

# eClosings On the Move



Sponsored by:

simplifile®

Produced by:



# ABOUT US

*The Legal Description* is a production of October Research, LLC specializing in business news and analysis for the settlement services industry and is published 24 times a year.

Contact information:  
October Research, LLC  
ATTN: The Legal Description  
3046 Brecksville Road, Suite D  
Richfield, OH 44286  
Tel: (330) 659-6101  
Fax: (330) 659-6102  
Email: [contactus@octoberresearch.com](mailto:contactus@octoberresearch.com)

**CEO & Publisher**  
Erica Meyer

**Editorial & Publishing**  
*Editorial Director*  
Chris Freeman

*Editors*  
Andrea Golby, *The Legal Description*  
Katherine Bercik, Esq., *RESPA News*  
Mike Holzheimer, *Valuation Review*  
Mark Lowery, *The Title Report*  
Robert Rozboril, *Dodd Frank Update*

*Seminars and Webinars*  
Tara Quinn, *Director*

**eCommerce**  
Rick Harris, *eCommerce Director*

**Sales & Marketing**  
Frank Carson, *Senior Account Executive*  
Sarah Harrington, *Marketing Manager*  
Jake Dean, *Sales Support*

**Circulation / Customer Service**  
Kathy Hurley

**Business Offices**  
Sam Warwar, Esq.  
Michelle Easter, *Accounting*

TO SUBSCRIBE, PLEASE GO TO  
[www.OctoberStore.com](http://www.OctoberStore.com)

Copyright © 1999-2016  
October Research, LLC  
All Rights Reserved.

Any copying or republication without the express written or verbal consent of the publisher is a violation of federal copyright laws and the publisher will enforce its rights in federal court. The publisher offers a \$500 reward for information proving a federal copyright violation with regard to this publication. To obtain permission to redistribute material, obtain reprints or to report a violation of federal copyright laws, please call 330-659-6101, or email: [customerservice@octoberresearch.com](mailto:customerservice@octoberresearch.com).



OCTOBER KNOWLEDGE...  
RESEARCH THE COMPETITIVE ADVANTAGE  
LLC

# A WORD FROM OUR SPONSOR

As a pioneer of electronic recording technology, witnessing our industry take another electronic leap is exciting.

Nationwide adoption of eClosing technology has the potential to shorten closing times, increase data quality and accuracy, and save money over traditional pen and paper mortgages. Frankly, the process of fully taking mortgage documentation and workflow online has been a long time coming.

Over time, as regulations and mindsets evolved, making eRecording more accepted nationally, settlement agents and counties saw huge benefits. Today, recording often takes minutes instead of hours or even days, by eliminating the process of mailing or hand delivering paper documents, then manually processing and filing.

We at Simplifile are proud of our work bringing eRecording technology to the industry and becoming the No. 1 choice of settlement agents and counties nationwide. We're also proud to offer fully electronic collaboration and post-closing solutions.

By working together in a secure online portal in real time, both the settlement agent and the lender are consistently on the same page. Our goal is to eliminate fee confusion, security holes, timing inefficiencies, miscommunication, and lack of defensibility inherent with traditional pre- and post-closing communication and workflow.

Maybe one day soon we'll drop the "e" from all these names as efficient electronic mortgage workflow will be the norm. In the meantime, we'll keep providing eSolutions that improve your business and bottom line, and we're happy to partner with October Research to educate the industry in this eClosing on the Move special report.

We hope you'll consider us and we thank you for your years of trust.

Paul Clifford  
President

**simplifile.**

## Table of Contents

4	eClosings spreading across the country
6	North Carolina takes on statewide pilot program
8	The importance of securing eClosings
11	GSEs continue with support of eMortgages
13	Association introduces model eNotarization Act
Appendix	Focus on states



We *connect* lenders, settlement  
agents, and counties.

800.460.5657 | [simplifile.com](https://simplifile.com)

simplifile<sup>®</sup>

# eClosings spreading across the country

It appears that what once seemed almost impossible and far away is slowly but surely becoming more commonplace. More and more companies are announcing the completion of electronic closings across the country.

## Starting point

“The conversations have been interesting to watch evolve ... literally a year ago it was ‘What is this?’ to ‘Yea, I’m kind of interested’ to now the conversation is starting to turn to, ‘How do we do this?’ ” said **Mathias (Matt) Hunoval**, founder, Hunoval Law Firm PLLC and member of the North Carolina Banking Commission. “This represents a profound change in the market and the attitudes of forward thinkers and the realization that this train is cresting the hill and is about to go on the downslope. You are either going to get in on the front and help steer the engine or you are going to get passed by or run over by the train. I think there is that dawning awareness on the part of originators and other institutional players in this space that this is going to happen and you can’t stop the march of technology, so we better figure out how to do this and how to get on board or we are going to be left behind.”

**Simon Moir**, general manager of digital mortgage for eOriginal, noted that the company completed the nation’s first end-to-end mortgage process and eClosing in 2000, but that the progress has been relatively slow in the 17 years since.

“We are in a completely different spot from 2000,” he said. “You can imagine that the Internet was around then, but it was just starting to be used for commercial transactions. Putting an eClosing together in the year 2000 was quite a feat. Just imagine that it was on a tablet! It’s kind of crazy as it was unheard of technology in those days.”

## Latest moves

In November, DocMagic announced that it successfully completed the first comprehensive eClosing in Massachusetts, which included both lender and closing/settlement agent documentation, for Radius Financial Group, Inc. It was aided in completing the end-to-end eClosing by eNotarization services provided by strategic partner World Wide Notary (WWN). Also key to DocMagic enabling Radius’ first eClosing was the

participation of Santander Bank, which served as the eWarehouse lender.

“In addition to having integrated eNotary capability, one of the last remaining obstacles to adoption has been the reluctance of warehouse players to fund eNotes,” said **Tim Anderson**, director of eServices at DocMagic. “We helped test and implement an eWarehouse process to eDeliver acceptance of the eNote to Santander Bank within seconds after the eClosing was completed. This is an industry-altering achievement.”

Pavaso announced in 2016 that it has recorded its 2,000th live transaction on the Digital Close platform.

## Mental shifts

**Vicki DiPasquale**, vice president of sales at Simplifile, noted that where the push forward still is lacking is adoption – moving from a paper or email mentality to using technology that has been built specifically for mortgage process collaboration.

“A lot of times we have title companies who tell us their current process. They say, ‘this goes through email and I pick up the phone and call the lender. I then print the document that I receive, hand write my changes on it, scan it back in, and send it to them. This back and forth process can occur many times before the closing is finalized.’ They’ve been doing this for so long they can’t think of a reason to change or that there could be a better way,” DiPasquale said. “As far as the closing room itself, again the technology is there. As with any kind of technology, the first thing that has to happen is you just have to decide to do it,” she continued. “You have to find the right platform that you are going to be consistent to use. Then, you have to get all of your employees adopting it and feeling comfortable and committed to using.

“I think that once all lender and closing software becomes MISMO 3.3 compliant, it will make the sharing of the data and documents a lot easier across multiple platforms,” DiPasquale said.

“We’ll see things start to escalate when you’ve got people who can share the same types of data in a safe format from one system to another without everybody having to reconfigure how they map their data or what their data looks like.”



## Next expectations

Many involved in pushing the eClosing movement believe that things will begin to move forward faster. “2016 really set the table for eMortgages,” Moir said. “People started to say, ‘Well, there seems to be something going on here. We should look into it. It seems kind of hard, but let’s try one and see if we can do it.’”

“I would say 2017 is the year of growth,” Moir continued. “We have broken through the old mindset and I think it is where you are going to see players start to take this very seriously. Digital mortgage will no longer be an innovative concept, but will become part of doing business now. I think we are on the verge of something very interesting.”

**Michael Cafferky**, eMortgage program manager, UPCM Management at Fannie Mae, agreed, noting that a lot of past hurdles have been or are currently being worked through.

“I think there are a number of foundational elements which have been obstacles that we are working on, bringing some of the technology solution providers that are important to our customers into the fold, warehouse bankers,” he said. “A year ago we had one warehouse bank funding eNotes; now we have seven or eight that are set up. I think as more of those providers come into the fold and can support this, it becomes easier for our customers to begin doing these. Although we are seeing a pretty significant increase in interest from our customers, I only expect that to increase. We’ve been talking about it for a while, but I think we are finally seeing that momentum.”

Pavaso President and CEO **Mark McElroy** noted there were several variations of eClosings.

“One variation is a paper-based eClosing where information, communication, collaborations are delivered through a digital platform like Pavaso but the final signing is actually signed on paper,” he said. “So in that eClosing, we don’t get a lot of the benefits of the digital signing and the security and that kind of thing, but we do get a lot of the improved consumer experience, the audit trails, the communication, the collaboration and providing a unified experience.”

“The second level is a hybrid level, which is the most common right now,” McElroy continued. “The hybrid level is where everything is electronically signed except the note and the deed. This is by far the most common eClosing today, and what I expect

the industry to evolve to first. Because we can do it today, we can do it without changing a lot of the major processes with that lender.

“The next level is a solely digital close, where the documents themselves are not smart docs but they are electronic documents that can be electronically signed, which would include the note and the deed,” he said. “There are not many at all that are done that way.”

Cafferky noted that although a few mid-tier investors have begun permitting correspondent lenders to sell eMortgage loans, there are encouraging signs that some of the larger wholesale investors are working on developing the technology to accept electronically signed notes and deeds.

“The next evolution is eNote,” McElroy stated. “An eNote, for all intents and purposes, is a smart document; that means there is technology built into the document itself and it understands what its life is, that is the best way to explain. There aren’t very many eNotes being done right now.”

McElroy said that in the last six months, interest has grown, but still consists of mostly hybrid closings. He estimated that eNotes are gaining speed, but probably nine months behind the hybrid closings.

“I think you’ve got some major investors coming in, Fannie and Freddie but also some warehouse lenders coming in, which is who our clients normally sell to,” Anderson said. “They don’t sell to the big guys; they get their funding through someone else. So they’ve come on board. And so what is kind of left is at the local level, because closings are always local. What cats do you have to herd to all buy into this process? We learned in the North Carolina pilot that even though you had the secretary of state out there pushing this initiative, you still go down and you get some lenders on board and then you go back to title – and, in this case, closing attorneys – and you are getting pushback.”

He said that getting warehouse lenders on board is critical, because most smaller lenders depend on them for funding. “We are starting to see because of that, other lenders that sell to them are jumping on board now. That was a major, major milestone, getting warehouse lenders involved, and we are there. And I think you are seeing now some of these larger players that have been sitting on the sidelines we know are going to come in,” he said. “By around third quarter you are going to see some major names and that will be all of a sudden, ‘Oh wow, those guys are in.’”

# North Carolina takes on statewide pilot program

Since August 2016, the North Carolina Secretary of State's Office – along with players from all sectors of the mortgage industry, from lenders, to closing attorneys, to title agents, even Fannie Mae and Freddie Mac – worked together to complete a pilot eClosing program, designed to overcome any last obstacles to the common use of eMortgages in the state. The group is approximately 60 days from finishing their endeavors and have been satisfied with their results thus far.

## The beginning

“The eClosing Pilot Project is something we have prepared to do for a long time. As North Carolina's primary agency for business formation and financial capital formation, as well as the administrator of NC's Electronic Commerce Act, we have worked for years to grow our state's electronic commerce marketplace,” according to **Elaine Marshall**, North Carolina Secretary of State.

“For more than 10 years we have helped construct a complete legal framework that supports safe, viable eCommerce business activities in North Carolina. This eCommerce pilot program will facilitate the implementation of electronic signatures, electronic notarization and electronic recording. These powerful tools will speed transactions and governmental services, and create real world efficiencies and cost savings for North Carolina citizens and businesses. Those efficiencies will enable North Carolina lenders to better compete in the increasingly changing, compliance driven and competitive mortgage marketplace.”

“The Secretary of State's Office is in a unique position to lead the efforts because it is the government agency with statutory responsibilities for electronic notarizations electronic signatures as well as North Carolina's Electronic Recording Standards,” said **Ozie Stallworth**, director of electronic notarization and notary enforcement at the North Carolina Department of the Secretary of State.

“Having regulatory oversight for these electronic tools put us right at the center of electronic commerce. Seeing the trends towards electronic processes in the mortgage industry and with the CFPB's (Consumer Financial Protection Bureau) successful eMortgage pilot, it seemed a perfect time to take the pulse of

industry insiders to determine if the timing was right to launch an eClosing pilot,” Stallworth said.

## Goals

The most important aspect of the program was bringing everyone to the table. “We invited various stakeholders within the mortgage industry in North Carolina to explore the potential of an eClosing pilot program, including mortgage bankers, the real estate section of the North Carolina Bar, the title industry, the registers of deed, North Carolina Banker's Association, the North Carolina Commissioner of Banks, secondary market investors in the mortgage industry and electronic closing solution providers that were approved by Fannie Mae and Freddie Mac and, importantly, who also had been approved as electronic notarization solution providers in the state of North Carolina,” Stallworth said.

“We facilitated bringing the stakeholders together and outlined what we believed was a path forward for eClosing in North Carolina. Once the group collectively determined the viability of this process it paved the way for various stakeholders to forge ahead with agreements and partnerships to bring about the first fully electronic eClosing in the state,” Stallworth said.

**Mathias (Matt) Hunoval**, founder of the Hunoval Law Firm PLLC and member of the North Carolina Banking Commission, who assisted in developing the pilot, agreed.

“The goal was really a true public/private initiative in the truest sense of the word that happens to be under the auspices of the Secretary of State's Office,” he said. “You would have these official meetings with the intent all along of ... generating private side conversations with the goal of actually having something commercially viable in North Carolina. We weren't set on blessing a particular way or manner of doing it, but rather let's get [the conversation] going and maybe there are several alternate paths.”

He said given the importance of the financial sector to the state of North Carolina, the goal was to keep that edge and begin innovating.

## Unique issues

The state has some specific structures in place that

offer some unique challenges to work through as it sought to develop this program.

“We are a very unique state in that our mortgage closings involve attorneys. And that is not true for many other states,” Stallworth said. “So the whole idea behind making sure that North Carolinians continue to enjoy the highest levels of protection and legal guidance with the most important transaction that many will be involved in was important to make sure that we maintain that, and that wouldn’t change based on dictates from how electronic mortgages might be taking place in other places.”

**J. Kenneth Sykes**, president, North Raleigh Mortgage Operations Office, North State Bank Mortgage, agreed, noting that although new technology is being utilized, attorneys will be able to easily log on to secure electronic closing platforms while providing the same high quality legal services the North Carolinians rely on in a closing process. It may be more difficult for attorneys to adapt to eClosings because of the additional requirements that may be expected of them. Sykes said the group will develop a list of standard operating procedures which will aide attorneys and other real estate professionals in understanding and interacting with eClosing Solutions.

The state also has unique laws regarding specific electronic notarization requirements.

“In North Carolina, electronic notarization laws require the signer and the notarizing official to be physically present in the same location during the notarization process,” Stallworth said. “The time honored safeguards of the signer personally appearing before a public official to verify their identity and establish volition and willingness to execute the transaction underlies the assurance and acceptance of the executed documents across all parties in the mortgage process.

“This is in contrast to a remote notarization process where the signer and the notary communicate through video technology which introduces high levels of uncertainty for title insurers, recording officials, financial institutions, investors and borrowers.”

Personal appearance before a notary is important to the stability of the mortgage marketplace as it is the established protocol for traditional notarization in every state. It is also specifically required for eNotarization in at least 22 states, and possibly 48 if one takes the view that the Uniform Electronic

Transactions Act provides authorization for electronic notarization as is the case in Texas and California,” Stallworth said. There are only two states that currently allow for remote notarization which is a built in inhibitor to the industry’s forward progress with eClosings.

The office also chose to consult with Fannie Mae and Freddie Mac’s requirements for electronic closing solution providers. The GSEs require electronic closing solutions to be capable of executing each of the closing documents in a secure system, producing an electronic note and delivering it to an approved electronic vault. At the time the pilot was launched, DocMagic and eOriginal met all of the GSE and North Carolina standards. Other GSE approved eClosing solution providers that are also approved eNotary solution providers in North Carolina may also participate in the eClosing Pilot.

## Optimal results

“The biggest challenge that we are facing currently is widespread adoption,” Stallworth said. “We believe however, with a successful implementation of the pilot program more and more within the mortgage industry will look to take advantage of the benefits that eClosing affords lenders, attorneys, settlement service providers, consumers and everyone that touches the mortgage closing process.

“In order for eClosings to become mainstream in North Carolina we are going to need to begin to attract more investors and servicers of electronic notes,” he continued. “The more investors and servicers of

“It seemed a perfect time to take the pulse of industry insiders to determine if the timing was right to launch an eClosing pilot.”

**Ozie Stallworth, director of electronic notarization and notary enforcement,  
N.C. Dept. of Secretary of State**

eNotes participating, the greater the opportunity there will be for more banks and mortgage lenders of all sizes to participate in electronic mortgage closings.

Stallworth noted that Fannie Mae and Freddie Mac are the primary investors of electronic notes currently associated with the pilot, but more investors, servicers and aggregators are needed to spur the type of growth we envision.

“Approximately 90 percent of our state’s population lives in a county that accepts electronic recordings,” Stallworth said. “Having such a significant eRecording footprint is critical to the success of our statewide electronic mortgage closing program because it assures all parties involved that the recordable documents will be submitted securely and quickly put onto the public record at the Register of Deeds offices.”

### What’s next

“The intention is to provide a competitive advantage for financial institutions doing business here compared

to those in other states, and to accomplish this without reducing any transactional security,” Secretary Marshall said.

The industry is moving towards electronic mortgage closings in order to comply with the new stricter governmental compliance standards and to provide greater consumer awareness and understanding of the home purchasing process. The Consumer Financial Protection Bureau eClosing Pilot Program of 2015 showcased how quick and secure the process is for all parties. It is the expectation of the next generation of homebuyers to conduct these transactions electronically, Secretary Marshall continued.

“As a part of this effort we are going to produce a best practice document as a resource for those in North Carolina’s mortgage industry to use as a guide for implementing an electronic closing process,” Stallworth said. “I expect that we will cross the finish line on a full-end-to-end digital mortgage sometime in the second quarter in the state of North Carolina, and not just a one-off ... instead we are going to have a critical mass of transactions that begin to happen that are true end-to-end digital mortgages,” Hunoval said.

## The importance of securing eClosings

In an age where cybertheft is a common word and attacks on company security systems is common, one might be concerned about an eClosing being interrupted, or documents being intercepted by hackers. However, those in the eClosing business have taken great strides to ensure the security of eClosing transactions, making them, perhaps, more secure than paper transactions.

“There isn’t a week that goes by that we aren’t talking about security because it’s a moving target,” Pavaso President and CEO **Mark McElroy** said. “We live in a world that is very dynamic, and there are many people around the world that are trying to figure out how to rob, cheat and steal from everybody else. So we have to take a variety of different methods to ensure that our security is the best that it can be at all times.”

### Gaining control


“If there was one point that anybody in the industry should be focused on, what they need to fix, whether you are a lender, Realtor, or title agent, is that every time ... I put my most private personal information

on a piece of paper and I send it to people, I’m losing control,” McElroy said. “I’m giving away my personal information and I’m violating the No. 1 rule of security — control. If there is anything that the digital world can help fix is the protection of that data so that it is not in a paper form that we lose control of. So a lot of the natural benefit of eClosings is the ability to protect that data, which fixes one of the biggest issues in this industry, and that is paper.

“One underlying premise that we are operating from is, only let people see what they need to see and secure the nonpublic information in a place where it is really needed,” McElroy said. “We compare that to every time we print a piece of paper, we commit the ultimate violation of security — we lose control of nonpublic information. We are 100 light years into the electronic world in terms of security.”

McElroy said Pavaso also uses the latest encryption methods, even redacting nonpublic information of documents so people can’t see them. He said the company makes the data as useless to outsiders as possible, if they happen to get in.





Join the nation's *largest*  
e-recording network.

800.460.5657 | [simplifile.com](http://simplifile.com)

simplifile<sup>®</sup>

**Tim Anderson**, director of eServices at DocMagic, agreed, adding that the ability to trust the data on the documents being eClosed is important to getting investors on board.

“[If] you paper out, you lose control of everything,” he said. “Things change, you miss signatures; people swap out documents; you don’t know what version of the document you are looking at. That is why you always have to have a post-closing review, because once you paper out, you go back into the black hole.”

## Verifying parties

**Simon Moir**, general manager of digital mortgage at eOriginal, said eClosings also allow for closer looks at the parties to the transaction, leaving less room for identity theft.

“Even with paper signatures, how do you really prove [the borrower signed the document],” he said. “You have a notary who says, ‘Yes, I logged it into my journal and saw their driver’s license,’ but what is the hard evidence that you could point to something other than the notary saying, ‘yes, I did it’?”

“People get concerned that technology may not be as secure. However, I would counter that the process can be more secure because of technology. We can record a closing, for example. We can record a verbal statement as part of the digital transaction for voice authentication. [There are] a number of other solutions that can come into play and can be appended to the audit log to validate the participants to this process.”

McElroy said Pavaso has an identity validation service and a character network service that “use a combination of methods to prove the person on the other end is who they say they are.”

“These are the kinds of methods we are going to start seeing in terms of validating a person and giving them an Internet persona, or an actual presence, on the Internet instead of just a number,” he said.

“We use a variety of passwords and PIN numbers, combined with the physical appearance of a person in front of a Realtor or title agent, to validate identity and then cross-reference those different identity checks to make sure they are still consistent to root out any kind of fraud that might be happening.”

“We use a biometric, which is a signing pad, which is their signature and we can prove it because it is

biometric,” Anderson said. “It looks at the speed and angle and pressure. The issue for all of this is, ‘Will it hold up in a court of law?’ That has got to be the guiding factor, whether it is electronic or paper – if it goes to court and someone contests that it is not a legal signature, it’s got to hold up in a court. That is why we use a signature pad because it actually matches their license. It is their signature and you can prove that systematically. Because of the biometrics, it is unique to them. At the end of the day we have to make sure that any court will accept that and it looks like their signature and it can be authenticated in a systematic way.”

## Vaults

The transfer of documents securely to investors such as Fannie Mae and Freddie Mac may have been one of the final pieces of the puzzle to making secure eClosings commonplace. Fannie and Freddie needed to know that the documents had no chance of being intercepted and changed during the process.

During an eClosing pilot in North Carolina, which is coming to a close in the next 60 days, this inaccessible channel, an eVault, was used with great success.

“You have to have a totally inaccessible channel to make it work, going from the Internet to your computer and transmitted through the Internet to the end user, which would be the buyer, Fannie Mae or Freddie Mac,” said **J. Kenneth Sykes**, president, North Raleigh Mortgage Operations Office, North State Bank Mortgage. “You have to have a vehicle that would carry the information where they’d have no chance that the security would be breached. We give credit to that to the document closing companies and their preparation to figure out a way to transmit this information. And we give a lot of credit to Fannie and Freddie, the GSEs, and their preparation to create the eVault to transmit this information.

“We didn’t consider eClosing until we had the eVault,” Sykes said. “The vault is the key word. It was a collaborative effort between [the document closing companies] and Freddie Mac and Fannie Mae. They have been working on it for two or three years.”

Fannie Mae is in the process of moving to an eVault platform hosted by eOriginal from a proprietary platform.

“We are in the process of replacing our proprietary eMortgage platform that we built internally and

moving to a platform that is hosted by eOriginal,” said **Michael Cafferky**, eMortgage program manager, UPCM Management at Fannie Mae.

“We think that has a number of advantages. The eOriginal platform is more robust and has a larger set of capabilities so this change is really a key piece in ensuring that our own internal technology is ready to support larger volumes.”

### Audit trails

The ability to know who had access to what portion of the transaction at what time and where important documents are is another critical piece.

**Mathias (Matt) Hunoval**, founder of the Hunoval Law Firm PLLC and member of the North Carolina

Banking Commission, said the audit trail capabilities of eClosing vendors are far superior to conducting residential mortgage transactions with pen and paper.

“I can say after closing many thousands of residential consumer mortgage transactions via the old pen-and-paper way, that the audit trail capabilities available through a number of these eVendors [is significantly better]. The way in which the eNote and other core transactional documents are immediately stored in an eVault, I would argue, protects the record on an exponentially better basis than has been the case in the pen-and-paper world,” he said.

“Because it’s all locked down in an eVault, it’s a lot neater and tighter process and it does not lend itself to the sloppiness that we saw during and leading up to the housing crisis.”

## GSEs continue with support of eMortgages

As the largest buyers of mortgages in the country, the Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac, have a lot of influence in moving forward with eClosings. Both have shown a desire to move forward with eClosings.

Among other things, in the fourth quarter of 2016, Fannie Mae announced it will transition the eNote to the MISMO SMART Doc Version 3.0 format (XML with embedded PDF) in 2017 “as part of our ongoing commitment to improve the lending industry’s ability to originate and deliver eMortgages. Fannie Mae conducted significant industry outreach regarding document format options after obtaining feedback that the SMART Doc Version 1.02 was a key barrier to eMortgage adoption due to its complexity. Our outreach efforts have concluded that transitioning the eNote to a PDF-based format and providing detailed guidance and samples will make it easier for our customers and their technology partners to develop and implement eMortgage solutions.

“Committed to providing customers with access to an unparalleled digital experience, Fannie Mae will adopt the new MISMO SMART Doc to align the eNote with the format required for the Uniform Closing Dataset (UCD),” the release stated. “This document format combines the PDF image with the corresponding XML data to enable fully automated document verification and processing. The new format

will reduce operational complexity and follow a more modern standard solution for the future of electronic mortgages. In an effort to bring greater transparency to the market, Fannie Mae encourages lenders to consider this new format when strategizing and developing their future eMortgage plans.”

Both entities have been extremely active in these efforts in recent months, approving technology solution providers to enable the submission of electronic mortgages to the GSEs and providing guidance on delivering eMortgages to them. Currently Fannie Mae has 13 providers on its list, which was updated March 22. All but one can provide eNote (meaning the provider can produce a MISMO v1.02 SMARTDoc eNote), eClose (meaning the provider platform supports digital execution of closing documents, including MISMO v1.02 SMARTDoc eNotes) and eVault (meaning the provider platform provides connectivity to the MERS eRegistry and includes eVault capabilities to validate, maintain, and enable transfers of Control and Location for eNotes).

Freddie Mac has a total of eight vendors on its list, almost all of whom can perform each function mentioned above.

Fannie Mae also recently announced a new eVault. “Fannie Mae is committed to enhancing the digital mortgage ecosystem and removing obstacles to

eMortgage adoption,” Fannie said in a release. “As part of our continuous efforts to simplify and enhance our technology, we have secured a next generation electronic vault (eVault) through eOriginal, Inc., to meet our customers’ needs and make it easier for you to do business with us.

“An eVault provides the ability to accept and receive, and securely store electronic mortgage documents post-closing and prior to investor delivery,” the release continued. “The new vault provides a more modern, efficient, and scalable platform that enables the secure management of electronically signed assets (eNotes) throughout their post-execution lifecycle. This new state-of-the-art platform also supports reporting, reconciliation, and regulatory process requirements.”

To be on the GSEs lists of technology providers, a provider must meet several criteria. Freddie Mac released its eMortgage Guide Version 5.0 in November 2016, which sets forth its requirements that “Seller/Serviceirs, Custodians and System Providers must comply with to create, store, sell, and service eMortgages. The requirements and specifications in this eMortgage Guide are based, for the most part, on the requirements of E-SIGN, which is a law that was adopted by Congress and signed into law by the president in 2000, and UETA, which was adopted by NCCUSL and recommended for adoption by the 50 states, the District of Columbia, and U.S. possessions and territories in 1999.”

It goes on to state: “If Freddie Mac, in its sole discretion, determines that a seller/servicer is eligible to sell and/or service eMortgages, Freddie Mac shall prepare an attachment or amendment to seller/servicer’s purchase documents, which shall incorporate this eMortgage Guide by reference. Seller/servicers and their system providers must comply with the requirements specified in this eMortgage Guide. In addition, contracts between the seller/servicer and any service provider(s) regarding the provision of eMortgage closing services and eNote Vault system services, will be required by Freddie Mac to contain certain terms and conditions. Seller/servicers will be required to make certain representations and warranties regarding their compliance with requirements in this eMortgage Guide and in other purchase documents.”

For participation with Freddie Mac, seller/servicers must go through an initial review and approval process, including an initial due diligence process to confirm compliance with Freddie Mac’s eClosing system requirements and eNote Vault system

requirements. Seller/servicers can choose to go through a provisional approval, “which requires a preliminary due diligence review, followed immediately by a six-month period during which seller: (i) may sell eMortgages to Freddie Mac and (ii) must obtain final approval from Freddie Mac to continue to sell eMortgages to Freddie Mac, or full approval, which requires a complete due diligence review, following which seller may receive final approval to sell eMortgages to Freddie Mac.”

Fannie Mae released its latest Guide to Delivering eMortgage Loans to Fannie Mae on Nov. 1, 2016. This states: “As part of our eMortgage readiness review process, we ask the lender to provide information about some of the systems and processes it intends to employ in origination and servicing eMortgages. Prior to execution of the eMortgage Addendum, Fannie Mae will work with lenders to assess their technology implementations and business processes for conformance to Fannie Mae eMortgage requirements. This assessment involves consultation and completion of a questionnaire, which will help us determine the lender’s eMortgage readiness and support the lender’s implementation.

“We also require that the lender work with us to conduct certain systems testing. The scope of the systems testing depends on the lender’s particular eMortgage implementation. Following initial implementation, lenders must inform Fannie Mae prior to making any substantial technology or process changes, including implementation of any new Mortgage Electronic Registration Systems (MERS) functionality, to ensure that such changes are coordinated with Fannie Mae systems. Fannie Mae reserves the right to periodically reassess technology implementations and business processes to ensure compliance with these requirements.”

Requirements for creating and closing a Fannie Mae-eligible eNote includes:

- Using uniform eNotes;
- Electronic document file formats;
- Electronic signatures;
- Borrower attribution and audit trails;
- Electronic disclosures and consent; and
- eNote closing.

They must also have electronic document security, such as tamper-evident seals. The guide states: “Regardless of the type of electronic signature used, each electronic document delivered to Fannie Mae must be cryptographically ‘sealed.’ This tamper-evident seal, created by digital signature technology,



is used to provide tamper-evident protection to the document. The tamper-evident seal must be applied to the signed document immediately after the last borrower's signature has been applied. If any alterations are made to the document, the seal will be compromised, therefore making it apparent that the document has been altered."

**Tim Anderson**, director of eServices at DocMagic, noted that Fannie Mae and Freddie Mac have introduced preclosing quality control systems.

"Now we have the ability to verify the data before the documents get drawn," he said. "That supports an electronic process versus a paper way, and the only way you are going to get rep and warrants is you have to go electronic with them to do these preclose QC

systems now."

"They want to know that the data that they blessed is the data on the documents," Anderson continued. "If you eClose it, you lock it down. Then the originator has reps and warrant relief, repurchase risk relief, because we now can verify that the data that was blessed in the system is the data on the document, locked down through the eClosing process so no one can change it. That is where you get into Day 1 Certainty. If you bless the documents five, 10 minutes prior to the documents being drawn, and we rep and warrant the data that was just perfected through the system is the data on the document, investors will love this, too. They should be able now to fund without exception. There is no data integrity issues, no missing signatures, all the stuff that happens in the paper world."

## Association introduces model eNotarization Act

In January, the National Notary Association (NNA) published its fifth model law, the Model Electronic Notarization Act of 2017 (MENA), as a guide for public officials "establishing rules to govern the notarization of electronic records."

"The primary intended purpose of the MENA is to set forth a progressive model for state and territorial officials to weave electronic notarization provisions into an existing paper-based regime in order to form an integrated, single system for both electronic and non-electronic notarial acts," the model law states. "It is designed to be implemented either as a 'plug-in' update or complete replacement for Article III of the Model Notary Act of 2010."

**Bill Anderson**, vice president, government affairs at NNA, said: "There are states that have done nothing with electronic notarizations and those states might be completely happy with their paper-based statutes. They may not want to repeal those, but [provide] electronic statutes that can be adopted alongside their paper-based statutes. That is how we designed the Act. It gives them the ability to

keep their existing paper-based statutes and augment it with electronic provisions."

Throughout the process, the NNA sought the comments of a review committee, made up of members of the business, governmental, legal and digital technology communities. The results of this effort are comment sections, written "to explain the positions taken by the drafters, as well as to clarify related matters."

"Every policymaker considering electronic notarization needs to consult the MENA to review all of the policy options available to them."

**Bill Anderson, VP government affairs  
National Notary Association**

### Remote notarization

Anderson said one of the biggest issues that needed to be tackled was how to address remote notarization.

"The drafting committee had to decide whether the Act should ignore, legitimize or condition remote electronic acts," he said. "Some committee

members didn't want it to be addressed, some wanted it to be banned outright; others said we've got to legitimize it and other members said they may be open to it, but we've got to put some conditions around it to make it work."

“The comments we received reflected that,” Anderson continued. “We could not ignore the comments of the people who said, ‘I think we should do this.’ We also heard very clearly those who said we have to be careful, and we have to think this through. The outcome was Chapter 5A in the Act, which we think strikes a really good balance between these perspectives.”

He said that unlike current statutes in Virginia, a notary must be in their state to perform a remote electronic notarization.

“The MENA says that remote notarizations must be completely electronic,” Anderson said. “That counters what Montana did. Montana and the Revised Uniform Law on Notarial Acts amendment basically allows you to use electronic or paper documents. That means the notary could be sent a paper car title in the mail, hop on a video app with the signer, acknowledge their signature and notarize the paper car title and send it back. We took the view in the MENA that web cam notarizations can only be done with electronic documents, using electronic signatures because we think that provides greater security.”

The model law would require notaries public who perform electronic notarial acts by means of audio-video communication to:

- “Be located within the state at the time the electronic notarial act is performed;
- Execute the electronic notarial act in a single recorded session;
- Be satisfied that any electronic record that is electronically signed, acknowledged or otherwise presented for electronic notarization by the principal is the same record electronically signed by the notary;
- Be satisfied that the quality of the audio-video communication is sufficient to make the determinations requires for electronic notarial act under this act and any other law of this state; and
- Identify the venue for the electronic notarial act as the jurisdiction within this state where the notary is physically located while performing this act.”

The drafting committee also took the view that the signer can be located anywhere — the next city over, across the state, or in a foreign country — as long as the notary is in the state in which they were commissioned to notarize documents.

The Act states, “A notary public may perform an electronic notarial act by means of audio-video communication in compliance with this chapter and any rules adopted by the commissioning official for a

principal who is located:

- In this state;
- Outside of this state but within the United States; or
- Outside the United States if the act is not known by the notary public to be prohibited in the jurisdiction in which the principal is physically located at the time of the act; and the record is part of or pertains to a matter that is to be filed with or is before a court, government entity or other entity located in the territorial jurisdiction of the United States, or a transaction substantially connected with the United States.”

The Act would require notaries public who perform electronic notarial acts by means of audio-video communication to obtain and maintain a surety bond.

## Technology standards

Anderson said Chapter 4 on electronic notarization systems providers was also very important. It outlines performance-based standards these providers must meet before notaries use them.

“There are some states that require system providers to have their systems formally vetted and approved,” Anderson said. “For example, North Carolina does that. We opted not to require the approval of specific technologies because we are concerned about the adoption of eNotarization. We want eNotarization to take off, so we opted for a set of performance-based standards that all eNotarization systems must comply with. As long as they do that, any notary can use the system.”

Under the Act, an electronic notarization system provider would be required to take reasonable steps to ensure that a notary public knows how to use the system to perform electronic notarial acts.

The system would have to, among other things:

- Require access to the system via a password or other secure authentication method;
- Enable a notary public to affix his or her electronic signature to the document; and
- Render every electronic notarial act tamper-evident.

Chapter 5A would further require audio-video electronic notarization systems to:

- “Require the notary public, the principal and any required witness to access the system through an authentication procedure that is reasonably secure from unauthorized access;
- Enable the notary public to verify the identity of the principal and any required witnesses by means of personal knowledge or satisfactory evidence of identity;

- Provide reasonable certainty that the notary public, principal and any required witness are viewing the same electronic record and that all signatures, changes and attachments to the electronic record are made in real time; and
- Be capable of creating, archiving and protecting the audio-video recording and of providing public and official access, inspection and copying of this record as required.”

It states: “A notary public who exercised reasonable care enrolling in and using an electronic notarization system shall not be liable for any damages resulting from the system’s failure to comply with the requirements of the [Act]. Any provision in a contract or agreement between the notary and provider that attempts to waive this immunity shall be null, void and of no effect.”

Notaries must refuse a request to:

- “Use an electronic notarization system that the notary does not know how to operate;
- Perform an electronic notarial act if the notary does not possess or have access to an appropriate electronic notarization system; and
- Perform an electronic notarial act if the notary has a reasonable belief that an electronic notarization system does not meet the requirements set forth in the [Act].”

Notaries public would be required to create audio-video recordings of every electronic notarial act performed by audio-video communication. The recording would have to be provided for public and official access, inspection and copying. The recording is in addition to a journal entry and must include:

- “At the commencement of the recording, a recitation by the notary public of information sufficient to identify the electronic notarial act;
- A declaration by the principal that the principal’s electronic signature on the record was knowingly and voluntarily made;
- All actions and spoken words of the principal, notary public and any required witnesses during the entire electronic notarial act; and
- At the discretion of the principal, an accurate and complete image of the entire electronic record that was viewed and electronically signed by the principal and notary public.”

## Identification

Another issue addressed in MENA is the identification of principals. Under the Act, a notary public would be able to determine from personal knowledge or

satisfactory evidence of identity that the principal is who he or she says they are. The notary would be considered to have satisfactory evidence of identity for remote notarizations based on:

- The oath or affirmation of a credible witness who personally knows the principal, is personally known to the notary public and who is in the physical presence of the notary or the principal during the electronic notarial act;
- A dynamic knowledge-based authentication assessment by a trusted third person that complies with the rules adopted by the commissioning official;
- A valid public key certificate that complies with rules adopted by the commissioning official; or
- An identity verification by a trusted third person that complies with rules adopted by the commissioning official.


## What’s next

What will happen now that MENA is available to the public? “The MENA is the go-to resource for electronic notarization rules,” Anderson said. “Every policymaker considering electronic notarization needs to consult the MENA to review all of the policy options available to them. We published the MENA and put it out in the public domain and legislators and policy makers are free to use it, adopt it all or parts of it, as their needs dictate.”

“We don’t have any plans to actively lobby for the enactment of the MENA,” he continued. “Sometimes we are even surprised when a bill gets introduced that includes provisions from our previous model acts. I’m sure that the MENA will be the subject of discussion at our annual conference in June, as well as other industry gatherings in the not too distant future, and I’ll be helping facilitate those discussions.”

Electronic and remote notarization legislation have been introduced in various states across the country. A bill allowing remote notarization recently was introduced in Nebraska.

“Indiana introduced a bill that is a kind of mishmash of RULONA, the MENA and Indiana specific provisions,” Anderson said. “In addition, several bills have been introduced that allow an individual to sign their last will electronically,” he continued. “The states of New Hampshire, Virginia and Florida have introduced provisions that allow the signer to the will, including the notary, to appear either in person or by means of audio/video communication. Those are really interesting bills.”



*Simplify* loan collaboration  
and post closing.

800.460.5657 | [simplifile.com](https://simplifile.com)

simplifile<sup>®</sup>



# Appendix A:

## Focus on states

# Louisiana reports on eSignatures, eNotary issues

The Louisiana State Law Institute Electronic Signatures Study Group recently submitted two reports to the Louisiana Legislature, one on the acceptance by clerks of court of electronic signatures and one on the adoption of an electronic notary law.

On Jan. 31, 2017, the Electronic Signatures Study Group issued its report on the adoption of an electronic notary law. It had reviewed the Virginia electronic notary law, as well as the electronic notary laws of Montana, Nebraska, Nevada, Arizona and South Carolina at its Nov. 4, 2016 meeting.

It noted that the Virginia law, which the group specifically had been asked to review, did not set out specific standards, but provided the Secretary of the Commonwealth with the authority and responsibility to create standards for electronic notarizations.

“The study group agreed that the adoption of an electronic notary law in Louisiana is advisable,” the report stated. “As was pointed out in the joint resolution, Louisiana Legislature enacted Act 244 in the 2001 Regular Session and created the Louisiana Uniform Electronic Transaction Act and R.S. 9:2611 specifically provides for the electronic signature of a notary but does not provide any guidance or standards for how electronic notarization can be achieved.

“This topic was discussed at length by the study group at its Jan. 27, 2017 meeting,” the report continued. “Having reviewed the electronic notary laws of other states for guidance, the group ultimately noted that Louisiana’s civilian tradition and the unique province of notaries in Louisiana necessitated further consideration and study of the following issued pertaining to adoption of an electronic notary law in Louisiana:

- What capabilities and functionalities should be required of technologies in order to qualify for use in the electronic notarization process;
- Whether such technologies should be prescribed by way of an exhaustive list, or instead by qualifying standards;
- The role of the secretary of state, the notaries association and other relevant organizations in creating and modifying such a list or settling such standards; and
- Whether and what parts of existing law might require

clarification should an electronic notary law ultimately be adopted.”

The study group said it will continue to research the implication of its discoveries and other relevant issues and prepare additional recommendations to the legislature.

On March 22, 2017, it issued its report on the acceptance by clerks of court of electronic signatures. It addressed the following issues:

- Given that documents currently often are created, published and transmitted primarily in an electronic form, how to properly authenticate electronic signatures, particularly those involving real property transactions in Louisiana;
- Whether it would financially prudent and practical to require clerks of court to accept electronic signatures on documents filed with them so that Louisiana remains consistent and current with other states’ practices;
- Whether there would be a cost savings for clerks of courts who accept electronically signed documents for filing; and
- Whether there are feasibility, legal and practical ramifications of requiring clerks of court in Louisiana to accept electronically signed documents for filing.

The group noted that in Louisiana there currently exists sufficient law to authorize the use and acceptance of electronic signatures of documents.

“Although some uncertainty may exist over how to properly authenticate an electronic signature, or even what constitutes an electronic signature on a document that is submitted to a clerk of court for filing in a suit record, the study group pointed out that this should not be viewed as a reason to reject a filing,” the report stated. “This is because, regardless of the means of electronic creation, documents with electronic signatures can be printed on paper (or an electronic image of the printed form of the document can be created), and a document describing the means of creation can be included in the filing. If the document is of the type that contains an image of a handwritten signature, such a document would, in fact, have no substantive difference from a document that is presented for filing via facsimile, which has been accepted for filing in all Louisiana courts since 2001

under the authority of the Code of Civil Procedure Article 253. Based on the facts that the clerks of court area already required to accept non-“wet ink” signatures and have been doing so for more than a decade and that electronic documents, regardless of how they were created, can be printed, the study group agreed that, with some refinement of the law, it would be reasonable to require all clerks of court to accept electronically signed documents for filing.

“Nevertheless, the study group agreed that it would not be desirable to require clerks of court to accept electronically signed documents that involve the transfer or encumbrance of immovable property,” the report continued. “The study group, acknowledging the legislature’s concern as expressed in the preamble of the resolution — particularly regarding the authentication of electronic signatures on documents involving real property transactions in Louisiana — agreed that ‘real property transactions,’ i.e., transfers involving immovable property, in Louisiana are sui generis and deserve special attention and additional safeguards under the law. Part of the reason for the unique treatment of such transactions is the fact that they are intended to be kept in the ‘land records’ long-term and are dependent, in large part, upon the authenticity of the signatures on them. Moreover, the merchantability of an immovable is contingent upon authenticity of the signatures on the documents. A missing or falsified signature on a document filed for immovable property could have long-lasting effects, not just for the parties to the transaction, but for subsequent generations. Due to these factors, the study group agreed that the conveyance and mortgage

records should be excepted from a general rule mandating the acceptance of electronic signatures on documents that are filed with clerks of court. Providing for the filing of electronically signed pleadings and related documents in lawsuits would allow for the greater use of electronic signatures in the practice of law without completely upending the current practice for filing documents with the court. It would also provide a starting point for future revisions to the law as technology and common practices evolve.

“The study group also agreed that it would not be reasonable to mandate that clerks of court accept digitally signed documents in their native digital form,” the report stated. “This is because requiring them to do so would be mandating that they accept electronic filings, which the study group did not believe was a goal of the resolution. In addition, a digitally signed document employs technology to ensure that a document shared between parties is not modified. This technology can interfere with a court’s ability to accept and process electronic filings and maintain electronic records. Requiring clerks of court to accept digitally signed documents would therefore be both impractical and onerous.”

The group suggested the adoption of a new Paragraph E of Code of Civil Procedure Article 23 so it reads, “The clerk shall not refuse to accept for filing any pleading or other document signed by electronic signature, as defined by R.S. 9:2602 and executed in connection with court proceedings, solely on the ground that it was signed by electronic signatures.”

## Oklahoma bill would allow for eNotarization

The Oklahoma Legislature is considering a bill that, among other things, would provide for electronic remote notarizations to be conducted by Oklahoma notaries.

The bill, HB 1366, was introduced by Rep. **Elise Hall**, R-Oklahoma County.

It states, “A notary public in Oklahoma may perform acknowledgments, administer an oath or affirmation, take a verification on oath or affirmation, witness or attest electronic signatures and certify or attest a copy by means of a real time, two-way audio-video communication.”

These electronic notarial acts only could be performed using technology that allows the individuals communicating to simultaneously see and speak to one another.

Such a notarization, “regardless of the jurisdiction in which the principal signer of the electronic record is physically located at the time of the electronic notarization,” would be deemed to have been performed in Oklahoma and would be governed by Oklahoma law.

It defines “audio-video communication” as “being able to see, hear and communicate with another individual

in real time using electronic means.”

Before beginning to perform electronic notarizations, notaries public would have to register with the Secretary of State and “provide a general description of the technology the notary public will be using or intends to use.” Individual notaries could choose not to perform electronic notarial acts. The application to perform electronic notarial acts would have to include:

- Disclosure of any license or commission revocations or other disciplinary actions against the registrant;
- Evidence that the required surety bond has been issued; and
- Certification of compliance to the secretary of state with the electronic notary performance standards developed in accordance with the provisions of the bill.

The Secretary of State would be required to maintain an electronic database of notaries so that a person can verify the authority of a notary public to perform notarial acts and identify whether a notary has registered for authorization to perform electronic notarial acts. An electronic notary would be able to select one or more tamper-evident technologies to perform electronic notarial acts and could not be required to perform an electronic notarial act with a technology the notary has not selected.

The bill would define “appearance in person” and “appears before” to mean “presence by a principal before an authorized notarial officer by:

- Being in the same physical location as another individual and close enough to see, hear, communicate with and exchange tangible identification credentials with that individual, or
- Being able to see, hear and communicate with another individual by means of audio-video communication.”

Oklahoma notaries would be permitted to perform remote notarizations for a principal who is physically located in Oklahoma, another location in the United States or outside the U.S. if:

- The act is not known by the notary public to be prohibited in the jurisdiction in which the principal is physically located at the time of the act, and
- The electronic record is part of or pertains to a matter that is to be filed with or is before a court, governmental entity or other entity in the U.S., or the electronic record relates to property located in the U.S., or the electronic record relates to a transaction substantially connected to a territorial jurisdiction in the U.S.

Each notarial act would have to be evidenced by a certificate signed by the notarial officer. If the notarial

act is for a tangible record, the notary public would have to attach their official seal to it. The certificate would have to be securely attached to the record. If the notarial act is for an electronic record, the seal would have to be attached or logically associated with the electronic notarial certificate. The electronic certificate would have to be affixed to or logically associated with the electronic record.

Notaries would be required to register each electronic notarial act in an electronic journal; maintain and protect that electronic journal and provide for the lawful inspection and copying of the electronic journal. In addition, each remote notarization would have to be recorded and stored for at least five years, and the notary would have to notify each participating individual that the electronic notarization will be recorded prior to commencement.

A notary would be permitted to charge up to \$10 for a notarial act, and up to \$25 for an electronic notarial act. An electronic record that is defectively electronically notarized, but otherwise validly recorded, would be deemed to be validly recorded under state law.

The Secretary of State would have the authority to promulgate rules to implement the provisions of the bill. The rules could not require, “or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification.”

The rules would be able to:

- Prescribe the manner of performing notarial acts regarding tangible and electronic records;
- Include provisions to ensure that any change or tampering with a record bearing a certificate of a notarial act is self-evident;
- Include provisions to ensure integrity in the creation, transmittal, storage or authentication of electronic records or signatures;
- Prescribe the process of granting, renewing, conditioning, denying, suspending or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as a notary public;
- Include provisions to prevent fraud or mistake in the performance of notarial acts; and
- Establish the process for approving and accepting surety bonds and other forms of assurance under state law.

The bill would not affect the ongoing validity or effect of an electronic notarial act performed before Jan. 1, 2018 under the authority of the Uniform Electronic Transactions Act.



# Virginia eliminates eRecording fee

Virginia Gov. **Terry McAuliffe** signed a bill that eliminates a provision allowing clerks to charge a fee to record real estate documents electronically, and instead allow clerks to record a fee for filing a paper land records.

The bill, SB 870, was prefiled by Sen. **Richard Stuart**, R-Montross.

Current law states: “The clerk may charge a fee to be assessed for each instrument recorded electronically in an amount not to exceed \$5 per document. The fee shall be paid to the clerk’s office and deposited by the

clerk into the clerk’s nonreverting local fund to be used to cover operational expenses.”

This provision now is eliminated.

The following provision has been added to the statute: “Any clerk of a circuit court with an electronic filing system established in accordance with this section may charge a fee not to exceed \$5 per instrument for every land record filed by paper. The fee shall be paid to the clerk’s office and deposited by the clerk into the clerk’s nonreverting local fund to be used to cover operational expenses.”

# Maryland considers electronic notarization bill

The Maryland General Assembly is considering a bill that would allow for the performance of electronic and remote notarizations by notaries public in the state.

The bill, SB 747, was introduced by Sens. **Bobby Zirkin**, D-Baltimore County; George Edwards, R-Cumberland; **Michael Hough**, R-Frederick County; **J.B. Jennings**, R-Bel Air; **Delores Kelley**, D-Baltimore County; **Susan Lee**, Montgomery County; and **Wayne Norman**, R-Harford County.

Under the proposed law, notaries would have to register with the Secretary of State before becoming an electronic notary. The secretary of state would have to develop an electronic notary registration form that includes a description of the technology the registrant will use to create his or her electronic signature and electronic notary seal, including the name of the technology provider.

The notary would have to attach or logically associate with the electronic record they notarize the notary’s electronic signature and electronic notary seal. These must identify the notary and be unique to the notary; render the time and date of the electronic notarization capable of independent verification and render the record tamper-evident.

The notary would have to refuse to perform an electronic notarization if the signer:

- Does not appear before the notary at the time of the electronic notarization;
- Is not personally known to the electronic notary or

identified to the notary’s satisfaction;

- Shows a demeanor that causes the electronic notary to have a compelling doubt about whether the signer knows the purpose of the electronic notarization; or
- In the electronic notary’s judgment, is not acting willingly.

The bill would allow notaries to perform remote notarizations if the notary obtains satisfactory proof of the identity of the signer. The bill defines “satisfactory proof” in the case of remote notarizations, as “proof of the identity of the signer of the electronic document that is established using real-time, two-way audio-video communication that enables the electronic notary to interact with and identify the signer of the electronic record.” It would have to be confirmed by:

- The electronic notary’s personal knowledge of the signer of the electronic document;
- A valid public key certificate that complies with any regulation adopted under the statute;
- The signer’s successful completion of an identity assessment that is based on a set of questions formulated from the public or private data sources for which the signer has not provided a prior answer. This would have to be combined with the use of software that relies on high-resolution imaging and document classification to perform a forensic analysis on an unexpired government-issued photo identification provided by the signer or the electronic notary’s visual inspection of a high-resolution image of a valid government-issued photo identification that has been provided by the signer and contains information that is consistent with other information the

signer has provided to the notary; or

- Any other method of confirming the identity of the signer of the electronic record that is authorized by regulation.

They would be permitted to charge a fee that exceeds the amount charged for notarial acts under state law. The electronic notarization fee would have to reasonably account for the costs of the technology used in electronic notarizations and be conspicuously disclosed to the signer in advance of being charged. The notary also would be able to charge a reasonable fee to recover the cost of preparing records and duplicates for inspection related to the notary's electronic notarial services. They could share fees they collect with a private entity that provides software or other services used by the notary for performing electronic notarial acts or complying with other requirements.

Electronic notaries would have to exercise reasonable care in performing electronic notarizations, as well as a high degree of care in obtaining satisfactory proof of the signer's identity. They would have to take reasonable steps to ensure the integrity, security and authenticity of electronic notarizations, as well as steps to ensure that any registration for a device used to create the electronic signature and notary seal is current and has

not been revoked or terminated. They would have to keep, maintain, protect and provide a record of electronic notarizations for lawful inspection; and maintain the register of electronic notarizations for at least five years. They would have to maintain a backup of the register of electronic notarizations and take reasonable steps to ensure protection of that backup from unauthorized use. In addition they would have to keep the register of electronic notarizations, electronic signature and electronic notary seal secure under the notary's exclusive control and for the notary's exclusive use. They also would have to use the electronic notary's electronic signature and electronic seal only for performing electronic notarizations. If the register of electronic notarizations, electronic signature or electronic notary seal has been lost, stolen or used by another individual, the notary would have to inform the appropriate law enforcement of any theft or vandalism and notify the secretary of state in writing.

Electronic notaries would be able to perform electronic notarizations in any other county or state with the same power and effect in all respects as if the electronic notarization was performed in the county for which the notary was appointed. The electronic notarization would be deemed to have been performed in Maryland and governed by Maryland law.

## Nebraska introduces remote notarization bill

The Nebraska legislature is considering a bill that would allow for the use of remote notarizations. The bill, LB 388, was introduced by Sen. **Brett Lindstrom**, R-Omaha. Under the proposed rule, a notary could not notarize an electronic document unless they personally knew the person or the person was in the physical presence of the notary at the time of notarization, unless the notary uses video and audio conference technology that meets certain standards.

The bill states, "The fact that the signer of an electronic document is not in the physical presence of the electronic notary public at the time of notarization shall not bar performance of an electronic notarial act if the signer and electronic notary use video and audio conference technology that meets the requirements of section 4 of this act and that permits the electronic notary to communicate with and identify the signer at the time of the electronic notarial act."

The identification would have to be confirmed by:

- Personal knowledge;
- An antecedent in-person identity proofing process in accordance with the specifications of the Federal

Bridge Certification Authority; or

- A valid digital certificate accessed by biometric data or by use of an interoperable personal identity verification card that is designed, issued and managed in accordance with the specifications published by the National Institute of Standards and Technology in Federal Information Processing Standards Publication 201-2, entitled Personal Identity Verification (PIV) of Federal Employees and Contractors, and supplements thereto or revisions thereof, including the specifications published by the federal Chief Information Officers Council, entitled Personal Identity Verification Interoperability for Non-Federal Issuers.

Video and audio conference technology used for remote notarial acts would have to meet these standards:

- The persons communicating must be able to simultaneously see and speak to one another;
- The signal transmission must be live and real-time;
- The signal transmission must be secure from interception through lawful means by anyone other than the persons communicating; and
- The technology shall comply with rules and regulations adopted and promulgated by the secretary of state.