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eNotarization Frequently Asked Questions (FAQs) Background Paper

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Executive Summary

PRIA has heard many questions about electronic notarization from its members over the past several years. This Background Paper provides answers to the most frequently asked questions (FAQs) about electronic notarization and provides examples of what an electronic notarization might look like.

What is electronic notarization?

An electronic notarization is an official act performed by a notary public using an electronic signature on an electronic document.

Generally speaking, all other steps and procedures of notarization remain the same. The signer appears before the notary to request a notarization, and the notary identifies the signer, completes a notarial certificate and affixes the electronic notary signature and seal.

How does electronic notarization work?

Think of electronic notarization as achieving the same result using different tools. A commissioned notary simply uses technology to electronically sign the document, complete the certificate language, and apply his/her electronic seal (if required) under state laws or rules.

All signatures on the electronic document will be applied using some device such as a keyboard, stylus, touchscreen, touchpad, or other similar input device.

What is an electronically-enabled notary public?

This is notary public who is authorized and prepared to notarize documents electronically using an electronic signature and (where required) seal. Some states require notaries to indicate their intention to notarize electronically by registering with the notary appointing authority. Some states issue an electronic notary commission in addition to a traditional notary commission.

Typically, states' electronically-enabled notaries follow the same statutes, rules and recommended practices applicable to paper-based notarial acts; their authority to notarize is simply extended to include electronic documents. Some states impose additional requirements for electronic notarization.

What are the notarial acts an electronic notary is authorized to perform?

Generally, electronically enabled notaries are authorized to perform the same official acts as paper notaries. Official acts typically include taking sworn statements and acknowledgments, and witnessing signatures.

What is an electronic notary signature and seal?

In a traditional paper notarization, a notary signs a notarial certificate with an ink pen and affixes a seal utilizing a rubber stamp or embosser. A notary performs the same actions on an electronic document, using an electronic signature (and, if required, an image of the seal) that complies with his or her state's unique requirements. For example, the electronic notary signature may take the form of the notary's typewritten name, an image of the electronic notary's handwritten signature, or the notary's seal information displayed on an electronic document.

While applicable electronic signature laws (ESIGN and UETA) require only the information conveyed by the seal, such as the notary's name, jurisdiction, commission number and expiration date, some jurisdictions still require a graphic representation of a seal image. See examples at the end of the FAQs.

Some states require the notary's electronic signature and seal to include "tamper-evident technology" to provide evidence if any change has been made to the electronic document after it was notarized.

Is a notary required to use a particular type of electronic signature?

It depends on the state. While ESIGN and UETA do not require specific signature technology or equipment, some states have added requirements for the notary's electronic signature. Despite these variations, each electronic signature technology is as valid as any other.

For a comprehensive list of state requirements, refer to the PRIA Web site: [URL]

Is a rubber stamp seal image required for an electronic notarial act?

While applicable electronic signature laws (ESIGN and UETA) require only the information conveyed by the seal, such as the notary's name, jurisdiction, commission number and expiration date, some jurisdictions still require a graphic representation of a seal image.

Must a notarial certificate be completed for an electronic notarial act?

Yes. A completed notarial certificate is essential to every notarial act, whether the document is paper or electronic. The certificate is prima facie (or "at face value") evidence that the notarization occurred. The notarial certificate language may be printed on the document or appended (either as a separate page or as an electronic inclusion).

In a few limited circumstances—for example, in Georgia, Maryland and Michigan—the certificate is not required to contain specific notarial language. The notary only is required to sign and date the document, and include the commission expiration date and county. Even though these requirements are minimal, they constitute a complete notarial certificate in those jurisdictions.

Are notaries required to keep a journal of electronic notarial acts?

This requirement varies from state to state. Some states require journals, some do not, and some have different journal requirements for paper and electronic transactions. Electronic solutions typically create journal entries automatically. Even if a journal is not legally required, keeping a journal is a best practice which is strongly recommended by notary appointing authorities and notary associations.

Does a notary have to perform electronic notarizations?

No, it is entirely up to a notary whether they want to perform electronic notarizations. If a notary does not want to participate in an electronic notarial transaction, most systems allow you to print out documents for a traditional notary process.

If the parties want to engage in a fully end-to-end electronic signing and recordable transaction, they would need to select a notary with the capability of performing electronic notarizations. Many states impose specific requirements on the manner in which that process takes place.

Is a separate notary bond required for electronic notarizations?

Typically no, but this can vary from state to state. For example, in Arizona, electronic notaries must have a separate bond.

Is separate errors and omissions (E&O) insurance required to protect notaries as electronic notaries?

No. Notaries have the option of obtaining E&O insurance at their discretion. In Louisiana and West Virginia, E&O insurance may function as the equivalent of a required bond.

Is the authentication process different for electronic notaries notarizing documents destined for foreign countries?

Documents notarized in the United States for use in foreign countries commonly have to have the notary's commission status authenticated by the secretary of state or other notary appointing authority. The concept is the same for electronically notarized documents as it is for traditionally notarized documents. Contact the state authenticating official, typically the secretary of state, for information.

What is remote electronic notarization?

With remote electronic notarization, the signer and the notary are not in the same location, but satisfy the requirement of personal appearance before the notary through use of real-time audio-video technology. The two-way live teleconferencing capability must ensure the persons communicating can simultaneously see and speak to one another, for the purpose of positive identification and personal appearance. States authorizing remote electronic notarization, such as Virginia, require a heightened level of identity assurance, such as knowledge-based authentication (KBA), as well as recording of the audio-video session, to ensure the integrity of the identification and the notarial act.

Currently, only Montana notaries and Virginia e-notaries are authorized by statute to perform remote electronic notarizations.

If a state does not currently authorize its notaries to notarize electronically, may the recorder record an instrument that has been duly electronically notarized (including remotely electronically notarized) in another state?

Virtually every state has long-established law recognizing and providing for acceptance of documents duly notarized by notaries in other states. Recorders have been recording documents notarized in other states under these laws for many years.

If a state (or county) has not yet adopted or is still transitioning into electronic recording, can the recorder accept for recording an electronically notarized document?

Any jurisdiction equipped to accept electronic filings can accept electronically notarized documents. A jurisdiction that is not equipped to accept electronic filings may or may not accept a paper copy of an electronically notarized document, depending on how they interpret their laws and regulations.

How would a recording official find more information on the electronic notarization laws and administrative rules for their state?

Check with your state's notary appointing authority, most commonly the secretary of state.

What is an electronic signature?

An electronic signature is any 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 document.

A broad range of technologies can be used to create an electronic signature. A common form of electronic signature is an “I accept” button on a Web site agreement or a statement such as, “By clicking the Submit button I agree to these terms and conditions” on an online form. A signature on an electronic signature pad is another familiar way to sign electronically.

What is a digital signature?

A digital signature is a specific type of electronic signature that employs public and private key encryption to secure an electronic document or electronic message from unauthorized tampering. The encryption technology provides trust that a known party signed an electronic document, and precludes the signer from denying his or her act of signing.

Digital signatures can also be used by signing systems to add a tamper-evident seal to the document, allowing recipients to later re-validate the document and ensure that document integrity has been preserved.

A digital signature is the most technically complex form of electronic signature being used today. It is frequently confused with the more general term “electronic signature,” which refers to a broader variety of e-signature technologies.

What is a digital certificate?

A digital certificate, also known as a public key certificate, is the electronic credential, issued by a party called a Certificate Authority (CA), which is used by a party to digitally sign a document. In addition, a digital certificate is an essential component of a public key infrastructure (PKI) scheme. The holder of a digital certificate in a PKI scheme uses the certificate to assert his own identity and authenticate other users within the system. This promotes trust among parties.

COMMENT: Some states’ electronic notarization laws or regulations require the notary public to acquire and use a specific technology, such as a digital certificate, in order to perform electronic notarizations. This adds technical complexity and dependencies where simple electronic signatures (like click-sign or a signing pad) would be sufficient under E-SIGN and UETA.

What are the advantages of electronic transactions over paper transactions?

A well-designed electronic transaction system can provide relying parties with stronger assurances than paper transactions in a number of ways:

—Some electronic signature technologies will render a document **tamper-evident**. For example, Public Key Infrastructure (PKI) technology can be used to create a numeric digest or “thumbprint” of an electronic document that can reveal any subsequent tampering or corruption of the document.

—An electronic signature system might include the capability to generate online challenge (“out-of-wallet”) questions, also known as knowledge-based authentication (KBA), that may help to provide a higher level of verification of the signer’s identity.

—Some electronic signing systems can also provide pertinent evidence when a signer falsely claims, “I know that looks like my signature, but it wasn’t me that signed that document; someone must have forged it.” The signer typically must access the electronic signing system through a password, an e-mail link, or other means known only to the signer. A detailed electronic audit trail of every event in the electronic document signing process can be created by some systems.

Do any of these technologies require me as a recorder to do anything different with electronic transactions than I do with paper transactions?

The format of electronic records submitted to your county office is dictated by the capabilities of your electronic recording solution. Submitters who present electronic documents in your county must comply with your requirements to ensure that their submissions are compatible and can be received and recorded.

Who is likely to be interested in submitting electronically notarized documents to the recorder’s office?

Industries actively engaged in promoting the use of electronically notarized documents include:

- Banks, credit unions and mortgage lenders
- Title and escrow companies
- Legal offices
- Financial services
- Construction companies

What does an electronic signature/document/notarization look like when it comes into the recorder’s office?

Documents coming into the recorder’s office fall into two broad categories:

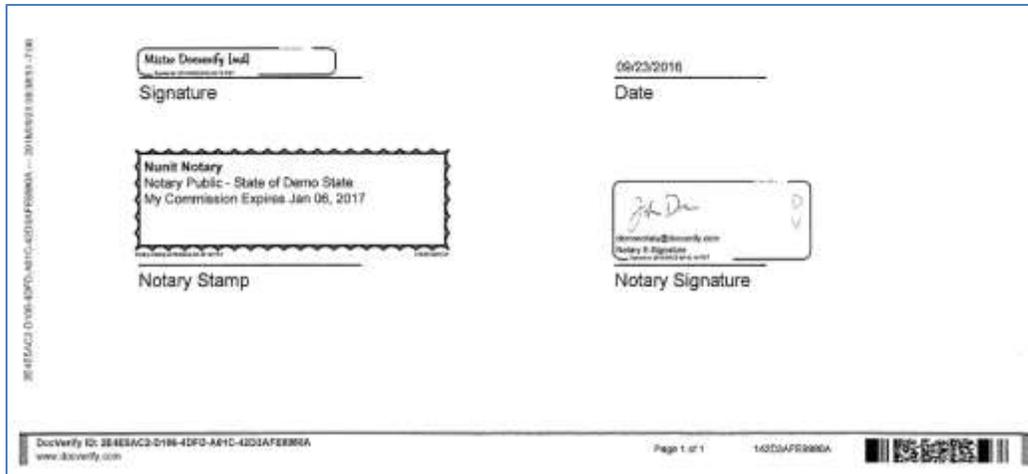
- Paper documents, with wet-ink signatures and notarization
- Electronic documents, with electronic signatures and electronic notarization

An electronically notarized document often looks like a paper-notarized document and may include a number or other identifiers to show it was notarized electronically. However, an electronically notarized document may have significant differences in appearance from a paper-notarized document which you should be aware of.

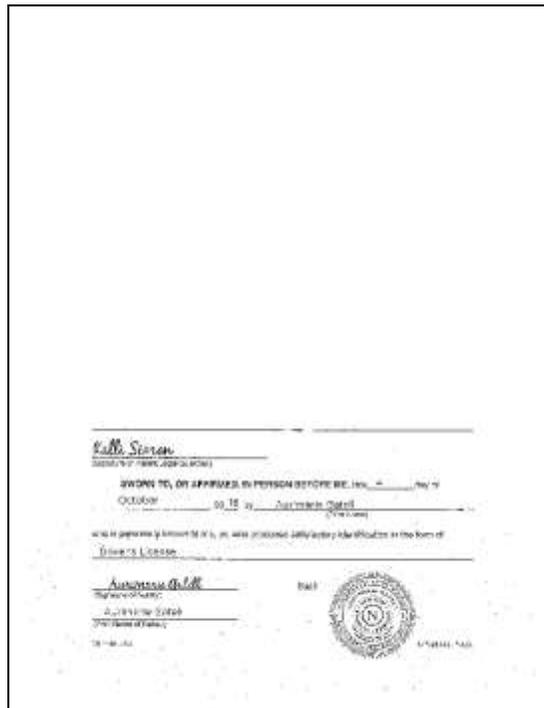
The signatures may come in in different formats, depending on the technology solution used to sign the documents. Since E-SIGN and UETA are technology-neutral, they do not require a specific signature format, although notary laws may dictate a certain notary signature technology like PKI in some states.

The notary stamp or seal may appear as text-based information or as a graphical representation of the notary’s stamp or seal. Examples are included at the end of the FAQs.

Today, the majority of electronically notarized documents are submitted into the recorder’s office in either PDF or TIFF image format, with the notary’s stamp and seal information contained in the electronic document.



This example is a sworn statement. It contains the electronic signature of the party appearing before the notary. Note that the electronic signature appears in a stylized, typed format. The properly completed certificate includes the date, name and identifying information for the signer. On the bottom left is the electronic signature (also in stylized, typed format) and printed name of the notary and, to the right, the notary's electronic seal. The seal is in compliance with Virginia's electronic notary law.



This example is a power of attorney. It is electronically signed by the principal on the left, and shows the date and time of the signing along with a security icon applied by the vendor. On the right appears the electronic signature of the notary, the date and time, and next to the signature another vendor-applied security icon. Most important, this example shows the electronic notarial stamp information applied to the document in simple text format. This format does not look like a traditional rubber stamp seal but is valid in electronic notarial acts. ESIGN and UETA do not require a representation of the seal but only the information contained on the seal. However, some state laws require an image of the seal, even in the context of an electronic notarization.



