



ELECTRONIC WILLS & NOTARIZATION

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ELECTRONIC DOCUMENTS GENERALLY

- Electronic documents have been recognized in Florida ever since the adoption of UETA (Uniform Electronic Transaction Act) in FS §668.50 in 2000 and URPERA (Uniform Real Property Electronic Recording Act) in FS 695.27 in 2007.
- Florida Legislature recently passed, and the Governor signed, House Bill 409 titled “Electronic Legal Documents.” The bulk of the legislation refers to remote notarization generally. However, the rules for execution of electronic estate planning documents differ significantly from the framework for loans, real estate closings, etc.



WHAT'S NEW?

- This past legislative session, legislation was passed to make it possible to notarize electronic documents when the notary and the signer (or “principal”) are in different physical locations and are connected via audio-video communication technology.

Key Definitions

“ONLINE NOTARY PUBLIC”

THE ACRONYM “RON” STANDS FOR “REMOTE ONLINE NOTARY.”

“RON SERVICE PROVIDERS”

THE “ORIGINAL” DOCUMENT IS THE ELECTRONIC VERSION, NOT A PAPER PRINT OUT OF THE DOCUMENT

“APPEAR BEFORE”



Notary: MUST be in Florida



Witness: In the U.S.



Principal: In Florida or confirm verbally or in writing that the Principal desires the notarial act be performed in Florida under Florida law

LOCATION



NOTARY BLOCK & FEES

- Beginning January 1, ALL notary blocks must say if the document was acknowledged by means of physical presence or online notarization.
- There is a \$25 limit on the fee that may be charged for performing online notarization.



IDENTITY CONFIRMATION OF PRINCIPAL

- The RON Service Provider will take the prospective principal through a software-driven authentication process before connecting the principal with the online notary.
- It is anticipated that this process will include written questions that the principal will have answer through written or click through answers.



AUTHENTICATION OF PRINCIPAL

- The principal must produce government-issued identification credentials to the RON service provider.
- The principal must answer a series of “out-of-wallet” questions derived from a database information about the principal, such as previous residence addresses. (5+)



AUTHENTICATION OF PRINCIPAL

- **TIME OUT:**

- The principal must answer these questions within a limited time period. (2 minutes)

- **MINIMUM PASSAGE RATE:**

- A prospective principal must answer 80% of the questions correctly.

- **ONE MULLIGAN:**

- If they fail, they are afforded one, second opportunity to answer another set of identity verification questions.

AUTHENTICATION OF WITNESSES

- Witnesses must go through the same authentication method as a principal.
- If the witnesses are not in the same room with the principal, then they must be residents of the United States and must be located in the United States when they witness the electronic document.



EXECUTION OF DOCUMENTS

- After authentication, the principal and witnesses (if any) are connected to the online notary via audio-video communication technology.
- An audio-video recording is made of the signing, witnessing and notarizing of the electronic document.
- A principal executes an electronic document through the RON service provider's software platform, generally by using a computer keyboard or a mouse or another electronic device.

NOTARIZATION AND WITNESSING

- The act of “witnessing” an electronic signature is defined as a “witness” being in the physical or audio-video presence of the principal and hearing the principal say that he or she has executed the electronic document.
- The online notary adds his/her electronic notary seal to the electronic document, which is required to be tamper-evident.
- The electronic document is transmitted wherever it needs to go for purposes of the transaction, such as a county recording office.



NOTARY JOURNAL AND RETENTION

- The online notary is required to maintain an electronic journal of the particulars of the notarial act, including the audio-video recording.
- The electronic journal and recording must be retained for minimum period of time depending on the document(s) being retained (wills have a longer retention period – 5 years after administration of estate or 20 years after death).
- The online notary is permitted to delegate the retention of the journal and the audio-video recording to a custodian approved by the Florida Department of State (generally expected to be the RON service provider or Clerk of Courts), provided that the notary notifies the Department of State of that delegation.



ESTATE PLANNING DOCUMENTS

- Estate planning documents: wills, trusts with testamentary aspects, health care advance directive, waiver of spousal rights, power of attorney authorizing any of the banking or investment power enumerated in F.S. section 709.2208
- If the document to be signed is an estate planning document, the principal must go through a vulnerable adult questionnaire.



VULNERABLE ADULTS

- A vulnerable adult is defined as "a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging." See, Florida Statute 415.102(28)

VULNERABLE ADULTS

- The RON will ask a series of preliminary questions to identify a vulnerable adult:
 - Are you under the influence of any drug or alcohol today that impairs your ability to make decisions?
 - Do you have any physical or mental condition or long-term disability that impairs your ability to perform the normal activities of daily living?
 - Do you require assistance with daily care?
- If the testator answers any in the affirmative, then the RON should not let the testator proceed unless in-person witnesses are gathered.

VULNERABLE ADULTS

- **Consumer Protection Warning**
- **NOTICE:** If you are a vulnerable adult as defined in s. 415.102, Florida Statutes, the documents you are about to sign are not valid if witnessed by means of audio-video communication technology. If you suspect you maybe a vulnerable adult, you should have witnesses physically present with you before signing.



VULNERABLE ADULTS

- The testator will then be asked a series of audible questions designed to build an evidentiary audio-video record of the testator's capacity and undue influence.
 - Are you currently married? If so, name your spouse.
 - Please state the names of anyone who assisted you in accessing this video conference today.
 - Please state the names of anyone who assisted you in preparing the documents you are signing today.
 - Where are you currently located?
 - Who is in the room with you?



IN-PERSON WITNESSES STILL REQUIRED IN TWO INSTANCES

1. A vulnerable adult who is executing estate planning documents (NOTE: a vulnerable adult can sign non-estate planning documents such as a deed or loan document).
2. Any power of attorney that contains superpowers, as defined by Florida Statute §709.2202

STORAGE OF ESTATE PLANNING DOCUMENTS

■ VIDEO REQUIREMENTS:

- No start/stops
- Must ask certain questions verbally/on video, while others can be done through a written q/a prompt.
- If video is lost, will is treated as a lost will that can be proved up through witness testimony.

■ STORAGE:

- Electronic record can be stored by notary, or any Qualified Custodian. It is anticipated that the Clerk of Courts will be QCs and will be available for will deposits.



EFFECTIVE DATE(S)

- General effective date for the legislation is January 1, 2020.
- However, there is a separate effective date of July 1, 2020, for Section 33 of the legislation (line 1678)—This is the section that creates the new FS 732.522, dealing with the execution of electronic wills.



HOW TO BECOME A REMOTE NOTARY

- You must be an existing notary public, a civil-law notary appointed under chapter 118, or a commissioner of deeds appointed under part IV of chapter 721.
- You must complete the online education training course and receive a certificate to be submitted with your registration.
- You are required to contract with the appropriate third-party vendors BEFORE applying.
- You must review the applicable statute and rules before applying.
- Your remote online notary public commission expires with your notary public commission.
- See <https://dos.myflorida.com/sunbiz/other-services/notaries/remote-online-notary-public/> for more information