

PRIA Position Statement on Electronic and Remote Notary

PRIA's Position Regarding Electronic and Remote Notary

PRIA supports the timely adoption of legislation and administrative rules that encourage and facilitate the use of electronic notarization. We believe any future updated statutes or regulations should provide guidance regarding: (1) electronic notarization; (2) traditional in-person notarization, and (3) the emerging practice of online appearance, sometimes referred to as remote notarization. We further support the inclusion of private and public sector stakeholders in the rulemaking process.

Recording and Notary

Recording statutes in every state require many documents to be notarized in order to be recorded in the public land records. There are several important assurances that the notarial act adds to the signing of documents and it is considered prima facie evidence in a court of law.

- **Prima facie evidence (“face value”).** The Federal Rules of Evidence Rule, Section 902(8) establishes that properly acknowledged documents are self-authenticating and can be presented as evidence in a legal proceeding without additional corroboration. Relying parties are able to accept a notarized document as authentic with a high degree of confidence because they include the following elements:
 - **Identification of the Signer.** The first and most important role of the notary is to confirm the signer’s identity as required by the law of the notary’s commissioning state.
 - **Independent Witness.** The notary, as an officer commissioned by the state, acts as an impartial witness to the signer’s act.
 - **Awareness (Sound Mind).** The notary confirms, based on reasonable inquiry, that the signer is aware that he or she is about to sign a legally binding document.
 - **Voluntary Act.** The notary confirms, based on reasonable inquiry, that the signer is voluntarily signing a legally binding document.

Legal Foundations

The Electronic Signatures in Global and National Commerce Act (ESIGN), the Uniform Electronic Transactions Act (UETA) and the Uniform Real Property Electronic Recording Act (URPERA) all provide a basic legal foundation for notaries to utilize an electronic signature and seal when notarizing an electronic document.

Administrative Rules

In many states, the Secretary of State (or other statutorily designated agency) is empowered to promulgate administrative rules that provide additional clarity and specificity to the state’s notary statutes. These administrative rules can have a significant impact on the use and performance of the electronic notarial act. PRIA supports rules, and rulemaking processes, that have the following features:

- **Simplicity and Clarity.** Rules should be simple and clear and, to the extent possible, uniform across states so that use of this technology and can be rapidly adopted. Conversely, the absence of clear and simple rules can potentially create uncertainty, which can slow the rate of adoption.
- **Support for Innovation and Technology Neutrality.** PRIA supports innovation in the tools available to notaries to perform notarial acts, with these guidelines:

- **Standards.** Set standards to ensure that a notarial act performed by electronic means meets the requirements of the statute and is safe and secure for users.
 - **Appearance (In-Person v. Online).** Provide guidance for electronic notarization which uses traditional in-person appearance, as well as online/remote appearance.
 - **Technology Neutrality.** Rules should not specify the use of any particular technology to achieve standards. Since technology changes so rapidly, broad rules are preferred as they are more easily adaptable to changes.
- **Stakeholder Engagement.** When administrative rules are being considered, PRIA supports stakeholder engagement and inclusion in the rulemaking process. In the real estate industry, key stakeholders include county recorders, lenders, settlement/title agents, title insurance underwriters, realtors, and technology providers. While each of these stakeholders strives to provide consumers with an excellent experience, each of them has unique concerns and insights because of the role they play in the transaction. Although real estate transactions are a major source of notarized documents, the interests of other industries need to be considered as well.

Summary

While ESIGN, UETA and URPRA provide a basic legal framework for the use of electronic signatures by notaries, PRIA believes that the adoption of administrative rules should be simple, clear, and technology neutral. These rules should take into account the perspectives and expertise of private and public sector stakeholders. This consideration will promote the integrity of the public record in the electronic age, support innovation and improve consumer experience across the real estate industry.