



**ALLIANT**  
**NATIONAL**  
TITLE INSURANCE COMPANY

# **Ethics and Enabling Laws for Remote Online Notarizations – What Florida Title Agents Need to Know**

**Credit: 1 hour CE Ethics / 1 hour CLE (Ethics and Real Estate)**

Elizabeth Blosser  
American Land Title Association  
10:00 am – 11:00 am

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Elizabeth Blosser is the Director of Grassroots and State Government Affairs for the American Land Title Association (ALTA). Prior to joining ALTA, Blosser served as Client Services Director for FLS Connect, where she developed strategy for national public affairs campaigns and managed data analytics and communications programs on behalf of corporations, trade associations and political action committees. Having been with FLS Connect since its inception, she played a vital role in taking it from a start-up to a major national consulting firm. Blosser has worked for legislators on the federal, state and local levels. She also has extensive experience managing political campaigns. Blosser holds a degree in communications and lives in White Salmon, Washington.

## **OVERVIEW**

**Name of Provider:** Alliant National Title Insurance Company

**Name of Course:** ETHICS AND ENABLING LAWS FOR REMOTE ONLINE NOTARIZATIONS-WHAT FLORIDA TITLE AGENTS NEED TO KNOW

**Targeted audience:** Florida Title Insurance Agents

### **Course Objectives:**

The Course gives the Florida title agent a good overview and understanding of the general law regarding notarizations and the functions of the notary public in Florida real estate transactions. This course will focus on remote online notarizations or RONS, where the notary is not physically in the same place as the signatory but instead the signatory and the notary are “present” via some type of audio and video technology. There will be a review of the relevant Florida statutes and rules on the subject.

### **Course Relevance:**

Because Florida law requires that real estate documents must be properly notarized in order to be recorded in Florida, Florida title agents must understand what types of notarizations are permitted in Florida. By becoming aware of remote online notarizations, the Florida title agent will be prepared to properly handle lender’s requests to use a remote notary and what is required to ethically and properly follow all laws regulating remote online notarizations, including fraud prevention and identity verification and authentication.

**Method:** Classroom

# OUTLINE

## ETHICS AND ENABLING LAWS FOR REMOTE ONLINE NOTARIZATIONS-WHAT FLORIDA TITLE AGENTS NEED TO KNOW

<b>I.</b>	Introduction	<b>5 Min</b>
<b>II.</b>	What is the Purpose and Effect of the Notarization of Signatures?	<b>5 Min</b>
<b>III.</b>	Types of Closings and Notarizations:	<b>10 Min</b>
	Traditional Closing with “Wet” Signatures	
	In-person E-Closing	
	Hybrid E-closing	
	Fully Electronic Closing with Remote Online Notarization (RON)	
<b>IV.</b>	Legal Foundations of Electronic Signatures	<b>15 Min</b>
	Uniform Electronic Transactions Act	
	Uniform Real Property Electronic Recording Act	
	Revised Uniform Law on Notarial Acts	
	Federal Electronic Signatures in Global National Commerce Act	
	Existing State RON Statutes	
	Florida’s Electronic-Related Laws	
<b>V.</b>	ALTA and MBA Activities on RON	<b>10 Min</b>
	Promoting protective, consistent state laws	
	National Secretaries of State - Approved Standards	
	Mortgage Industry Standards Maintenance Organization	
	State Legislation and Rules	
	Principles and Regulatory Process	
<b>VI.</b>	Conclusion	<b>5 Min</b>
	<b>Total Instruction Time</b>	<b>50 Min</b>
	<b>Total Break Time</b>	<b>10 Min</b>
	<b>Total Time</b>	<b>60 Min</b>

# Ethics and Enabling Laws for Remote Online Notarizations-What Florida Title Agents Need to Know

## I. Introduction

Real estate transactions in Florida and the rest of the United States are becoming increasingly electronic with lenders spearheading the move toward fully electronic or digital lending processes. A Florida real estate transaction may now include electronic recording, electronic signatures, and electronic notarizations in some form. To handle real estate transactions properly, Florida title agents must know the intricacies of this emerging and rapidly-changing area and what is and is not acceptable under current Florida law.

## II. What is the Purpose and Effect of the Notarization of Signatures on the Insured Documents?

The purpose of the notarization of signatures is to help ensure that the person signing the instrument and acknowledging his or her signature to the notary public (“notary”) is mentally competent, not under duress, and is not posing as someone else. To help accomplish this, the notary is required under Florida law (Chapter 117) to verify the identity of the person signing the instrument by reviewing a legally acceptable form of identification, and to gauge that person’s mental state and understanding of the instrument.

F.S. 695.03 requires that to “entitle any instrument concerning real property to be recorded,” the person signing the instrument must acknowledge his or her signature to a civil-law notary or notary public who affixes his or her official seal. “Entitled to be recorded” is a critical element because if an instrument is not properly notarized, it does not provide constructive (legal) notice to third parties—even if the instrument is actually recorded by the county clerk. If an instrument is not “entitled” to be recorded and therefore does not provide constructive notice, the law treats that instrument as if it were not recorded at all.

## III. Types of Closings and Notarizations

- Traditional Closing with “Wet” Signatures-this is the traditional “paper transaction” where all documents are in paper form, all or most of the parties are in the same room, the signatory signs the document in ink and acknowledges his or her signature to the notary, and the notary then completes and signs the notary block. If the transaction is a mail-way, the person signing and the notary are nonetheless physically in the same place when the person signs the instrument or acknowledges his or her signature to the notary.
- In-Person E-Closing-in this type of closing, the persons signing the documents are physically with the notary but all documents are signed electronically.

- Hybrid E-closing- in this type of closing, the persons signing the documents are physically with the notary but some documents are being signed electronically while others are being signed in the traditional “wet ink” method.
- Fully Electronic Closing with Remote Online (or Webcam) Notarization (“RON”)— the key difference with this new type of closing is that the person signing a document and the notary are not “face-to-face” and may be located miles away from each other or in different states-even in states other than where the real property is located. Instead of being face-to-face, the parties and the notary “see and hear” each other via some form of audio or video technology. The notary confirms the person’s identity and performs all notarial acts via this technology and all documents and signatures are electronic.

Since remote online notarization is so new and its use and application are evolving so rapidly, the American Land Title Association (ALTA), the Mortgage Bankers Association (MBA) and the National Association of Secretaries of State (NASS) have developed models to promote certain protections such as authentication technology layers and the ethical application of such technology. These protections and authentication measures include:

- 1) Multi-Factor Identification-this requires the person signing the document to prove his or her identity through at least two of the following methods: a) the person’s credentials and identification, such as a driver’s license or passport; b) correct responses to questions that only the person signing would or should know; and c) biometrics or biological characteristics, such as fingerprint recognition or eye scans.
- 2) Credential Analysis Technology-this involves the use of technology to confirm the authenticity of credentials and identification documents such as a driver’s license.
- 3) Audio-Visual Recording-this involves the video recording of the notarial act but could also include video and/or audio recording of the entire interaction between the person signing the document and the notary.

## **What is the Status of Remote Online Notarizations in Florida?**

Although Florida law recognizes and permits electronic signatures and electronic recording (discussed below), current Florida law specifically prohibits a Florida notary from notarizing a signature if the person signing is not in the notary's presence. "Presence" has long been thought to mean physical presence but could it also mean some type of "virtual" presence? This is the looming and unanswered question currently in Florida as Florida law simply does not yet address RON and RON-related issues. (RON legislation (Florida Senate Bill 1042 and Florida House Bill 771) was recently vetoed by the Governor.)

The current relevant Florida statutes are F.S. 117.107 (9) and F.S. 117.05 set out below:

Florida Statute 117. 107 (9) provides that: "A notary public may not notarize a signature on a document if the person whose signature is being notarized is not in the presence of the notary public at the time the signature is notarized. Any notary public who violates this subsection is guilty of a civil infraction, punishable by penalty not exceeding \$5,000, and such violation constitutes malfeasance and misfeasance in the conduct of official duties. It is no defense to the civil infraction specified in this subsection that the notary public acted without intent to defraud. A notary public who violates this subsection with the intent to defraud is guilty of violating s. 117.05."

Florida Statute 117.05 provides that: "A notary public who falsely or fraudulently takes an acknowledgement of an instrument as a notary public or who falsely or fraudulently makes a certificate as a notary public or who falsely takes or receives an acknowledgement of the signature on a written instrument is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084."

### **IV. Legal Foundations of Electronic Signatures**

- Uniform Electronic Transactions Act:  
[http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta\\_final\\_99.pdf](http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf)  
States with electronic signature statutes:  
<http://www.uniformlaws.org/Act.aspx?title=Electronic%20Transactions%20Act>
- Uniform Real Property Electronic Recording Act:  
[http://www.uniformlaws.org/shared/docs/real%20property%20electronic%20recording/urpera\\_final\\_apr05.pdf](http://www.uniformlaws.org/shared/docs/real%20property%20electronic%20recording/urpera_final_apr05.pdf)  
States with Electronic Recording Acts:  
<http://www.uniformlaws.org/Act.aspx?title=Real%20Property%20Electronic%20Recording%20Act>

- Revised Uniform Law on Notarial Acts:  
<http://www.uniformlaws.org/Act.aspx?title=Law%20on%20Notarial%20Acts,%20Revised>  
States with RULNA laws  
<http://www.uniformlaws.org/Act.aspx?title=Law%20on%20Notarial%20Acts,%20Revised>
- Federal Electronic Signatures in Global National Commerce Act:  
<https://www.fdic.gov/regulations/compliance/manual/10/x-3.1.pdf>
- Existing State RON enabling statutes, see legislative adoption maps at:  
<https://www.mba.org/audience/state-legislative-and-regulatory-resource-center/remote-online-notarization>
- Florida’s electronic-related Laws—see reprinted below, F.S Section 695.27, 695.28, 117.021, and Florida Administrative Code Section 1N-5.002

#### Florida Statutes:

##### **695.27 Uniform Real Property Electronic Recording Act.—**

- (1) SHORT TITLE.—This section may be cited as the “Uniform Real Property Electronic Recording Act.”
- (2) DEFINITIONS.—As used in this section:
  - (a) “Document” means information that is:
    1. Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and
    2. Eligible to be recorded in the Official Records, as defined in s. [28.222](#), and maintained by a county recorder.
  - (b) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
  - (c) “Electronic document” means a document that is received by a county recorder in an electronic form.
  - (d) “Electronic signature” means an electronic sound, symbol, or process that is executed or adopted by a person with the intent to sign the document and is attached to or logically associated with a document such that, when recorded, it is assigned the same document number or a consecutive page number immediately following such document.
  - (e) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, instrumentality, or any other legal or commercial entity.



(f) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(3) VALIDITY OF ELECTRONIC DOCUMENTS.—

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying the requirements of this section.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

(4) RECORDING OF DOCUMENTS.—

(a) In this subsection, the term “paper document” means a document that is received by the county recorder in a form that is not electronic.

(b) A county recorder:

1. Who implements any of the functions listed in this section shall do so in compliance with standards established by rule by the Department of State.
2. May receive, index, store, archive, and transmit electronic documents.
3. May provide for access to, and for search and retrieval of, documents and information by electronic means.
4. Who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.
5. May convert paper documents accepted for recording into electronic form.
6. May convert into electronic form information recorded before the county recorder began to record electronic documents.
7. May agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording.

(5) ADMINISTRATION AND STANDARDS.—

(a) The Department of State, by rule pursuant to ss. [120.536\(1\)](#) and [120.54](#), shall prescribe standards to implement this section in consultation with the Electronic Recording Advisory Committee, which is hereby created. The Florida Association of Court Clerks and Comptrollers shall provide administrative support to the committee and technical support to the Department of State and the committee at no charge. The committee shall consist of nine members, as follows:

1. Five members appointed by the Florida Association of Court Clerks and Comptrollers, one of whom must be an official from a large urban charter county where the duty to

maintain official records exists in a county office other than the clerk of court or comptroller.

2. One attorney appointed by the Real Property, Probate and Trust Law Section of The Florida Bar Association.

3. Two members appointed by the Florida Land Title Association.

4. One member appointed by the Florida Bankers Association.

(b) Appointed members shall serve a 1-year term. All initial terms shall commence on the effective date of this act. Members shall serve until their successors are appointed. An appointing authority may reappoint a member for successive terms. A vacancy on the committee shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(c) The first meeting of the committee shall be within 60 days of the effective date of this act. Thereafter, the committee shall meet at the call of the chair, but at least annually.

(d) The members of the committee shall serve without compensation and shall not claim per diem and travel expenses from the Secretary of State.

(e) To keep the standards and practices of county recorders in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this section and to keep the technology used by county recorders in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this section, the Department of State, in consultation with the committee, so far as is consistent with the purposes, policies, and provisions of this section, in adopting, amending, and repealing standards, shall consider:

1. Standards and practices of other jurisdictions.

2. The most recent standards adopted by national standard-setting bodies, such as the Property Records Industry Association.

3. The views of interested persons and governmental officials and entities.

4. The needs of counties of varying size, population, and resources.

5. Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

(f) The committee shall terminate on July 1, 2010.

(6) UNIFORMITY OF APPLICATION AND CONSTRUCTION.—In applying and construing this section, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(7) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.—This section modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ss. 7001 et seq., but this section does not modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

History.—s. 1, ch. 2007-233.

**695.28 Validity of recorded electronic documents.—**

(1) A document that is otherwise entitled to be recorded and that was or is submitted to the clerk of the court or county recorder by electronic means and accepted for recordation is deemed validly recorded and provides notice to all persons notwithstanding:

(a) That the document was received and accepted for recordation before the Department of State adopted standards implementing s. [695.27](#); or

(b) Any defects in, deviations from, or the inability to demonstrate strict compliance with any statute, rule, or procedure to submit or record an electronic document in effect at the time the electronic document was submitted for recording.

(2) This section does not alter the duty of the clerk or recorder to comply with s. [695.27](#) or rules adopted pursuant to that section.

History.—s. 1, ch. 2011-173.

**117.021 Electronic notarization.—**

(1) Any document requiring notarization may be notarized electronically. The provisions of ss. [117.01](#), [117.03](#), [117.04](#), [117.05](#)(1)-(11), (13), and (14), [117.105](#), and [117.107](#) apply to all notarizations under this section.

(2) In performing an electronic notarial act, a notary public shall use an electronic signature that is:

(a) Unique to the notary public;

(b) Capable of independent verification;

(c) Retained under the notary public's sole control; and

(d) Attached to or logically associated with the electronic document in a manner that any subsequent alteration to the electronic document displays evidence of the alteration.

(3) When a signature is required to be accompanied by a notary public seal, the requirement is satisfied when the electronic signature of the notary public contains all of the following seal information:

(a) The full name of the notary public exactly as provided on the notary public's application for commission;

(b) The words "Notary Public State of Florida";

(c) The date of expiration of the commission of the notary public; and

(d) The notary public's commission number.

(4) Failure of a notary public to comply with any of the requirements of this section may constitute grounds for suspension of the notary public's commission by the Executive Office of the Governor.

(5) The Department of State may adopt rules to ensure the security, reliability, and uniformity of signatures and seals authorized in this section.

History.—s. 1, ch. 2007-257.

## Florida Administrative Code:

### 1N-5.002 Notary's Electronic Signature.

(1) In performing an electronic notarial act, a notary shall execute an electronic signature in a manner that attributes such signature to the notary public identified on the official commission.

(2) A notary shall take reasonable steps to ensure the security, reliability and uniformity of electronic notarizations, including, but not limited to, the use of an authentication procedure such as a password, token, card or biometric to protect access to the notary's electronic signature or the means for affixing the signature.

(3) The notary's electronic signature and seal information may be affixed by means of a public key certificate.

(4) The notary's electronic signature and seal information may be affixed by means of an electronic notary system.

(5) Any public key certificate or electronic notary system that is used to affix the Notary's electronic signature and seal information shall be issued at the third or higher level of assurance as defined by the U.S. National Institute of Standards and Technology (NIST) Special Publication 800-63-2 (NIST800-63-2), Electronic Authentication Guideline Version 1.0.2., effective 8-2013, available at NIST's website [www.csrc.nist.gov](http://www.csrc.nist.gov) which is incorporated by reference at: <https://www.flrules.org/Gateway/reference.asp?No=Ref-07017>, and may be accessed at the following URL: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP800-63-2.pdf>.

*Rulemaking Authority 117.021(5) FS. Law Implemented 117.021 FS. History—New 1-26-10, Amended 6-27-16.*

## **V. ALTA and MBA Activities on RON**

ALTA and MBA are not endorsing RON, but are promoting protective, consistent state laws.

- RON resources are available on ALTA's public site:  
<https://www.alta.org/advocacy/online-notarization.cfm>

Some of these resources are printed and attached in the appendix:

[Remote Online Notarization Checklist](#)

[Model Bill](#)

[Memo for Model Bill](#)

[Section-by-Section Description of Model Bill](#)

[FAQ on Model Bill](#)

[Suggested Talking Points](#)

[Frequently Used Legal Acronyms of Key Laws and Model Bills](#)

Letter dated June 1, MBA-ALTA submit joint comments to the Texas Secretary of State on proposed RON legislation

<file:///C:/Users/kstevens/AppData/Local/Microsoft/Windows/Temporary%20Internet%20Files/Content.IE5/571JXOBF/MBA-ALTA%20Comments%20on%20TX%20Proposed%20Rules%20FINAL%206-1-18.pdf>

- RON resource available on ALTA's private member site: Legislation Map
- See ALTA MBA State Legislative Adoption Map here:  
<https://www.mba.org/audience/state-legislative-and-regulatory-resource-center/remote-online-notarization>
- NASS - Approved Standards Amended and Readopted on 2-19-2018  
[https://www.nass.org/sites/default/files/resolutions/2018-02/nass-support-revised-enotarization-standards-winter18\\_0.pdf](https://www.nass.org/sites/default/files/resolutions/2018-02/nass-support-revised-enotarization-standards-winter18_0.pdf)
- Mortgage Industry Standards Maintenance Organization (MISMO)—Remote Online Notary Development Workgroup: The mission of the Remote Online Notarization Development Workgroup is to create and maintain industry standards and other collateral to enable electronic and online (aka remote) notary for real estate financing transactions. Collaborate, where possible, with other industries that may utilize electronic and online notary to develop common standards for all electronic and online remote notarial transactions. Collaborate with appropriate state agencies for the adoption of consensus standards in governing statutes. <http://www.mismo.org/get-started/participate-in-a-mismo-workgroup/remote-online-notarization-dwg>
- State Legislation and rules-ALTA MBA Legislative RON Activities Map as referenced above.
- Principles for RON-the real estate and the title insurance industries—in Florida and nationwide--must be assured that remotely notarized real estate documents will have the same legal validity and certainty as more traditional types of notarizations.
- RON Regulatory Process-given the important differences between traditional types of notarizations and RONs, ALTA and MBA, while not endorsing RON, want to promote protective and consistent legislation in Florida and nationwide. ALTA and MBA encourage Florida and other states that do not currently address, recognize or permit RONs to implement RON legislation that incorporates these elements:
  - ✓ Adequate safeguards to protect against identity theft, forgery, undue influence and fraud;
  - ✓ Proven methods of authenticating the identity of the person signing through a multi-layered process that includes forms of identification (such as a driver's license or passport), knowledge-based authentication

- (knowledge that only the signatory would know) and biometrics such as fingerprint recognition or eye scans;
- ✓ Confidence that a document notarized via RON is recognized in the state as being entitled to be recorded and once recorded, provides constructive (legal) notice;
  - ✓ A determination whether Florida and other states will recognize RONs done outside their respective state and whether out-of-state RONs are governed by the laws of the state where the real property is located;
  - ✓ An indication or notation be required on the notarized document setting out the type of notarization that was done;
  - ✓ Sound, secure technology that protects the integrity of RONs, including technology that can recognize and prevent tampering and hacking;
  - ✓ Retention of electronic records related to RONs, including the IP address data for both the person signing and the notary, the date and time of the RON, and the audio-video recording of the portion of the notarial act during which the identity of the signatory is authenticated; and
  - ✓ Clarity and consistency between the different state's real estate-related statutes, such as the Florida Statute 689.01 which requires that deeds conveying Florida real property must be signed in the presence of two subscribing witnesses.

## **VI. Conclusion**

The laws in most states, including Florida, have not “caught up” with the new technology supporting and enabling RONs and do not yet specifically address the validity or legality of this new form of notarization.

Until Florida implements RON-related laws, we encourage you to reach out to your lender customers to find out what their positions on RONs are, whether they are developing programs to use RONs, and what RON-related vendors they are looking at or may even be currently using.

## Appendix—

[Remote Online Notarization Checklist](#)

[Model Bill](#)

[Memo for Model Bill](#)

[Section-by-Section Description of Model Bill](#)

[FAQ on Model Bill](#)

[Suggested Talking Points](#)

[Frequently Used Legal Acronyms of Key Laws and Model Bills](#)

[MBA ALTA Joint Letter to the National Association of Secretaries of State Remote Notary Task Force in Support of Draft Remote Notary Standards dated February 14, 2018](#)

[National Secretaries of State RON Model Standards](#)

[Alliant National's Informational Memo on RON dated June 5, 2018](#)