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Electronic Notarization Frequently Asked Questions (# draft, Date of Issue)

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DATE Disclaimer: *This is a proposed-for-adoption draft.*

There are still known deficiencies in format which PRIA's Style Committee will clean up following final approval.)

PROPERTY RECORDS INDUSTRY ASSOCIATION

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For

Incomplete Work

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Executive Summary

Questions continue to persist about Electronic Notarization (eNotarization) and Remote Online Notarization (RON). This paper provides answers to the most frequently asked questions (FAQs) about eNotarization and RON and provides examples of what an electronic notarization might look like.

General Information

What is an electronic signature?

An electronic signature is any electronic sound, symbol or process attached to or logically associated with an electronic record 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 website agreement or a statement such as, “By clicking the Submit button I agree to these terms and conditions” on an online form. Typing a name or writing a signature on an electronic signature pad are other ways to sign electronically.

Is there a difference between an “autograph” and a “signature”?

We use these terms interchangeably, but in the legal world - and especially in terms of electronic signatures - they are not always the same.

Merriam-Webster defines “autograph” as “something written or made with one's own hand.” We think of this as an athlete signing a fan’s program, or a doctor signing a prescription. The Electronic Signatures in Global and National Commerce Act (ESIGN) and Uniform Electronic Transactions Act (UETA) define “electronic signature” as “any sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” In the paper world, you must scrawl your name with your own hand. In the electronic world, any sound, symbol or process that you use with the intent to sign a record meets the definition. This is consistent with the well-established practice that an illiterate or physically disabled person can “make their mark” on a document to indicate an intent to sign.

In the electronic world, signatures can take many forms. A signature pad can attach an image of an autograph to an electronic record. A digital certificate can be used to represent a legally binding signature and at the same time provide tamper-evident technology to the document. The court system has adopted the /S/ format for typed signatures on court filings. Courts have even ruled that text messages may create a legally binding signature.

So, while “autographs” may certainly be “signatures”; “signatures” are not always “autographs”.

What is electronic notarization?

Electronic notarization (eNotarization) is the same as a traditional paper-based notarization except the document is in electronic form and is signed and sealed by the notary with an electronic seal and signature.

A commissioned notary simply uses technology to electronically sign the document, complete the notarial certificate, and apply an electronic seal (if required) under state laws or rules.

All signatures on the electronic record are applied with a keyboard, stylus, touchscreen, touchpad, or other similar input device.

What is remote online notarization?

Remote online notarization (RON) is an electronic notarization performed by a notary public for a signer personally appearing before the notary via real-time, audio-video technology. States that authorize their notaries to perform RON require a heightened level of identity verification and a recording of the audio-video session to ensure the integrity of the identification and the notarial act.

What is an electronic notary signature and seal?

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

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 record after it is notarized.

Who is authorized to perform eNotarization or RON?

Notaries may perform eNotarization or RON when authorized by the laws of their state. Most states have additional laws regulating how notaries may use electronic tools to perform notarial acts. Many of those states also authorize their notaries to perform notarial acts for remotely located individuals. For an updated list of those states, see the map on PRIA's [website](#).

Is a notary required to perform eNotarization or RON?

No, it is entirely up to a notary whether they want to perform electronic notarizations or RON.

If the parties want to engage in a fully end-to-end electronic signing and recordable transaction, they would need to select a notary who has the capability of performing electronic notarizations or RON.

Benefits of eNotarization & RON

What are the benefits of eNotarization and RON?

- **Document integrity:** A notary uses a “tamper-evident” technology with which to perform the electronic notarial act. This technology enables any party relying on the electronic record to know if there have been any changes to the electronic record after the notarization was completed.
- **Audit log:** The eNotarization or RON platform produces an audit log of all significant actions taken on the document.
- **Cost and paper savings:** Electronic records eliminate printing, courier and storage costs associated with paper documents. Electronic notarization also promotes a healthy environment by eliminating paper altogether.
- **Easier signing:** Electronic signing of documents is less strenuous than signing multiple documents in pen and ink, and it accomplishes the same purpose.
- **Faster transactions:** Electronic notarization allows for immediate processing and distribution of documents, resulting in quicker closing and recording of real estate documents.
- **Robust record keeping:** Most electronic notarization platforms automatically create an audio-video recording and a journal entry of the details of the notarial act that may be required under state law for evidentiary purposes.

RON also provides additional benefits:

- **Audiovisual recording:** Every state requires its notaries to retain an audiovisual recording of the notarization for a specified period as evidence of the notary’s and signer’s actions.
- **Multiple-factor identification:** A RON requires multiple means for verifying the identity of a signing party. First, the signer must correctly answer a series of challenge-response questions that only they are expected to know. Then, the signer presents an identification credential to the notary, which is verified by a third party. Thus, multiple factors are used to confirm the signer’s identity: something they *know* (answers to identity questions), *have* (a validated ID credential) and *are* (the person identified on the credential).
- **Greater convenience:** A signer can have their document notarized anytime by a notary commissioned in a [jurisdiction that authorizes RON](#). This convenience is available whether the signer is located in another state or country.

Acceptance of eNotarization and RON

If a document is electronically or remotely notarized, what is the “original”?

With the adoption of ESIGN and UETA, the concept of “originality” as the property records industry has traditionally thought about it has been expanded. These laws state, “if a law requires a record to be in writing, an electronic record satisfies the law” and “if a law requires a signature, an electronic signature satisfies the law”. These laws go on to apply the same logic to notarizations, stating that the requirement is satisfied if the notary utilizes an electronic signature.

A single email attachment can be sent to a dozen or a hundred parties, all at the same time. Which one is the “original”? ESIGN and UETA do not attempt to determine this. Rather, they establish that an electronic record, with electronic signatures, “satisfies the requirement” for a record to be in writing and for it to be signed.

Thus, in the context of recordable documents, an electronic record satisfies the requirement that a record or contract be in writing, be signed, and be notarized.

If my office doesn’t eRecord, can I accept a paper copy of the electronic or RON document?

Yes, if your state has a papering out statute that expressly allows the recorder to accept a paper printout of an electronic record that has been certified as a true copy. If your state doesn’t have a statute, check with your county counsel or state recorder association.

Must documents that are electronically notarized in a foreign country be authenticated like paper documents?

Yes, electronic records notarized in a foreign country must be authenticatedⁱ like paper documents. The use of electronic records and signatures has not eliminated the requirement for authentication. In 2006, the Hague Conference on Private International Law established the [Electronic Apostille Program](#) to clarify that electronic records may be authenticated with an electronic Apostille. For all other countries not party to the Hague Apostille Convention, the use and requirements of electronic certificates of authority must be determined by each particular country.

Implementation of Electronic & Remote Online Notarization:

Does the title industry support use of eNotarization and RON?

American Land Title Association (ALTA), which represents the real estate settlement services, abstract and title insurance industry, has developed [principles](#) related to the use of remote notarization, along with [model state legislation](#) authorizing the use of RON. The title industry has worked with elected officials across the country to ensure laws and regulations related to electronic notarization include consumer protections and anti-fraud measures. Electronically notarized documents are a key component of creating a digital closing experience for consumers and generating an eMortgage. The ability to eRecord or paper out and record these electronically executed documents is vitally important to the title industry.

Do any of these technologies require recorders to do anything different with electronic transactions?

The recorder will perform the same review and indexing procedures as they perform with paper records. The format of electronic records submitted to the county is dictated by the capabilities of your Land Records Management System (LRMS). The image received should conform to your jurisdiction's imaging standards.

Should recorders validate credentials of notaries who perform eNotarization and RON?

In paper notarizations, notary credentials are not validated by the recorder. eNotarization and RON transactions should be treated the same as paper notarizations. The recorder is the relying party, and as such may accept the notarized document at face value with both paper and electronic recordings.

If my state enacts eNotarization or RON enabling legislation, will that mean all the consumers in my state have to use RON?

The use of electronic and remote online notarization is an option for all consumers. It does not fully replace paper notarizations.

Examples

The following examples of electronically notarized documents illustrate typical variations in the appearance of electronic signatures made by the signer and the notary, as well as in the appearance of the electronic notarial seal. All are examples of valid notarial signatures and seals.

Note the inclusion of the statement that the notarization was performed using audio-visual technology. This is added by the electronic notarization platform and is not found on the acknowledgment certificate on paper documents.

PRIA Acknowledgment

State of Tennessee
County of Hamilton

I, John Signer, whose names are signed to the foregoing instrument, being fully duly sworn, do hereby declare that I/we have signed willingly, and that it was voluntary act for the purposes therein expressed, and that all of the individuals, in the presence of the Notary was at the time eighteen or more years of age, so sound mind and under no constraint or undue influence.

Individual's Signature John Signer Date 06/09/2021 09:34 AM EDT

Witness Signature Sarah Witness Date 06/09/2021 09:35 AM EDT

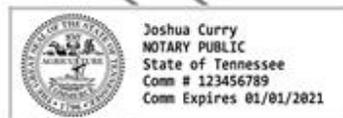
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

NOTARY ACKNOWLEDGMENT

On this date 06/09/2021 09:37 AM EDT personally appeared the above-named John Signer

and acknowledged the foregoing to be (his/her) free act and deed, before me.

Subscribed and sworn to before me on the day and date first above written,



Online Notary Public. This notarial act involved the use of online audio-video communication technology.

Joshua Curry

Notary Public

Joshua Curry

Print Name

On this example, a document hash — a series of letters and numbers— appears below the image of the notary stamp. This is added by the electronic notarization platform and is not found on the acknowledgment certificate on paper documents

General Affidavit Form

I, Joel Barna, personally appeared before
Name of Affiant

the undersigned notary public, and under oath or affirmation make the following statements:

I work at Stavvy, Inc.

Signed with Stavvy:
Joel Barna Date: 6/21/2021
Signature of Affiant

State of Virginia
County of Chesterfield

Signed and sworn to (or affirmed) before me on 6/21/2021
Date

by Joel Barna
Printed name(s) of individual(s) making statement

who proved to me on the basis of satisfactory evidence to be the person(s)
who appeared before me.

Personally Known

or
 Produced Identification

Type and # of ID (last 4 digits) 1234

ID Expiration Date 02/02/2022

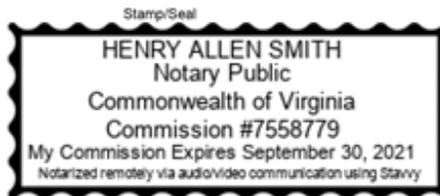
Signed with Stavvy:
Henry Allen Smith
Signature of notary public

Henry Allen Smith
(Name of notary, typed, stamped or printed)
Notary Public State of _____

My commission expires: 9/30/2021

Commission # 7558779

Affidavit General Ver A



This example shows bar codes in the lower right corner, part of the software vendor's tamper-evident security process. This is added by the electronic notarization platform and is not found on the acknowledgment certificate on paper documents

docVerify



Test_Agreement.pdf

DocuVerify ID: A62A9548-3325-4FF7-A05B-95DD82A8B9E2
Created: June 11, 2021 10:57:17 -8:00
Pages: 1
Remote Notary: Yes / State: MI - Notarial act performed by means of audio video communication

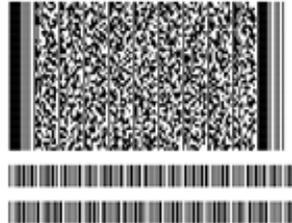
This document is a DocuVerify VeriVaulted protected version of the document named above. It was created by a notary or on the behalf of a notary, and it is also a DocuVerify E-Sign document, which means this document was created for the purposes of Electronic Signatures and/or Electronic Notary. Tampered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

Go to u1.docuverify.biz/cloudtest.com at any time to verify or validate the authenticity and integrity of this or any other DocuVerify VeriVaulted document.

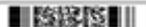
E-Signature Summary

E-Signature 1: Nancy G Pratt (NGP)
June 11, 2021 11:00:12 -8:00 [1807D684FF49] [206.201.77.151]
nancy.g.pratt@bkfs.com (Principal) (Personally Known)

E-Signature Notary: Anu Notary (AN)
June 11, 2021 11:00:12 -8:00 [DFD56C211C53] [206.201.77.151]
anu.panka@bkfs.com
I, Anu Notary, did witness the participants named above electronically sign this document.



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ⁱ “Authentication” refers to a government official’s certification that the signature and seal of a notary or notarial officer on a notarized document destined for a foreign country is genuine. This authentication can take one of two forms:

- (1) an Apostille prescribed by the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of October 5, 1961 (Hague Apostille Convention), if used in a nation that has signed and ratified the Convention; or
- (2) a certificate of authority, for a country not party to the Hague Apostille Convention.

In most U.S. jurisdictions, the Notary commissioning official (usually the Secretary of State) provides the authentication, although there still may be some states where a county official issues it.