Mortgage Bankers Association – American Land Title Association
Model Legislation for Remote Online Notarizations
Suggested Talking Points for Model Bill Advocates

- In the United States, real estate transfer documents are typically recorded in local land records at the end of a transaction. These public records provide the world with constructive notice about American property rights. The ability to rely on the validity of these records is central to our real estate market and provides a fundamental foundation for all parties when mortgaging, purchasing, and selling real property.

- Notarization helps provide confidence that transaction documents are actually signed by the persons named in the documents. It is performed by government-authorized persons called Notaries Public who confirm the identity of the signatory (usually established by government issued ID) before placing their signature and seal on the document.

- Occasionally, real estate closings involve parties that are not physically in the same city or state as the property they are buying or selling. When this occurs, a complex choreography takes place to get the important documents signed and the transaction complete. Online remote notarization has the potential to make this process smoother, cheaper, and more secure.

- [Our association/firm] is working with the national Mortgage Bankers Association (MBA) and the American Land Title Association (ALTA) to enact legislation that would authorize remote online notarizations.

- We urge you to consider introducing/supporting this legislation which was developed through the input of MBA and ALTA members and a wide group of stakeholders. The draft was also shared with the National Association of Secretaries of State, the Uniform Law Commission, Fannie Mae, Freddie Mac and the Federal Housing Administration.

- MBA and ALTA collaborated in order to help offer a solution to the legal uncertainty their member companies face with respect to notarizing consumers' real estate transactions remotely online through electronic technology.

- That uncertainly stems from the lack of uniformity of laws enacted in a few states to permit these remote online notarial acts. For example, Virginia's law was very permissive about where lenders, customers and property could be located and Montana's law was much more conservative in establishing a very Montana-specific nexus in the transaction.

- The model bill provides consumers and the market clarity and certainty without offering an industry "wish list." It is based largely on a 2017 statute enacted in Texas that was quickly emulated in Nevada. Both of these laws gave remote online notarizations the same legal recognition as in-person ones.

- The Texas law was the result of robust debate and negotiation of various perspectives on this issue, including policy makers, state and national industry and consumer groups.

- Additionally, the model bill is similar to those two new statutes in three other key ways:

  - First, to protect against fraud, it requires the Secretary of State to promulgate rules to implement data standards and requirements related to credential analysis, consumer identification, data retention, privacy, security and other items. In fact, the Mortgage Standards Maintenance Organization (MISMO), has already convened a working group to produce suggested standards for Secretaries of State, to which the National Association of Secretaries of State has been invited to participate.

  - Second, the model incorporates the principle of consumer optionality. No consumer would be forced to choose to close their loan using remote online means.

  - Third, the model bill does not embrace technology standards specific to any one proprietary system. In other words, no single company would possess a monopoly on the state's approved technology.

- If the model bill was enacted, it would set out a lengthy implementation timeline. This would not only allow ample time for a Secretary of State to draft proposed rules and receive expert input, but it would also give time for the real estate finance industry and consumers to prepare.

- While other organizations are also preparing model bills, such as the Uniform Law Commission, law and policy makers in states throughout the country are already holding stakeholder meetings to examine other states' statutes and prepare their own proposals for their state's 2018 legislative session. Thus, it was imperative for the real estate finance industry to collaborate on this thoroughly vetted model bill and release it immediately.

- We believe that without a model bill to help guide legislative discussions in 2018, different state standards are likely to result. That outcome is the last thing consumers or the industry need, as it will lead to inefficiencies, additional costs and a poor customer experience.