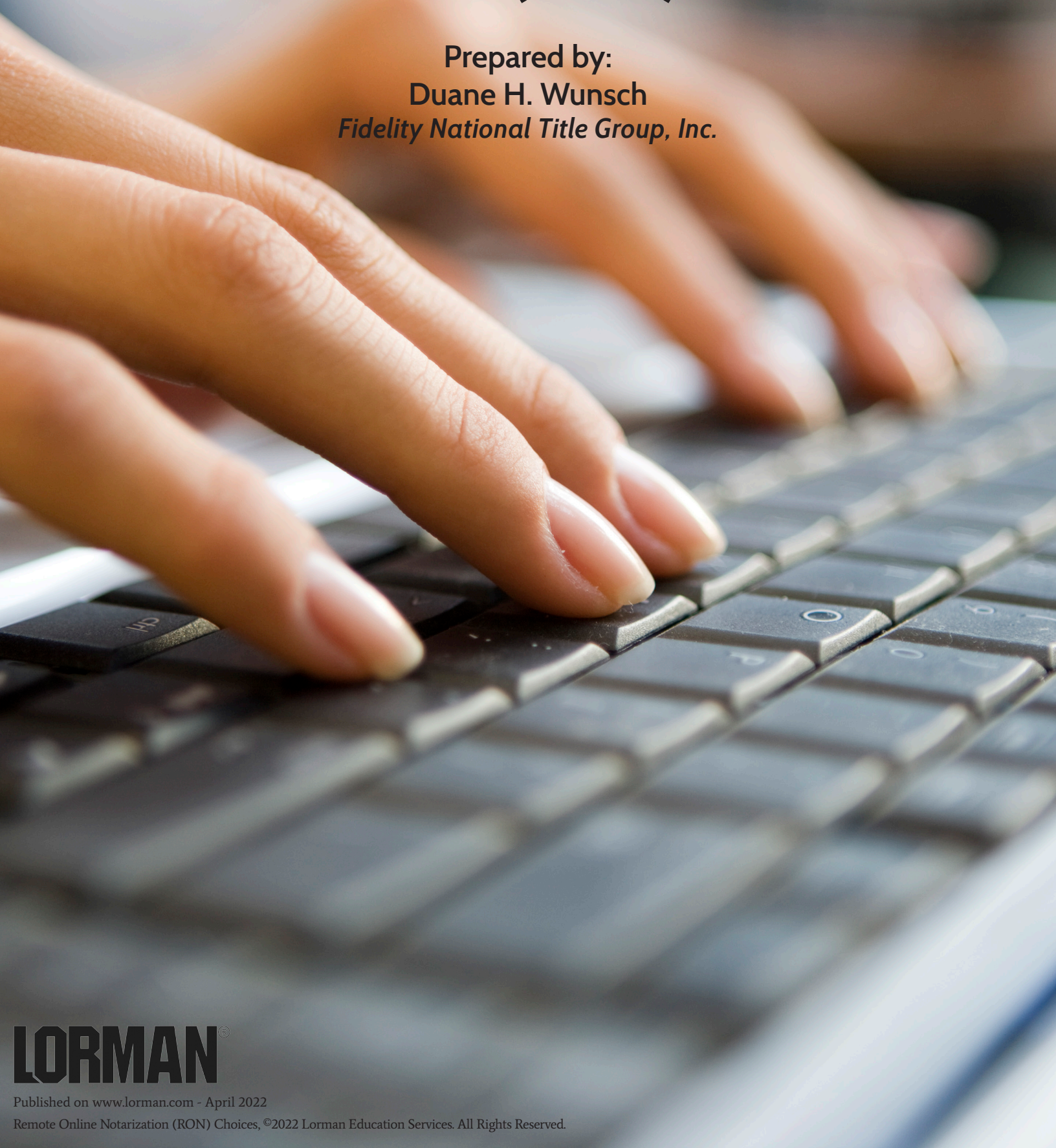


Remote Online Notarization (RON) Choices

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Remote Online Notarization (RON) Choices

1. RON legislation and emergency measures

As of August 2020, 29 states enacted legislation allowing notaries to perform the same general functions digitally by interacting with the signer only through audio-video technology and applying the electronic equivalent of the notarial stamp to a document existing only in electronic form. Some of the states have enacted hybrid RON laws that still require features of traditional notarization. Nearly all states that had not previously enacted RON legislation have adopted emergency measures by executive action in response to COVID-19 to permit some form of RON on a temporary basis. As a result, as of August 2020, 48 states and Washington, D.C. permitted RON in some form either because it was permitted before COVID or because of legislative or executive action spurred by COVID.

2. RON: The basics

Do RON state laws share universally recognized features or requirements? Generally, the notary must be physically located in the state that issued the RON notary commission. In contrast, the signer may be located outside the state. Documents for which RON notarization is permitted must relate to a matter before a court, governmental entity, public official or other

entity subject to the jurisdiction of the United States, involve property located in the jurisdiction of the United States, or a transaction substantially connected with the United States. The act of making the statement or signing the record may not be prohibited by the foreign state in which the signer is physically located at the time of signing.

3. RON and RIN compared

In contrast to RON notarizations, RIN notarizations are also occurring with varying frequency in some states. What are the differences between RON and RIN? A RON closing is a fully digital process where electronic documents are eSigned and eNotarized once the identity is verified with the notary in a remote location via webcam. The original documents are not paper documents, but rather the digital documents that are electronically signed and electronically notarized. In a RIN closing, paper documents are ink-signed while a notary witnesses via a webcam. The ink-signed documents are then mailed back to the notary for final ink notarization.

4. State law variations

One of the barriers to summarizing RON availability to investors and lenders that do business nationally is the

wide variations among RON legislation and emergency measures among the states. Many variations in RON requirements exist across the states, particularly in those states that adopted emergency measures. For example, although Texas requires that the original real estate documents be delivered to the notary to be signed and notarized at a later date, New York requires that the original signed documents be faxed or sent to the notary by electronic means so that the documents are notarized on the same day the documents were signed. Therefore, counsel must be familiar with state law before engaging the RON notary or scheduling the closing.

5. Documents not eligible for RON

Because RON touches many documents and has the potential to affect varied professional and commercial endeavors, certain states prohibit use of RON. For example, various states prohibit the use of RON to notarize signatures on powers of attorney, wills and trusts, though the same pandemic-related concerns may exist in maintaining distance between the signer and the notary.

6. County recorder criteria

Another practical feature of RON is the variation among county recorders concerning their willingness to accept real estate documents evidencing RON notarization for recordation. Parties may encounter variations among Recorder practices within the same state. Is counsel satisfied prior to closing that the deed or mortgage will be accepted for recordation?

7. Title insurer criteria

Will the title insurer commit to insure the title of the grantee of the deed or the lien of the mortgage or deed of trust, signatures on which contain RON notarization? Title insurers have vetted certain RON providers and will require that the notarization be limited to only the title insurer's approved providers.

8. Lender criteria

At the start of the Covid-19 pandemic, a noticeable increase in the proportion of residential cash sales occurred, an aberration that has since abated. When financing the transaction is present, the lender must approve of the use of RON for documents involved relating to financing. Residential mortgage loans are governed by rules imposed by Fannie Mae, Freddie Mac, and Ginnie Mae. Lenders have reason to be vigilant concerning loan document signature authenticity.

Although the pros and cons of RON are beyond the scope of this discussion, there may conceivably be advantages to lenders who approve RON notarization. During the housing finance crisis of 2009-2012, borrowers in growing numbers denied the authenticity of their signatures on the promissory note, resulting in wide-spread contested foreclosure litigation. Notaries public frequently did not recall having personally acknowledged the borrower's signature. In contrast with the traditional notarization process, the video recording of a RON notary provides the lender with a greater likelihood of a defense raised by the borrower. Nonetheless, lenders must approve of RON specifically before it is safe for the parties to assume that RON will be available in any transaction involving the lender.



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