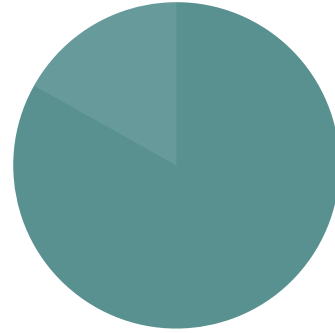


Remote Notarization For Estate Planning In A Post COVID World



Presented by **THE BEST**
NOTARY

Discussion Overview/ Key Takeaways

- Options for notarization now include in-person and remote online notarization (RON) even in states which haven't passed legislation to allow it.
- Post COVID, traditional methods of locating notaries will become less effective as business moves away from the physical office.
- RON may work for less savvy document signers with tech support via specialized notarization partners.
- Laws regarding RON are complicated and vary by state. It is best to delegate or work closely with experts.

In-Person Notary Options

Where can I find in-person notaries?

- Friends and colleagues
- Local banks
- Mailbox stores
- Local mobile notaries on Yelp and Google Maps
- Notary directories such as [123notary.com](https://www.123notary.com), [notarycafe.com](https://www.notarycafe.com), [snapdocs.com](https://www.snapdocs.com)
- Local notary companies



Notarization After COVID-19

What are the challenges for notarization after COVID?

- Extra dangerous for people in high-risk categories
- Confusion about emergency laws passed to allow RON
- Difficulty finding notaries willing to meet in person
- Law office and bank closures reduce available options



Electronic Signatures are as Binding as Handwritten Ones

Is a paper signature more binding than an electronic one?

Are electronic signatures legal?

- The **Electronic Signatures in Global and National Commerce (ESIGN)** Act in 2000, electronic signatures became legal in every state and U.S. territory where federal law applies
- When federal law does not apply, most U.S. states have adopted the Uniform Electronic Transactions Act (UETA)



Remote Online Notarization (RON)



Remote Online Notarization (RON)



What is Remote Online Notarization (RON)?

- RON is the use of audio-video technology to allow notarization to happen through a video conference instead of the traditional in person meeting
- Requires identity authentication
- Sessions are recorded and required to be stored for up to 10 years

RON is 100% Digital: No Papers, No Ink



**There will be no hard copies provided at any point:
Before nor after the appointment.**

- The notary and the document signer will not meet in person, and no thumbprint is required
- Signers will only receive a PDF copy of their documents
- No wet-signature copy will be provided but a physical copy can be printed if desired
- Most CA county recorders have no issue recording deeds notarized remotely out of state

RON Requirements: Technology

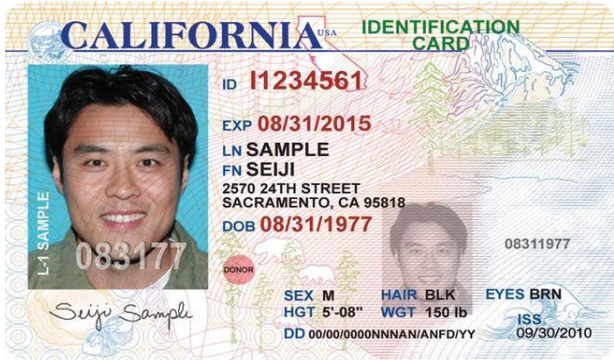


What technology is needed for RON?

- Signer has a smartphone, tablet, laptop or desktop computer with a working video camera, speakers and microphone
- Signer has the latest version of their browser installed or even better, the Zoom conference calling app.
- Signer has a high speed internet connection with at least 2MB/s of bandwidth

RON Requirements: Identity Authentication

At the moment, both of the methods below are required to identify a US based (citizen or permanent resident) signer before the notary can witness and notarize a signature:



Signer present acceptable ID to the notary:

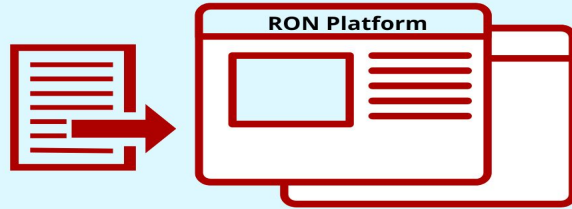
- Current Passport (US only at this time)
- Driver License or
- State issued identification card
- Any ID that is acceptable per the state the notary is commissioned in

Signer meets the following requirements:

- Enters their residential address
- Correctly answers 4 out of 5 timed questions KBA (Knowledge Based Authentication)
- Has at least 3 years of historic U.S. based public record.

REMOTE ONLINE NOTARIZATION (RON) IN A NUTSHELL

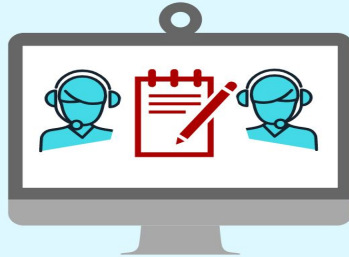
1) Documents are uploaded to RON platform.



2) Signer and the documents get authenticated using valid IDs and credit history.



3) The signer signs, and the notary notarizes the document over a live audio-video conference. Both parties receive a signed copy.



4) Authentication data and audio-video records are securely saved to notary's electronic journal.

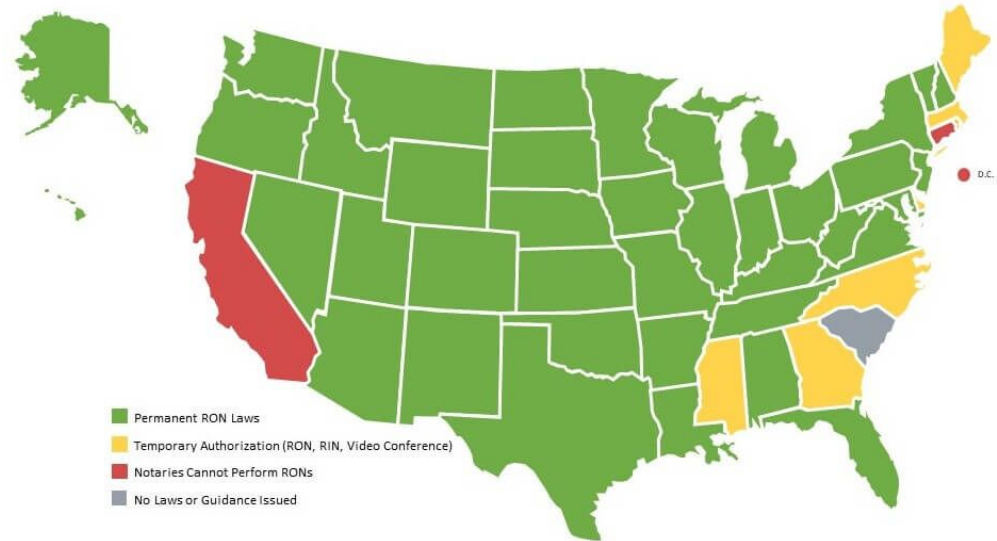


RON in Different States

Which States Allow RON?

- Virginia started in 2011
- 40 states have officially authorized RON as of Feb 2022
- 7 more have emergency RON statutes & gubernatorial orders
- Each state has different regulations

RON Policies: Permanent Laws or Temporary Rules



<https://www.nationalnotary.org/notary-bulletin/blog/2020/03/states-emergency-action-remote-notarization>

Inter-state Recognition of RON: Uniform Notarial Acts and their Validity of Out of State

**UAA
(1892)**



- The Uniform Acknowledgments Act of 1892 was the ULC's (Uniform Law Commission) first US uniform notarial act.
- Out of state acknowledgments were OK as long as they included an additional certificate signed by a designated official from the foreign state

**URAA
(1968)**



- The Uniform Recognition of Acknowledgments Act (URAA) was adopted by the ULC in 1968 in 12 states:
- Eliminated the certificate requirement required by the UAA above
- Currently the law in **AK, AZ, CT, CO*, IL, KY, ME, MI, NE, OH, SC, and VA**

**ULONA
(1982)**



- The Uniform Law on Notarial Acts (ULONA) adopted by the ULC in 1982 is currently the law in **10 states** and the District of Columbia
- The signature and title of a notarial officer established the authority of the officer to perform the notarial act.
- Currently the law in: **DE, DC, KS, MN, NE, NH, NM, OK, WA*, WI and WY.**

*CO and WA adopted RULONA in 2018

Inter-state Recognition of RON: Non-uniform Notarial Acts

RULONA (2010)

- Revised Uniform Law on Notarial Acts (RULONA) RULONA was introduced by the ULC in 2010. It expands on ULONA with RON.
- As of 2021, RULONA has been adopted by **AZ, CO, HI, ID, IA, KS, KY, NM, MD, MN, MT, ND, OR, PA, RI, SD, VT, WA, WI, WV.**

In addition, the following states have passed their own interstate recognition statutes:

- | | |
|--|---|
| <ul style="list-style-type: none">● Alabama - Ala. Code § 35-4-26● California - Cal. Civ. Code § 1189(B)● Florida● Georgia,● Hawaii - Haw. Rev. Stat. § 502-45● Indiana,● Mississippi,● Missouri, | <ul style="list-style-type: none">● New Jersey,● New York,● North Carolina - N.C. Gen. Stat. § 10B-20(F)● Rhode Island: R.I.Gen. Laws § 34-12-1● Tennessee● Texas● Vermont - VT. Stat. Ann. Tit. 27 § 379 |
|--|---|

RON in California

Is RON allowed in California?

- Yes. As long as it is done legally with a notary in a state that allows RON per Section 1189(b). California has had several RON laws proposed but none have passed and become law. [AB-1093](#) is before the state senate and should have ruling soon.
- TheBestNotary prefers to work with vetted notaries in TX, NV, and VA as these states have fewer restrictions and notarizations completed in these states are valid in California.



RON in Select States



How do different states laws differ for RON?

- Virginia - oldest and most relaxed laws, Knowledge Based Authentication is sufficient & doesn't even require photo ID
- Massachusetts - notary and signer must be in same state
- Iowa - can only use specified platforms, signer and notary must both be in Iowa.
- Florida - Certain estate planning documents have complex restrictions

RON Challenges

Why is RON Still Not Widely In Use?

- Acceptability and validity varies widely
- Choosing a platform can be overwhelming
- Technology challenges
- KBA can be a hurdle for senior citizens
- Variability in the attention to detail, knowledge and professionalism of notaries
- Privacy concerns



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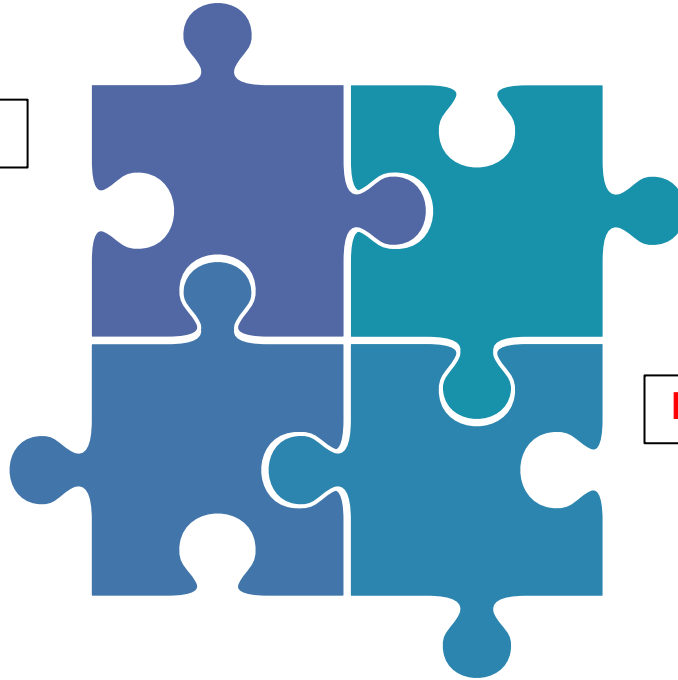
RON Challenges for Estate Planning Law Firms

Hard to Find Great Notaries

Notaries are scattered across various directories and websites. Very few allow online booking and scheduling.

Costs Will Vary Wildly

Each platform has a different cost structure and notary fees also vary widely.



Scheduling Can Be a Hassle

When working with independent notaries directly, one has to start from scratch if an appointment changes.

Doc Prep Is Tedious & Error Prone

Preparing documents for signature
Ensuring signers can view & sign them
can be time consuming and
emotionally challenging.

Estate Planning Law & RON





Need not be notarized or witnessed

See Probate Code:

- § 15200 (methods of creating trust)
- § 15206 (statute of frauds for trusts for real property)
- § 15401 (methods of revoking revocable trust)
- § 15402 (methods of modifying revocable trust)

Notarization a best practice

It is typical and expected for such documents to be notarized, and a lack of notarization may make third-parties (e.g., banks and escrow companies) wary of honoring the instrument.

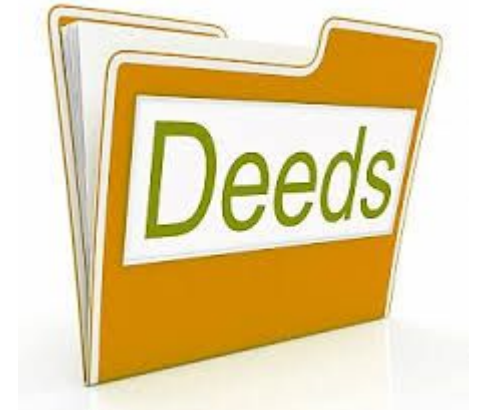
Wills - Witnessed (Probate Code § 6110)



- Probate Code § 6110(c)(1) witnessing rule
- Probate Code § 6110(c)(1) codifies substantial compliance doctrine
- “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

Deeds

- Recorded documents generally must contain original signatures.
- Gov. Code § 27201(b) (“Each instrument, paper, or notice shall contain an original signature or signatures, except as otherwise provided by law, or be a certified copy of the original.”)
- California County Recorders have traditionally required “wet” signatures notarized in the physical presence of the signer,
- 37 counties now allow companies to electronically submit both scanned copies of wet-signed documents and electronically signed versions that are validly notarized under the law of another state which has permitted RON.



How to Make RON Successful



RON Best Practices

What is the best way to overcome the challenges with RON?

- Screen to make sure the client has the technology available
- Have a technical assistance plan for clients who lack technology skills
- Recruit notaries and consultants with expertise in state laws, patience and time in case of technical challenges



Case Studies

TheBestNotary's RON experiences post COVID-19

- Tech ability of RON notaries varies wildly
- First RON estate plan - 7 hours
- Most recent - 8 minutes
- TheBestNotary was first company to facilitate the recording of a RON deed in Imperial County

Caveats of On-Demand Platforms such as Notarize and NotaryCam

- Lack of knowledgeable SMEs to answer basic questions
- Misspelled names of signer
- Signer needs to manually populate all the signature fields
- Notary did not notice important, material elements of the transaction - deeding property to Max & Sunny the cats

Summary

Can I use RON with my clients and what are the best practices to ensure success?

- Yes, it is legal to use RON in California
- Laws differ by state but almost every state accepts notarizations completed in another state (Expect IA as of June 2021)
- Technical support is crucial to ensure appointments proceed smoothly especially if the clients have difficulty with technology
- Work with providers who are familiar with estate planning documents and know how to prepare the documents accurately
- Outsource document preparation before the notarization appointment to facilitate a shorter, smoother experience for the client

Some Words From A RON Early Adopter



“Eli & his team have been lifesavers during this pandemic! Their attention to detail and management of my document execution frees me up to focus exclusively on my clients and their estate planning matters. TheBestNotary.net ensures smooth, concierge-grade notary appointments 100% on video via Zoom. My clients are very grateful for their full-service approach including tech support as needed. With remote signings COVID is one less thing for them to worry about; especially for those who are vulnerable, expecting children or have infants at home”

Patricia De Fonte
patricia@defontelaw.com

Feel Free to Reach Out if We Can Help

<https://ep.thebestnotary.net/estate-planning/>



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