

# **Frequently Asked Questions about Electronic and Remote Notarization in Pennsylvania**

## **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 generated by a complex mathematical formula (algorithms) involving coding and decoding (encryption) technology. The fundamental components of notarization, including personal appearance of the record signers before the notary, still apply. But rather than a paper document and a rubber stamp notary seal, the notary digitally places their identifying information to a document which exists as electronic data in a computer-readable form.

## **What is the Electronic Notarization Program?**

The Electronic Notarization Program permits qualified Pennsylvania notaries to perform notarial acts with respect to electronic records, using tamper-evident technologies.

## **What is remote online notarization (RON)?**

Remote online notarization (RON) occurs when a notary public commissioned in and located in this Commonwealth performs a notarial act facilitated by communication technology for a remotely located customer. The legal requirement that the signer personally and physically appear before the notary is met by the use of audio-visual electronic communication technology. The important role that the notary plays when a statement is made in or a signature executed on a record now occurs remotely over the internet, with a document that is in electronic form. Remote online notarization is also called remote notarization, webcam notarization, online notarization or virtual notarization.

## **I don't remember hearing about RON in my notary class. How new is this?**

Until Spring 2020, Pennsylvania law required all notarial acts, even those performed electronically with respect to electronic records, to be done in the physical presence of the notary or other notarial officer. Remote online notarization (where personal appearance is made via audio-visual communication or technology) was not permitted or provided for under prior law.

## **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.

## **What is an electronic signature?**

The Revised Uniform Law on Notarial Acts (RULONA), the Uniform Electronic Transactions Act (UETA) and the federal Electronic Signatures in Global and National Commerce Act (ESIGN) 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 their 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 an indication to the receiver that the document may have been tampered with, thereby protecting against forgery.

The definitions in the Revised Uniform Law on Notarial Acts (RULONA) mirror those found in the Pennsylvania Uniform Electronic Transactions Act (UETA) and the federal Electronic Signatures in Global and National Commerce Act (ESIGN) for the relevant terms pertaining to electronic documents:

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

“Electronic signature” is “an electronic symbol, sound or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.”

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

“Sign” means “with present intent to authenticate or adopt a record:

- (1) to execute or adopt a tangible symbol; or
- (2) to attach to or logically associate with the record an electronic symbol, sound or process.”

“Signature” is defined as “a tangible symbol or an electronic signature which evidences the signing of a record.”

“Stamping device” is any of the following:

(1) A physical device capable of affixing to or embossing on a tangible record an official stamp.

(2) An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.

### **What is an electronic notarization solution provider?**

An electronic notarization solution provider is any person, company or organization that offers a tamper-evident technology that consists of, or includes, an electronic notarization component. In order to provide an electronic notary solution for use in this Commonwealth, 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. This means that the solution must: (a) allow a person inspecting an electronic record to determine whether there has been any tampering with the integrity of a certificate of notarial act logically associated with a record or with the attachment or association of the notarial act with that electronic record; (b) ensure all of the notary public’s identifying and commissioning information be made a part of, or a secure attachment to, the underlying notarized electronic record; (c) verify the authorization of the notary public to perform notarial acts with respect to electronic records by verifying the name, commission number and commission expiration date with the Department prior to authorizing use of the electronic notary solution, and (d) suspend the use of any electronic notarization solution for any notary public whose commission has been revoked or suspended by the Department.

### **What is a remote notarization solution provider?**

A remote notarization solution provider is any person, company or organization that offers a communication technology that complies with Acts 15 and 97 of 2020. Such communication technology is an electronic device or process that satisfies the following requirements:

- The technology must enable a notary public located in Pennsylvania to communicate with a remotely located individual simultaneously by sight and sound and make reasonable accommodations for persons with vision, hearing or speech impairments.
- The technology must enable the notary public to determine the identity of the remotely located customer based either (1) on his or her personal knowledge; (2) the testimony of a credible witness; or (3) by using at least two identity-proofing technologies or services. Identify-proofing processes or services include having the remotely located individual answer questions for which there is a high probability that only the true individual would be able to answer correctly (commonly known as knowledge-based authentication or KBA), or may identify the individual through the use of biometric identification technology or the analysis of identification cards. The identity of a witness must be determined in the same manner as the identity of the remotely located

customer.

- The technology must enable the identification of a record in the presence of the notary as the same record being signed by or containing a statement made by the remotely located individual. This can be accomplished by the use of electronic records or signatures created using tamper evident technology; the presence of the same tangible record before the notary and the remotely located individual; or by the exchange of tangible records.
- The technology must create an audio-visual recording of the notarization, including all interactions between the notary public and the remotely located individual, that will be retained by the notary public or a person acting on his or her behalf for at least ten years.

### **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: from recording of faxed or emailed documents; to the electronic submission and recording of scanned images and partial index data; to 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 indexes 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, electronic signatures and an electronic notarization.

### **How can I incorporate electronic or remote notarization into my notary practice?**

You must take into consideration whether your notary practice includes the opportunity or need to notarize documents which are completely electronic. You should also take into consideration whether you wish to notarize for customers who are not in the same location as you are. You must also determine whether you and/or your employer have the hardware and necessary software to create, validate and distribute documents electronically. Approved electronic and remote 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 or remotely notarize documents in Pennsylvania, you must participate in the Department of State's Electronic and Remote Notarization Program. To participate, you must be approved by the Department as an electronic or remote notary and obtain an electronic or remote notarization technology from an approved vendor. (See **How do I become an electronic or remote notary in Pennsylvania?**)

## **How do I become an electronic or remote notary in Pennsylvania?**

In order to become an electronic or remote 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/remote 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 the Department upon request or on the Department's website at [www.notaries.pa.gov](http://www.notaries.pa.gov) (link to ENotary Services). Upon approval by the Department of State, an email will be sent to your email of record. The email will authorize you to participate in the Department's Electronic/Remote Notarization Program until the end of your four-year commission as a notary public or until the expiration of your chosen solution technology, whichever comes first. The approval letter will also instruct you on how to log onto the Department of State's website to select an approved electronic or remote technology. You may use only a technology from an approved vendor. If you do not see the vendor of your choice on the Department's list, contact the Bureau of Elections and Notaries and request an evaluation of the technology. Please contact each approved electronic or remote notarization solution provider for their fees to use their technology. You can find more details on the process in "**Steps to Becoming an Electronic Notary in Pennsylvania**" at <https://www.dos.pa.gov/notaries> (link to Electronic/Remote Notarization).

## **Is additional notary education required to become an electronic or remote notary?**

There is no additional notary education required to become an electronic or remote notary. Under RULONA, all notaries public must complete a basic education or continuing education course of at least three hours approved by the Department. The basic education course must cover the statutes, regulations, procedures and ethics relevant to notarial acts, with a core curriculum including the duties and responsibilities of the office of notary public and electronic notarization. Additional continuing notary education classes with content that includes electronic or remote notarization may become available. Please see the list of approved notary education courses and providers on the Department of State website at <https://www.dos.pa.gov/notaries> (link to Education Providers)

## **Is additional bonding required to become an electronic or remote notary?**

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

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

As with traditional 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 and remote notarization.

## **What fees may I charge for electronic notarization?**

A notary public may charge fees in accordance with the existing fees established by the Department of State. See fee information at <https://www.dos.pa.gov/notaries> (link to General Information and Equipment). The fees fixed by the Department are for notarial

services regardless of whether the services occur in the traditional pen and paper manner or using electronic/remote technology. 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 journal of my electronic and remote notarization acts?**

Yes. The fundamental principles and processes of notarization remain the same regardless of the technology used to notarize. A notary public must maintain a journal in which the notary public records in chronological order all notarial acts that the notary public performs. A journal may be created on a tangible medium or in an electronic format. A notary may maintain a separate journal for tangible records and for electronic records. If the journal is maintained in an electronic format, it must be in a tamper-evident electronic format complying with the regulations of the Department.

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

Only the technology of the document changes with electronic 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 section 306 of RULONA, the individual making the statement or executing the signature must appear personally before the notary public. This means that the customer must be physically present before the eNotary as well. This requirement permits the eNotary to observe and interact with the signer.
- **Identification** - Under section 307 of RULONA, the notary public must have personal knowledge or satisfactory evidence of the identity of an individual appearing before the notary. The eNotary may rely on a passport, driver's license or government-issued nondriver identification card, which is current and unexpired, or another form of government identification issued to the individual, which: is current; contains the signature or a photograph of the individual; and is satisfactory to the eNotary, or the verification on oath or affirmation of a credible witness. The identification card and/or the credible witness must be physically present before the eNotary. The eNotary may refuse to perform an electronic notarial act if she is not satisfied that the individual's signature on the record or statement substantially conforms to the signature on the form of identification used to determine the identity of the individual; or if the eNotary is not satisfied that the physical appearance of the individual signing the record or statement substantially conforms to the photograph on the identification.
- **Acknowledgment or statement by signer** - By signing in the physical presence of the eNotary, customers assert that they are authorized to sign the document or give the statement and that they are signing or stating of their own volition.
- **Lack of duress** - The physical presence of a third party (the eNotary) helps ensure that a signer is not being coerced into signing by emotional or physical threats. The eNotary may refuse to perform an electronic notarial act if he is not satisfied that the individual's signature is knowingly and voluntarily made.
- **Awareness** - Interaction with the signer permits the eNotary 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. The eNotary may refuse to perform an electronic notarial act if he is not satisfied that the individual executing the record is competent or has the capacity to execute the record.

## **How does remote online notarization differ from my pen and paper notarization?**

Both the technology of the document and the location of the customer changes with remote online notarization, as well as the notarial certificate. The notarization process remains the same. The five major components for valid paper and ink notarizations also apply to remote notarizations:

- **Personal appearance** - Under section 306.1 of RULONA, the individual making the statement or executing the signature may appear before a notary public by means of communication technology in lieu of being physically present before the remote notary. The communication technology must be approved by the Department and must permit the remote notary to observe and interact with the signer, as well as record the interaction and retain the recording for ten years.
- **Identification** - Under sections 306.1 and 307 of RULONA, the notary public must have personal knowledge of the identity of an individual appearing before the notary, satisfactory evidence via credible witness of the identity of the individual or be reasonably able to identify the individual by at least two different types of identity proofing processes or services. All remote notarization technologies approved by the Department to date include two different types of identity proofing processes or services. The remote notary may refuse to perform a remote notarial act if the customer does not pass the identity proofing built into the technology. As with other types of notarization, the notary may refuse to perform a remote notarial act if she is not satisfied that the individual's signature on the record or statement substantially conforms to the signature on the form of identification used to determine the identity of the individual; or if the notary is not satisfied that the physical appearance of the individual signing the record or statement substantially conforms to the photograph on the identification.
- **Acknowledgment or statement by signer** - By signing in the virtual presence of the remote notary, customers assert that they are authorized to sign the document or give the statement and that they are signing or stating of their own volition.
- **Lack of duress** - The virtual presence of a third party (the remote notary) helps ensure that a signer is not being coerced into signing by emotional or physical threats. The remote notary may refuse to perform a remote online notarial act if he is not satisfied that the individual's signature is knowingly and voluntarily made.
- **Awareness** - Interaction with the signer permits the eNotary 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. The eNotary may refuse to perform an electronic notarial act if he is not satisfied that the individual executing the record is competent or has the capacity to execute the

record.

- **Certificate** - If a notarial act is performed remotely, the certificate of notarial act must indicate that the notarial act was performed by means of communication technology (e.g. "This notarial act involved the use of communication technology.").

### I have obtained my Remote or Electronic Notarization Solution—now what?

The electronic and remote notary solutions will vary in whether they will be installed on the notary's computer, used by the notary via the web or exported and placed on a portable USB drive. All electronic and remote notary solutions are password-protected so that only the authorized notary may use it. For electronic notarization, the signers of an electronic document must personally appear before the eNotary, who will have the document shown on his or her computer. For remote online notarization, the signers appear via audio-visual communication from their own computers and are typically sent passwords to enter into the technology platform. The signers must be properly identified by the notary, either in person or as part of the approved remote online technology. The notary must ensure that the correct language is used for the notarial act that is performed, e.g. acknowledgment, verification on oath or affirmation or other appropriate language.

All requirements of notarial certificates under RULONA apply. The certificate must:

- (1) be executed contemporaneously with the performance of the notarial act;
- (2) be signed and dated by the notary;
- (3) identify the county and State in which the notarial act is performed; and
- (4) contain the title "notary public."

For remote notarizations, the certificate of notarial act must indicate that the notarial act was performed by means of communication technology.

The certificate must be affixed to or logically associated with the electronic record and the notary must execute the notary public's electronic signature in a manner which attributes the signature to the notary public identified in the commission.

Finally, the notary's official stamp may be attached to or logically associated with the certificate. It may be the stamp information in text form or an electronic image attached to or logically associated with an electronic record.

This information can be displayed in different and customized ways, depending on the software vendor and the document preparation software used. 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 and remote notarization solutions will vary in how they prompt the 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.

**May electronically notarized records that are “papered out” be recorded?**

Yes. Act 97 provides for the certification of tangible copies of electronic records by the notary for the purpose of meeting recording requirements that the document be an original. In other words, a Recorder of Deeds may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that the record be an original, if the notary public executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record. This includes electronic records that have been remotely notarized.

**How do I renew my electronic notary approval?**

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 notary who wishes to continue to electronically or remotely notarize must renew that approval with the Department of State and obtain or renew an approved solution from an approved electronic/remote notary solution provider. Do not reapply for electronic or remote approval until your bond/commission/oath for the next four years is recorded and your signature is registered for your next commission. Please see **How do I become an electronic or remote notary in Pennsylvania?**

Questions about the Electronic Notarization Program may be directed to the Bureau of Elections and Notaries, Department of State, 210 North Office Building, Harrisburg, Pennsylvania 17120. Tel: (717) 787-5280. Email: ST-NOTARIES@pa.gov.

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