

TITLE SOURCE, INC.

CORE PRINCIPLES OF REMOTE ENOTARIZATION

February 10, 2017

Who We Are

Title Source, Inc. (“**Title Source**”) is a Detroit based title insurance and settlement service provider to nine of the top ten retail mortgage lenders. Title Source provides lenders a national solution for title and settlement services through direct operations and an expansive network of partners including licensed agents, signing agents and attorneys. Title Source has regional operating centers in Michigan, California, Ohio, Pennsylvania and Texas and is an authorized agent of the highest rated title insurers in the industry. Title Source delivers innovative business solutions powered by technology and driven by a passion for process. Through technology, Title Source has and will continue to improve the title and settlement process for its client and consumers.

1. Uniform Standards for Remote eNotarization

As our economy becomes increasingly digital, and electronic commerce gains acceptance, trust and use amongst consumers, financial transactions requiring notarial evidence remain mired in conventional methods. Consumers in all fifty states and the District of Columbia should be afforded the option to transact remotely (uninterrupted live video) which can only be accomplished through establishment of a uniformly adopted standard regulation for remote eNotarizations.

2. Federal Uniform Standard for Recognition

Remote eNotarizations should be promoted through federal legislation which adopts a minimum uniform standard that is technology agnostic which recognizes and enforces documents that have been remotely eNotarized.

While Title Source encourages the adoption of federal recognition, it continues to support standards prescribed by state business practices and legislation addressing remote eNotarizations where and when it is appropriate and in line with the principles outlined in this document.

3. Support for Federal Uniform Standard for Recognition

Federal legislation best serves the need to ensure portability, security and standardization in the marketplace.

- a. **Powers of the United States Congress.** Congress has the authority to permit and regulate remote eNotarizations through its enumerated and implied powers.
 - i. Congress has the power to regulate interstate commerce by electronic means including the expansion of electronic commerce, operation of free market forces, reduction of paperwork and other purposes.
 - ii. Congress has the power to regulate the effect and method of interstate records under the Full Faith and Credit Clause of Article IV, Section 1 of the United States Constitution.

- b. Regulation and enforcement of rights granted under the 14th Amendment’s right to travel
- c. Within facilitating interstate commerce, the use of remote eNotarization technology reduces or may eliminate impediments to commerce.
 - i. The digital economy plays an increasingly important role in the nation’s success in the 21st century.
 - ii. American businesses and consumers must be focusing on increasing productivity, lowering costs, and spurring growth.
- d. **Consumer Choice and Protection.** Adoption of a uniform standard for recognition of remote eNotarizations will enhance consumer choice and protection.
 - i. Consumers will experience greater choice, enhanced disclosure of important business terms, flexible options, faster service, safer methodology and potential cost reduction.
 - ii. Consumer protection laws already exist for verification, validation and identification in the digital economy. Thus, providing better security and reducing the risk of fraud.
 - iii. Ensures consistency and validity among the states.
 - iv. Potential to enable a fully auditable record of the transaction to deter fraudulent actors.

4. **Principles Core to Proposed Legislation**

Title Source highly encourages that any federal legislation promote interstate recognition of remote electronic notarial acts to ensure the notarial act properly supports parties without regard to geography. Additionally, any legislation, whether state or federal, must fall within the following guiding principles:

- a. **General Standards**
 - i. Existing notarial standards and practices can continue without disruption to existing market, local custom or practice.
 - ii. Support for existing notarial officers, agents and attorneys as defined by state law.
 - iii. Ethical standards on notarial officers remain unchanged.
- b. **Applicability**
 - i. Must provide clarity as to applicability of the remote eNotarization to instruments:
 - 1. For land in another state
 - 2. For person physically in a another state
 - 3. Acknowledgement of notarization when notary, land and signer are all in different states
- c. **Appearance**
 - i. Personal appearance is defined as live or via uninterrupted live video.
- d. **Identity Proofing**
 - i. Identity proofing is necessary. Legislation must recognize all current and future ways to authenticate identity. Identity proofing includes:
 - 1. Prior personal knowledge of the individual by the notary wherein personal knowledge means satisfactory evidence – credible ID or oath/affirmation of a credible witness.

2. Technology dependent identification and authentication when prior personal knowledge is not present which should consist of a multi-factor authentication process verifying at least two of the following: government issued identification, knowledge based questions, or biometric identifiers.
 - ii. Documentary evidence of the identity verification is key and will not require, by law, a video or audio recording document trail. Laws should be agnostic to the exact documentary evidence needed, but rather speak to the need for such evidence and a sufficient audit trail.
5. **Records and Journals**
 - a. Record retention with regard to video and audio recording requires flexibility and should be regulated according to applicable industry regulatory regimes in place today.
 - b. Journal requirements are to include any existing requirements and must include geo-location of the notary and signatory. A geo-location journal can be used to ensure location and performance of notary.
6. **Technology and Security**
 - a. Technology agnostic. Current proposals and laws should not bind future innovation or creation.
 - b. Security will develop and evolve as cybersecurity practices, regulations develop, and legislation must not bind remote electronic notaries to dated security practices.
7. **Consumer Benefits**
 - a. Consistent remote electronic notarization standards recognize an increasingly mobile economy where notarial officials can use technology to meet customers at their point of need.

Should you have any questions or comments on the views expressed in this document please do not hesitate to reach out to Brian Hughes via email at TitleSourceNotarization@titlesource.com.