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More and more loan servicers are moving their bank accounts to a new national bank to take advantage of new technology that generates a unique bank account number for each payoff quote. Find out why this is posing a challenge to the title and escrow industry in "BANK wire information."

Learn more about "REMOTE online notarization (RON)" from Patricia Ihnat, Underwriting Counsel for the State of Oregon and Vice Chair of the Oregon Real Estate Board. In this article, she

discusses RON and how it may provide an option for parties to real estate transactions who cannot physically be in the same room as the notary.

Sales of real property in West Virginia are subject to withholding when the seller is a nonresident person or entity. A nonresident entity is one which is not formed under the laws of the state and not qualified by or registered to do business in West Virginia. Read all about this month's state withholding topic in the article titled "WEST virginia real estate withholding."

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volume 16 issue 11  
November 2021

**Publisher**  
Fidelity National Financial

**Editor**  
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## **BANK** wire information

It has become standard operating procedure to verify bank wire information prior to originating a wire to a loan servicer for the first time. Once the bank wire information is validated using a known trusted number, that information is continually relied upon for each subsequent wire transfer submitted to the loan servicer.

The latest technology being offered by a national bank offers the loan servicer a unique feature. For every payoff quote the lender sends out — whether to pay a commercial or residential secured loan — the system dynamically generates a new bank account number.

As a result, settlement agents can no longer rely on previously validated wire instructions to these loan servicers. Instead, they must call and verify the unique bank account number with **each payoff**.

The re-verification process has added to the workload of settlement agents and loan servicers alike. The loan servicers do not have the manpower required to answer every caller that needs to verify bank wire information on every payoff quote they generate. In most cases, the loan servicers refuse to verify the bank wire information unless the borrower is on the call with the settlement agent. Hold times are often more than one hour.

This has proved frustrating to settlement agents, as well as the borrowers. Most settlement agents are resorting to overnight delivery of checks, in



lieu of wire transfers, when they are unable to verbally verify the auto-generated number as a true and valid bank account number.

Some of the loan servicers are requiring cashier's checks, instead of title company checks. That adds even more complexity since the check needs to be ordered, picked up at the bank and then sent via overnight delivery.

If settlement agents elect to send a check, instead of sending a wire transfer, the package must be tracked to a successful delivery and the check must be tracked to make sure it clears and ensures the loan was successfully paid for the borrower.

This information is provided so settlement agents can be aware of and account for the additional time required to verify unique bank account numbers, which are becoming more commonplace in the industry.

## **REMOTE** online notarization (RON)

**Oregon has joined a growing list of states that have implemented remote online notarization (RON). On June 15, 2021, Senate Bill 765 was signed into law by Governor Kate Brown making remote online notarization permanent in Oregon.**

With RON, parties to real estate transactions may have the option to sign documents without being physically present with the notary. Until the passage of Senate Bill 765, Oregon law required a document signer to be in the same room as the notary, and documents notarized by RON notaries from other states were not valid in Oregon.

*RIN and IPEN – What RON Is Not*

### **RON and RIN**

Unlike RON, RIN (remote ink-signed notarization) refers to a process whereby a signer receives the paper document in advance of signing. The paper

document is ink-signed while the signer and notary communicate with one another in real-time using Zoom, Teams, Facetime, GoToMeeting, or similar video-chat or video-conference applications. The signer then mails or delivers the ink-signed original paper document to the notary for signature and stamping.

While some states have emergency orders authorizing the use of RIN, Oregon notaries may not perform RIN, and RIN documents are not acceptable for use in Oregon. Remember, RIN is not RON.

### **RON and IPEN**

Electronic notarization refers to in-person electronic notarization (IPEN) and should not be confused with RON. IPEN has been legal and acceptable in Oregon for several years. With IPEN, the signer must be physically present in the same room with the notary.



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## [REMOTE online notarization (RON) — continued]

All the elements of a traditional notarization apply to IPEN — except the signer executes a digital document using an electronic signature and the notary signs and stamps the document using digital technology. The terms IPEN and electronic notarization do not apply to RON.

### *RON — Overview and Practical Considerations*

#### **Overview**

With RON, the signer is not required to be physically present with the notary. RON is performed completely online with the notary and signer in separate locations. The signer appears in person before the notary using secure online audio-video technology.

The signer interacts with the notary in real-time and signs the documents using a digital signature. A digital signature is a more secure form of electronic signature, using encryption and other technology that inextricably link the signature to the document.

In every remote online notarization, or RON, certain basic elements must be present:

- » The notary is located in the state where the notary has been certified to perform remote notarizations.
- » The signer is not physically present with the notary.
- » The signer has reliable internet access.
- » The signer uses a laptop or desktop computer with a camera and microphone.
- » The notary uses an approved secure online platform.
- » The signer and notary see, hear, and understand each other.
- » The signer's identity is verified through the RON platform using security measures including personal-identity-challenge questions and credential analysis of government-issued identification.
- » The platform provides for secure tamper-evident document upload and transfer.
- » The document includes a statement that the notarial act involved the use of communication technology.
- » The audio-video RON conference is recorded and associated with the notary's electronic/digital journal.

#### **Practical Considerations — Is RON an option for your client?**

##### Equipment and internet access

- » Does your client have reliable access to the internet?
- » Does your client have a laptop or desktop computer with a camera and microphone? [Tablets and smartphones cannot be used with currently-available RON platforms.]
- » Is your client comfortable with the electronic signing process and capable of using the required technology?

##### Current photo ID

- » Does your client have current government-issued identification such as a driver license or state-issued identification card, United States passport, or an officially recognized passport of a foreign country?

##### Identity verification

- » Can your client complete the required knowledge-based authentication (KBA) process?

- » Before a signer is connected to the audio-video session with the notary public, KBA is used to verify the signer's identity. A series of questions is developed through the platform relating to the signer's credit, banking, and residence history in the United States. These questions must be answered accurately by the signer to proceed with the RON session.
- » RON may not be an option if your client is neither a U.S. citizen nor a permanent resident of the United States, or if your client does not have several years of credit activity in the United States because there may be insufficient data from which the RON platform can formulate KBA questions.

##### Which party is asking to use RON?

- » Seller: If a Seller seeks to use RON for signing the deed and other required title documents, most title companies will require the buyer to consent to the use of RON, and will notify buyer's lender the deed will be executed with RON.
- » Buyer: For a Buyer, the question whether RON is an option depends on the several variables.
  - Is the Buyer paying cash?
  - If so, RON is not necessary as there are no notarized documents. The title company may arrange for the buyer to sign closing documents electronically.
  - Have the Buyer and Seller agreed to carryback financing? Has the seller agreed to accept a note secured by trust deed? Or, are the parties entering into a land sale contract?
  - With seller's consent, RON may be available for buyer to sign a land sale contract or a trust deed securing the carryback note. The latter situation requires seller to determine how to handle execution and delivery of the promissory note.
  - Is the Buyer obtaining a loan from a private lender?
  - A private lender may agree to accept a trust deed notarized using RON. The lender will determine how to handle execution and delivery of the promissory note.
  - Is the Buyer obtaining a loan from a bank or other institutional lender?
  - Most institutional lenders and banks do not accept RON for loan documents. Very few institutional lenders and banks have a fully-digital closing process in which the notarized documents are signed using RON and the note is signed using a digital signature and stored electronically using a secure digital storage and note holding system.
  - Is there a solution if lender will not accept RON for loan documents? Possibly. Buyer's lender may allow an attorney in fact to execute loan documents on buyer's behalf using traditional signing and notarization methods. The lender may accept a power of attorney signed by the buyer and notarized using RON.

##### *Takeaway for real estate licensees — Early notice is key*

Is your client:

- » In quarantine or ill as a result of the pandemic or other condition?
- » Unable or unwilling to meet with an escrow officer or notary public because of COVID-related risk concerns?

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[REMOTE online notarization (RON) — continued]

- » In a foreign country and unable to obtain notary services from a U.S. consular office, embassy, military officer or other acceptable U.S. notary services?
- » In a foreign country and unable to obtain notary and apostille or authentication services from a foreign notary and official government office?
- » Unable to attend a signing appointment at the title company or with a mobile notary for any other reason?

To avoid closing delays, notify the title company if any of these issues come to your attention. Begin a discussion of signing options right away to determine whether RON is an option.

In addition to the variables discussed above, keep in mind each title company has its own requirements for closing and insuring transactions using RON documents. Not all RON platforms and providers are acceptable to every title company, even if they are listed at the Oregon Secretary of State's website.

Discourage your clients from scheduling their own RON signing appointments directly with a RON provider. Documents signed and notarized using RON, such as a power of attorney or a deed, may

not be accepted by the title company unless the RON signing was set up through the title company.

Do not assume RON is acceptable in all states. Always check with the title company to confirm whether RON may be used for documents recorded in other states. Statutes and rules vary.

**CONCLUSION**

**Remote online notarization (RON) provides a secure and safe process for remote execution of documents before a notary public. If traditional notary methods cannot be used, contact the title company early to determine whether RON is an option for your client.**



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Patricia Ihnat,  
Vice-Chairperson, Oregon Real Estate Board,  
and the *Oregon Real Estate News-Journal*  
(September 2021 edition)

## WEST virginia real estate withholding

**For sales of real property located in West Virginia withholding is calculated using either 2.5% of the total payment or 6.5% of the estimated capital gain from the sale. Total payment is defined as the total sales minus:**

- » Debts of the transferor secured by mortgage or other lien on the property being transferred that are being paid upon the sale or exchange of the property, **and**
- » Other expenses of the transferor arising out of the sale or exchange of the property and disclosed on a settlement statement prepared in connection with the sale or exchange of the property, not including adjustment in favor of the transferor.

Unlike most other states, the buyer is not the one responsible for withholding and reporting the sale. Instead, the real estate reporting person is. The state prioritizes the person or entity who is responsible for withholding in the order listed below and defines the real estate reporting person as the:

1. Person responsible for closing the transaction which includes attorneys or settlement agents, or
2. Buyer's lender, or
3. Seller's real estate broker, or
4. Buyer's real estate broker, or
5. Person responsible for reporting a sale on IRS Form 1099-S as stated in the Treasury Regulations.

The buyer is only responsible for withholding when there is not an attorney, mortgage lender or real estate broker involved in the sale. The withholding must be remitted to the tax commissioner within 30 days of closing.

There are six (6) **exceptions** from withholding:

1. The seller is a resident of West Virginia.
2. The tax commissioner has issued a certificate stating:
  - a. No tax is due from the sale; **or**
  - b. A reduced amount is due at closing; **or**
  - c. The transferor has provided to the tax commissioner adequate security to cover the amount required to be withheld
3. If the property is being foreclosed upon or transferred via deed in lieu of foreclosure with no additional consideration.
4. The seller is a governmental agency.
5. The property being sold is the principal residence of the seller.
6. The transfer is without consideration such as a gift or transfer for tax or estate planning purposes.

West Virginia reporting forms are available by visiting <https://tax.wv.gov/Pages/default.aspx> or by calling a Taxpayer Service Representative at 1.800.982.8297.

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