

Iowa State Bar Association presenting

Remote Online Notarization in Iowa

By:

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Simmons Perrine Moyer Bergman
 - Eric Langston
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 - Christine Halbrook
Bradshaw Law
 - Lindsey Guerrero
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-

Introductions

- ❖ Paul Morf, Partner, *Simmons Perrine Moyer Bergman*
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- ❖ Eric Langston, Associate, *Simmons Perrine Moyer Bergman*
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- ❖ Christine Halbrook, Partner, *Bradshaw Fowler Proctor & Fairgrave*
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Simmons Perrine Moyer Bergman

Paul Morf

Paul Morf has led the firm's wills, trusts, estate planning and probate law group since 2005 and is a founding member and president of the Iowa Academy of Trust and Estate Counsel. Mr. Morf counsels business owners, farmers and high-net-worth individuals on creating customized and comprehensive estate plans that preserve wealth for future generations and ensure that the client's precise wishes are enacted. Mr. Morf creates trusts, limited liability companies, partnerships and other structures and helps clients arrange for charitable giving. He also handles trust and estate litigation, such as will contests or disputes between beneficiaries and fiduciaries.



Simmons Perrine Moyer Bergman

Eric Langston

Eric is an associate at Simmons Perrine Moyer Bergman and, prior to joining the firm 2019, worked as an associate in the bankruptcy and restructuring group of Kirkland & Ellis, LLP. He currently works in the areas of bankruptcy, real estate, and corporate governance. He graduated from DePaul University College of Law, Order of the Coif, in 2015 and from Knox College in 2007 while majoring in economics, minoring in business & management and mathematics. Prior to becoming an attorney, he worked as a data scientist in higher education for seven years.



Bradshaw Fowler Proctor & Fairgrave

Christine Halbrook

Christine Halbrook is a shareholder at the law firm of Bradshaw, Fowler, Proctor & Fairgrave, P.C. in Des Moines. Each year since 2013, Christine has been selected for inclusion in The Best Lawyers in America in the area of Trusts and Estates. She is an honors graduate of Drake University Law School, where she served on the Drake Law Review. Prior to attending law school, Christine received a Bachelor of Science in Economics from the Wharton School at the University of Pennsylvania.



Iowa Finance Authority, Iowa Title Guaranty

LINDSEY GUERRERO

Prior to joining Iowa Title Guaranty, Lindsey practiced in the private sector as a transactional real estate attorney representing consumers, lenders, developers, and builders in commercial and residential real estate matters. Lindsey has extensive experience in abstract examination, title clearing, and settlement services. Lindsey earned her J.D. degree, with distinction, from the University of Iowa College of Law in 2012. She received her undergraduate B.A. degree, with distinction, in Spanish and Entrepreneurial Management from the University of Iowa in 2009.



Roadmap of Webinar

- ❖ Remote Execution of Wills and Trusts, *Paul Morf*
- ❖ Nuts & Bolts: Wisdom from the Trenches, *Eric Langston*
- ❖ Remote Execution of Ancillary Estate Planning Documents, *Christine Halbrook*
- ❖ Real Estate: Remote Execution of Deeds, *Lindsey Guerrero*
- ❖ Selecting a Vendor & Walkthrough, *Eric & Christine*
- ❖ Question & Answer Session with Panel

Remote Execution of Wills and Trusts

Estate Planning Documents

- ❖ Will
- ❖ Revocable Trust
- ❖ Health Care Power of Attorney
- ❖ Living Will
- ❖ General Power of Attorney (a / k / a Financial Power of Attorney)
- ❖ Deeds

Wills

- ❖ A valid must be "witnessed, at the testator's request, by two competent persons who signed as witnesses in the presence of the testator and *in the presence of each other*" §633.279 (emphasis added)
- ❖ Wills cannot be electronically signed by the Testator
 - Uniform Electronic Transactions Act, § 554D.104(2)(a)

Wills - Witnessing

- ❖ Governor's Proclamation states that a person is "present" in a manner in which the witness or other person can see and hear the acts by electronic means, such as video conference, Skype, Facetime, Zoom, or other means, *whether or not recorded*.
- ❖ Consider different attestation clause, broken out over two separate pages – one for Witness 1 and one for Witness 2

Sample Attestation Clause

On this ____ day of _____, 2020, the foregoing instrument was in our presence signed and executed by the Testator, TESTATOR'S NAME, and declared by Testator to us to be Testator's Last Will and Testament, and at Testator's request, in Testator's presence, and in the presence of each other, we have subscribed our names as witnesses hereto.

For purposes of the above paragraph, "presence" is defined as a manner in which the witnesses and Testator can simultaneously see and hear the acts of the witnesses and Testator by electronic means, such as video conference, Skype, Facetime, Zoom, or other means. This definition is consistent with Section Seventeen of the State of Iowa's Proclamation of Disaster Emergency issued by the Governor on March 22, 2020.

The attesting witnesses may execute this document in counterparts, each of which shall be deemed an original, but all of which together shall constitute an attested Last Will and Testament of TESTATOR'S NAME.

Self-Proving Affidavit

- ❖ Typically would use a Self-Proving Affidavit
 - However, requires two witnesses, testator, and notary
 - Can be expensive to do on RON
- ❖ Consider Testimony of Subscribing Witness (§633.295)
 - Only requires one witness to sign
 - With attorney as witness, firm likely has notary

Revocable Trusts

- ❖ Execution requirements are much easier
- ❖ Simply requires trustor and trustee to sign
- ❖ No notarization or witnesses required in Iowa

Considerations Before Remotely Signing Wills & Trusts

- ❖ How likely is a contest?
- ❖ Who is present remotely or physically? Have we documented that?
- ❖ Are there competence issues?
- ❖ What evidence are you creating regarding the signing conference to use in the event of a contest?
- ❖ Implications of Covid-19 on Decision Between Revocable Trusts v. Will-based Plans Going Forward.
- ❖ Do we need a certificate of trust?
- ❖ Implications for Probating Estates?

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Nuts & Bolts:

Wisdom from the Trenches of R&D

Types of Notarization

- ❖ Traditional

- Physical presence required and stamped on paper

- ❖ E-Notarization

- Physical presence required, but stamped electronically

- ❖ Remote Online Notarization (RON)

- Virtual presence allowed and stamped electronically

Proclamations of Disaster Emergency

- ❖ March 22, 2020 Proclamation
 - Immediately implemented §9B.14A, which otherwise would have been effective July 1, 2020
 - Scheduled expiration of disaster - April 16, 2020
- ❖ April 2, 2020 Proclamation
 - Continued implementation of §9B.14A
 - Scheduled expiration of disaster - April 30, 2020
- ❖ RON is valid in Iowa as long as it is extended by proclamation

What is Remote Online Notarization?

- ❖ Signers and notary use a software platform
 - Identity-proofing technology
 - E-signature capability
 - Recordation of notarial act and storage of same
- ❖ Notary establishes *identity* (just remotely)
- ❖ Execution occurs where the notary is located

Notary Requirements for RON

- ❖ Notary must register as a remote notary with the Iowa Secretary of State
- ❖ [sos.iowa.gov / RemoteNotary](https://sos.iowa.gov/RemoteNotary)
- ❖ Note the interim guidance

Remote Notarization

Complete the form below indicating your intention to undertake remote notarization. For more information please see the [Secretary of State's Guidance](#).

Commission Number	required
Name	required
Email	required
Phone	required
Remote Online Notary Service Provider	required
Other Information	optional

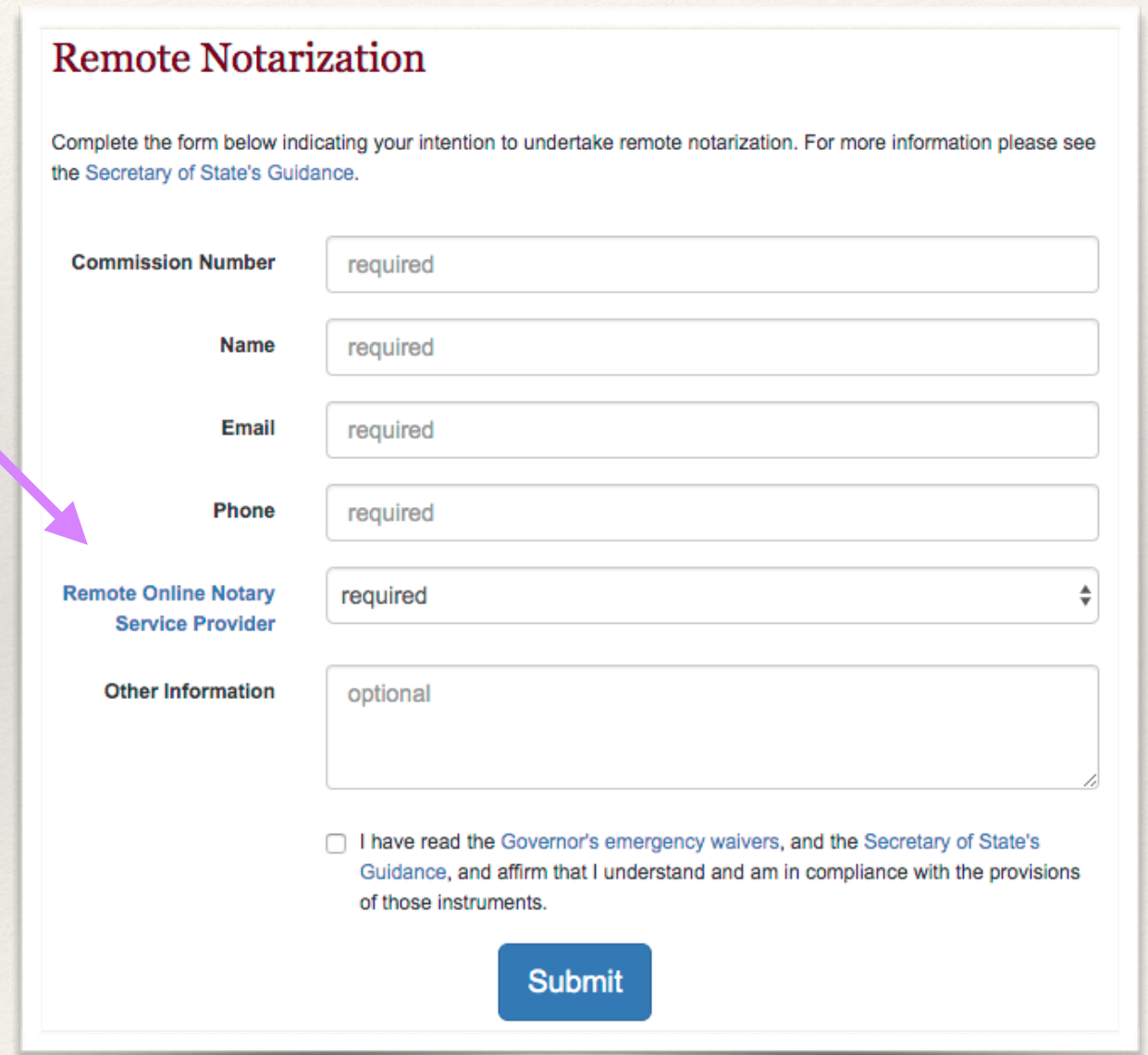
☐ I have read the Governor's emergency waivers, and the [Secretary of State's Guidance](#), and affirm that I understand and am in compliance with the provisions of those instruments.

Submit

Notary Requirements for RON

❖ Software platforms approved by SOS

- DocVerify
- LenderClose
- Notarize
- Pavaso
- SIGNiX



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Submit

Personal Appearance Before Remote Notary

- ❖ Signer virtually appears before notary (*via software platform*)
- ❖ Personal appearance met by:
 - Notary personally knowing the signer. §9B.6.
 - Signer being identified by oath from witness known by the Notary. §9B.7(2).
 - Knowledge-Based Authentication (KBA)

Technical Notes

- ❖ Notary certificate should state, “This notarial act used communication technology.” §9B.14A(5)(b).
- ❖ County of execution is where the notary is located.
- ❖ Improper notarization doesn’t invalidate the document, but instead opens the notary to a potential E&O claim if the identity of the signer were forged and a party relied on the document, which resulted in damaged.

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Remote Execution of Ancillary Estate Planning Documents

Durable Power of Attorney for Health Care (§ 144B.3)

- ❖ Two ways to execute HCPOA: Notarized or Witnessed
- ❖ If witnessed, then it must be “signed by at least two individuals who, in the *presence of each other and the principal*, witnessed the signing” (emphasis added)
- ❖ Presence, under the Governor’s Proclamation, can be done by electronic means

Sample Witness Clause (HCPOA)

By signing this form I declare that I signed this form in the presence of the other witness and the Principal and I witnessed the signing by the Principal or other person acting on behalf of and at the Principal's direction.

For purposes of the above paragraph, “presence” is defined as a manner in which the witnesses and Principal can simultaneously see and hear the acts of the witnesses and Principal by electronic means, such as video conference, Skype, Facetime, Zoom, or other means. This definition is consistent with Section Seventeen of the State of Iowa’s Proclamation of Disaster Emergency issued by the Governor on March 22, 2020.

The witnesses may execute this document in counterparts, each of which shall be deemed an original, but all of which together shall constitute a fully executed Witness Form.

Living Wills

- ❖ Not specifically included in Governor's Proclamation
- ❖ These can be witnessed or notarized (acknowledged)
- ❖ Many forms combine the Living Will with the Health Care Power of Attorney

General Power of Attorney (GPOA)

- ❖ A general power of attorney must be signed by the principal “or in the principal's conscious presence by another individual” and must be “acknowledged before a notary public or other individual authorized by law to take acknowledgments.” §633B.105
- ❖ No option for witnessing

GPOA (a/k/a FinPOA)

- ❖ For the notarization, it can be acknowledgment
- ❖ Consider having client drive up, point to signature, confirm signature, and pass through car window
 - Other ideas?

Summary of Video Execution with FaceTime as Example

- ❖ Use Facetime with witnesses & clients to videoconference using cellphones.
- ❖ During that conference, clients and witnesses execute (in counterparts) healthcare powers of attorney that utilize two witnesses rather than a notary, at least for now.
- ❖ During that conference, clients and witnesses execute (in counterparts) a will without a self-proving affidavit.
- ❖ Clients also execute any trusts or LLC documents or transfer documents that may be involved in the estate plan, with no notary or witnesses.
- ❖ After the conference, one of the witnesses (me) executes a form compliant with §633.295, with a notary here in my office, in lieu of a self-proving affidavit.

Deeds

- ❖ But what about Deeds? Can you remotely notarize those and will the recorder accept it?
- ❖ Background:
 - Governor's proclamation did not make reference to section in SF 475 that relates to recording RON real estate documents
 - Outstanding question as to whether they would be accepted since not “fast-tracked” by proclamation

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Real Estate: Remote Execution of Deeds

May Recorders Accept an Electronic RON Record for Filing?

- ❖ Section 16 of the Governor's Proclamation did not adopt Subsection 2A of Senate File 475:
 - “The office of the recorder of a county in which the real estate is located may accept for recording a tangible copy of an electronic record of an instrument affecting real property, if the electronic record is evidenced by a certificate of a notarial act pursuant to 9B.15.”

Will Iowa Recorders Accept Deeds Notarized Remotely in Another State?

- ❖ Yes, pursuant to Iowa Code §9B.11, quoted below.
 1. A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by any of the following:
 - a. A notary public of that state.
 - b. A judge, clerk or deputy clerk of that state.
 - c. Any other individual authorized by law of that state to perform the notarial act.

RON and Real Estate

- ❖ How will RON impact Iowa real estate transactions?
- ❖ Will ITG provide title coverage for closings conducted with RON?
- ❖ Will ITG impose any requirements or exceptions related to RON?
- ❖ Practical concerns?
 - Lenders not permitting the use of RON
 - Fannie Mae and Freddie Mac restrictions
 - Cost prohibitive for solo practitioners and small firms?

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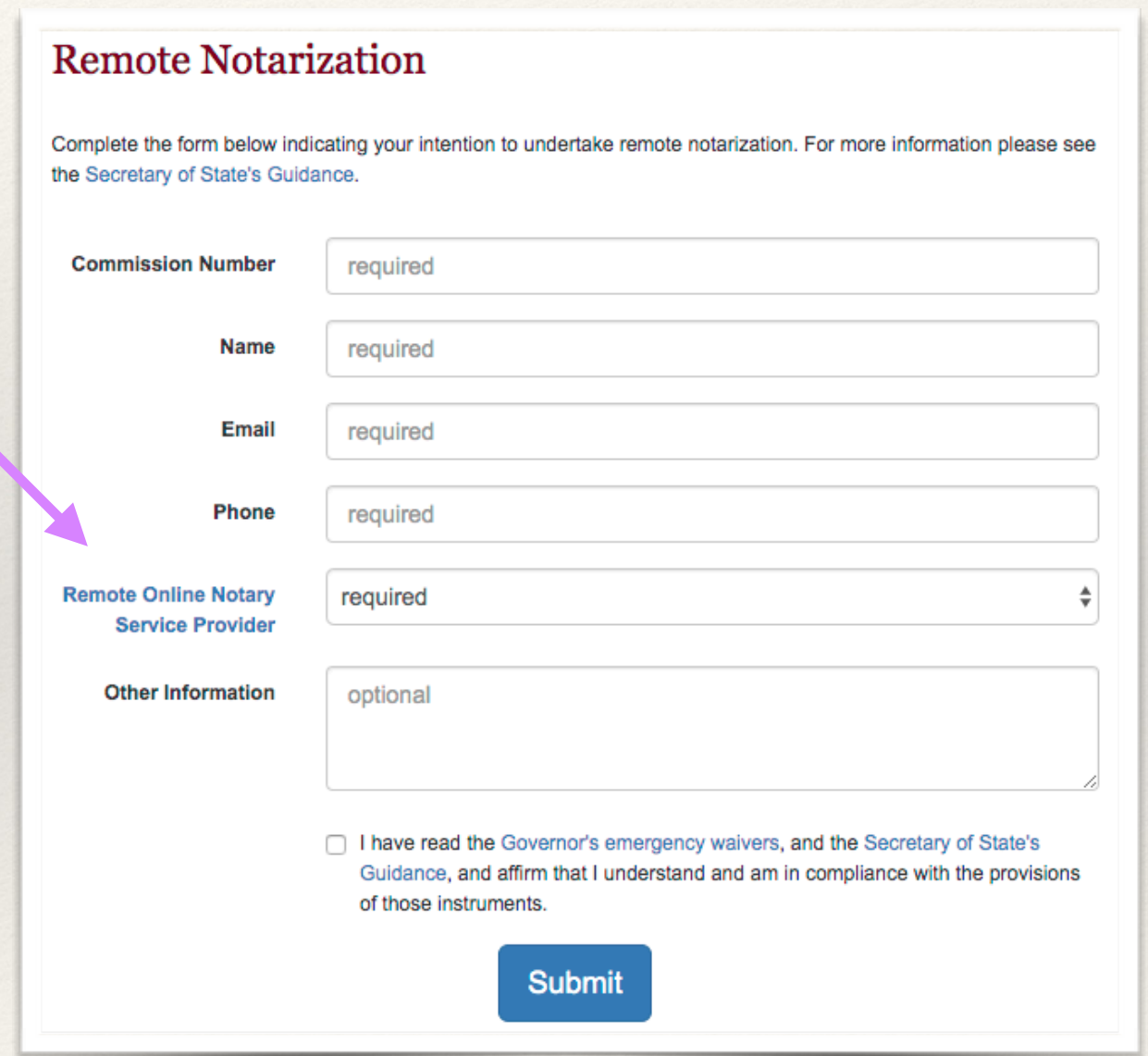
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Selecting a Vendor & Walkthrough

Selecting a RON Service Provider

❖ Software platforms approved by SOS

- DocVerify
- LenderClose
- Notarize
- Pavaso
- SIGNiX



Remote Notarization

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Phone	<input type="text" value="required"/>
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Other Information	<input type="text" value="optional"/>

☐ I have read the [Governor's emergency waivers](#), and the [Secretary of State's Guidance](#), and affirm that I understand and am in compliance with the provisions of those instruments.

Submit

Sample Output



JSH Affidavit.pdf

DocVerify ID: 25168D87-F141-4115-8057-176E7A098381
Created: March 29, 2020 14:48:43 -8:00
Pages: 1
Remote Notary: Yes / State: IA

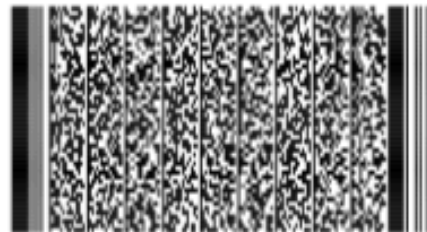
This document is a DocVerify VeriVaulted protected version of the document named above. It was created by a notary or on the behalf of a notary, and it is also a DocVerify E-Sign document, which means this document was created for the purposes of Electronic Signatures and/or Electronic Notary. Tampered or altered documents can be easily verified and validated with the DocVerify VeriCheck system. This remote online notarization involved the use of communication technology.

Go to www.docverify.com at any time to verify or validate the authenticity and integrity of this or any other DocVerify VeriVaulted document.

E-Signature Summary

E-Signature 1: John Halbrook (JH)
March 29, 2020 15:22:36 -8:00 [759CEB41BF21][174.217.13.51]
me@johnhalbrook.com (Principal) (Personally Known)

E-Signature Notary: Christine F Halbrook (cfh)
March 29, 2020 15:22:36 -8:00 [179DBD51F670][174.6.142.42]
halbrook.christine@bradshawlaw.com
I, Christine F Halbrook, did witness the participants named above
electronically sign this document.



documents cannot be altered or tampered with in any way once they are protected by the DocVerify VeriVault System. Best viewed with Adobe Reader or Adobe Acrobat.
electronic signatures contained in this document are symbolic representations of the persons signature, and not intended to be an accurate depiction of the persons actual
by various Acts and/or Laws.



AFFIDAVIT

STATE OF IOWA)

COUNTY OF POLK)

The undersigned, John S. Halbrook, being duly sworn on oath, submits the following:

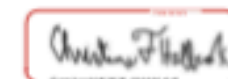
1. I am a resident of the State of Iowa.
2. I am the spouse of Christine F. Halbrook.
3. I have put up with many shenanigans over the years, but this is probably the most ridiculous.
4. However, when I took the vow of "for better or for worse," I meant it.
5. I just did not realize it would come to this.
6. I am signing this so she will stop talking about remote notarizations.
7. This Affidavit has no legal effect.

03/29/2020

Date


John S. Halbrook

Signed and sworn to (or affirmed) before me on the 03/29/2020 day of March, 2020, by John S. Halbrook. This notarial act involved the use of communication technology.



NOTARY

CHRISTINE F HALBROOK
NOTARY SEAL - STATE OF IOWA
Commission No. 741915
My Commission Expires July 26, 2021

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Question & Answer Session

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Helpful Links

- ❖ Freddie Mac Bulletin (2020-8) issued March 31, 2020 (See page 5 *et seq.* for RON guidance and page 11 for states permitting RON)
 - guide.freddiemac.com/ci/okcsFattach/get/1003772_7
- ❖ Fannie Mac Lender Letter (LL-2020-03) updated March 31, 2020 (See page 5 *et seq.* for RON guidance)
 - singlefamily.fanniemae.com/media/22316/display
- ❖ American College of Trust & Estate Counsel, 50 State Survey
 - www.actec.org/resources/emergency-remote-notarization-and-witnessing-orders/