notarization in a foreign country. Review Fund Title Note 1.04.02 for additional guidance.

4. Will the recorder's office be able to verify the e-notarized document is legitimate, or fraudulent?

Answer: It is not the responsibility of the recorder to determine if a document is fraudulent. As for the legitimacy of an electronic document, the Uniform Real Property Electronic Recording Act (Sec. 695.27, F.S.) establishes the standards that will guide a recorder in determining the document's legitimacy and entitlement to recording.

5. If I receive documents that have been RON notarized, what am I looking for to verify they are valid?

Answer: In addition to the elements you review on notarized paper documents, examining the seal to determine if it was a proper notarization is a little different. Relevant information about the seal can be viewed when the computer cursor hovers over the electronic seal. You must see the full name of the notary public, the words "Notary Public State of Florida", the expiration date of the notary's commission, and the notary public's commission number (Sec. 117.021(3), F.S.). Do not be concerned if other matters appear such as "signature not verified" as this is not important for your purposes in confirming validity.

Finally, if notarized remotely by a Florida online notary, there must also be a notation on the document in or adjacent to the seal that it was an online notarization (e.g. "online notary") per Sec. 117.265(7), F.S.

6. Are estate planning documents, e.g. POA, Affidavit of No FL Estate Tax Due (DR-312), required to reflect the new notarial certificates as of Jan. 1, 2020?

Answer: Yes. Although the state-issued forms may not be updated right away, it is up to the notary to conform all non-compliant affidavits before notarization.



7. Do we need to update our Best Practices manuals?

Answer: Your Best Practices manual should be reviewed and revised as needed on no less than an annual basis. As of this writing, ALTA has not modified its Best Practices guidelines for RON matters. In any event, should someone in your office become RON certified, you may want to add that relevant information to your manual.

8. What are the basic steps required for a Florida notary to become certified as a Florida online notary?

Answer: Only an actively commissioned Florida notary can register to become an online notary. Here are the steps:

1. Submit a signed and sworn registration to the FL Department of State.
2. Pay the \$10.00 notary registration fee required under Sec. 113.01, F.S.
3. Identify the notary's intended RON service provider and confirm to DOS that its technology and processes satisfy the requirements of Chapter 117 and any rules promulgated by DOS.
4. Complete a 2-hour in-person or online training course covering RON duties, obligations and technology.
5. Provide evidence satisfactory to DOS that the registrant has obtained a \$25,000 bond.
6. Provide evidence satisfactory to DOS that the registrant is covered by errors and omissions insurance in the minimum amount of \$25,000.

9. Must The Fund approve the use of remote online notarization?

Answer: No but if the signer is a non-US citizen you must consult with an underwriting attorney.

10. Can a signer be compelled to use RON?

Answer: No. The principal must voluntarily agree to utilize remote online notarization.

11. Do I need to obtain lender approval if the borrower wishes to sign the loan documents remotely via RON?

Answer: Check the written loan closing instructions and contact the lender for approval to close digitally and utilize RON.



RON Service Providers

1. If the signer fails the credential verification process, can they retry that same day?

Answer: Sec. 117.295(3)(a) allows for the offering of one additional attempt in the event of a failed attempt. Since the statute does not require the offering of an additional attempt on the same day you should check with your vendor to determine their policy.

2. Can an online notary avoid the use and costs of a RON service vendor and notarize an instrument using FaceTime?

Answer: No. An online notary must identify and use a RON service provider whose audio-video communication technology and processes they will use. (Sec. 117.225(5), F.S.)

3. Can the witness and the notary be in the same location and share a screen?

Answer: The witness and notary can be on the same screen as long as the witness and principal can see and hear each other, and the witness hears the principal make a statement to the effect the principal has signed the electronic record (See 117.285(3), F.S.).

4. Does the RON service provider keep a copy of the audio-video recording so that it can be accessed in the future, if necessary?

Answer: Under the statute, the RON service provider is not required to do so. The online notary public is required to provide access to the recording to the parties; the title agent, settlement agent, or title insurer who insured the electronic record or hired the notary public; the RON service provider; the qualified custodian of an electronic will; any person asked to accept a POA notarized by the online notary; the Department of State; and any other persons pursuant to subpoena, court order, law enforcement investigation, or other lawful inspection demand (Sec. 117.255(5), F.S.).

The online notary public can delegate their responsibility by contract to a secure repository provided the Department of State is notified of the delegation within 30 days (Sec. 117.245(4), F.S.). The RON service provider you use may not



necessarily be the secure repository, so you should determine their policy at the time you enter into an agreement with them.

5. Do you need the IDs of the witnesses to ensure they're disinterested parties?

Answer: No. The IDs are for the purpose of verifying the identity and confirming the U.S. residency of a witness who is not physically present with the principal. If appearing with the principal, no ID is needed; the witness need only announce his or her name and current address for purposes of the recording (Sec. 117.285, F.S.). Disinterest of a witness must be separately determined.

6. Will the RON service providers allow the closer or attorney to be part of or oversee the signing process?

Answer: In cases where the closer or attorney is not the online notary, some RON service providers will allow the closer or attorney to attend the signing session as an observer. Check with the RON service provider to determine the level of access afforded to an observer.

7. Are there RON service providers that provide an online notary “on demand”?

Yes. Some RON service providers will provide online notarial services on demand, thus obviating the need of the Fund member or staffer, who may be a notary, from immediately becoming an online notary.

Itemization of RON-related fees

1. Can the charges related to the execution of documents through a RON service provider’s platform be separately itemized on the closing statement and/or CD?

Answer: Generally the answer to this question is “yes” because the remote signing of closing documents would be at the specific request of the buyer or the seller. However, it would be advisable that you indicate the cost of signing remotely online in any promotional materials that contain closing cost estimates (including a quote to a particular party) so it is clear to anyone who might choose the RON option what the additional cost will be. Here is a statement from the Department of Financial Services website on this topic:



Title agencies are permitted to charge the third-party fees as separate line items as long as the consumer has been notified these fees represent responsibilities of the agency, which were contracted to a third party. The consumer must also understand these fees will be charged to them either as part of the closing services fee total, or in addition to the agency's closing services fee. However, in no case should a third-party fee be charged to a consumer in a deceptive or misleading manner.