

Frequently Asked Questions about the Department of State's Electronic Notarization Program

What is the Pennsylvania Department of State's Electronic Notarization Program?

The Electronic Notarization Program permits qualified notaries to perform notarizations electronically as part of electronic documents that may be recorded electronically by participating Pennsylvania county recorders of deeds.¹ This program provides safeguards for consumers, recording offices and notaries alike.

What is the background behind the Electronic Notarization Program?

The Secretary of the Commonwealth is authorized to appoint and commission all notaries public in Pennsylvania and is charged with the general administration of the Notary Public Law, 57 P.S. §§ 147-169. The Secretary's authority is exercised by the Division of Legislation and Notaries within the Department of State's Bureau of Commissions, Elections and Legislation (BCEL).

With the 1999 enactment of the Uniform Electronic Transactions Act (UETA)² and the 2000 enactment of the federal Electronic Signatures in Global and National Commerce Act (E-SIGN),³ electronic documents and electronic signatures became as legally binding as paper documents and pen-and-ink signatures. Section 307 of the UETA,⁴ specifically permits the use of a notary's electronic signature, where the notary is performing services relating to a notarization, acknowledgment, verification or statement under oath. Section 307 does not take effect, however, until the Secretary issues a notice that the provisions of section 307 no longer conflict with the requirements and procedures of the Notary Public Law with regard to electronic notarization, acknowledgment and verification.

Revisions to the Notary Public Law, effective July 1, 2003, provided for electronic notarization by adding provisions for the execution and registration of a notary's electronic signature, as well as the requirement that notary education programs preapproved by the Secretary have a core curriculum which includes electronic notarization.

As part of the Secretary's oversight of the notaries public in the Commonwealth of

¹ Please see the link for List of Participating County Recorders of Deeds at <http://www.dos.state.pa.us/notaries> (link to Electronic Notarization) for a current list of participating counties.

² 73 P.S. §§2260.101-2260.5101, effective January 15, 2000 (with the exception of section 307).

³ 15 U.S.C. §§ 7001-7006, effective October 1, 2000.

⁴ Section 307 of the UETA, 73 P.S. §2260.307, provides in full:

Notarization and Acknowledgment

If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those services, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Pennsylvania, the Department of State launched Phase I of the Electronic Notarization Initiative in conjunction with notice that the provisions of section 307 of the Uniform Electronic Transactions Act no longer conflict with the requirements and procedures of the Notary Public Law. That notice was published in the Pennsylvania Bulletin on December 31, 2005, at 35 Pa.B. 7068. (You may access the Pennsylvania Bulletin website at <http://www.pabulletin.com>). From January 30, 2006 through June 30, 2010, the Department partnered with the National Notary Association to provide digital certificates to approved e-notaries. In order to make more electronic notarization alternatives available to approved e-notaries, a second notice was published on April 17, 2010 at 40 Pa.B. 2065. This notice announced the availability of electronic notarization solution provider applications to any person, company or organization that offers a system or process that consists of, or includes, an electronic notarization component. The Department began approving electronic notarization solution providers in June 2010.

What is electronic notarization (e-notarization)?

Electronic notarization (e-notarization) in its most basic and common form is the process of a commissioned notary affixing a digital signature or certificate (see **What is an electronic signature?**) to an electronic document where the digital signature or certificate is a series of numbers generated by a complex mathematical formula (algorithms) involving coding and decoding (encryption) technology. The fundamental components of notarization, including personal appearance of the document signers before the notary, still apply. But rather than a paper document and a rubber stamp notary seal, the notary digitally places his or her identifying information to a document which exists as electronic data in a computer-readable form.

What is an electronic document?

An electronic document exists as electronic data in a computer-readable form, rather than as words on a printed paper page. Some examples of electronic documents are word processing documents, e-mail messages, portable documents format (PDF) files, documents scanned into an image format, such as the software known as Adobe, and web pages. An electronic document, such as a mortgage agreement, has the same properties as a paper version, but is created and maintained electronically, usually via a computer program or a web site.

The definitions in the Pennsylvania Uniform Electronic Transactions Act (UETA) and the federal Electronic Signatures in Global and National Commerce Act (ESIGN) for relevant terms pertaining to electronic documents are substantially the same:

“Electronic” is defined as “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or other similar capabilities.”

“Record” is defined as “information which is inscribed on a tangible medium or is stored in an electronic or other medium and which is retrievable in perceivable form.”

“Electronic record” is defined as “a record created, generated, sent, communicated, received, or stored by electronic means.”

What is an electronic signature?

The UETA and ESIGN both define electronic signature as “an electronic 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.” An electronic signature in its most basic form is a representation of a person’s digitized image of his/her handwritten signature or symbol. It refers to any of several, not necessarily cryptographic (encoded), methods for identifying the originator of an electronic message. Electronic signatures include, but are not limited to, a facsimile transmission of handwritten signatures on a paper document; the typewritten name at the end of an e-mail; a user name and password which gain one access to a secure website; a digitalized signature made using an electronic signing pen; and even a “voice print” using biometric technology. An electronic signature is typically attached to an electronic document or transaction, and, because it is not encoded, can be copied or tampered with, making forgery easy.

The term “digital signature” is often used interchangeably with “electronic signature.” However, digital signatures or certificates are a result of a cryptographic (i.e. encoding and deciphering) operation. The technology behind digital signatures is an industry standard known as Public Key Infrastructure (PKI), a security framework or architecture which facilitates signed transactions by utilizing cryptography to ensure verifiable authenticity. The digital signature, essentially a complex coded message, cannot be copied, tampered or altered and is unique to both the document and the signer. The digital signature generally contains two complementary algorithms, one for signing and the other for verification, and the output of the signing process is also called a digital signature. The digital signature ensures that the signatory is in fact the originator of the message. Any changes made to the document after it was signed are in an indication to the receiver that the document may have been tampered with, thereby protecting against forgery.

What is an electronic notarization solution provider?

An electronic notarization solution provider is any person, company or organization that offers a system or process that consists of, or includes, an electronic notarization component. In order to provide an electronic notary solution for use in this Commonwealth by Pennsylvania notaries, the person or entity must apply to the Department for designation as an approved electronic notary solution provider. An approved solution provider must comply with the technical specifications of the rules and standards that govern electronic notarization processes and procedures in Pennsylvania, such that the electronic notary seal must be: (a) unique to the notary public; (b) capable of independent verification; (c) retained under the notary public’s sole control; (d) attached to or logically associated with the electronic document and (e) linked to the data in such a manner that any subsequent alterations to the underlying document or electronic notarial certificate are detectable.

What is electronic recording?

Electronic recording of documents is a combination of software and services that permits the paperless creation, authorization, validation and distribution of documents. Several levels of electronic recording are possible: Level 1 commonly permits faxed or emailed documents. Level 2 permits scanned images and partial index data to be submitted and recorded. Level 3 is fully electronic, where the document originators create, review, digitally sign and notarize the document (often through a computer web-based service), and then submit the document electronically to county offices, such as a recorder of deeds. The

office that receives the documents then validates and distributes the submitted documents into its own recording database.

At the present time, electronic recording technology is most often used with real estate, banking and mortgage documents. All traditional recording requirements must be present, including the submission of a document that is signed and notarized. However, these traditional requirements can be met by the submission of a document image, digital signatures and an electronic notarization.

How can I incorporate e-notarization into my notary practice?

You must take into consideration whether your notary practice includes the opportunity to notarize documents which will be electronically filed with an entity which is capable of receiving and recording such documents. In the first year of Phase I of the Electronic Notarization Initiative, four participating county recorders of deeds were able to accept electronic documents for recording. In subsequent years of the Electronic Notarization Program, more counties continue to add electronic recording technology. You must also determine whether you and/or your employer have the hardware and necessary software to create, authorize, validate and distribute documents electronically. Approved electronic notarization solutions each have different processes, costs and business purposes. They may be designed for e-recording, contracting or use in the financial services sector. A notary should carefully review each solution to choose the best one(s) for the notary's practice.

In order to electronically notarize documents in Pennsylvania, you must participate in the Department of State's Electronic Notarization Program. To participate, you must be approved by the Secretary of the Commonwealth as an electronic notary and obtain an electronic notarization solution from an approved electronic notarization solution provider. (See **How do I become an electronic notary (e-notary) in Pennsylvania?**)

How do I become an electronic notary (e-notary) in Pennsylvania?

In order to become an electronic notary in Pennsylvania, you must first be a duly appointed and commissioned notary public in the Commonwealth of Pennsylvania and complete the application to become an electronic notary, verifying that you have not had any finalized or pending criminal or disciplinary actions since being appointed and commissioned. The electronic notary application form is available from BCEL upon request or on the Department's website at <http://www.dos.state.pa.us/notaries> (link to Electronic Notarization). Upon approval by the Department of State, a letter will be sent to your business office of record and a corresponding email sent to your email of record. The letter will authorize you to participate in the Department's Electronic Notarization Program until the end of your four-year commission as a notary public or until the expiration of your chosen electronic notarization solution, whichever comes first. The approval letter will also instruct you on how to obtain an electronic notary solution from an approved solution provider. You may use only an e-notary solution from an approved electronic notary solution provider to notarize documents as part of the Electronic Notarization Program. Prior to the issuance of any electronic notary solution, you will be required to appear at a participating county recorder of deeds office and present your approval letter and

satisfactory evidence of identity.⁵ After this in-person identification, you will log onto the Department of State’s website to select an approved electronic notary solution provider(s). You will also be required to pay a fee to the approved electronic notary solution provider for issuance of the electronic notary solution. You can find more details on the application and approval process in “**Eight Steps to Becoming an Electronic Notary in Pennsylvania**” at <http://www.dos.state.pa.us/notaries> (link to Electronic Notarization).

What is a digital certificate?

The digital certificate which Pennsylvania notaries were authorized to receive from the National Notary Association at the beginning of the Electronic Notarization Program were issued under the technology of Public Key Infrastructure (PKI). Some, but not all, approved electronic notary solutions include a digital certificate as part of the process. The digital certificate, also referred to as an electronic notary seal, identifies you as a notary authorized to notarize electronically and you will attach the digital certificate to an electronic document. The digital certificate or electronic notary seal, in essence, apply a tamper-evident seal to the document, which enable the parties to detect whether the electronic document has been modified or tampered with in any way after the notary signs it. The procedure used to issue the certificate, which includes an in-person proofing step at a local county recorder of deeds’ office, provides assurances of your identity as the subscriber to the certificate. The digital certificate is considered an “individual” certificate, in contrast to an “organizational” certificate commonly used to secure web-based commercial sites such as online banking. Once a digital certificate is issued, you must safeguard the password or other access procedure, as you would your rubber stamp seal. It is up to you to prevent misuse of the digital certificate by others and to report its loss, theft or compromise.

How can a digital certificate or electronic notarization solution be misused or compromised?

The digital certificate and a public or private key enable a signer to encrypt electronic documents and know if a document has been altered, but these features do not prevent a digital certificate or electronic notarization solution from being used fraudulently to sign a document.

There are a number ways in which a digital certificate may be fraudulently used:

- The certificate may have been issued to an imposter. The Department of State’s Electronic Notarization Program will ensure that the identity of the digital certificate holder is verified on several occasions before issuance of a digital certificate or an electronic notarization solution.

⁵ What is satisfactory evidence of identity before a participating county Recorder of Deeds?

Satisfactory evidence of identity consists of a current state or federal government-issued photo identification document and includes presentation of one of the following documents:

- Federal Government Issued Photo Identification Document
- Military Photo Identification Document
- U.S. Passport
- State Issued Photo Identification Document
- State Issued Driver’s License

- A digital certificate or electronic notarization solution may be accessed and exploited by an unauthorized person. Do not share your access codes to any electronic notarization solution with a coworker, friend or spouse. Protect it as you would an ATM 'pin' number or other sensitive code.
- Less frequently, the certificate owner may be coerced into using the certificate to sign an electronic document against his or her desires or the certificate owner may be intellectually vulnerable and manipulated into signing an electronic document against his or her interest. Medication or mental condition could play a part in rendering certain signers temporarily unaware of the ramifications of making a signature.

If a digital certificate or electronic notarization solution issued under the Program is misused or compromised in any way, the electronic notary subscriber must notify both the Department of State and the electronic notary solution provider immediately. In addition to the notification requirement, a notary subscriber should voluntarily surrender the digital certificate or electronic notarization solution in the event the notary believes it is being misused or has been compromised. The act of voluntarily surrendering the digital certificate or solution (with notice to the Department of State and the solution provider) effectively revokes the electronic notarization solution and renders it invalid. Instructions and a link to a web-based tool to surrender your solution will be included in the information you receive when you are issued an electronic notarization solution.

Also remember that the impersonation of a notary is against the law and the use of a notary public seal (whether it be ink or electronic) by a person who is not the notary public named on the seal will be deemed an impersonation of a notary public. Criminal prosecution and penalties are possible under 18 Pa.C.S. §4913 (relating to impersonating a notary public).

Is additional notary education required to become an electronic notary?

There is no additional notary education required to become an electronic notary under the Electronic Notarization Program. However, the Department of State strongly suggests continuing notary education for all notaries, with basic and advanced course content that includes electronic notarization. Please see the list of approved notary education providers on the Department of State website at <http://www.dos.state.pa.us/notaries> (link to Education Providers)

Is additional bonding required to become an electronic notary?

No. The only bond requirement at the present time is the \$10,000 bond required for your notary commission.

Is errors and omissions (E&O) insurance needed if I electronically notarize?

As with paper notarization, it is solely at the notary public's discretion whether to obtain errors and omissions insurance. The Department recommends, if you are insured, that you check with the issuer of your E&O insurance to verify that your coverage includes electronic notarization.

What fees may I charge for electronic notarization?

A notary public may charge fees in accordance with the existing fees established by the Secretary of the Commonwealth. See fee information at <http://www.dos.state.pa.us/notaries> (link to General Information and Equipment). The eight distinct fees fixed by the Secretary of the Commonwealth are for notarial services regardless of whether the services occur in the traditional pen and paper manner or electronically. As always, the notary public may waive the right to charge a fee and/or may charge reasonable clerical or administrative fees for services provided in addition to the notarization of a document.

Must I keep a notary register of my electronic notarization acts?

Yes. The fundamental principles and processes of notarization remain the same regardless of the technology used to notarize. Under section 15 of the Notary Public Law, every notary public shall keep an accurate chronological register of *all* official acts by that notary done by virtue of that notary's office. The e-notary should keep one notary register for all notarial acts. That register may—but is not required to be—electronic.

How does e-notarization differ from my current pen and paper notarization?

Only the technology of the document changes with e-notarization. The notarization process remains the same. The five major components for valid paper and ink notarizations also apply to e-notarizations:

- **Personal appearance** - Under the Notary Public Law, the person described in and who is executing the instrument must appear before the notary public. This means that the customer must be physically present before the e-notary. This requirement permits the e-notary to observe and interact with the signer.
- **Identification** - Under the Notary Public Law, an approved electronic notary is permitted to rely on a current government-issued identification card containing a photo, a signature or a physical description and serial or identification number or rely upon a disinterested credible witness known to the notary and who knows the individual executing the instrument. The identification card and/or the credible witness must be physically present before the notary.
- **Acknowledgment by signer** - By signing in the physical presence of authorized e-notary, the signer asserts that he/she is authorized to sign a document and that he/she is signing on their own volition.
- **Lack of duress** - The physical presence of a third party (the e-notary) helps ensure that a signer is not being coerced into signing by emotional or physical threats.
- **Awareness** - Interaction with the signer permits the e-notary to detect whether mental impairment, other infirmity or controlled or alcoholic substances may have affected a person's judgment and his/her decision to sign.

I have downloaded my Electronic Notarization Solution—now what?

The electronic notary solutions will vary in whether they will be installed on the e-notary's computer, used by the e-notary via the web or exported and placed on a portable USB drive. It is strongly recommended that that any electronic notary solution be password-protected so that only the e-notary may use it to sign eNotarizations. The signers of an electronic document must appear before the e-notary, who will have the document on his or

her computer. The notary must ensure that the proper language is used for the notarial act that is performed, e.g. acknowledgment, affidavit or other appropriate language. The notary must ensure, pursuant to section 12(f) of the Notary Public Law, that the following information about the e-notary is attached to or logically associated with the electronic document or signature being notarized, acknowledged or verified:

- (1) The full name of the notary along with the words "Notary Public" [the full name should be the name under which the notary has been appointed and commissioned];
- (2) The name of the municipality and the county in which the notary maintains an office [this is the name of the municipality and the county in which the notary's office of record with the Department of State is located]; and
- (3) The date the notary's commission is due to expire.

This information can be displayed in different and customized ways, depending on the software manufacturer and the document preparation software used. As with the rubber stamp seal, the Department recommends that the notary public add the words "Commonwealth of Pennsylvania" near the above-cited information. The signatures of the signers and the notary may be made by any of the means described in **What is an electronic signature?** The electronic notarization solutions will vary in how they prompt the e-notary to complete the notarization process with the software program being used. The document may then be forwarded electronically to its next destination or to an end user, such as the recorder of deeds.

How do I renew my electronic notary seal?

After expiration of your initial approval (which will expire at the end of your four-year commission or when the electronic notarization solution expires, whichever is sooner), an approved e-notary who wishes to continue to electronically notarize must renew that approval with the Department of State and obtain or renew an approved solution from an approved electronic notary solution provider. All current fees will apply (cost of the electronic notary solution). An approved e-notary need only apply when the electronic notarization solution is coming to an end or when the underlying commission comes to an end. The same form which was used for initial application for electronic notary approval should be used for renewal (note that the notary should check the appropriate "renewal of approval" box at the top of the form). The application is available at www.dos.state.pa.us/notaries (link to Electronic Notarization). Please see **How do I become an electronic notary (e-notary) in Pennsylvania?** The Department recommends submission of the renewal application three to four weeks in advance of expiration of the current digital certificate.

Questions about the Electronic Notarization Initiative may be directed to the Bureau of Commissions, Elections and Legislation, Department of State, 210 North Office Building, Harrisburg, Pennsylvania 17120. Telephone: (717) 787-5280. E-mail address: RA-NOTARIES@state.pa.us.

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