



## Colorado Mortgage Lenders Association

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**November 13, 2020**

Jena Griswold  
Colorado Secretary of State  
1700 Broadway #200  
Denver, CO 80290  
Sent via email: SoS.Rulemaking@sos.state.co.us

**Re: Proposed Notary Program Rules 8 CCR 1505-11**

Dear Ms. Griswold:

We would like to thank the Secretary of State's office for the opportunity to provide public comments on the proposed regulations for SB 20-096. The Colorado Mortgage Lenders Association (CMLA) is a trade association whose membership is comprised of more than 130 Member Companies and includes Mortgage Bankers, Brokers, Licensed Mortgage Loan Originators, Banks and Credit Unions located throughout the State of Colorado. Our members employ over 9,000 individuals and account for the majority of residential lending in Colorado.

### **THE DIGITAL MORTGAGE ERA**

As an industry, we are consistently working to find better ways to serve current and prospective consumers throughout the mortgage process for both home purchase and refinance transactions.

We appreciate the Secretary of State's efforts to provide good, common sense regulations in the area of remote online notarization. This will give consumers the choices they expect in this digital era, whether to have a completely digital experience throughout the mortgage process, or to provide flexibility in the closing process by providing notaries and consumers an audio-visual technology enabled closing option, rather than only in-person closings.

## **PUBLIC COMMENTS**

Comments will cover the following 6 areas:

### **Data Minimization**

- 5.1.3 states “REMOTE NOTARIZATION SYSTEM PROVIDER” MEANS A BUSINESS ENTITY THAT PROVIDES A REMOTE NOTARIZATION SYSTEM, AS DEFINED IN SECTION 24-21-502(11.7), C.R.S, THAT INCLUDES STORAGE OF BOTH THE NOTARIZED ELECTRONIC RECORDS AND THE AUDIO-VIDEO RECORDINGS REQUIRED BY SECTION 24-21-514.5(9)(A), C.R.S.
- First, and foremost, SB 20-096 only requires retention of the audio-video recording by the notary in accordance with corresponding journal retention requirements in CRS § 24-21-519. Nowhere in the bill are the notarized documents required to be retained by the notary, or any other party. Lenders and title companies have separate record retention requirements pursuant to their licensing statutes and regulations. CMLA believes that requiring additional entities to retain and store electronic loan documents and the audio-video recording contradicts ongoing efforts across industries to limit the exchange or unnecessary duplicative access to personal data. If, however, the vendor is acting as a custodian to retain the audio-video recording on behalf of notaries, title companies, or others, then this requirement would be appropriate.
- Proposed Language:
  - “REMOTE NOTARIZATION SYSTEM PROVIDER” MEANS A BUSINESS ENTITY THAT PROVIDES A REMOTE NOTARIZATION SYSTEM, AS DEFINED IN SECTION 24-21-502(11.7), C.R.S, THAT INCLUDES STORAGE OF ~~BOTH THE NOTARIZED ELECTRONIC RECORDS AND~~ THE AUDIO-VIDEO RECORDINGS REQUIRED BY SECTION 24-21-514.5(9)(A), C.R.S. **WHEN ACTING AS A CUSTODIAN FOR SYSTEM USERS, INCLUDING, BUT NOT LIMITED TO, NOTARIES PUBLIC.**
- 1.5.6.4 states “A PROVIDER MUST RETAIN ALL LOGS FOR AT LEAST ONE YEAR”
  - Consistent with the comment related to 5.1.3, above, in the interest of data minimization, CMLA suggests amending the length of log retention to 90 days, rather than one year.

### **Data Security**

- 1.5.8.1 states IN THE EVENT OF A DATA BREACH, A PROVIDER MUST HAVE A DESIGNATED SPECIFIC PERSON TO BE RESPONSIBLE FOR NOTIFYING CUSTOMERS AND COLORADO SECRETARY OF STATE WHO HAVE HAD THEIR INFORMATION COMPROMISED
  - Colorado Revised Statutes § 6-1-716(f)(I) provides that in the case of a data breach believed to affect 500 or more Coloradoans, the covered entity notify the Colorado Attorney General. Additionally, CRS § 6-1-716(f)(II) requires that, in the case of a data breach affecting 1,000 or more Coloradoans, the consumer reporting agencies must be notified.

- There is no new breach notification requirement included in SB 20-096 expanding these obligations to SOS notification.
- While vendors are not covered by CRS § 6-1-716, as “third-party service providers,” those entities utilizing the vendor’s services are. CMLA recommends amending 1.5.8.1 to require notice by the vendor to its users and reference the statutory breach notification obligations of the vendor’s users to consumers, the Colorado Attorney General, and credit reporting agencies required by CRS § 6-1-716.
- Proposed language:
  - IN THE EVENT OF A DATA BREACH, A PROVIDER MUST HAVE A PROGRAM AND DESIGNATED INDIVIDUAL SPECIFIC PERSON TO BE RESPONSIBLE FOR NOTIFYING ITS CUSTOMERS, WHO ARE COVERED ENTITIES UNDER CRS § 6-1-716, SUFFICIENT TO ENABLE THOSE CUSTOMERS TO MEET THEIR NOTIFICATION OBLIGATIONS UNDER CRS § 6-1-716. ~~AND COLORADO SECRETARY OF STATE WHO HAVE HAD THEIR INFORMATION COMPROMISED~~

## Signature Requirements

- 5.2.3 (A)(2) states “THE SIGNATURE USED BY THE REMOTE NOTARY PUBLIC FOR REMOTE NOTARIZATIONS MUST MATCH THE SIGNATURE THAT THE REMOTE NOTARY PUBLIC SUBMITTED TO THE SECRETARY OF STATE FOR AND IS ON FILE AS THE NOTARY’S MOST RECENT UNDERLYING COMMISSION AS A COLORADO NOTARY PUBLIC. THIS IS THE SIGNATURE IDENTIFIED AS THE NOTARY PUBLIC’S “OFFICIAL SIGNATURE” ON THE NOTARY’S MOST RECENT AFFIRMATION FORM OR ON THE NOTARY’S MOST RECENT SIGNATURE CHANGE FORM, WHICHEVER WAS FILED LATER. A REMOTE NOTARY PUBLIC MAY NOT USE THE REMOTE NOTARIZATION APPLICATION OR ANY UPDATE FORM TO CHANGE THE NOTARY’S OFFICIAL SIGNATURE.”
  - Technically, using electronic signatures, an electronic signature can be a process, sound, etc. As a matter of common practice in the mortgage industry, it is a digital rendition of a name, but not an actual digital rendering of a signer’s ink signature. For example, most e-signature technologies will allow someone to select one of a variety of script or handwriting type computer fonts.
  - CMLA suggests requiring the name in the electronic signature to match the notary’s name on file with the Secretary of State’s office (eg. S. Smith vs Sam Smith)
- Proposed language:
  - THE NAME APPLIED BY ELECTRONIC SIGNATURE USED BY THE REMOTE NOTARY PUBLIC FOR REMOTE NOTARIZATIONS MUST MATCH THE NAME SIGNATURE THAT THE REMOTE NOTARY PUBLIC SUBMITTED TO THE SECRETARY OF STATE FOR AND IS ON FILE AS THE NOTARY’S MOST RECENT UNDERLYING COMMISSION AS A COLORADO NOTARY PUBLIC. THIS IS THE NAME IN THE SIGNATURE IDENTIFIED AS THE NOTARY PUBLIC’S “OFFICIAL SIGNATURE” ON THE NOTARY’S MOST RECENT AFFIRMATION FORM OR ON THE NOTARY’S MOST RECENT SIGNATURE

CHANGE FORM, WHICHEVER WAS FILED LATER. ~~A REMOTE NOTARY PUBLIC MAY NOT USE THE REMOTE NOTARIZATION APPLICATION OR ANY UPDATE FORM TO CHANGE THE NOTARY'S OFFICIAL SIGNATURE.~~ FOR EXAMPLE, IF A REMOTE NOTARY PUBLIC'S OFFICIAL SIGNATURE INCLUDES THEIR FIRST NAME, MIDDLE INITIAL, AND LAST NAME ("John J. Doe" or "Jane J. Doe") THEN SO SHALL THE NAME APPLIED BY ELECTRONIC SIGNATURE BY THE REMOTE NOTARY PUBLIC FOR REMOTE NOTARIZATIONS.

## Notary Commission

- 5.2.9(b) IF APPROVAL EXPIRES, THE REMOTE NOTARY PUBLIC OR THE NOTARY'S AUTHORIZED REPRESENTATIVE MUST DELETE THE NOTARY'S SEAL AND SIGNATURE FROM THE REMOTE NOTARY PROVIDER'S SYSTEM AND DISPOSE OF THE JOURNAL AND THE AUDIO-VIDEO RECORDINGS IN ACCORDANCE WITH SECTIONS 24-21-514.5(9)(C) AND 24-21-519, C.R.S. UNLESS WITHIN 30 DAYS OF THE EXPIRATION, THE SECRETARY OF STATE REAPPROVES THE NOTARY.
- Rather than requiring deletion, CMLA suggests requiring access to the system by the notary be restricted or suspended. Additionally, because the audio-video recording may be relied upon by other users of the platform, such as if/when the provider is acting as the custodian of the data on behalf of a title company or lender, we do not recommend information be deleted entirely. Alternatively, CMLA would recommend an exception to deletion in the case of a custodial relationship with a party other than the notary.
- It is not unlikely that a notary may be reapproved by the secretary of state within 60-90 days of expiration. By suspending a notary's access to the platform, any unauthorized notarizations can be prevented without the added administrative work of deleting and re-creating access in short succession.

## Notary Authorization

- 5.3.3(A)(2) states "VERIFY THE AUTHORIZATION OF A COLORADO NOTARY PUBLIC TO PERFORM REMOTE NOTARIAL ACTS BEFORE EACH REMOTE NOTARIZATION"
- The automated and systemic verification of a notary public's authority prior to every notarization, would require a data integration between the Colorado Secretary of State database and RON platforms. Building this type of integration would require a material time and financial investment by both the platform vendors and the CO Secretary of State.
- CMLA suggests, instead, that this provision be stricken and at the time of registration with the platform provider(s), the notary be required to prove their registration/commission as a CO RON notary public.
- If the Secretary of state is seeking an ongoing validation of notary public credentials, CMLA would suggest an annual validation requirement.

## RON Transaction Suspense

- 5.3.3(A)(3) states IN ORDER TO BE APPROVED AND MAINTAIN CONTINUING ELIGIBILITY, A REMOTE NOTARIZATION SYSTEM PROVIDER MUST...SUSPEND THE USE OF ITS REMOTE NOTARIZATION SYSTEM FOR ANY REMOTE NOTARY PUBLIC IF THE NOTARY'S UNDERLYING COMMISSION OR THE SECRETARY OF STATE'S APPROVAL OF THE NOTARY PUBLIC TO PERFORM REMOTE NOTARIZATIONS HAS BEEN DENIED, SUSPENDED, OR REVOKED BY THE SECRETARY OR WHEN THE NOTARY HAS RESIGNED;
- We would suggest adding "or when made aware" language to this section because although suspension should happen immediately when a provider is aware of a notary's commission being denied, suspended or revoked, the provider may not have knowledge immediately.
- Proposed language:
  - IN ORDER TO BE APPROVED AND MAINTAIN CONTINUING ELIGIBILITY, A REMOTE NOTARIZATION SYSTEM PROVIDER MUST...SUSPEND THE USE OF ITS REMOTE NOTARIZATION SYSTEM FOR ANY REMOTE NOTARY PUBLIC IF **AND WHEN MADE AWARE OF A SITUATION WHERE** THE NOTARY'S UNDERLYING COMMISSION OR THE SECRETARY OF STATE'S APPROVAL OF THE NOTARY PUBLIC TO PERFORM REMOTE NOTARIZATIONS HAS BEEN DENIED, SUSPENDED, OR REVOKED BY THE SECRETARY OR WHEN THE NOTARY HAS RESIGNED;

## CONCLUSION

CMLA appreciates the willingness of the staff at the Colorado Secretary of State's office to consider public input on this topic. By embracing remote notarial acts using audio-video communication and innovation in technology, the mortgage industry will be able to further streamline and enhance the convenience and security of the mortgage lending and closing processes. Thank you again for the opportunity to engage during this public comment period.

Respectfully,



Wes Phillips  
Executive Director  
Colorado Mortgage Lenders Association