

Questions: Remote Notarization Webinar: Thursday, May 9, 2019

Q: What is the average cost of the typical e-notary session?

A: Most of the states have authorized a notary to charge up to a cap of \$25 for an online notarial act, due to the substantially greater technology, identity validation process and video infrastructure required for those acts. However, this is a cap not a floor, and businesses which require high volumes of notarizations often negotiate lower fees. Also, in certain common use cases such as mortgage transactions, notarial fees are generally charged on a "bundled" flat-price basis, such as \$100 (for example) for a notary to supervise and, as needed, notarize all the signatures in a mortgage package, which might involve 10 or 20 or more notarial acts.

Q: Who pays for this service? How does that transaction take place?

A: When an individual signer needs a document notarized, that signer pays at the time the service is performed, via credit card. (Every modern software platform will have a means for secure payment via credit card). When a business initiates a transaction for a customer, the business can choose whether to pay on the customer's behalf or to have the customer pay at the conclusion of the notarization. That choice depends on the type of business and is up to the business and their customer.

Q: How do you obtain the video recording of the notarial act?

A: The video is part of the record of the notarial act. State law therefore determines access to it, much the same way state law determines who may request and obtain a copy of an entry in the notary's journal. Generally, the video is always available to the signer. Depending upon the agreements between the signer and the business which initiated the transaction, the notarial video may also be available to the business which needed the notarized document in the first place. The video, along with the rest of the notarial record, is kept "behind" by cybersecurity protections and is not available to any party unless that party has permission or the legal right to access it.

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Q: How would a title company know when to file? Do they have direct access to the e-notarized document(s)?

A: Yes, one of the benefits of modern software platforms is that each party to the transaction can be automatically notified of all key events in the transaction. Thus, for example, a title agent can be notified as soon as the documents have been signed and notarized and when (for example) the Deed or other recordable instrument is complete and ready to record. More than just being notified, systems are also commonly integrated so that the title agent's software receives the signed, ready-to-go recordable instrument as soon as it is completed.

Q: How long do you retain the recording of the acknowledgement of the signatures?

A: Each state's law dictates mandatory minimum retention periods, which typically run for between 5 to 10 years, with 10 years becoming the most common standard. In particular transactions, such as mortgage transactions as an example, there may be other federal or state retention requirements, or additional contractual retention obligations, which apply as well.

Q: In Texas who will be the party issuing the certification of the e-document when made a paper document

A: The bill currently making its way through the TX legislature, which is based on the MBA/ALTA Model Act provision on this topic, provides that a notary can certify that a paper print-out of an electronic record is a true and correct paper printout. The Uniform Law Commission's RULONA 2018 contains a similar power for the notary. These provisions are extensions of a notary's very common and long-standing power to certify that a copy of a document is a true and correct copy.

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Q: Is there a tracking process of the signature process for someone to validate?

A: Yes. There are two "levels" of such tracking. First, at the document-level, every document has an "audit trail" which is generated during the e-signing process. Typically, this will track each significant act relating to that document: When it was opened, when any changes were made, when it was signed, when it was notarized. This document-level audit trail is then logically attached to the document itself. (It is viewable in the PDF viewer by anyone who has the PDF and wishes to verify the audit trail). In addition, there is also a "session log" which captures the entire session between the signer and the notary: When the signer came on the platform, each step of the identity validation process, the meeting with the notary, the video recording, etc. All this information is kept in the "session log." This information is available in each state in accordance with that state's laws, as set forth above.