Remote Online Notarization – New Challenges?

Wednesday, January 30, 2019
10:45 a.m.–noon

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Attorney

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This presentation will discuss HB 1217, the new online (remote) notarization law which became effective on July 1, 2018, as well as electronic notarization in general. It will include a demonstration of the electronic notarization process to give you a better understanding of how electronic notarization is done. The presenters will also discuss some the issues involved in determining whether to accept a document for filing which has been notarized electronically.
Roland Love has over 40 years experience in real estate and the title industry. He is an attorney certified in residential, farm and ranch, and commercial land and he chairs the Texas Land Title Institute. Love is an active volunteer with the Texas Land Title Association and has worked with state of Texas county and district clerks many times over the years to collaboratively address new technology and legal developments.

Robert Sumners is the Director of Government Filings for the Texas Secretary of State. Sumners received his undergraduate and law degrees from the University of Texas at Austin. He was in private practice for 20 years, and for the past 18 years he has worked for the Secretary of State. One of his responsibilities in that office is to supervise notary public commissioning and complaints against notaries.
Presented by: G. Roland Love and Robert M. Sumners
“Personal Appearance” by definition now includes...

Texas House Bill 1217

Online Audio-Visual Internet Appearance

Texas Civil Practice and Remedies Code Chapter 121

“an interactive two-way audio and video communication.”
Notary’s new vehicle...

Continuous feed through a high quality internet connection.

Texas Civil Practice and Remedies Code
Chapter 121

Texas Government Code
Chapter 406
\(\text{Definitions added and amended...}\)

\[\partial \text{ “Credential analysis” by a third party;} \]
\[\partial \text{ “Electronic” and “Electronic document” to encompass non-paper documents;} \]
\[\partial \text{ “Electronic notarial certificate,” Electronic seal,” and “Electronic signature” to capture the act of online notarization by a notary; and} \]
\[\partial \text{ “Identity proofing” by a third party.} \]

Texas Government Code
Chapter 406, Subchapter C

\(\text{Texas Government Code}
\)
\(\text{Chapter 406, Subchapter C}\)

\(\text{§406.105 - .107}\)

\(\text{New Position: “Online Notary Public”}\)

\(\text{New Commission: “Online Notary Public Commission”}\)

You must be a traditional notary to become an Online Notary Public.
Online Notary Public must keep, “secure electronic record of electronic documents notarized by the online notary public.”

“regardless of whether the principal is physically located in this state at the time of the online notarization.”
Summary of Statutory Implementations

Introduced NEW CONCEPTS:
- Secure storage requirements were created;
- A separate license in addition to a traditional notary license;
- “Presence” definition was expanded;
- Identity proofing is required; and
- Credential analysis is required.

No real change to the act of notarization.

Secretary of State’s Adopted Rules
Texas Administrative Code, Ch. 87
Secretary of State’s Adopted Rules  
Texas Administrative Code, Ch. 87  

Implemented modern consistent administrative provisions to track the Government Code.

- 87.1. Definitions  
- 87.4. Submission of Online Notary Public Application  
- 87.11. Eligibility to be Commissioned as an Online Notary Public  
- 87.14. Issuance of the Online Notary Public Commission by the Secretary of State  
- 87.41. Online Notarization Procedures  
- 87.43. Reasons to Refuse Online Notarization  
- 87.51. Form of Record Book  
- 87.52. Public Information  
- 87.54. Records Retention  
- 87.63. Changes to Digital Certificate and Electronic Seal  
- 87.70. Identity Proofing and Credential Analysis Standards  
- 87.71. Online Notarization System

Online Notary Commission

Distinct and separate commission from a Traditional Notary Commission.

Texas Administrative Code, Ch. 87
Technology Requirements

Must utilize, “Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant.”

Texas Administrative Code, Ch. 87

Online notary must be physically located in Texas at the time of notarization.

Texas Administrative Code, Ch. 87 87.41(b)
Texas Property Code, Ch. 12
Recording of Instruments

§12.001
Does not contemplate a remote online notarization which involves an...

Electronic Document
Digital Signature

RISK AHEAD
Not all counties accept electronic documents.

What to do about an electronic document that must be "papered out" to be recorded?

A "Paper Document" must have an original signature that is acknowledged to be recorded;

OR

Attached to an Affidavit that has an original acknowledgement and signature.

Two immediate problems...

1. The main feature of remote online notarization is the avoidance of paper documents.

2. How will the Affidavit be indexed?
An original signature, “may not be required” for an electronic instrument that meets with the requirements of Chapter 15, Texas Property Code; Chapter 195, Local Government Code; or “other applicable law.”

Texas Property Code, Ch. 12
§12.001(c)

Texas Property Code, Ch. 15
Uniform Real Property Electronic Recording Act Adopted in 2005

15.005(b)(3)
Allows for the conversion of paper documents into an electronic form, by the COUNTY CLERK.

Allows for the recording of electronic documents, IF the COUNTY CLERK chooses to implement electronic recording.
Local Government Code, Ch. 195
Establishes rules for electronic document recording.

§195.003 Limits who may file electronically.

Fails to address the conversion of a “wet” signature to a pdf or other electronic document by title company for electronic filing.

Business & Commerce Code, Ch. 322
Uniform Electronic Transactions Act

Permits transaction of business electronically and ability to contract via an electronic signature.

§322.001 Allows electronic notarizations and acknowledgments.
What about the “papered out” electronic document?

Possible solutions...

Texas Property Code §12.0011
Expand the permissible types of paper documents.

Local Government Code, Ch. 193
Provide for indexing by the grantor/grantee of the exhibit documents.
Other Issues

IF an Affidavit or Certification process is adopted...

Provide statutory language directing County Clerk how to index an Affidavit for “papering out.”
Statute of Limitations...

... for challenges to remote notarizations.

Mortgage Bankers Association and ALTA

Collectively addressing technical standards.

ALTA may provide Title Insurance coverage for remotely notarized documents.

Possible jurisdictional requirements to physical presence of a notary licensed under any state.
Entities with the potential to affect changes to RON

Texas Attorney General

Texas State Library and Archives Commission

Electronic Recording Advisory Committee
Created by Local Govt. Code §195.008

RON is a simple concept ...

Implementation with adequate safeguards and requirements.

“Personal Appearance” Via the internet.
Seek approval when conflicting circumstances arise.
Breakout 3: Miscellaneous

Remote Online Notarization—New Challenges?

Mr. Robert M. Sumners
Director of Government Filings, Office of the Texas Secretary of State
Notary Statutes: Chapters 406 and 602 of the Texas Government Code
Chapter 121 of the Texas Civil Practice and Remedies Code
These statutes can be accessed at: https://statutes.capitol.texas.gov

Notary Rules: Title 1, Part 4, Chapter 87 of the Texas Administrative Code
These rules can be accessed at: https://texreg.sos.state.tx.us/public/readtac$ext.viewtac
or just go to Secretary of State website: www.sos.state.tx.us and look for “state rules and open meetings”

New Online (Remote) Notary Law is House Bill 1217 – 85th Legislature (2017)
Can be accessed at https://webservices.sos.state.tx.us/legbills/index.aspx

NOTARY PUBLIC DO’s and DON’T’s

1. Only notarize when the signing party is present & there is a notarial certificate (e.g. jurat or acknowledgment) on the document (unless you are an online notary notarizing remotely).
2. Respond to requests for copies of notary log book entries. They are PUBLIC RECORD. Do not put entries in your notary log that you do not want to be public record, e.g. SSN’s and DOB’s, and driver’s license numbers.
3. Do put signing parties under oath with a formal ceremony, “Raise your right hand. Do you swear or affirm that ….”
4. Always properly identify the signer/principal and (if necessary) the credible witness, with an ID that has a picture and signature of the signing party issued by an agency of the State of Texas or of the United States.
5. Make sure SOS has your correct mailing address.
6. Do try to get the signing party to sign your log book (although it is not required by statute).
7. Do not notarize a document in which you have a financial or beneficial interest or to which you are a party.
8. Maintain your log book for as long as possible.
9. Keep a copy of your commission certificate in your records.
10. If requesting an apostille from our office, we will need the original document and the name of the country it is going to. We do not yet have the technology to apostille a document that has been notarized with an electronic signature.

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Breakout 3: Miscellaneous

Remote Online Notarization - RON

- What is the Legal Basis for RON

G. Roland Love
Vice President, Business Alliances and Field Operations
Independence Title
WHAT IS THE LEGAL BASIS FOR RON?

2019 CDCAT Winter Conference
County and District Clerks Association of Texas
January 30, 2019

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Board Certified in Commercial, Farm and Ranch, and Residential Real Estate Law by the Texas Board of Legal Specialization, and admitted to the U.S. Patent and Trademark Office.

Currently Vice President, Business Alliances and Field Operations, Independence Title Company

Representative Experience

- Past President of Texas region of a large title agency, including homebuilder, retail and fee attorney operations, encompassing financial planning and monitoring operations, employment issues, acquisitions and mergers, business development, coordination with home builder and lender, and daily problem solving and closing deals.
- Shareholder and Attorney, Winstead PC
- Real Estate curative matters
- Title and real property disputes
- Title insurance coverage
- Regulatory matters before the Texas Department of Insurance
- Extensive appellate practice throughout the state
- Experience in all aspects of title industry, including entities, escrow, title insurance and RESPA
- Intellectual Property litigation and licensing

Professional & Community Involvement

- AIDS Interfaith Network (AIN) (Advisory Committee)
- College of the State Bar of Texas (Fellow)
- Consumer Credit Counseling Service of Greater Dallas (Now Transformance) - (Board of Trustees)
- Dallas Bar Association (Certified Mediator; Past Chair, Legal Ethics Committee and Law in the Schools Committee)
- Dallas Bar Foundation (Life Patron Fellow)
- American College of Real Estate Lawyers (Fellow)
- Dallas Inter Soccer Club (Director and Manager)
- Dallas Volunteer Attorney Program – Lawyers for Affordable Housing (Mentor)
- Episcopal School of Dallas (Director)
- North Texas Housing Coalition (Director)
- Park Cities YMCA (Board of Directors; Sports Committee)
- St. Michael's School (Vice President, Board of Trustees)
- State Bar of Texas (Real Estate, Probate & Trust Law Section, Council Member and Chair 2016-2017)
- State Bar of Texas (Special Prosecutor)
- State Bar of Texas Title Examination Standards Board
- State Bar Board of Legal Specialization (Examiner)
- Tarrant County Bar Foundation (Fellow)
- Texas Bar Foundation (Life Fellow)
- Texas Bar CLE, Advanced Real Estate Drafting Course (Chair)
• Texas Land Title Association (Chair, Legislative Committee, Chair, Title Insurance: A Primer For Lawyers; Past Chair, Defense Counsel Committee; Director and Vice-Chair, PAC; Instructor)
• Texas Land Title Institute (Chair - 17 Years)
• Texas Land Title PAC (Vice-chair, Board of Trustees)
• Texas Real Estate Commission (Instructor)
• The 500, Inc. (Director)
• United Way – Tocqueville Society (Member); Advocacy Committee (Chair 2017)
• YMCA Indian Guides Program (Nation Chief)
• YMCA Partners with Youth Sustaining Campaign (Chair)
• YMCA Youth Sports Program (Director and Coach)

Awards & Recognition
• AIN – Crystal Hope Award
• Best Lawyers in America
• Dallas Inter Soccer Club - Volunteer of the Year
• Texas Bar Foundation Outstanding Law Review Article Award
• Texas Land Title Association Title Person of the Year (2018)
• Texas Land Title Association Peggy Hayes Teaching Excellence Award
• Texas Land Title Association President's Award (2005, 2014)
• Texas Land Title Association Professional Excellence Award
• Texas Land Title Association Special Certificate of Appreciation (2013)
• Texas Super Lawyers, Real Estate, Commercial Litigation, Texas Monthly, 2005-2013
• United Way – Advocate Award (2018)

Admitted to Practice
• Texas, 1977
• U.S. Patent and Trademark Office
• U.S. District Courts for the Northern, Southern, Eastern and Western Districts of Texas
• U.S. Court of Appeals, Fifth Circuit
• U.S. Court of Appeals, Eleventh Circuit
• U.S. Supreme Court

Personal Interests
Tennis, skiing, fishing and sailing; active as a community volunteer with a number of organizations focusing on individual financial counseling, housing, education, and children.
# Table of Contents

I. Introduction....................................................................................................................1  
II. The Adoption of RON..................................................................................................1  
III. What does Government Code Ch. 406 Do?.................................................................1  
IV. What Did the Secretary of State Say?...........................................................................2  
V. Recording Laws.............................................................................................................3  
VI. Attorney General Opinion KP-0233..............................................................................4  
VII. Papering Out...............................................................................................................5  
VIII. Other Issues.............................................................................................................5  
IX. Conclusion..................................................................................................................6
What is the legal basis for RON?

I. Introduction

This paper addresses the legal side of Remote Online Notarization (RON). Moreover, while notarization and closings are keeping up with technology, the transition from paper recording and in-person acknowledgments has its gaps in coverage. The legal structure and those gaps are discussed herein.

II. The Adoption of RON

Remote Online Notarization (RON) was the result of Texas House Bill 1217, adopted September 1, 2017 but to be effective July 1, 2018. Essentially, it changed the definition of “personal appearance” required for a notarization to include an on-line audio-visual internet appearance, one that satisfies certain conditions. HB 1217, Appendix A attached hereto, made the following statutory changes:

Texas Civil Practice and Remedies Code Chapter 121, Acknowledgments & Proofs of Written Instruments, was amended to expand the definition of personal appearance to include “an interactive two-way audio and video communication.” Thus, a continuous feed transmitted over a high-quality internet connection is now a vehicle for a notary to remotely take an acknowledgment or sworn statement. This new vehicle for a notarization was made expressly subject to the new Subchapter C, ONLINE NOTARY PUBLIC, of Chapter 406 of the Government Code, which is discussed later in this paper.

The Secretary of State was authorized and directed to adopt rules and standards by July 1, 2018. The final rules and standards were adopted August 19, 2018.

III. What does Government Code Ch. 406 do?

Chapter 406 of the Government Code now includes Subchapter C, entitled “Online Notary Public.” Subchapter C includes the following:

The new subchapter included new terminology with the following definitions:

a. “Credential analysis” by a third party;

b. “Electronic” and “Electronic document” to encompass non-paper documents;

c. “Electronic notarial certificate,” “Electronic seal,” and “Electronic signature” to capture the act of online notarization by a notary; and,

d. “Identity proofing” by a third party.

Sections 406.105 - .107 of Subchapter C also went to great lengths to create a new position and commission for an “online notary public.” Only a licensed “online notary public” may perform an “online notarization.” Perhaps most interesting, the online notary must first qualify and be commissioned as a traditional notary. That notary may then go the extra step to obtain the online notary license. Of course, the application and process is on-line.

Perhaps the greatest burden an online notary public will face is part of Section 406.108, which requires him/her to keep a “secure electronic record of electronic documents notarized by the online notary public.” Section 406.108 includes the actual video and audio conference among other specific storage requirements. The record must be backed-up, tamper-proof, secure, and maintained for 5 years.
What is the legal basis for RON?

Also of note, Section 406.110 specifically states “regardless of whether the principal is physically located in this state at the time of the online notarization.” It does not say that the notary can be elsewhere, and traditional legal theory has been that a notary loses his/her authority once outside the jurisdiction of licensure. (See National Notary Association website, nationalnotary.org and American Association of Notaries, texasnotary.com.) And, of course, a Texas notary must be a Texas resident, or a resident of a contiguous state but acting in Texas. Significantly, nothing is said about an online notary licensed under another state’s laws taking an acknowledgment by a Texas resident, wherever the principal may be.

In summary, the online notarization statutory implementation introduces only a few new key concepts, with no real change to the underlying act of notarization. Particularly important new concepts are:

a. Secure storage requirements were created;

b. A separate license on top of a traditional notary license is required;

c. “Presence” is expanded;

d. Identity proofing is required;

e. Credential analysis is required.

IV. What did the Secretary of State say?

The Secretary of State proceeded as directed and promulgated rules by July 1, 2018, though for public comment. Some changes were made after public comment, and the final Rules were adopted August 19, 2018. The adopted rules are attached as Appendix B. They may also be found at Texas Administrative Code, Chapter 87, Notary Public. The Secretary of State chose to repeal the existing rules for notary publics, reorganize, and adopt new rules.

The new rules did not legislate but rather implemented modern consistent administrative provisions to track the Government Code as amended. Key updates were:

a) 87.1. Definitions;
b) 87.4. Submission of Online Notary Public Application;
c) 87.11 Eligibility to be Commissioned as an Online Notary Public;
d) 87.14. Issuance of the Online Notary Public Commission by the Secretary of State;
e) 87.41. Online Notarization Procedures;
f) 87.43. Reasons to Refuse Online Notarization;
g) 87.51. Form of Record Book;
h) 87.52. Public Information;
i) 87.54. Records Retention;
j) 87.63. Changes to Digital Certificate and Electronic Seal;
k) 87.70. Identity Proofing and Credential Analysis Standards; and
l) 87.71. Online Notarization System

Importantly, an applicant must already be a notary public, and the application for an online notary commission is required to be completed and submitted online - imagine that! The online notary is a distinct and
What is the legal basis for RON?

separate commission on top of the standard notary commission. The online notarization and notary seal will indicate that the notarization is remote and by a commissioned remote online notary. See Appendix C for suggested acknowledgement language from the Secretary of State. Also, the electronic technology will utilize “Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant.”

Somewhat substantively, the online notary must be physically located in Texas at the time of the notarization (87.41(b)). Section 87.41(a) also states that “An online notarization may only be performed by a notary who is commissioned as an online notary public.” This could be read to require a Texas commissioned online notary for Texas property, but it has not been so broadly construed. However, certainly if the parties are in Texas and dealing with Texas property, the notary must be commissioned in Texas. This also does not address the outstanding question of out-of-state remote on-line notaries when the signing party is located outside of Texas.

V. Recording Laws

Texas Property Code, Chapter 12, Recording of Instruments, governs the recording of real property conveyances in Texas. Recording is necessary to impart constructive notice. Texas Property Code, Chapter 13, Effects of Recording. Important here, Section 12.001 addresses an acknowledgment by a notary, but it does not contemplate a remote online notarization, which necessarily involves an electronic signature and an electronic document.

This is where Section 12.0011, Instruments Concerning Property, Original Signature Required for Certain Instruments, comes in, to some extent. “Paper document” is a document received by a county clerk in a form that is not electronic. A remote online notarized document is obviously an electronic document, not a paper document. This section becomes important when addressing the question of recording a remote online notarized document that needs to be “papered out,” or printed/copied, to be recorded in a county that does not e-record. At that point, it becomes a paper document, but does it meet the requirements for recording a paper document?

A paper document may not be recorded unless it contains an original signature that is acknowledged, or the paper document is attached as an exhibit to an affidavit that has an original acknowledged signature. Section 12.0011 (b). This presents two immediate problems: 1) one of the main features of remote online notarization is the avoidance of paper documents, and 2) how will the affidavits be indexed? A second notary will also be required to take the signature of the affiant on the affidavit proving up the “papered out” document.

Section 12.0011(c) also provides that an original signature “may not be required” for an electronic instrument that complies with the requirements of Chapter 15, Texas Property Code; Chapter 195, Local Government Code; Chapter 322, Business & Commerce Code; or “other applicable law.” Chapter 15 is the Uniform Real Property Electronic Recording Act adopted in 2005. The Act allows the recording of electronic documents, if the county clerk chooses to implement electronic recording. Also, 15.005(b)(3) allows the conversion of paper documents into an electronic form, though by the county clerk.

Chapter 195 of the Local Government Code establishes the rules by which electronic documents may be recorded. Technically, the rules are adopted by the Texas State Library
What is the legal basis for RON?

and Archives Commission. Specifically, digital signatures are permitted. Section 195.003 limits the persons who may file electronically. Of course, the already existing practice is the conversion of a “wet” signature to a PDF or other electronic document by the title company for filing electronically. The comments as to the Uniform Act and Texas Property Act Section make it clear that a paper document may be converted to an electronic form for submission to the county clerk for recording. It does not provide for a printout of an electronic document to be recorded. It is accepted that an electronically signed document may be recorded in a county with electronic recording.

For the sake of completeness, it is accepted that Chapter 322 of the Business & Commerce Code is the Uniform Electronic Transactions Act. This act permits the transaction of business electronically and the ability to contract via an electronic signature. Section 322.011 also allows electronic notarization and acknowledgment. Thus, the remotely online notarized document fits nicely into the electronic recording scheme, where it exists.

Finally, the applicability of “other applicable law” is an unknown. Ostensibly, a law could be adopted permitting the recording of a paper document that is a printout of an electronic document that was notarized remotely online. The current version of the model uniform act envisions simply recording a printout of the remotely notarized document, apparently assuming chain of custody and that the remote notary seal will satisfy concerns regarding alteration or possibly fraud and forgery. Such a law would also need to direct the clerk as to indexing the document to provide notice via a grantor/grantee search.

Thus, one can see, neither the newly enacted law, nor the existing law, accommodate the “papered out” electronic document. A legislative fix will likely be required.

VI. Attorney General Opinion KP-0233

On January 7, 2019, the Attorney General of Texas issued a relevant opinion KP-0233 confirming this analysis. The opinion was issued in a response to a request from Guadalupe County, RQ-0235-KP, dated June 1, 2018. Guadalupe County does not have electronic recording. The opinion is instructive and attached as Appendix D. On page 4, the Attorney General states:

To summarize, a paper document with a copied image of an electronic signature is neither an "electronic instrument" nor a document complying with the provisions that subsection 12.001l(c) of the Property Code would require in order for the document to qualify for recording without an original signature. Absent other applicable law, to the extent that the paper documents in Category 1 concern real or personal property, a court would likely conclude that they must contain an original signature that meets the requirements of subsection 12.001l(b) to be recorded.

Moreover, the summary is stated:

The county clerk must accept a paper document presented for recording if the document complies with the requirements of the particular statutory provision authorizing the recording of the document. To the extent a printed copy of an electronic document presented for recording by the county clerk concerns real or personal property, it must contain an original signature that meets the requirements of
What is the legal basis for RON?

subsection 12.0011(b) of the Property Code to be recorded by a county clerk. To the extent a county clerk has implemented electronic filing and recording in accordance with state law, the clerk's obligation to accept a document submitted electronically for recording depends on whether the document (1) is a real property record; (2) is submitted by an authorized filer who has completed the requisite enrollment and agreement with the county clerk; and (3) otherwise meets the requirements for recording of real property records submitted electronically.

VII. Papering Out

One suggested approach is to attack the issue via Property Code Section 12.0011 by expanding the permissible types of paper documents to be recorded. Rather than have the remote online notary provide an affidavit, the affiant or certifier of a prove-up could be a person listed as permitted for electronic recording in Local Govt Code 195.003, albeit a person with personal knowledge of the document and its execution/notarization. This would typically be a title company employee, but could be a lender or attorney. In addition, the Local Government Code Chapter 193 would need to be amended to provide for indexing by the grantor/grantee of the exhibit document. In the meantime, should Property Code Section 15.005(b) be amended to make it clear that a title company (and maybe others) may make a copy of a “wet signature” paper document and electronically record it? Maybe so, although it is already an accepted practice in counties with electronic recording and addressed by the Uniform Act comments. A proposed draft bill is attached as Appendix E.

VIII. Other Issues

RON has brought some other miscellaneous issues to the forefront. In particular, if an affidavit or certification process is adopted for “papering out,” legislation will be needed to provide direction to the County Clerks as to indexing. Affidavits are indexed by affiant, except where there is statutory language to the contrary, and that will need to happen here.

Second, a Statute of Limitations should likely be adopted to cut off challenges to remote notarization, the acknowledgment, and the recording. Not unlike the two-year statute currently in place for acknowledgments, a straightforward two-year statute makes sense, dropping the current limiting language for a “ministerial act.” See Tex. Civ. Pract. and Rem. Code, Section 16.033 and Title Examination Standard 4.20.

Also, the Mortgage Bankers Association and the American Land Title Association (ALTA) are collectively addressing technical standards but also modifications to the Uniform model bill. Texas is something of a lead in this area, but Texas will want to be observant as to any national trends or requirements. This might include jurisdictional requirements for a physical presence for a notary licensed under any state laws and reciprocity issues from state to state.

ALTA may also take affirmative steps to provide title insurance coverage for documents remotely notarized. Arguably, the Texas policy insuring language for Covered Risk 2. (a) (iii), (iv), (vi) already addresses this:

(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized or delivered;
What is the legal basis for RON?

(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;

(vi) a document not properly filed, recorded or indexed in the Public Records including failure to perform those acts by electronic means authorized by law.

Finally, there are at least two entities that could affect RON. Both Tex. Prop. Code Section 15.005 and Local Govt. Code Ch. 195 refer to rules established by the Texas State Library and Archives Commission to control documents that may be recorded. Section 195.008 of the Local Govt. Code also creates an Electronic Recording Advisory Committee “to recommend to the commission initial and subsequent rules to be adopted.” Bulletin E, Electronic Filing and Recording by County Clerks, April 2009, is attached as Appendix F. No further information was found from this agency regarding electronic recording of non-state agency related documents.

IX. Conclusion

As one can see, the concept of a remote online notarization is simple. With a recognition that a “personal appearance” can be achieved via the internet, the next step was implementation with adequate safeguards and requirements. What was left behind was those situations where the internet or use of electronic means to conduct business is not a standard operating procedure. Parties may buy, sell, or borrow against real property located in areas where electronic recording is not feasible or otherwise adopted. Yet, the transaction of the business or closing the transaction may be electronic without a second thought, especially the use of a remote online notary. The national model act overlooked this, as did Texas. Other more remote issues also remain, such as out-of-state notaries remotely online notarizing Texas transactions and acceptance of remote online notarial acts in other jurisdictions without the same safeguards as Texas. For now, those will remain underwriting and operational decisions. When these circumstances are present, prudence would suggest review with all affected parties review to determine if the remote notary approach will be viable.
List of Appendices

Appendix A…………………………………………………………………………HB 1217 and Bill Analysis
Appendix B……………………………………………………………………………Secretary of State Rules
Appendix C……………………………………………………………………………Acknowledgment Example
Appendix D……………………………………………………………………………Attorney General of Texas Opinion KP-0233
Appendix E……………………………………………………………………………Draft Legislation Regarding “Papering Out”
Appendix F………………Bulletin E, Electronic Filing and Recording by County Clerks, April 2009
AN ACT
relating to appointment of and performance of notarial acts by an
online notary public and online acknowledgment and proof of written
instruments; authorizing a fee and creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 121.006, Civil Practice and Remedies
Code, is amended by adding Subsections (c) and (d) to read as
follows:

(c) For purposes of Subsection (b), a person may personally
appear before the officer taking the acknowledgment by:

(1) physically appearing before the officer; or
(2) appearing by an interactive two-way audio and
video communication that meets the online notarization
requirements under Subchapter C, Chapter 406, Government Code, and
rules adopted under that subchapter.

(d) The acknowledgment form provided by this chapter must
include a space for an online notarization as defined by Section
406.101, Government Code, to indicate by which method described by
Subsection (c) the acknowledging person appeared before the
officer.

SECTION 2. Chapter 121, Civil Practice and Remedies Code,
is amended by adding Section 121.016 to read as follows:

Sec. 121.016. EFFECT OF OTHER LAW. To the extent that a
provision of this chapter conflicts with Subchapter C, Chapter 406,
Government Code, that subchapter controls with respect to an online notarization as defined by Section 406.101, Government Code.

SECTION 3. Chapter 406, Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ONLINE NOTARY PUBLIC

Sec. 406.101. DEFINITIONS. In this subchapter:

(1) "Credential analysis" means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

(4) "Electronic notarial certificate" means the portion of a notarized electronic document that is completed by an online notary public and contains the following:

(A) the online notary public's electronic signature, electronic seal, title, and commission expiration date;

(B) other required information concerning the date and place of the online notarization; and

(C) the facts attested to or certified by the online notary public in the particular notarization.

(5) "Electronic seal" means information within a
notarized electronic document that confirms the online notary public's name, jurisdiction, identifying number, and commission expiration date and generally corresponds to information in notary seals used on paper documents.

(6) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document.

(7) "Identity proofing" means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the identity of an individual through review of personal information from public and proprietary data sources.

(8) "Notarial act" means the performance by an online notary public of a function authorized under Section 406.016.

(9) "Online notarization" means a notarial act performed by means of two-way video and audio conference technology that meets the standards adopted under Section 406.104.

(10) "Online notary public" means a notary public who has been authorized by the secretary of state to perform online notarizations under this subchapter.

(11) "Principal" means an individual:

(A) whose electronic signature is notarized in an online notarization; or

(B) taking an oath or affirmation from the online notary public but not in the capacity of a witness for the online notarization.
H.B. No. 1217

(12) "Remote presentation" means transmission to the online notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to:

(A) identify the individual seeking the online notary public's services; and

(B) perform credential analysis.

Sec. 406.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to an online notarization.

Sec. 406.103. RULEMAKING. The secretary of state may adopt rules necessary to implement this subchapter, including rules to facilitate online notarizations.

Sec. 406.104. STANDARDS FOR ONLINE NOTARIZATION. (a) The secretary of state by rule shall develop and maintain standards for online notarization in accordance with this subchapter, including standards for credential analysis and identity proofing.

(b) The secretary of state may confer with the Department of Information Resources or other appropriate state agency on matters relating to equipment, security, and technological aspects of the online notarization standards.

Sec. 406.105. APPLICATION; QUALIFICATIONS. (a) A notary public or an applicant for appointment as a notary public under Subchapter A may apply to the secretary of state to be appointed and commissioned as an online notary public in the manner provided by this section.

(b) A person qualifies to be appointed as an online notary public by:
(1) satisfying the qualification requirements for appointment as a notary public under Subchapter A;
(2) paying the application fee described by Subsection (d); and
(3) electronically submitting to the secretary of state an application in the form prescribed by the secretary of state that satisfies the secretary of state that the applicant is qualified.

(c) The application required by Subsection (b) must include:

(1) the applicant's name to be used in acting as a notary public;
(2) a certification that the applicant will comply with the secretary of state's standards developed under Section 406.104; and
(3) an e-mail address of the applicant.

(d) The secretary of state may charge a fee for an application submitted under this section in an amount necessary to administer this subchapter.

Sec. 406.106. PERFORMANCE OF NOTARIAL ACTS. An online notary public:

(1) is a notary public for purposes of Subchapter A and is subject to that subchapter to the same extent as a notary public appointed and commissioned under that subchapter;
(2) may perform notarial acts as provided by Subchapter A in addition to performing online notarizations; and
(3) may perform an online notarization authorized
under this subchapter.

Sec. 406.107. AUTHORITY TO PERFORM ONLINE NOTARIZATIONS. An online notary public has the authority to perform any of the functions authorized under Section 406.016 as an online notarization.

Sec. 406.108. ELECTRONIC RECORD OF ONLINE NOTARIZATIONS. (a) An online notary public shall keep a secure electronic record of electronic documents notarized by the online notary public. The electronic record must contain for each online notarization:

(1) the date and time of the notarization;
(2) the type of notarial act;
(3) the type, the title, or a description of the electronic document or proceeding;
(4) the printed name and address of each principal involved in the transaction or proceeding;
(5) evidence of identity of each principal involved in the transaction or proceeding in the form of:
   (A) a statement that the person is personally known to the online notary public;
   (B) a notation of the type of identification document provided to the online notary public;
   (C) a record of the identity verification made under Section 406.110, if applicable; or
   (D) the following:
      (i) the printed name and address of each credible witness swearing to or affirming the person's identity; and
(ii) for each credible witness not personally known to the online notary public, a description of the type of identification documents provided to the online notary public;

(6) a recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence; and

(7) the fee, if any, charged for the notarization.

(b) The online notary public shall take reasonable steps to:

(1) ensure the integrity, security, and authenticity of online notarizations;

(2) maintain a backup for the electronic record required by Subsection (a); and

(3) protect the backup record from unauthorized use.

(c) The electronic record required by Subsection (a) shall be maintained for at least five years after the date of the transaction or proceeding.

Sec. 406.109. USE OF ELECTRONIC RECORD, SIGNATURE, AND SEAL. (a) An online notary public shall take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device's issuing or registering authority.

(b) An online notary public shall keep the online notary public's electronic record, electronic signature, and electronic seal secure and under the online notary public's exclusive control. The online notary public may not allow another person to use the online notary public's electronic record, electronic signature, or
(c) An online notary public may use the online notary public's electronic signature only for performing online notarization.

(d) An online notary public shall attach the online notary public's electronic signature and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(e) An online notary public shall immediately notify an appropriate law enforcement agency and the secretary of state of the theft or vandalism of the online notary public's electronic record, electronic signature, or electronic seal. An online notary public shall immediately notify the secretary of state of the loss or use by another person of the online notary public's electronic record, electronic signature, or electronic seal.

Sec. 406.110. ONLINE NOTARIZATION PROCEDURES. (a) An online notary public may perform an online notarization authorized under Section 406.107 that meets the requirements of this subchapter and rules adopted under this subchapter regardless of whether the principal is physically located in this state at the time of the online notarization.

(b) In performing an online notarization, an online notary public shall verify the identity of a person creating an electronic signature at the time that the signature is taken by using two-way video and audio conference technology that meets the requirements of this subchapter and rules adopted under this subchapter.
Identity may be verified by:

(1) the online notary public's personal knowledge of the person creating the electronic signature; or

(2) each of the following:

(A) remote presentation by the person creating the electronic signature of a government-issued identification credential, including a passport or driver's license, that contains the signature and a photograph of the person;

(B) credential analysis of the credential described by Paragraph (A); and

(C) identity proofing of the person described by Paragraph (A).

(c) The online notary public shall take reasonable steps to ensure that the two-way video and audio communication used in an online notarization is secure from unauthorized interception.

(d) The electronic notarial certificate for an online notarization must include a notation that the notarization is an online notarization.

Sec. 406.111. FEES FOR ONLINE NOTARIZATION. An online notary public or the online notary public's employer may charge a fee in an amount not to exceed $25 for performing an online notarization in addition to any other fees authorized under Section 406.024.

Sec. 406.112. TERMINATION OF ONLINE NOTARY PUBLIC'S COMMISSION. (a) Except as provided by Subsection (b), an online notary public whose commission terminates shall destroy the coding, disk, certificate, card, software, or password that enables
electronic affixation of the online notary public's official electronic signature or seal. The online notary public shall certify compliance with this subsection to the secretary of state.

(b) A former online notary public whose commission terminated for a reason other than revocation or a denial of renewal is not required to destroy the items described by Subsection (a) if the former online notary public is recommissioned as an online notary public with the same electronic signature and seal within three months after the former online notary public's former commission terminated.

Sec. 406.113. WRONGFUL POSSESSION OF SOFTWARE OR HARDWARE; CRIMINAL OFFENSE. (a) A person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling an online notary public to affix an official electronic signature or seal commits an offense.

(b) An offense under this section is a Class A misdemeanor.

SECTION 4. This Act takes effect July 1, 2018.
H.B. No. 1217

President of the Senate                      Speaker of the House

I certify that H.B. No. 1217 was passed by the House on May 6, 2017, by the following vote: Yeas 141, Nays 1, 2 present, not voting.

______________________________
Chief Clerk of the House

I certify that H.B. No. 1217 was passed by the Senate on May 22, 2017, by the following vote: Yeas 27, Nays 3.

______________________________
Secretary of the Senate

APPROVED: _______________________

Date

______________________________
Governor
AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1217 amends the Government Code to authorize a notary public or an applicant for appointment as a notary public to apply to the secretary of state to be appointed and commissioned as an online notary public in the manner provided by the bill. The bill establishes qualifications for appointment as an online notary public, including the electronic submission of an application to the secretary of state, sets out the requirements for that application, and authorizes the secretary of state to charge an application fee in an amount necessary to administer the bill's provisions governing online notaries public. Those bill provisions apply only to an online notarization, defined by the bill as a notarial act performed by means of two-way video and audio conference technology that meets the standards for online notarization adopted under the bill's provisions.

H.B. 1217 authorizes the secretary of state to adopt rules necessary to implement the bill's provisions governing online notaries public, including rules to facilitate online notarizations, and requires the secretary of state by rule to develop and maintain standards for online notarization in accordance with the bill's provisions, including standards for credential analysis and identity proofing. The bill authorizes the secretary of state to confer with the Department of Information Resources or other appropriate state agency on matters relating to equipment, security, and technological aspects of the online notarization standards. The bill establishes that an online notary public is a notary public for purposes of statutory provisions governing notaries public and is subject to those provisions to the same extent as a notary public appointed and commissioned under those provisions, authorizes an online notary public to perform notarial acts as provided by those provisions in addition to performing online notarizations, and authorizes an online notary public to perform an online notarization authorized under the bill.

H.B. 1217 limits the types of online notarizations that an online notary public may perform to those relating to a document involving real estate located in Texas, a document or agreement relating to a transaction in which at least one of the parties is a Texas resident or authorized to conduct business in Texas, an agreement or instrument securing a debt that is payable at a location in Texas, a document that is intended to be filed in state public records, an acknowledgement or affirmation made by a person while the person is physically located in Texas, or a document signed by a person who is a Texas resident at the time of signing as evidenced by a valid government-issued identification credential that includes a photograph and current Texas address. The bill requires an online notary public, before performing an online notarization, to determine the basis for which the online notarization is authorized by requesting information from the person for which the notarization will be performed. The bill requires an online notary public to maintain a record of such information in accordance with the bill's provisions. The bill exempts an online notary public from liability for a false statement made to the online notary public under the bill unless the online notary public knows that the statement is false.

H.B. 1217 requires an online notary public to keep a secure electronic record of electronic documents notarized by the online notary public and sets out the required contents for that electronic record. The bill requires the electronic record to be maintained for at least five years after the date of the transaction or proceeding and requires the online notary public to take reasonable steps to ensure the integrity, security, and authenticity of online notarizations, maintain a backup for the electronic record, and protect the backup record from unauthorized use.
H.B. 1217 requires an online notary public to take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device's issuing or registering authority. The bill requires an online notary public to keep the online notary public's electronic record, electronic signature, and electronic seal secure and under the online notary public's exclusive control and prohibits the online notary public from allowing another person to use that electronic record, electronic signature, or electronic seal. The bill restricts the use of an online notary public's electronic signature to the performance of online notarization. The bill requires an online notary public to attach the online notary public's electronic signature and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident. The bill requires an online notary public to immediately notify an appropriate law enforcement agency and the secretary of state of the theft or vandalism of the online notary public's electronic record, electronic signature, or electronic seal and requires the online notary public to immediately notify the secretary of state of the loss or use by another person of that electronic record, electronic signature, or electronic seal.

H.B. 1217 authorizes an online notary public to perform an online notarization authorized by the bill that meets the requirements of the applicable bill provisions and rules adopted under those provisions regardless of whether the principal is physically located in Texas at the time of the online notarization. The bill requires an online notary public, in performing an online notarization, to verify the identity of a person creating an electronic signature at the time that the signature is taken by using two-way video and audio conference technology that meets such requirements and sets out the manner in which identity may be verified. The bill requires an online notary public to take reasonable steps to ensure that the two-way video and audio communication used in an online notarization is secure from unauthorized interception and requires the electronic notarial certificate for an online notarization to include a notation that the notarization is an online notarization. The bill authorizes an online notary public or the online notary public's employer to charge a fee in an amount not to exceed $25 for performing an online notarization in addition to any other fees that a notary public or its employer is authorized to charge.

H.B. 1217 requires an online notary public whose commission terminates to destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the online notary public's official electronic signature or seal and requires the online notary public to certify compliance with such requirements to the secretary of state. A former online notary public whose commission terminated for a reason other than revocation or a denial of renewal is not required to destroy those items if the former online notary public is recommissioned as an online notary public with the same electronic signature and seal within three months after the former online notary public's former commission terminated. The bill creates the Class A misdemeanor offense of wrongful possession of software or hardware for a person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling an online notary public to affix an official electronic signature or seal. The bill establishes that an online notarization for a document accepted by a county clerk for purposes of the recording of real estate located in Texas is considered to have been conducted in accordance with the bill's provisions if the online notary public certifies, in accordance with rules adopted under the bill, that the online notarization was so conducted.

H.B. 1217 amends the Civil Practice and Remedies Code to authorize a person, for purposes of the conditions that constitute acknowledgement in relation to an acknowledgement form provided under statutory provisions relating to acknowledgments and proofs of written instruments, to personally appear before the officer taking the acknowledgement by physically appearing before the officer or by appearing by an interactive two-way audio and video communication that meets the online notarization requirements and rules adopted under the bill's provisions. The bill requires such an acknowledgment form to include a space for an online notarization to indicate by which method the acknowledging person appeared before the officer. The bill establishes that, to the extent that statutory provisions relating to acknowledgments and proofs of written instruments conflict with the bill's provisions governing online notaries public, those bill provisions control with respect to an online notarization.
H.B. 1217 amends current law relating to appointment of and performance of notarial acts by an online notary public and online acknowledgment and proof of written instruments, authorizes a fee, and creates a criminal offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas secretary of state in SECTION 3 (Sections 406.103 and 406.104, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 121.006, Civil Practice and Remedies Code, by adding Subsections (c) and (d), as follows:

(c) Authorizes a person, for purposes of Subsection (b) (relating to the definition of "acknowledged" in an acknowledgment form), to personally appear before the officer taking the acknowledgment by:

(1) physically appearing before the officer; or

(2) appearing by an interactive two-way audio and video communication that meets the online notarization requirements under Subchapter C, Chapter 406 (Notary Public; Commissioner of Deeds), Government Code, and rules adopted under that subchapter.

(d) Requires that the acknowledgment form provided by this chapter (Acknowledgments and Proofs of Written Instruments) include a space for an online notarization as defined by Section 406.101, Government Code, to indicate by which method described by Subsection (c) the acknowledging person appeared before the officer.

SECTION 2. Amends Chapter 121, Civil Practice and Remedies Code, by adding Section 121.016, as follows:

Sec. 121.016. EFFECT OF OTHER LAW. Provides that, to the extent that a provision of this chapter conflicts with Subchapter C, Chapter 406, Government Code, that subchapter controls with respect to an online notarization as defined by Section 406.101, Government Code.

SECTION 3. Amends Chapter 406, Government Code, by adding Subchapter C, as follows:

SUBCHAPTER C. ONLINE NOTARY PUBLIC


Sec. 406.102. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to an online notarization.

Sec. 406.103. RULEMAKING. Authorizes the Texas secretary of state (SOS) to adopt rules necessary to implement this subchapter, including rules to facilitate online notarizations.

Sec. 406.104. STANDARDS FOR ONLINE NOTARIZATION. (a) Requires the SOS, by rule, to develop and maintain standards for online notarization in accordance with this subchapter, including standards for credential analysis and identity proofing.
(b) Authorizes the SOS to confer with the Department of Information Resources or other appropriate state agency on matters relating to equipment, security, and technological aspects of the online notarization standards.

Sec. 406.105. APPLICATION; QUALIFICATIONS. (a) Authorizes a notary public or an applicant for appointment as a notary public under Subchapter A (Notary Public) to apply to the SOS to be appointed and commissioned as an online notary public in the manner provided by this section.

(b) Provides that a person qualifies to be appointed as an online notary public by meeting certain requirements.

(c) Requires that the application required by Subsection (b) include certain information.

(d) Authorizes the SOS to charge a fee for a submitted application in an amount necessary to administer this subchapter.

Sec. 406.106. PERFORMANCE OF NOTARIAL ACTS. Provides that an online notary public:

(1) is a notary public for purposes of Subchapter A and is subject to that subchapter to the same extent as a notary public appointed and commissioned under that subchapter;

(2) is authorized to perform notarial acts as provided by Subchapter A in addition to performing online notarizations; and

(3) is authorized to perform an online notarization authorized under this subchapter.

Sec. 406.107. AUTHORITY TO PERFORM ONLINE NOTARIZATIONS. Provides that an online notary public has the authority to perform any of the functions authorized under Section 406.016 (Authority) as an online notarization.

Sec. 406.108. ELECTRONIC RECORD OF ONLINE NOTARIZATIONS. (a) Requires an online notary public to keep a secure electronic record of electronic documents notarized by the online notary public. Requires that the electronic record contain certain information for each online notarization.

(b) Requires the online notary public to take reasonable steps to ensure the integrity, security, and authenticity of online notarizations, maintain a backup for the electronic record required by Subsection (a), and protect the backup record from unauthorized use.

(c) Requires that the electronic record required by Subsection (a) be maintained for at least five years after the date of the transaction or proceeding.

Sec. 406.109. USE OF ELECTRONIC RECORD, SIGNATURE, AND SEAL. (a) Requires an online notary public to take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device's issuing or registering authority.

(b) Requires an online notary public to keep the online notary public's electronic record, electronic signature, and electronic seal secure under the online notary public's exclusive control. Prohibits the online notary public from allowing another person to use the online notary public's electronic record, electronic signature, or electronic seal.
(c) Authorizes an online notary public to use the online notary public's electronic signature only for performing online notarization.

(d) Requires an online notary public to attach the online notary public's electronic signature and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(e) Requires an online notary public to immediately notify an appropriate law enforcement agency and the SOS of the theft or vandalism of the online notary public's electronic record, electronic signature, or electronic seal. Requires an online notary public to immediately notify the SOS of the loss or use by another person of the online notary public's electronic record, electronic signature, or electronic seal.

Sec. 406.110. ONLINE NOTARIZATION PROCEDURES. (a) Authorizes an online notary public to perform an online notarization authorized under Section 406.107 that meets the requirements of this subchapter and rules adopted under this subchapter regardless of whether the principal is physically located in this state at the time of the online notarization.

(b) Requires an online notary public, in performing an online notarization, to verify the identity of a person creating an electronic signature at the time that the signature is taken by using a two-way video and audio conference technology that meets the requirements of this subchapter and rules adopted under this subchapter. Authorizes identity to be verified by certain methods.

(c) Requires the online notary public to take reasonable steps to ensure that the two-way video and audio communication used in an online notarization is secure from unauthorized interception.

(d) Requires that the electronic notarial certificate for an online notarization include a notation that the notarization is an online notarization.

Sec. 406.111. FEES FOR ONLINE NOTARIZATION. Authorizes an online notary public or the online notary public's employer to charge a fee in an amount not to exceed $25 for performing an online notarization in addition to any other fees authorized under Section 406.024 (Fees Charged by Notary Public).

Sec. 406.112. TERMINATION OF ONLINE NOTARY PUBLIC'S COMMISSION. (a) Requires an online notary public whose commission terminates to, except as provided by Subsection (b), destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the online notary public's official electronic signature or seal. Requires the online notary public to certify compliance with this subsection to the SOS.

(b) Provides that a former online notary public whose commission terminated for a reason other than revocation or a denial of renewal is not required to destroy the items described by Subsection (a) if the former online notary public is recommissioned as an online notary public with the same electronic signature and seal within three months after the former online notary public's former commission terminated.

Sec. 406.113. WRONGFUL POSSESSION OF SOFTWARE OR HARDWARE; CRIMINAL OFFENSE. (a) Provides that a person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling an online notary public to affix an official electronic signature or seal commits an offense.

(b) Provides that an offense under this section is a Class A misdemeanor.
SECTION 4. Effective date: July 1, 2018.
TITLE 1. ADMINISTRATION
PART 4. OFFICE OF THE SECRETARY OF STATE
CHAPTER 87. NOTARY PUBLIC
SUBCHAPTER A. GENERAL PROVISIONS

§87.1. Definitions. Words and terms defined in the Texas Government Code, Chapter 406, shall have the same meaning in this chapter. For the purposes of this chapter the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Credential means a valid, unexpired identification card or other document issued by the federal government or any state government, as defined by §311.05 of the Government Code, that contains the photograph and signature of the principal. With respect to a deed or other instrument relating to a residential real estate transaction, credential also includes a current passport issued by a foreign country.

(2) Credential Analysis means the process which complies with Subchapter H of this chapter by which the validity of a government-issued identification credential is affirmed by a third party through review of public and proprietary data sources.

(3) Digital Certificate means a computer-based record or electronic file issued to a notary public or applicant for appointment as a notary public for the purpose of creating an official electronic signature. The digital certificate shall be kept in the exclusive control of the notary public.

(4) Identity Proofing means the process which complies with Subchapter H of this chapter by which the identity of an individual is affirmed by a third party through review of public and proprietary data sources.

(5) Online Notary Public means an individual commissioned by the secretary of state as an online notary. An online notary has authority:
    (A) whose signature is notarized in a traditional or online notarization; or
    (B) taking an oath or affirmation from a notary public but not in the capacity of a witness for the online notarization.

(6) Notary Public means an individual commissioned by the secretary of state under both Subchapters A and C, Chapter 406 of the Government Code.

(7) Principal means an individual:
    (A) whose signature is notarized in a traditional or online notarization; or
    (B) for an online notarization, the principal for whom the notarization is being performed appears by an interactive two-way audio and video communication that meets the online notarization requirements as provided by Subchapter C, Chapter 406 of the Government Code and this chapter.

(8) Principal means an individual:
    (A) whose signature is notarized in a traditional or online notarization; or
    (B) taking an oath or affirmation from a notary public but not in the capacity of a witness for the online notarization.

(9) Traditional Notary Public means an individual commissioned by the secretary of state under Subchapter A, Chapter 406 of the Government Code. A traditional notary public does not have the authority to perform an online notarization unless also commissioned as an online notary public.

The provisions of this §87.1 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.2. Application for Commission as a Traditional Notary Public.

(a) The secretary of state appoints notaries public under the provisions of article IV, §26 of the Texas Constitution and Chapter 406, Government Code.

(b) An individual applying for a traditional notary public commission shall use the application form prescribed by the secretary of state. The application shall include:

    (1) the applicant's name to be used in acting as a traditional notary public;
    (2) the applicant's mailing address;
    (3) the applicant's county of residence;
    (4) the applicant's date of birth;
    (5) the applicant's driver's license number or the number of other official state-issued identification; and
    (6) the applicant's social security number.

(c) An applicant must secure a bond if required to do so by §406.010 of the Government Code. To evidence the bond, the application shall include the signature of a person authorized by the surety company providing the bond.

(d) The applicant shall execute, in the name under which the commission is sought, the statement of officer as required by article XVI, §1 of the Texas Constitution.

(e) The application form is available on the secretary of state web site or may be obtained by writing the Office of the Secretary of State, Notary Public Unit, P.O. Box 13375, Austin, Texas 78711. See Form 2301. The application form for a notary who is an officer or employee of a state agency is Form 2301-NB, available on the web site maintained by the State Office of Risk Management.

The provisions of this §87.2 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.3. Electronic Submission of Traditional Notary Public Application.
(a) The secretary of state has developed a system for electronic submission of an application for a traditional notary public commission, the bond required under §406.010 of the Government Code, and the statement of officer. The secretary of state authorizes the submission of these documents electronically on behalf of a traditional notary public under the following terms and conditions:

(1) the submitter must comply with the technical specifications contained in the eNotary Web Service Consumer's Guide available through the Information Technology Division of the Office of the Secretary of State;

(2) the traditional notary public application and the statement of officer signed by the applicant and the surety bond signed by an officer or attorney-in-fact for the surety must be attached to the electronic submission as an image in the format specified in the eNotary Web Service Consumer's Guide; and

(3) all fees must be paid by prepaid account, LegalEase® or credit card.

(b) If the applicant is qualified, the secretary of state shall cause the commission to be issued and the educational materials to be sent to the traditional notary public. On commission, the applicable fees will be charged to the prepaid account, LegalEase® or the credit card.

(c) If the application is rejected, the secretary of state will return a notice of the rejection to the submitter electronically. On rejection, no fees are charged to the account, LegalEase® or the credit card.

(d) Status of a traditional notary public application submission may be checked through use of a web service interface.

(e) If the submitter is not able to consistently comply with the technical specifications and the submissions are failing as a result, the secretary of state may revoke the privilege of the submitter to submit electronically until all technical issues are resolved to the satisfaction of the secretary of state.

(f) As part of the electronic submission, the submitter is responsible for accurately entering the data elements related to the application. Repeated and consistent entry errors may result in a revocation of the privilege of the submitter to submit electronically.

(g) The submitter shall retain the original signed application, surety bond and statement of officer until the commission is issued by the secretary of state.

(h) The secretary of state will not accept electronic applications on behalf of an applicant who has been convicted of a felony or a crime of moral turpitude. The application under these circumstances (along with the statement of officer, the bond, the explanation of the criminal conviction and the applicable fees) must be delivered to the secretary of state by mail, courier or personal delivery.

The provisions of this §87.3 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.4. Submission of Online Notary Public Application.

(a) An individual applying for an online notary public commission shall use the electronic submission platform developed by the secretary of state.

(b) The application shall include:

(1) the applicant's name to be used in acting as an online notary public, which shall match the name on the applicant's traditional notary public commission;

(2) the applicant's email address;

(3) the applicant's digital certificate;

(4) a copy of applicant's electronic seal in an acceptable file format;

(5) the applicant's notary public identification number, as assigned by the secretary of state;

(6) an executed statement of officer, as required by article XVI, §1 of the Texas Constitution; and

(7) a statement certifying that the applicant:

(A) will comply with the standards set forth in this chapter relating to identity proofing and credential analysis;

(B) will use a third party provider who has provided the notary with evidence of its ability to provide an electronic technology standard that utilizes Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant when attaching or logically associating the notary's electronic seal and digital certificate to an electronic document;

(C) will, upon request by the secretary of state, promptly provide any necessary instructions or techniques supplied by a vendor that allow the online notary public's digital certificate and seal to be read and authenticated; and

(D) is at least 18 years of age, a resident of the State of Texas, and has not been convicted of a felony or a crime involving moral turpitude.

The provisions of this §87.4 adopted to be effective August 19, 2018, 43 TexReg 5355.

SUBCHAPTER B. ELIGIBILITY AND QUALIFICATION

§87.10. Eligibility to Hold the Office of Notary Public.

(a) Subject to the provision in subsection (b) of this section and §87.12 of this title (relating to Qualification by an Escrow Officer Residing in an Adjacent State), a person is eligible to be a notary public if the person is 18 years of age or older and a resident of Texas.

(b) A person is not eligible to be a notary public if the person was convicted of a crime involving moral turpitude or a felony and the conviction has become final, has not been set aside, and no pardon or certificate of restoration of citizenship rights has been granted.

(c) A crime involving moral turpitude includes the commission of a crime involving dishonesty, fraud,
deceit, misrepresentation, deliberate violence, moral depravity, or that reflects adversely on the applicant's honesty, trustworthiness, or fitness as a notary public, which may include, but not be limited to:

(1) Class A and B type misdemeanors which have not been set aside, or for which no pardon or certificate of restoration of citizenship rights have been granted; and

(2) felony convictions which have not been set aside, or for which no pardon or certificate of restoration of citizenship rights have been granted.

d) Class C type misdemeanor convictions shall not be considered in determining eligibility.

e) If the secretary of state discovers, at any time, that an applicant or commissioned notary public is not eligible, the secretary of state will reject the notary public application or revoke the notary public commission.

The provisions of this §87.10 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.11. Eligibility to be Commissioned as an Online Notary Public. In addition to the eligibility requirements in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public), an applicant must hold a commission as a traditional notary public before being eligible for appointment as an online notary public.

The provisions of this §87.11 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.12. Qualification by an Escrow Officer Residing in an Adjacent State.

(a) An applicant who is qualified as an escrow officer within the meaning assigned by §2652.051, Insurance Code, is not required to be a resident of Texas if the applicant is a resident of New Mexico, Oklahoma, Arkansas or Louisiana.

(b) The secretary of state shall commission the applicant if, notwithstanding the residency requirements, the applicant satisfies the conditions of subsection (a) of this section and §87.13 and §87.14 of this title (relating to Issuance of the Traditional Notary Public Commission by the Secretary of State and Issuance of the Online Notary Public Commission by the Secretary of State).

(c) A notary public, appointed under this section, who ceases to be qualified under this section, must voluntarily surrender the notary public commission.

The provisions of this §87.12 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.13. Issuance of the Traditional Notary Public Commission by the Secretary of State.

(a) The secretary of state shall issue a traditional notary public commission to a qualified applicant. An applicant is qualified if:

(1) the applicant meets the eligibility requirements stated in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public);

(2) the applicant submits:

(A) a properly completed and executed application;

(B) the bond as provided in §406.010, Government Code, if required;

(C) the statement of officer required by article XVI, §1 Texas Constitution;

(D) payment to the secretary of state of fees required by §406.007, Government Code; and

(3) no good cause exists for rejecting the application.

(b) The secretary of state shall not commission an applicant if the applicant had a prior application rejected or a commission revoked due to a finding of ineligibility or good cause and the reason for ineligibility or grounds for good cause continues to exist.

(c) When all conditions for qualification have been met, the application shall be approved and filed. The secretary of state shall cause a commission to be issued and sent to each traditional notary public who has qualified. A commission is effective as of the date of qualification.

The provisions of this §87.13 adopted to be effective August 19, 2018, 43 TexReg 5355.


(a) The secretary of state shall issue an online notary public commission to a qualified applicant. An applicant is qualified if:

(1) the applicant meets the eligibility requirements stated in §87.11 of this title (relating to Eligibility to be Commissioned as an Online Notary Public);

(2) the applicant submits:

(A) a properly completed and executed application;

(B) the statement of officer required by article XVI, §1 Texas Constitution;

(C) payment to the secretary of state the application fee of $50; and

(3) no good cause exists for rejecting the application.

(b) The secretary of state shall not commission an applicant if the applicant had a prior application rejected or a commission revoked due to a finding of ineligibility or good cause and the reason for ineligibility or grounds for good cause continues to exist.

(c) When all conditions for qualification have been met, the application shall be approved and filed. The secretary of state shall cause a commission to be issued and sent to each online notary public who has qualified. A commission is effective as of the date of qualification.

The provisions of this §87.14 adopted to be effective August 19, 2018, 43 TexReg 5355.
and shall expire on the same date as applicant's corresponding traditional notary public commission.

The provisions of this §87.14 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.15. Renewal of Commission.
(a) A notary public seeking to renew either a traditional commission or both a traditional and online commission shall file an application for renewal in the same manner and on the same form as if filing an original application for commission. The secretary of state will accept applications for renewal not sooner than 90 days before the expiration of the notary public's current commission. The renewal must be received by the secretary of state no later than the expiration date of the notary public's current commission.

(b) The secretary of state shall determine eligibility for renewals according to the same standards as initial applicants, in accordance with this chapter and §406.004, Government Code. The secretary of state is not bound by prior determinations of eligibility.

The provisions of this §87.15 adopted to be effective August 19, 2018, 43 TexReg 5355.

SUBCHAPTER C. NOTARIES WITHOUT BOND
§87.20. Qualification by an Officer or Employee of a State Agency.
(a) An applicant who is an officer or employee of a state agency is not required to provide a surety bond. For the purpose of this chapter, "state agency" has the meaning assigned by §2052.101, Government Code.

(b) An applicant who is an officer or employee of a state agency and does not provide a surety bond must complete the traditional notary public application entitled "Application for Appointment as a Notary Public Without Bond" (Form 2301-NB).

(c) The State Agency employing the applicant must submit the completed application to the State Office of Risk Management.

(d) The State Office of Risk Management shall complete the verification certificate on the application and forward the completed application to the Office of the Secretary of State for processing.

(e) The secretary of state shall commission the applicant if:
(1) the applicant meets the eligibility requirements stated in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public);
(2) the applicant submits:
(A) a properly completed and executed application verified by the State Office of Risk Management;
(B) the statement of officer required by article XVI, §1 Texas Constitution;
(C) the payment of fees required by §406.007(a)(2) and§406.007(b), Government Code; and
(3) no good cause exists for rejecting the application.

The provisions of this §87.20 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.21. Change in Employment Status by an Officer or Employee of a State Agency Who Has Qualified Without a Surety Bond.
(a) If a notary public who has qualified without a surety bond transfers to another state agency, the agency to which the notary public transfers shall notify the State Office of Risk Management and the Office of the Secretary of State of the transfer.

(b) If a notary public terminates state employment, the notary public shall:
(1) voluntarily surrender the notary public commission;
(2) purchase and provide evidence to the secretary of state of the purchase of a notary public bond for the time period remaining on the notary's current term of office; or
(3) voluntarily surrender the notary public commission and apply for a new term of office, provide a notary public bond, and pay the applicable fees.

(c) Failure to take one of the actions set forth in subsection (b) of this section within 30 days of termination of state employment is good cause for revocation of the notary public's commission.

The provisions of this §87.21 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.22. Special Requirements for Notaries Without Bond.
(a) A notary public commissioned as a notary public without bond shall obtain a seal which complies with the requirements of §406.013, Government Code and §87.44 of this title (relating to Notary Seal) and which contains an additional line reading "Notary without Bond".

(b) A state employee is not prohibited from purchasing a notary bond at personal expense. However, an individual commissioned as a notary without bond shall only notarize documents pursuant to their official state duties.

(c) Agencies shall require notaries without bond to attend a notary training class, either provided internally or externally.

(d) Notaries without bond who notarize documents outside of their official state duties or who fail to use the "Notary without Bond" seal shall be subject to disciplinary action by their respective agencies and such action may constitute good cause under §87.31 of this title (relating to Good Cause).

The provisions of this §87.22 adopted to be effective August 19, 2018, 43 TexReg 5355.

SUBCHAPTER D. ADMINISTRATIVE ACTION
§87.30. Rejection of Application and Revocation of Commission. The secretary of state shall, for ineligibility or good cause, reject any application, revoke the commission of any notary public, or take other disciplinary action, as outlined in §87.34 of this title (relating to Disciplinary Action), against a notary public as the secretary of state deems appropriate. Rejection, revocation, and suspension proceedings will be held pursuant to the right of notice, hearing, and adjudication as set out in the rules of practice and procedure before the Office of the Secretary of State, the rules of the State Office of Administrative Hearings and the Administrative Procedure Act, Government Code, §§2001.001 - 2001.902. Any party to a contested case has the right to be represented by legal counsel. Such action will be subject to the right of appeal to a district court of Travis County.

The provisions of this §87.30 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.31. Good Cause. Good cause may include the following:

(1) a false statement knowingly made in a notary public application;
(2) a final conviction for the violation of any law concerning the regulation of the conduct of notaries public in this state or any other state;
(3) use of the phrase "notario" or "notario publico" in connection with advertising or offering the services of a notary public;
(4) false representation as an attorney as specified in §406.017, Government Code;
(5) a failure to fully and faithfully discharge any of the duties or responsibilities required of a notary public;
(6) the unauthorized practice of law;
(7) a failure to utilize a correct notary seal as described in §406.013 and §406.101(5), Government Code and this chapter;
(8) a failure to administer an oath or affirmation as required by law;
(9) the collection of a fee in excess of the fees authorized by §406.024 and §406.111, Government Code;
(10) the execution of any certificate as a notary public containing a statement known to the notary public to be false;
(11) a failure to complete the notarial certificate at the time the notary public's signature and seal are affixed to the document;
(12) the advertising or holding out in any manner that the notary public is an immigration specialist, immigration consultant, or any other title or description reflecting an expertise in immigration matters;
(13) the use of false or misleading advertising of either an oral or written nature, whereby the notary public has represented or indicated that he or she has duties, rights, powers, or privileges that are not possessed by law;
(14) performing a notarization when the purported principal did not personally appear before the notary public at the time the notarization is executed;
(15) previous disciplinary action against the notary public in accordance with these sections;
(16) a failure to comply with, or violation of, a previous disciplinary action taken pursuant to §87.34 of this title (relating to Disciplinary Action);
(17) a failure to promptly respond to a request for public information in accordance with §87.52 of this title (relating to Public Information);
(18) a failure to properly identify the individual whose signature is being notarized;
(19) a failure to keep a notary record as described in §406.014 and §406.108, Government Code, and Chapter 87 of this title;
(20) a failure to include in the notarial certificate for an online notarization a notation that the notarization is an online notarization;
(21) a failure to take reasonable steps to ensure that the two-way audio-visual communication used during an online notarization is secure from unauthorized interception;
(22) a failure to safely and securely maintain notary materials;
(23) performing a notarial act that the notary public is not authorized to perform;
(24) use of a digital certificate or electronic seal that has expired or is no longer valid;
(25) a failure to report a new digital certificate or electronic seal as required by §87.63 of this title (relating to Changes to Digital Certificate and Electronic Seal for Online Notary);
(26) notarizing one's own signature;
(27) a failure to pay the filing fee required by §406.007, Government Code, and §87.13 and §87.14 of this title (relating to Issuance of the Traditional Notary Public Commission by the Secretary of State and Issuance of the Online Notary Public Commission by the Secretary of State) or when such payment was made by an instrument that was dishonored when presented by the state for payment;
(28) a failure to timely respond to a request for information from the secretary of state; and
(29) a failure to maintain a current address as required by §406.019, Government Code.

The provisions of this §87.31 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.32. Submitting a Complaint.
(a) The jurisdiction of the secretary of state to investigate a complaint is limited to individuals who are commissioned or have applied for commission or renewal of a commission as a Texas notary public. The jurisdiction of the secretary of state to investigate a complaint ceases upon the expiration, revocation or surrender of a notary public commission, except as provided in §87.35 of this title (relating to Time for Action).

(b) A person harmed by the actions of a notary public may file a complaint with the secretary of state on a form prescribed by the secretary of state. The complaint shall include:
   (1) the name of the notary public who is the subject of the complaint;
   (2) the expiration date of the notary public's current commission;
   (3) the name, mailing address, and email address of the individual filing the complaint;
   (4) whether the notary was performing an online notarization;
   (5) a recitation of the facts, within the personal knowledge of the complainant, relating to the alleged misconduct by the notary public; and
   (6) copies of the notarized documents that are the subject of the complaint.

(c) The complaint shall be signed and verified by the person alleging misconduct on the part of the notary public.

(d) The secretary of state may, for good cause, as defined in §87.31 of this title (relating to Good Cause), and/or as otherwise referenced in this title, initiate its own complaint against a notary public.

The provisions of this §87.32 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.33. Complaint Procedures.

(a) The secretary of state may determine that the allegations in the complaint are not sufficient to warrant formal disciplinary action. In such case, the secretary of state may:
   (1) take no action on the complaint;
   (2) informally advise the notary public of the appropriate conduct and the applicable statutes and rules governing the conduct; or
   (3) request further information from the complainant or the notary public prior to taking action.

(b) If the secretary of state determines that the complaint alleges sufficient facts to constitute good cause for disciplinary action against the notary public, and the complaint complies with §87.32 of this title (relating to Submitting a Complaint), the secretary of state shall send a copy of the complaint, with any attachments the secretary of state deems to be relevant, to the notary public with a request to the notary to respond to the statements in the complaint.

(c) The notary public must respond to the complaint in writing. The response must:
   (1) specify any disputed facts and provide such additional information as the notary public shall desire;
   (2) be signed and sworn to by the notary public before a person authorized to administer oaths;
   (3) include copies of the pages of the notary record book referencing the notarization that is the subject of the complaint; and
   (4) be received by the secretary of state within 21 days of the date of the secretary of state's notice of the complaint to the notary public.

(d) The secretary of state shall review the response and determine whether further administrative action is appropriate. If the secretary determines that no further action is appropriate, the secretary shall notify the notary public and the complainant of the determination in writing.

(e) If the secretary determines that further administrative action is appropriate, the secretary shall follow the procedures set forth in this §87.34 of this title (relating to Disciplinary Action).

The provisions of this §87.33 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.34. Disciplinary Action.

(a) The secretary of state has discretion to determine that the conduct that forms the basis of a complaint against a notary public does not warrant disciplinary action against the notary public and take no further action on the complaint. If the secretary of state determines that disciplinary action should be taken, the secretary of state may pursue the following disciplinary actions against individuals commissioned pursuant to Subchapter A or C, Chapter 406, Government Code:

   (1) issue a written reprimand to the notary public; or
   (2) require the notary public to enter into an agreement to:
       (A) not engage in any further misconduct;
       (B) agree to voluntarily surrender the notary public commission;
       (C) accept a suspension of the notary public commission for a set period of time;
       (D) complete a course of study relating to the powers, duties, and responsibilities of a notary public;
       (E) not seek renewal of the notary public commission for a specified period of time; or
       (F) take such other action as the secretary deems appropriate; or
   (3) take action to revoke the notary public commission.

(b) If an individual has been commissioned as a notary public under both Subchapters A and C of Chapter 406, Government Code, the office has the
discretion to pursue revocation of either the online notary public commission alone or both the traditional and online notary public commission.

(c) If no agreement can be reached, before taking action to suspend or revoke the notary public commission, the secretary of state shall give written notice to the notary of a right to a hearing in accordance with the rules of practice and procedure before the secretary of state. If a hearing is timely requested, the secretary of state shall follow the provisions of the Administrative Procedure Act, Chapter 2001, Texas Government Code governing the initiation and conduct of a contested case proceeding.

(d) It is within the secretary of state's discretion to determine that no action should be taken or to enter into an agreement with the notary public regarding the appropriate action. The secretary of state shall close a complaint file upon a determination that no further action is necessary or conclusion of an agreement with the notary public. After a complaint file is closed, the secretary of state will take no further action on the complaint and will not accept an additional complaint with the same or substantially similar allegations.

The provisions of this §87.34 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.35. Time for Action. The secretary of state may take disciplinary action for an act or omission which occurred during a prior term of office. The secretary may also require any pending complaints against a notary public that remain at the expiration of the notary public's prior commission to be resolved prior to accepting a renewal or new application for appointment as a notary public. Failure to reach a resolution on an unresolved complaint may result in the rejection of an application for appointment or renewal.

The provisions of this §87.35 adopted to be effective August 19, 2018, 43 TexReg 5355.

SUBCHAPTER E/ NOTARY PROCEDURES

§87.40. Traditional Notarization Procedures.

(a) A traditional notary public shall not perform a notarization if the principal does not personally appear before the notary at the time of notarization in accordance with §87.1 of this title (relating to Definitions).

(b) The methods by which a traditional notary public identifies a principal are as follows:

(1) Traditional notary public personally knows the principal; or

(2) Principal is introduced by oath of credible witness who personally knows the principal and either is personally known to the traditional notary public or provides qualifying identification in accordance with paragraph (3) of this subsection; or

(3) Identification by a credential.

(c) For all notarial acts that require a notarial certificate, the traditional notary public shall attach a notarial certificate that names the principal, the date of the notarization, the state and county in which the notarization is performed, and language evidencing the type of notarial act performed. The notarial certificate shall be signed and include an impression of the notary's seal.

(d) The traditional notary public shall keep a record of all notarial acts in accordance with §406.014, Government Code, and this chapter.

(e) This section shall apply to a traditional notary public who performs notarizations on tangible or electronic records.

The provisions of this §87.40 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.41. Online Notarization Procedures.

(a) An online notarization may only be performed by a notary who is commissioned as an online notary public.

(b) An online notary public shall not perform an online notarization if the online notary public is not physically in Texas at the time of the notarization.

(c) An online notary public shall not perform an online notarization if the principal does not personally appear before the notary public at the time of notarization in accordance with §87.1 of this title (relating to Definitions).

(d) The methods by which an online notary public identifies a principal are as follows:

(1) Online notary public personally knows the principal; or

(2) Principal is introduced by oath of credible witness who personally knows the principal and either is personally known to the online notary public or provides qualifying identification in accordance with paragraph (3) of this subsection; or

(3) Principal or credible witness is identified using the identity proofing and credential analysis standards in accordance with subchapter H of this chapter.

(e) For all notarial acts that require a notarial certificate, the online notary public shall attach an electronic notarial certificate that identifies the principal, the date of the notarization, the state and county in which the notarization was performed, that the notarial act was an online notarization, and language evidencing the type of the notarial act performed. The notarial certificate shall be signed by affixing the online notary public's digital certificate and include an attachment of the online notary public's electronic seal.

(f) The liability, sanctions, and remedies for the improper performance of online notarial acts are the same as described and provided by law for the improper performance of traditional notarial acts.
(g) An online notary public shall keep a record of all notarial acts in accordance with §406.108, Government Code, and Chapter 87 of this title. The record shall include a recording of the audio-visual conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence by the principal, if the principal is not personally known to the online notary public. The recording shall include, at minimum:

(1) confirmation by the notary public that the principal has successfully completed identity proofing and credential analysis;

(2) visual confirmation of the identity of the principal through visual inspection of the credential used during credential analysis; and

(3) the actual notarial act performed.

(h) If the principal is personally known to the online notary public, the audio-visual conference shall include a statement to that effect and a recording of the actual notarial act performed.

(i) The online notary public shall not disclose any access information used to affix the notary's digital certificate and seal except when requested by the secretary of state, law enforcement, the courts, and with reasonable precautions, electronic document preparation and transmission vendors.

(j) Online notaries public shall attach their digital certificate and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

The provisions of this §87.41 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.42. Refusal of Requests for Notarial Services.

(a) A notary public is authorized to refuse to perform a notarial act if:

(1) the notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence;

(2) the notary public has reasonable grounds to believe that the document in connection with which the notarial act is requested may be used for an unlawful or improper purpose;

(3) the notary public has reasonable grounds to believe the signing party does not have the capacity to understand the contents of the document; or

(4) the notary public is not familiar with the type of notarization requested.

(b) A notary public who is employed by a governmental body shall not perform notarial services that interfere with the notary's discharge of the notary's duties as a public employee.

(c) An employer may limit or prohibit an employee who is a notary public from notarizing during work hours.

(d) A notary public may not refuse a request for notarial services on the basis of the sex, age, race, ethnicity or national origin of the requesting party.

(e) A notary public should refuse a request for notarial services only after careful deliberation.

The provisions of this §87.42 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.43. Reasons to Refuse Online Notarization. In addition to those in §87.42 of this title (relating to Refusal of Requests for Notarial Services) in which a notary public is authorized to refuse a notarization, an online notary shall refuse to perform an online notarization if:

(1) The online notary public is unable to verify the identity of the principal using an acceptable means of identification in accordance with Subchapter H;

(2) The online notary public is unable to verify the security of the two way audio visual transmission;

(3) The signature of the principal cannot be attached to the electronic document; or

(4) The digital certificate or electronic seal of the online notary public cannot be attached to the electronic document in a manner that renders any subsequent change or modification to the document evident.

The provisions of this §87.43 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.44. Notary Seal.

(a) The name on the notary public seal must match the name, as stated on the application, under which the notary public is commissioned and performs all notarial acts.

(b) For all applicants commissioned or recommissioned on or after January 1, 2016, the notary public seal must contain the identifying number issued by the secretary of state.

(c) For notaries public who were commissioned or recommissioned prior to January 1, 2016, the seal of such notaries is not required to contain the identifying number issued by the secretary of state until the notary is recommissioned in accordance with the procedures specified in §406.011, Texas Government Code, and §87.15 of this title (relating to Renewal of Commission). The seal of notaries who were commissioned or recommissioned prior to January 1, 2016, may, however, contain the identifying number issued by the secretary of state prior to the notary being recommissioned in accordance with the procedures specified in §406.011, Texas Government Code, and §87.15 of this title.

(d) The notary seal shall remain within the exclusive control of the notary public at all times.
The provisions of this §87.44 adopted to be effective August 19, 2018, 43 TexReg 5355.

SUBCHAPTER F. NOTARY RECORDS

§87.50. Prohibition Against Entering Personal Information in a Notary Record Book.
(a) A notary public (other than a court clerk notarizing instruments for the court) shall not record in the notary's record book:
   (1) an identification number that was assigned by a governmental agency or by the United States to the principal and that is set forth on the identification card or passport presented as identification;
   (2) any other number that could be used to identify the principal of the document; or
   (3) a biometric identifier, including a fingerprint, voice print, and retina or iris image.
(b) This section does not prohibit a notary public from recording a number related to the mailing address of the principal of the document or the instrument.
(c) This section does not apply to the audio-visual recording required by an online notary public performing an online notarization.
(d) A notary public who inadvertently records information prohibited under subsection (a) of this section shall redact such information prior to providing public access to or copies of the notary record book.

The provisions of this §87.50 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.51. Form of Record Book.
(a) Notary records, other than records of online notarizations, may be maintained either in a book or electronically in a computer or other storage device so long as the records are adequately backed-up and are capable of being printed in a tangible medium when requested.
(b) Records of an online notarization shall be maintained electronically in computers or other storage devices that are capable of recording the information required by §406.108, Government Code, including a recording of any video and audio conference that is the basis for identifying the principal. An online notary public may contract with a third party to provide such storage if the third party:
   (1) has provided reasonable evidence to the online notary public that it is capable of providing such services; and
   (2) provides complete access to the online notary public of all the notary's records for an agreed period of time, which at minimum, complies with the retention requirements in §87.54 of this title (relating to Records Retention) even if such a contract is terminated. If the contract between the online notary public and the third party is terminated, all records must be transferred to the online notary public.
(c) The records of a notary public shall remain within the exclusive control of the notary public at all times.
(d) A notary public who performs multiple notarizations for the same principal within a single document may abbreviate the entry of those notarizations in the notary record book, except that a separate entry must be made for each type of notarial act. The abbreviated entry must contain all the information required by §406.014, Government Code, and must include the number of notarizations performed within the specified document.

The provisions of this §87.51 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.52. Public Information.
(a) Subject to subsection (b) of this section, records regarding notarial acts performed are public information. On payment of all fees, the notary public shall promptly provide a certified copy of any entries in the notary public's records to any person requesting the copy. The notary shall provide the certified copy no later than 10 business days from the date of receipt of the fees, unless the notary cannot produce the certified copy within 10 business days from the date of receipt of the fees, in which case the notary shall certify that fact in writing to the person requesting the copy on or before the 10th business day from the date of receipt of the fees, and set a date and hour within a reasonable time when the certified copy will be provided, and shall provide the information by that date and hour. If the notary has inadvertently included personal identifiable information in the record contrary to §87.50 of this title (relating to Prohibition Against Recording Personal Information), the notary must redact that personal information prior to release of the information.
(b) If any portion of the audio visual recording of an online notarization includes biometric information or includes an image of the identification card used to identify the principal, that portion of the recording is confidential and shall not be released without consent of the individual(s) whose identity is being established, unless ordered by a court of competent jurisdiction or upon request by the secretary of state.

The provisions of this §87.52 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.53. Failure to Provide Public Information. Failure of a notary public to promptly and adequately respond to a request for public information in accordance with §87.52 of this title (relating to Public Information) may be good cause for suspension or revocation of a notary commission or other disciplinary action against the notary.

The provisions of this §87.53 adopted to be effective August 19, 2018, 43 TexReg 5355.
§87.54. Records Retention.

(a) Records of a notarization other than an online notarization shall be retained, in a safe and secure manner, for the longer of the term of the commission in which the notarization occurred or three years following the date of notarization.

(b) Records of an online notarization shall be retained, in a safe and secure manner, for five years following the date of the notarization. An online notary public must also maintain a back-up of the electronic records for the same period of time. Both the original records and the back-up shall be protected from unauthorized use.

The provisions of this §87.54 adopted to be effective August 19, 2018, 43 TexReg 5355.

SUBCHAPTER G. CHANGES AFTER COMMISSIONING

§87.60. Change of Address.

(a) A notary public must notify the secretary of state in writing of a change in address within 10 days of the change. To notify the secretary of state of a change of address, the notary public should complete and submit Form 2302 (Notary Public Change of Address Form). This form is available on the secretary of state web site.

(b) The secretary of state sends all official notices, including notices of complaints and requests to respond to complaints, to the notary public at the address on file with the secretary's office. Failure to change the address may, consequently, result in a revocation of the notary commission if, for example, the notary fails to timely respond to a complaint or to a request for public information.

(c) A notary public who removes his or her residence from Texas or no longer qualifies under the residency exceptions provided under §87.12 of this title (relating to Qualification by an Escrow Officer Residing in an Adjacent State) vacates the office of notary public and must surrender the notary commission to the secretary of state.

The provisions of this §87.60 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.61. Qualification Under New Name.

(a) During the four-year term of office, a notary public may change the name on the notary commission by submitting the following to the secretary of state:

(1) an Application for Change of Name as a Texas Notary Public (Form 2305 available on the secretary of state web site);

(2) for traditional notaries public, a rider or endorsement to the bond on file with the secretary of state from the surety company or its agent or representative specifying the change of name;

(3) the current certificate of commission or a signed and notarized statement that the notary public will perform all future notarial acts under the name specified on the amended commission; and

(4) the statutory fee equal to the sum of the fee for the issuance of a commission and the fee for filing of a bond.

(b) An online notary public shall check the appropriate box on Form 2305 to update the name on both the traditional and online notary commission and shall pay the fee for issuance of two commissions and the bond.

The provisions of this §87.61 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.62. Issuance of Amended Commission.

(a) If the submission of the change of name complies with §87.61 of this title (relating to Qualification Under New Name), the secretary of state shall issue an amended commission to the notary public in the name requested. Upon issuance of the amended commission, the notary public must perform all notarial acts using the name on the amended commission.

(b) Upon qualifying under a new name, a notary public must obtain a new seal that contains the name, as specified on the amended commission, under which the notary will perform all future notarial acts.

(c) If the notary public who qualifies under a new name is commissioned as both a traditional and online notary, the notary shall obtain both a new traditional seal and new electronic seal and digital certificate that contains the name, as specified on the amended commission, under which the notary will perform all future notarial acts.

The provisions of this §87.62 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.63. Changes to Digital Certificate and Electronic Seal for Online Notary.

(a) An online notary public shall at all times maintain an electronic seal and a digital certificate that includes the online notary's electronic signature. Both the electronic seal and digital certificate must comply with the provisions of Chapter 406, Government Code, and this chapter.

(b) An online notary public shall replace an electronic seal or digital certificate under the following circumstances:

(1) the electronic seal or digital certificate has expired;

(2) the electronic seal or digital certificate has been revoked or terminated by the device's issuing or registering authority; or

(3) the electronic seal or digital certificate is for any reason no longer valid or capable of authentication.
An online notary public who replaces an electronic seal or digital certificate shall provide the following to the secretary of state within 10 days of the replacement:

1. the electronic technology or technologies to be used in attaching or logically associating the new electronic seal or digital certificate to an electronic document;
2. applicant's new digital certificate, if applicable;
3. a copy of applicant's new electronic seal, if applicable; and
4. any necessary instructions or techniques supplied by the vendor that allow the notary's electronic seal or digital certificate to be read and authenticated.

The provisions of this §87.63 adopted to be effective August 19, 2018, 43 TexReg 5355.

SUBCHAPTER H. MINIMUM REQUIREMENTS FOR ONLINE NOTARIZATIONS

§87.70. Identity Proofing and Credential Analysis Standards.
(a) Identity proofing and credential analysis must be performed by a reputable third party who has provided evidence to the online notary public of the ability to satisfy the requirements of this chapter.
(b) Identity proofing is performed through dynamic knowledge based authentication which meets the following requirements:
   1. principal must answer a quiz consisting of a minimum of five questions related to the principal's personal history or identity, formulated from public and proprietary data sources;
   2. each question must have a minimum of five possible answer choices;
   3. at least 80% of the questions must be answered correctly;
   4. all questions must be answered within two minutes;
   5. if the principal fails their first attempt, they may retake the quiz one time within 24 hours;
   6. during the retake, a minimum of 60% of the prior questions must be replaced; and
   7. if the principal fails their second attempt, they are not permitted to retry with the same online notary public for 24 hours.
(c) Credential analysis is performed utilizing public and proprietary data sources to verify the credential presented by the principal.
(d) Credential analysis shall, at a minimum:
   1. use automated software processes to aid the online notary public in verifying the identity of a principal or any credible witness;
   2. ensure that the credential passes an authenticity test, consistent with sound commercial practices that:
      (A) Use appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;
      (B) Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;
      (C) Use information held or published by the issuing source or authoritative source(s), as available, to confirm the validity of personal details and credential details; and
      (D) Provide output of the authenticity test to the notary public.
(e) If the principal must exit the workflow, the principal must meet the criteria outlined in this section and must restart the identity proofing and credential analysis from the beginning.

The provisions of this §87.70 adopted to be effective August 19, 2018, 43 TexReg 5355.

§87.71. Online Notarization System. An online system used to perform online notarial acts by means of audio-video communication shall:
(a) provide for continuous, synchronous audio-visual feeds;
(b) provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak to each other simultaneously through live, real time transmission;
(c) provide sufficient captured image resolution for credential analysis to be performed in accordance with subchapter H of this chapter.
(d) include a means of authentication that reasonably ensures only the proper parties have access to the audio-video communication;
(e) be capable of securely creating and storing or transmitting securely to be stored an electronic recording of the audio-video communication, keeping confidential the questions asked as part of any identity proofing quiz, and the means and methods used to generate the credential analysis output; and
(f) provide reasonable security measures to prevent unauthorized access to:
      (A) the live transmission of the audio-video communication;
      (B) a recording of the audio-video communication;
(C) the verification methods and credentials used to verify the identity of the principal; and

(D) the electronic documents presented for electronic notarization.

The provisions of this §87.71 adopted to be effective August 19, 2018, 43 TexReg 5355.
**Long Form Acknowledgment**

State of Texas §

County of __________ §

Before me, *(insert the name of notary or other officer taking acknowledgment)*, on this day personally appeared by means of an interactive two-way audio and video communication *(insert name of acknowledging party)*, who is known to me [or proved to me on the oath of *(insert name of credible witness if necessary)*] [or has provided satisfactory evidence of identity in accordance with Chapter 406, Texas Government Code] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed. This notarial act was an online notarization. Given under my hand and seal of office this __________ day of __________, *(year)*.

Notary Seal  Digital Certificate

**Short Form Acknowledgment**

State of Texas

County of __________

This instrument was acknowledged before me by means of an interactive two-way audio and video communication on *(date)* by *(name or names of person or persons acknowledging)*. This notarial act was an online notarization.

Notary Seal  Digital Certificate

**For a Natural Person as Principal Acting by Attorney-in-Fact**

State of Texas

County of __________ §

This instrument was acknowledged before me by means of an interactive two-way audio and video communication on *(date)* by *(name of attorney-in-fact)* as attorney-in-fact on behalf of *(name of principal)*. This notarial act was an online notarization.

Notary Seal  Digital Certificate
For a Partnership Acting by One or More Partners

State of Texas §

County of ______________ §

This instrument was acknowledged before me by means of an interactive two-way audio and video communication on (date) by (name of acknowledging partner or partners), partner(s) on behalf of (name of partnership), a partnership. This notarial act was an online notarization.

Notary Seal  Digital Certificate

For a Corporation

State of Texas §

County of ______________ §

This instrument was acknowledged before me by means of an interactive two-way audio and video communication on (date) by (name of officer), (title of officer) of (name of corporation acknowledging), a (state of incorporation) corporation, on behalf of said corporation. This notarial act was an online notarization.

Notary Seal  Digital Certificate

For a Public Officer, Trustee, Executor, Administrator, Guardian, or Other Representative

State of Texas §

County of ______________ §

This instrument was acknowledged before me by means of an interactive two-way audio and video communication on (date) by (name of representative) as (title of representative) of (name of entity or person represented). This notarial act was an online notarization.

Notary Seal  Digital Certificate
Form of Certificate For Proof by Witness

State of Texas §

County of ______________ §

Before me, (insert the name of the notary), on this day personally appeared _____________________, known to me (or proved to me on the oath of ___________________), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw ________, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same). This notarial act was an online notarization.

Given under my hand and seal of office this __________ day of __________, (year).

Notary Seal  Digital Certificate

Jurat

State of Texas §

County of _________ §

Sworn to and subscribed before me on the ___ day of (month) , (year), by (insert name of signing party). This notarial act was an online notarization.

Notary Seal  Digital Certificate

Oath or Affirmation

State of Texas §

County of __________ §

I, (affiant), do solemnly swear (or affirm), that I will faithfully execute the duties of the office of ______________ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

________________________________________
Signature of Affiant

Sworn to and subscribed before me by (affiant) on this __________ day of ______________, (year). This notarial act was an online notarization.

Notary Seal  Digital Certificate
Deposition

Certificate to Deposition Upon Written Questions

State of Texas §

County of __________ §

(Plaintiff) v. (Defendant) In the __________ Court of __________ County, Texas, Cause No. __________, I hereby certify that the foregoing answers of __________, the witness forenamed, were signed and sworn to before me on (date), by said witness. This notarial act was an online notarization.

Notary Seal Digital Certificate

Verification (option 1)

State of Texas §

County of __________ §

[Name], personally appeared before me, and being first duly sworn declared that he/she signed this application in the capacity designated, if any, and further states that he/she has read the above application and the statements therein contained are true. This notarial act was an online notarization.

Notary Seal Digital Certificate

Verification (option 2)

State of Texas §

County of __________ §

Before me, a notary public, on this day personally appeared __________, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct. This notarial act was an online notarization.

Notary Seal Digital Certificate
The Honorable David Willborn  
Guadalupe County Attorney  
211 West Court Street  
Seguin, Texas 78155-5779  

Opinion No. KP-0233  

Re: Whether a county clerk whose office does not accept electronic documents for recording must accept and record a printed copy of an electronic document under particular circumstances (RQ-0235-KP)

January 7, 2019

Dear Mr. Willborn:

You ask about a county clerk’s duty to accept printed copies of electronic documents for recording under particular circumstances. You tell us that the Guadalupe County Clerk’s office does not accept documents electronically for recording purposes. Request Letter at 1. You relay that some filers accustomed to the acceptance of electronic recording in other counties “assume that all they have to do is print a copy of the electronic document and then deliver it to” the county clerk’s office in order to record the document in Guadalupe County. Id. On behalf of the Guadalupe County Clerk, you ask whether the clerk must accept various categories of such printed documents for recording.

The county clerk is the recorder of the county. TEX. CONST. art. V, § 20; TEX. LOC. GOV’T CODE § 191.001(a). County clerks must accept a written document for recording if a statute authorizes, requires, or permits the recording. See Turrentine v. Lasane, 389 S.W.2d 336, 337 (Tex. Civ. App.—Waco 1965, no writ); see also TEX. LOC. GOV’T CODE § 191.001(c) (requiring a clerk to “record . . . the contents of each instrument that is filed for recording and that the clerk is authorized to record”). Conversely, if no statute authorizes the filing and recording of a document, a clerk may not accept it for that purpose. Tex. Att’y Gen. Op. No. GA-0450 (2006) at 2 (“[A] county clerk is prohibited from filing and recording a document that no statute authorizes, requires, or permits the clerk to accept.”). The majority of instruments filed with a county clerk relate to the conveyance of real property; such as deed records and deeds of trust, but other

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1See Letter and attachment from Honorable David Willborn, Guadalupe Cty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. (June 1, 2018), https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-reqs (“Request Letter” and “Attachment,” respectively) (Attachment on file with the Op. Comm.).

2Your request excludes “documents submitted for filing in either Civil or Criminal court case files,” and we limit our opinion accordingly. Request Letter at 1.
documents, such as assumed name certificates and state water permits, do not. In each instance, a county clerk must determine whether the instrument presented for filing and recording meets the requirements of the pertinent statutory provision authorizing its recording, which will vary depending on the document. See Tex. Loc. Gov't Code § 193.001(c) (outlining the recording procedure for a clerk to follow "[i]f an instrument that is filed for recording is acknowledged or proved in the manner prescribed by law for [the] record" (emphasis added)). You present three categories of documents, each based on the state of the signature information contained in the documents, and ask whether a county clerk must "accept for recording a paper document that fits" each category. Request Letter at 2.

We begin with Category 1, which you tell us encompasses "documents which, if containing original signatures would otherwise be recordable, but only reflect an 'electronic signature' of the signatory, the Notary, or both." Id. You further relay that the "signatures are either a 'facsimile stamp' or a copy of the original or contain '/s.'" Id. Based on your letter as a whole, we assume you to ask about the effect of a paper copy of a signature that originated as a form of "electronic signature" in a different context. You assert "that documents submitted in this manner do not meet the requirements of Section 12.0011 [of the Property Code] and may be rejected for recording purposes." Id. at 2–3. Generally, "[a]n instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law." Tex. Prop. Code § 12.001(a); see also id. § 12.001(b) (providing that if the instrument conveys real property, it must be "signed and acknowledged or sworn to by the grantor in the presence of two or more credible subscribing witnesses or acknowledged or sworn to before and certified by an officer authorized to take acknowledgements or oaths"). Subsection 12.0011 of the Property Code dictates particular signature requirements for recording paper documents concerning real or personal property. See id. § 12.0011(b); see also id. § 12.0011(a) (defining "paper document" for purposes of subsection 12.0011 as "a document received by a county clerk in a form that is not electronic"). "A paper document concerning real or personal property may not be recorded . . . unless [it] contains an original signature or signatures that are acknowledged, sworn to with a proper jurat, or proved according to law" or "the paper document is attached as an exhibit to a paper affidavit or other document" meeting the acknowledgement, swearing, or proving requirements. Id. § 12.0011(b)(1)–(2). But subsection 12.0011(c) contains an exception to the original signature requirement "for an electronic instrument or other document that complies with the requirements of" specified statutes "or other applicable law." Id. § 12.0011(c) (emphasis


Certain statements filed pursuant to the Business and Commerce Code do not require acknowledgement or swearing. See Tex. Prop. Code § 12.001(c).

added). By definition, a printed hard-copy of a document handed to a county clerk is received by the clerk "in a form that is not electronic" and is thereby a "paper document," regardless of its content or the fact that at one time it may have existed in electronic form. See id. § 12.0011(a). Thus, the documents you ask about would not qualify for the original signature exception as an "electronic instrument." See id. § 12.0011(c). The exception, however, also applies to "other documents." See id. Thus, the question is whether a paper document with a copied image of an electronic signature is a "document that complies with the requirements of" any of the statutes listed in subsection 12.0011(c) such that the document could be recorded without an original pen-and-ink signature. See id.

The first statute referenced in subsection 12.0011(c) is chapter 15 of the Property Code, which is the Uniform Real Property Electronic Recording Act. See generally id. §§ 15.001–.008. Section 15.004(b) of that statute provides that "[i]f a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature." Id. § 15.004(b). An "electronic signature" is "an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document." Id. § 15.002(4) (emphasis added); see also id. § 15.002(2) (defining "electronic" as "relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities"). As you describe them, the documents in Category 1 only reflect a copied image of an electronic signature of the signatory in paper-copy format. See Request Letter at 2. Thus, the signatures on the documents are no longer "electronic signatures" in and of themselves when presented to a clerk. See TEX. PROP. CODE § 15.002(2), (4). Accordingly, the documents cannot satisfy the requirements of Property Code chapter 15. See Tex. Att’y Gen. Op. No. GA 0228 (2004) at 10 (noting that a paper copy of an electronic signature is not the equivalent of an electronic signature).6

Next, subsection 12.0011(c) references chapter 195 of the Local Government Code, which governs electronic filing and recording of records by a county clerk. See generally TEX. LOC. GOV’T CODE §§ 195.001–.009. Chapter 195 directs the Texas State Library and Archives Commission to adopt rules providing "the means by which a county clerk may electronically record an electronic document or other instrument filed electronically." Id. § 195.002(b)(3) (emphasis added); see also id. § 195.003(1) (adopting the definition of "electronic document" found in section 15.002 of the Property Code); TEX. PROP. CODE § 15.002(3) (defining "electronic document" as "a document that is received by a county clerk in an electronic form"). Again, the county clerk receives the documents you ask about in hard-copy format, not electronic format. Thus, they are not "electronic documents" under Local Government Code chapter 195.

Finally, subsection 12.0011(c) refers to chapter 322 of the Business and Commerce Code, which is the Uniform Electronic Transactions Act. See generally TEX. BUS. & COM. CODE §§ 322.001–.021. Subsection 322.007(d) provides that "[i]f a law requires a signature, an

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6 Briefing received from the Texas State Library and Archives Commission explains that converting digitized documents to paper format can result in the loss of certain metadata necessary to identify, authenticate, and contextualize records. See Brief from Mr. Craig Kelso, Dir. and State Records Adm’r, Tex. State Library & Archives Comm’r, to Charlotte M. Harper, Deputy Chair, Op. Comm., Office of the Tex. Att’y Gen. at 1–3 (July 13, 2018) (on file with the Op. Comm.).
electronic signature satisfies the law.” Id. § 322.007(d) (emphasis added). Subsection 322.011 additionally provides that “[i]n a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature [of the authorized person] is attached to or logically associated with the signature or record.” Id. § 322.011 (emphasis added). For purposes of chapter 322, an “electronic signature” means “an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” Id. § 322.002(8); see also id. § 322.002(5) (defining “electronic” as “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities”). Again, the signatures on the hard-copy documents you describe are no longer “electronic signatures” in and of themselves when presented to the clerk. As such, they would not fall within the purview of chapter 322.7

To summarize, a paper document with a copied image of an electronic signature is neither an “electronic instrument” nor a document complying with the provisions that subsection 12.0011(c) of the Property Code would require in order for the document to qualify for recording without an original signature. Absent other applicable law, to the extent that the paper documents in Category 1 concern real or personal property, a court would likely conclude that they must contain an original signature that meets the requirements of subsection 12.0011(b) to be recorded. See Tex. Prop. Code § 12.0011(c) (applying the original signature exception to an electronic instrument or other document that complies with the requirements of the specified statutes “or other applicable law”). If they do not, a county clerk may not accept them for recording.

Category 2 contains copies of documents previously filed with a state agency that you tell us are either “not certified” or “only contain a copy of an electronic ‘certification’ signature.” Request Letter at 2. You include examples of such documents filed with the Secretary of State, including articles of amendment of a corporation (Exhibit A), articles of incorporation of a property owners’ association (Exhibit B), and a certificate of merger of a limited liability company and a limited partnership (Exhibit C). See Attachment at 1–16. You tell us that the certification in these sample documents “is merely a copy of the original certification and/or the signatures were never original in the first place and a ‘signature stamp’ was used.” Request Letter at 3. Again, a county clerk must determine whether the instrument presented meets the requirements of the particular statutory provision authorizing the recording of the document. See Tex. Loc. Gov’t Code §§ 191.001(c), 193.001(c). In light of the specific examples you provide, we turn to provisions governing corporate filings.

Subsection 4.005(b) of the Business Organizations Code provides that a public office or official body, such as a county clerk, may “record a certificate or certified copy” of a document issued or accepted by the Secretary of State as described in subsection 4.005(a). Tex. Bus. Org. Code § 4.005(b); see also id. § 4.005(a) (“A . . . public office . . . shall accept a certificate issued

7Chapter 322 as a whole “applies to electronic records and electronic signatures relating to a transaction,” except in certain instances not relevant here. Tex. Bus. & Com. Code § 322.003(a). Furthermore, it applies “only to transactions between parties each of which has agreed to conduct transactions by electronic means.” Id. § 322.005(b). As explained in the State Bar Committee Comments to section 322.003, such a conveyance, effective between the parties, would not be recordable in the deed records of the particular county until the county had adopted an electronic filing system in accordance with Chapter 195, Local Government Code.” Id. § 322.003 cmt. 2 (State Bar Committee Comments).
... by the secretary of state or a copy of a filing instrument accepted by the secretary of state for filing ... that is certified by the secretary of state as prima facie evidence of the facts stated in the certificate or instrument.). Unlike the provisions governing the recording of documents concerning real or personal property, the statute here makes no direct reference to an acknowledgement, jurat, or proof requirement for recording purposes. Nor does it require original signatures. Subsection 4.005(b) requires only that the document be “a certificate or certified copy described by Subsection (a)” in order to be recorded. Id. § 4.005(b). Thus, to the extent the document in question is a certificate issued by the Secretary of State or a filing instrument accepted and certified by the Secretary of State, a county clerk may generally accept a copy of it for recording. In certain instances, a statute will mandate that a particular type of corporate document be filed with the county clerk, in which case the clerk should consult the specific recording provision.

Category 3 documents, you tell us, “do not contain an acknowledgement or original signatures but might be covered for filing purposes in a separate statute.” Request Letter at 2. The example you provide is an amendment to a certificate of adjudication filed with the Texas Commission on Environmental Quality (the “Commission”). See Attachment at 17–19. You relay that the document “did not contain original signatures, was not sworn to or acknowledged and did not, in the vicinity of the signature, contain the current seal of the Commission.” Request Letter at 3. As noted above, a county clerk must determine whether the instrument presented meets the requirements of the particular statutory provision authorizing the recording of the document. Section 11.324 of the Water Code requires the Commission to “transmit [a] certificate of adjudication or a true copy to the county clerk of each county in which the appropriation [of water] is made.” TEX. WATER CODE § 11.324(a). “On receipt of the recording fee from the holder of the certificate, the county clerk shall file and record the certificate ....” Id. § 11.324(b). The recording statute references no signature or seal requirements. Thus, a certificate of adjudication transmitted by the Commission must be filed and recorded by a county clerk upon receipt of the appropriate recording fee. To summarize the answer to your questions regarding Categories 2 and 3, a county clerk must accept for recording a paper document that complies with the requirements of the particular statutory provision authorizing the recording of the document.

Lastly, you ask whether our answers would change “if these same documents [were] submitted to a County Clerk’s office that does accept the electronic recording of documents.” Request Letter at 4. If by the phrase “these same documents” you mean paper copies, then our answers would not change because the relevant statutes apply to printed documents irrespective of whether a particular clerk’s office also accepts electronic filing. If you mean the same documents in electronic form, then our answers may or may not change, depending on the circumstances. Section 191.009(a) of the Local Government Code authorizes a county clerk to “accept electronic documents and other instruments by electronic filing and record the electronic documents and other instruments electronically if the filing or recording complies with the rules adopted by the Texas State Library and Archives Commission under Chapter 195.” TEX. LOC. GOV’T CODE § 191.009(a); see also id. § 195.002(b) (setting forth the required content of the rules, which must provide for electronic filing and recording of “real property records” and, with certain exceptions, “other instruments . . . as determined by” the Texas State Library and Archives Commission); 13 TEX. ADMIN. CODE §§ 7.141–145 (2018) (Tex. State Library & Archives Comm’n, Electronic Filing & Recording) (the “Rules”) (to date providing for the electronic filing and recording of real
property records only). Chapter 195 further governs the electronic filing of records with and recording by a county clerk. See generally Tex. Loc. Gov't Code §§ 195.001-.009. For example, the statute limits the authority to file electronically to certain persons and entities only. See id. § 195.003(a), (a-1); see also 13 Tex. Admin. Code § 7.142(c), (d) (requiring an authorized filer to apply for enrollment in a participating county clerk's electronic filing and recording program and to enter into an agreement governing terms and conditions with the county clerk). With respect to real property in particular, the Uniform Real Property Electronic Recording Act in chapter 15 of the Property Code validates complying electronic documents for purposes of certain recording requirements that would otherwise apply to a paper document, such as signatures, notarization, acknowledgement, and seals, among others. See Tex. Prop. Code § 15.004(a)-(c); see also id. § 15.005(a) (requiring a county clerk, when receiving electronic documents, to comply with both the Rules and certain uniform standards established by the Texas State Library and Archives Commission).

Thus, in answer to your last question, our answer will depend on whether (1) the document in question is an electronic real property record filed by an authorized filer who completed the requisite enrollment and agreement with the county clerk; and (2) the electronic document otherwise meets the requirements for recording of real property records submitted electronically.
SUMMARY

The county clerk must accept a paper document presented for recording if the document complies with the requirements of the particular statutory provision authorizing the recording of the document. To the extent a printed copy of an electronic document presented for recording by the county clerk concerns real or personal property, it must contain an original signature that meets the requirements of subsection 12.0011(b) of the Property Code to be recorded by a county clerk.

To the extent a county clerk has implemented electronic filing and recording in accordance with state law, the clerk’s obligation to accept a document submitted electronically for recording depends on whether the document (1) is a real property record; (2) is submitted by an authorized filer who has completed the requisite enrollment and agreement with the county clerk; and (3) otherwise meets the requirements for recording of real property records submitted electronically.

Very truly yours,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

BECKY P. CASARES
Assistant Attorney General, Opinion Committee
AN ACT

Relating to the recording of documents in real property records

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 12 of Title 3, Property Code, is amended by amending Sect. 12.0011 as follows:

Sec. 12.0011. INSTRUMENTS CONCERNING PROPERTY: ORIGINAL SIGNATURE REQUIRED FOR CERTAIN INSTRUMENTS. (a) For the purposes of this section, "paper document" means a document received by a county clerk in a form that is not electronic.

(b) A paper document concerning real or personal property may not be recorded or serve as notice of the paper document unless:

(1) the paper document contains an original signature or signatures that are acknowledged, sworn to with a proper jurat, or proved according to law; or

(2) the paper document is attached as an exhibit to a paper affidavit or other document that has an original signature or signatures that are acknowledged, sworn to with a proper jurat, or proved according to law.

(3) the paper document is an electronically generated printout of an electronic document as defined in Government Code Section 406.101(3) or an electronic instrument or other document identified in Property Code Section 12.0011(c), and which paper document is certified to be true and correct by a person
authorized in Local Government Code Section 195.003 to file electronic documents or other documents electronically for recording.

(c) An original signature may not be required for an electronic instrument or other document that complies with the requirements of Chapter 15 of this code, Chapter 195, Local Government Code, Chapter 322, Business & Commerce Code, or other applicable law.

(d) This section does not apply to a child support lien notice issued by the Title IV-D agency under Chapter 157, Family Code. For purposes of this subsection, "Title IV-D agency" has the meaning assigned by Section 101.033, Family Code.

(e) This section does not apply to a notice of sale under Section 51.065, Natural Resources Code, or a land award under Section 51.066, Natural Resources Code.

SECTION 2. Chapter 193 of Title 6, Local Government Code, is amended by amending Sec.193.003 as follows:

Sec. 193.003. INDEX TO REAL PROPERTY RECORDS. (a) The county clerk shall maintain an alphabetical index to all recorded deeds, powers of attorney, mortgages, correction instruments, and other instruments relating to real property. The index must state the specific location in the records at which the instruments are recorded.
(b) The index must be a cross-index that contains the names of the grantors and grantees in alphabetical order. If a deed is made by a sheriff, the index entry must contain the name of the sheriff and the defendant in execution. If a deed is made by an executor, administrator, or guardian, the index entry must contain the name of that person and the name of the person's testator, intestate, or ward. If a deed is made by an attorney, the index entry must contain the name of the attorney and the attorney's constituents. If a deed is made by a commissioner or trustee, the index entry must contain the name of the commissioner or trustee and the name of the person whose estate is conveyed. The index entry for a correction instrument must contain the names of the grantors and grantees as stated in the correction instrument. The index entry for a document filed pursuant to Section 12.0011(b)(3), Property Code, must contain the names of the grantors and grantees and any other persons having an interest as stated in the paper document.

(c) This section does not apply to records classified and indexed in the manner required for records on microfilm by Sections 193.008 and 193.009.

SECTION 3. This Act takes effect July 1, 2019.
Electronic Filing and Recording By County Clerks
Texas Local Government Code
Sec. 191.009. Electronic Filing And Recording.

(a) A county clerk may accept electronic documents and other instruments by electronic filing and record the electronic documents and other instruments electronically if the filing or recording complies with the rules adopted by the Texas State Library and Archives Commission under Chapter 195.

(b) An electronic document or other instrument that is filed electronically in compliance with the rules adopted under Chapter 195 is considered to have been filed in compliance with any law relating to the filing of instruments with a county clerk.
(c) For purposes of this section:

(1) an instrument is an electronic record, as defined by Section 322.002, Business & Commerce Code; and

(2) "electronic document" has the meaning assigned by Section 15.002, Property Code.

Source:

Texas Local Government Code
Chapter 195. Electronic Filing of Records with and Recording by County Clerks

Sec. 195.001. Definitions. In this chapter:

(1) "Commission" means the Texas State Library and Archives Commission.

(2) "Director and librarian" means the executive and administrative officer of the Texas State Library and Archives Commission.

(3) “Electronic document” has the meaning assigned by Section 15.002, Property Code.

Source:

Sec. 195.002. Adoption of Rules.

(a) The commission shall adopt rules by which a county clerk may accept electronic documents and other instruments by electronic filing and record electronic documents and other instruments electronically under Section 191.009.

(b) The rules must provide for:

(1) the electronic filing with and recording by the county clerk of:

(A) real property records; and

(B) except for records maintained under Section 192.006, other instruments filed with and recorded by the county clerk as determined by the commission;

(2) the means by which an electronic document or other instrument may be electronically transmitted to a county clerk for filing;
Sec. 195.003. Persons Authorized To File Electronically. The following persons may file
electronic documents or other documents electronically for recording with a county clerk that
accepts electronic filing and recording under this chapter:

(1) an attorney licensed in this state;

(2) a bank, savings and loan association, savings bank, or credit union doing business under laws
of the United States or this state;

(3) a federally chartered lending institution, a federal government-sponsored entity, an
instrumentality of the federal government, or a person approved as a mortgagee by the
United States to make federally insured loans;

(4) a person licensed to make regulated loans in this state;
(5) a title insurance company or title insurance agent licensed to do business in this state; or

(6) an agency of this state.

Source:

Sec. 195.004. Notice of Confirmation.

(a) A county clerk that accepts electronic filing and recording under this chapter shall confirm or reject an electronic filing of an electronic document or other instrument not later than the first business day after the date the document record or instrument is filed. Notice under this section must be made:

(1) by electronic means if possible; or

(2) if notice under Subdivision (1) is not possible, by telephone or electronic facsimile machine.

(b) If the county clerk fails to provide notice of rejection within the time provided by Subsection (a), the electronic document or other instrument is considered accepted for filing and may not subsequently be rejected.

Source:

Sec. 195.005. Time Electronic Document or Other Instrument Considered Filed or Recorded.

An electronic document or other instrument that is recorded electronically under this chapter is considered to be recorded in compliance with a law relating to the recording of electronic documents or other instruments as of the county clerk’s business day on which the electronic document or other instrument is filed electronically. An electronic document or other instrument filed electronically under this chapter must be recorded as timely as an instrument filed by any other means.

Source:
Sec. 195.006. Additional Fee Prohibited.

The fee to file or record an electronic document or other instrument electronically under this chapter is the same as the fee for filing or recording the instrument by other means, and a county clerk may not charge an additional fee for filing or recording an electronic document or other instrument electronically under this chapter.

Source:

Sec. 195.007. Access To Electronic Document or Other Instrument Recorded Electronically.

(a) An electronic document or other instrument filed or recorded electronically must be available for public inspection in the same manner and at the same time as an instrument filed or recorded by other means.

(b) The county clerk shall provide a requestor, as defined by Section 552.003, Government Code, of an electronic document or other instrument filed or recorded electronically under this chapter with electronic copies of the electronic document or other instrument in a form that is capable of being processed by the use of technology that is generally available and nonproprietary in nature. The county clerk shall provide the copies to the requestor at the cost of producing the copies in accordance with Section 552.262, Government Code.

Source:

Sec. 195.008. Electronic Recording Advisory Committee.

(a) The Electronic Recording Advisory Committee shall be appointed as required by this section to recommend to the commission initial and subsequent rules to be adopted under this chapter.

(b) The committee consists of:

(1) the following persons appointed by the director and librarian:

(A) one person who is employed by or is an officer of a title insurance agent or title insurance company;

(B) an officer or employee of a federal government-sponsored entity;
(C) a person who as a usual business practice obtains copies of recorded instruments from a county clerk to maintain an abstract or title plant; and

(D) a public representative;

(2) two persons who are county judges or county commissioners appointed by the County Judges and Commissioners Association of Texas;

(3) four county clerks appointed by the County and District Clerks' Association of Texas;

(4) three persons who are employed by or officers of different title insurance agents or companies appointed by the Texas Land Title Association;

(5) the presiding officer of the Title Insurance Subcommittee of the Real Estate, Probate, and Trust Law section of the State Bar of Texas or the functional equivalent of that subcommittee;

(6) the attorney general or a person designated by the attorney general;

(7) the comptroller or a person designated by the comptroller;

(8) the executive director of the General Services Commission or a person designated by the executive director;

(9) the executive director of the Department of Information Resources or a person designated by the executive director; and

(10) the director and librarian or a person designated by the director and librarian, who also serves as presiding officer of the committee.

(c) A member of the committee serves a term of two years that expires on August 31 of each odd-numbered year.

(d) A vacancy in the membership of the committee is filled in the same manner as the initial appointment and is for the remainder of the unexpired term.

(e) A meeting of the committee is at the call of the presiding officer and is subject to Chapter 551, Government Code.

(f) A member of the committee is not entitled to compensation or reimbursement of expenses from the commission for serving on the committee. A member of the committee who is an employee or officer of a state agency is entitled to compensation and reimbursement of expenses for service on the committee as determined by the state agency of which the member is an officer or employee. Chapter 2110, Government Code, does not apply to the committee.

Source:
Sec. 195.009. Filing

For purposes of this chapter, an electronic document or other instrument is filed with the county clerk when it is received by the county clerk, unless the county clerk rejects the filing within the time and manner provided by this chapter and rules adopted under this chapter.

Source:

Texas Administrative Code, Chapter 13
Section 7.141. Definitions.

Electronic Filing and Recording

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these sections shall have the meanings defined in the Local Government Code, Chapter 201.

(1) Authorized filer—A person authorized to file instruments electronically as provided in the Local Government Code, Section 195.003.

(2) Electronic record—Any information that is recorded in a form for computer processing and that satisfies the definition of local government record data in the Local Government Code, Section 205.001.

(3) Filed instrument—An instrument that has been sent to and received by a participating county clerk, but not yet recorded.

(4) Participating county clerk—A county clerk who chooses to accept real property instruments by electronic filing and to record those instruments electronically in accordance with the Local Government Code, Section 191.009 and Chapter 195 and these sections.

(5) Real property record—All recorded instruments relating to real property.

(6) Recorded instrument—An instrument that has been sent to, received by, and recorded by a participating county clerk.

(7) Security procedure—A procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other verification procedures.

Source:
The provisions of this Section 7.141 adopted to be effective December 6, 2000, 25 TexReg 11937.
Section 7.142. General.

(a) These sections establish the minimum requirements for the electronic filing and recording of real property records by a participating county clerk.

(b) If a participating county clerk chooses to accept instruments for filing electronically, the participating county clerk shall record those instruments electronically.

(c) An authorized filer must apply to a participating county clerk to be enrolled in the participating county clerk's electronic filing and recording program.

(d) An authorized filer and a participating county clerk must enter into an agreement of understanding relating to the terms and conditions of participation in the county clerk's electronic filing and recording program.

(e) The provisions of an agreement of understanding must be consistent with these sections and the Local Government Code, Chapter 195.

(f) A participating county clerk may adopt other procedures and requirements consistent with these sections and the Local Government Code, Chapter 195, in order to implement fully the electronic filing and recording program of the participating county clerk.

(g) Any electronic record created by electronic recording means shall meet the minimum requirements for the management of electronic records in subchapter C of Chapter 7 of this title (relating to Standards and Procedures for Electronic Records).

(h) A participating county clerk shall:

   (1) impose no fee or charge of any kind for filing or recording electronically, other than the recording fees authorized by state law for filing of a paper instrument;

   (2) provide a requester (as defined in Government Code, Section 552.003) of an instrument filed or recorded electronically with electronic copies of the instrument in a form that is capable of being processed by use of technology that is generally available and nonproprietary in nature;

   (3) provide the electronic copies at the cost of producing the copies in accordance with the Government Code, Section 552.262; and

   (4) retain control and ownership of the electronic records created or received by the office of the county clerk and be responsible for their maintenance as public property pursuant to the Local Government Code, Section 201.005.

Source:
The provisions of this Section 7.142 adopted to be effective December 6, 2000, 25 TexReg 11937.
Section 7.143. Form and Method of Transmission.

(a) An authorized filer should visually inspect each instrument prior to transmitting to ensure compliance with existing statutory recording requirements.

(b) Electronic submissions shall carry sufficient information to identify the authorized filer and to uniquely identify the instrument to be recorded.

(c) Instruments transmitted electronically shall:

(1) provide fidelity to the original appearance of any instrument at the time such instrument was first created, whether by electronic or other means;

(2) retain the original content; and

(3) provide for a non-proprietary digital file format.

(d) An electronic filing system may offer several means by which electronic instruments can be delivered to a participating county clerk. Commonly available electronic delivery mechanisms include network connections, direct electronic connection with the county clerk, and physical delivery of media.

Source:
The provisions of this Section 7.143 adopted to be effective December 6, 2000, 25 TexReg 11937.

Section 7.144. Method of Recording.

(a) An agreement of understanding between a participating county clerk and an authorized filer shall include information required by the participating county clerk in order to provide electronic notice of confirmation or rejection of an electronic filing and subsequent recording, or if such electronic notice is not possible, by telephone or facsimile. The agreement of understanding shall address the following:

(1) All electronic submissions shall generate an acknowledgment of receipt to an authorized filer indicating that the instrument has been filed, but not recorded by the participating county clerk. The acknowledgment of receipt shall include the identity of the receiving county clerk, date and time of the instrument's receipt (which is the county clerk's official receipt date/time), and a county clerk-assigned instrument reference number (i.e., transaction number).

(2) When a participating county clerk provides acknowledgment of receipt of an instrument filed electronically, the instrument is considered to have been filed in compliance with the applicable regulations and laws relating to filing of an instrument with the county clerk.

(3) A notice of confirmation of recording or a notice of rejection for recording shall be provided by a participating county clerk to an authorized filer no later than the first business day after the instrument is filed electronically pursuant to the Local Government Code, Section 195.004(a).
(4) A notice of confirmation shall include recording information for the instrument accepted for recording and shall identify the instrument accepted for recording, as provided in the agreement.

(5) A notice of rejection shall include a brief explanation of the reason or reasons for rejection and shall identify the instrument rejected for recording, as provided in the agreement.

(6) If a participating county clerk complies with the notice provisions of the agreement, the failure of an authorized filer to receive notice of confirmation or rejection of filing and subsequent recording shall not affect the validity of the confirmation or rejection.

(b) The authorized filer shall be responsible for returning the original instrument to the party or parties entitled to it after notice of confirmation of recording is received by the authorized filer and for providing to such party or parties the recording information set forth in the notice of confirmation from the participating county clerk.

(c) A participating county clerk may allow the concurrent submission of an index of real property records filed electronically with the corresponding electronically filed instruments.

(d) If a participating county clerk permits an electronically filed index of real property records, and the authorized filer submits an electronic index, the following requirements shall be met:

   (1) The index shall show the same information that may be required by state law for an index to the same record if it is not filed electronically.

   (2) Indexing fields and field syntax shall be provided by the participating county clerk to enable authorized filers, who choose to do so, to transmit that information in as complete a form as possible.

Source:
The provisions of this Section 7.144 adopted to be effective December 6, 2000, 25 TexReg 11937.


(a) Security procedures shall be implemented to ensure the authenticity and integrity of the electronically filed instrument, including the ability to verify the identity of the filer, as well as the ability to verify that an instrument has not been altered since it was transmitted or filed.

(b) In order to protect the integrity of instruments to be recorded electronically, a participating county clerk and authorized filers shall meet the following security procedure requirements:

   (1) Authorized filers who are enrolled in a participating county clerk's electronic filing and recording program shall implement security procedures for all electronic filing transmissions in order to properly identify each authorized filer.
(2) Instruments to be electronically transmitted to a participating county clerk for filing and recording shall be instruments in a form eligible for recording under conventional means of recording.

(3) Authorized filers agree to transmit eligible instruments using commercially available, nonproprietary formats and other commercially available, nonproprietary computer software programs compatible with those used by the participating county clerk.

(4) All authorized filers shall be responsible for maintaining the security of the systems within their respective offices.

(5) Participating county clerks and authorized filers shall scan files capable of carrying viruses prior to processing.

(c) If a participating county clerk implements an interactive electronic filing process, the participating county clerk shall control interactive access to the electronic filing system via a user authentication process. When an electronic communication channel is used, the login process shall be secured via use of a secure communication channel, or other secure means.

(d) Electronic filing and recording systems shall protect against system and security failures and, in addition, they shall provide normal backup and disaster recovery mechanisms in accordance with Section 7.75 of this title (relating to Security of Electronic Records).

(e) If a participating county clerk permits electronic filing that utilizes digital signature standards based on public-private key encryption technology, they shall be in accordance with the Government Code, Section 2054.060. For purposes of efficiency, participating county clerks are encouraged to utilize technology and to accept certificates from certification authorities compatible with the technology used and certificates accepted by other participating county clerks.

Source:
The provisions of this Section 7.145 adopted to be effective December 6, 2000, 25 TexReg 11937.