



November 16, 2020

Colorado Secretary of State – Office of Jena Griswold  
1700 Broadway, Suite 200  
Denver, Colorado 80290

**RE:** *Draft Remote Online Notarization Regulations*

Dear Madam Secretary and to Whom it May Concern at the Office:

Nexsys Technologies is pleased to submit its comments on the preliminary draft rules for remote online notarization. Nexsys appreciates the Secretary of State’s willingness to consider feedback on these rules.

### **Background**

As a financial technology (FinTech) company based in Detroit, among the Nexsys offerings is a digital closing platform, Clear Sign, which was built specifically to address the needs of digital closings in the eMortgage realm. As such, Nexsys Clear Sign has quickly become one of the leading digital closing providers in the eMortgage industry with more than 100,000 MERS Registered eNotes completed on Clear Sign.

### **Comments**

Digital commerce allows flexibility of choice and gives consumers more options than ever. Over the last few years, digital options have become increasingly pervasive in the mortgage industry. However, it stopped at the point of the actual signing of documents, where a consumer was required to use traditional pen and ink. We look forward to the day when every consumer has the option of whether or not to complete their mortgage completely digitally online all the way through closing. While the industry has made strides in the past few years, there are still limitations as to which consumers are able to participate in the digital closing space. We appreciate the state legislature and Secretary of State in Colorado to allow Colorado notaries and consumers to participate in a digital closing.

Feedback has been delineated by notice type, Draft Rules and Provider Protocols.

## Draft Rules

1. *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."*
  - a. We request that this is updated to exclude the audio-video (AV) recordings as they can be used to deter fraud and for non-repudiation purposes. Retention of the AV recordings may be a requirement for many vendors in contracts as retention on behalf of the originating client.
  - b. Additionally, we request that it is updated to require the vendor to comply upon notification of expiration/revocation by the notary.
  
2. *5.3.3(A)(2) – "VERIFY THE AUTHORIZATION OF A COLORADO NOTARY PUBLIC TO PERFORM REMOTE NOTARIAL ACTS BEFORE EACH REMOTE NOTARIZATION"*
  - a. Without a continuous data feed of notary status, this is a limitation to provide these solutions to a wider range of consumers. Alternatively, we would request that this is updated to reflect at the time of the notary onboarding onto the platform, or a regular cadence such as annually, as opposed to verification before each individual transaction.
  
3. *5.3.3(A)(3) – "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;"*
  - a. Without a continuous data feed of notary status, this is a limitation to provide these solutions to a wider range of consumers. As an alternative, we would request that this is updated to reflect at the time the platform is made aware, which could be upon notification from the notary or at the time of validation. This is similar to a paper notarization where a notary should not be able to notarize a paper document upon revocation of notarial commission.

4. *5.2.5 (C) - “THE RESOLUTION OR QUALITY OF THE TRANSMISSION BECOMES SUCH THAT THE REMOTE NOTARY PUBLIC BELIEVES THE PROCESS HAS BEEN COMPROMISED AND CANNOT BE COMPLETED.”*

- a. We request that this is updated to mirror language in other states, as well as that of the Mortgage Industry Standards Maintenance Organization (MISMO) RON Standards which have been accepted by many in the mortgage lending industry. “Inherent in online audio/video technology is the presence of temporary surges or spikes in quantitative measures like bitrate and/or frequency of communications and no simple technical limits are practical or prudent. Rather, a sounder approach to ensuring reliable real-time communications is to rely on the judgement of the Notary to determine the adequacy of the communications and provide direction to terminate the session if those conditions are not met<sup>1</sup>.”

5. *5.2.3 (A)(2) – “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.”*

- a. We request clarity that this is updated to allow for a digital signature that matches the name with which the notary is commissioned with the Secretary of State, rather than the digital reproduction of a handwritten signature. Even as a text-based signature, this should hold the same legal weight as a handwritten, or digital reproduction, signature.

6. *5.1.3 - “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....”*

- a. We request clarity that a system is not required to hold copies of notarized records. In an effort to reduce personally identifiable information (PII) in databases, we would prefer to not be subject to a retention on these documents but rather only the AV recording and audit log which are used for purposes of fraud prevention and non-repudiation.

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<sup>1</sup> “Uniform standards that take into account all potential audio/video disruptions and whether they affect the integrity of the Notarial Act are not practical, and therefore, these standards provide for human judgement to determine adequate audio/video quality.”

7. *5.1.4 - "REMOTE NOTARIZATION STORAGE PROVIDER" MEANS A BUSINESS ENTITY THAT SOLELY PROVIDES STORAGE OF NOTARIZED ELECTRONIC RECORDS AND THE AUDIO-VIDEO RECORDINGS REQUIRED..."*

- a. We request clarity that a system is not required to hold copies of notarized records. In an effort to reduce personally identifiable information (PII) in databases, we would prefer to not be subject to a retention on these documents but rather only the AV recording and audit log which are used for purposes of fraud prevention and non-repudiation.

**Provider Protocols**

1. *1.3.2 – "Provider must use a Public Key Infrastructure (PKI) to create certificates based on X.509 standards."*

- a. We request that this is updated to "utilize certificates" rather than "create" to allow for the use of a third-party PKI digital certificate provider that specializes in this arena.

2. *1.5.8.1 – "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."*

- a. We would request this is changed to creating a policy that requires notification of customers as this is more robust in ensuring continuity of workflow in the event that the designated individual changes roles or leaves the organization.

3. *1.5.5.3 – "A provider must audit user access on a quarterly basis."*

- a. As many accesses are provisioned and tied to employment status, we would request that this is updated to "on at least an annual" basis to allow for flexibility in provider compliance programs.



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## Conclusion

We appreciate the opportunity to comment on these preliminary draft rules and look forward to being able to provide service to more consumers and for Colorado's notaries as a Remote Online Notarization solution provider.

Should you have any further questions, please contact me at [SamanthaBudzyn@NexsysTech.com](mailto:SamanthaBudzyn@NexsysTech.com) or (313) 771 - 8687. Additionally, you may also contact Michael Lyon, Executive Vice President of Nexsys Technologies at [MichaelLyon@NexsysTech.com](mailto:MichaelLyon@NexsysTech.com) or (313) 771 - 8502.

Respectfully,

A handwritten signature in black ink that reads "Samantha Budzyn".

Samantha Budzyn  
Director of Operations  
Nexsys Technologies