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Electronic Notarization Frequently Asked Questions

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<http://www.pria.us>

PROPERTY RECORDS INDUSTRY ASSOCIATION

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For

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Executive Summary

Government and business entities both have questions 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 the difference between a record/document and an electronic record/electronic document?

The short answer is one is a legal term and the other a popular term.

State laws generally use the noun “record” to describe either an electronic or paper document. Whereas the term “document” has traditionally been understood to mean a paper writing, “record” is a medium-neutral term. “Electronic record” is used in the law when the context demands the medium to be electronic. An electronic record is the equivalent of an “electronic document.”

In this FAQ all these terms will be used. In some contexts, for example reference to a particular law, “record” or “electronic record” may be used. In others, “document” or “electronic document” will be used to make the content more understandable or to avoid potential confusion with the terms “recorder,” “recordable,” and the verbs “record” and “eRecord.”

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 record.

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”?

These terms are used 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.” Think of this as an athlete signing a fan’s program, or a doctor signing a prescription. Three acts (ESIGN, UETA and URPERA) all define electronic signature the same way. In the paper world, you must scrawl your name with your own hand. This requirement 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, any sound, symbol, or process that you use with the intent to sign a record meets the definition.

In the electronic world, signatures can take many forms. A typed name on an email or electronic record is considered an electronic signature. 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 apply tamper-evident technology protection 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 the notary’s electronic 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 notary’s electronic signature may take the form of the notary’s typewritten name, an image of the notary’s handwritten signature, or the notary’s electronic 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 this paper.

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 regulations addressing 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. There is no notary public law requiring a notary to perform notarizations electronically.

If the parties want to engage in a fully end-to-end electronic signing and record the transaction in the public records, they will need to select a notary who has the capability to perform electronic notarizations or RON.

Benefits of eNotarization and RON

What are the benefits of eNotarization and RON?

- Document integrity: A notary uses a “tamper-evident” technology to perform the electronic notarial act. This technology enables any party relying on the electronic record to identify whether 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 fees, and storage costs associated with paper documents. Electronic notarization also promotes a greener environment by eliminating paper altogether.
- Easier signing: Electronic signing of documents is accomplished more efficiently 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.

RON also provides additional benefits:

- Audiovisual recording: Every state requires its notaries to retain an audiovisual recording of the RON for a specified period as evidence of the notary’s and signer’s actions.
- Multiple-factor identification: Most states require multiple methods for verifying the identity of a signing party. For example, the signer may be asked to correctly answer a series of challenge-response questions that only they are expected to know and present an identification credential to the notary, which is verified by a third party. Thus, multiple factors are used to confirm the signer’s identity.
- Greater convenience: A signer can have their document notarized anytime by a notary commissioned in a [jurisdiction that authorizes RON](#). This convenience is available even when the

signer is located in another state or country, or whether the state where the signer is located has authorized RON.

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 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 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 a recording jurisdiction doesn’t eRecord, can a paper copy of the electronic or RON document be recorded?

Yes, if a 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 the county counsel or state recorder association.

Must documents that are electronically notarized in a foreign country by a notarial officer in that country be authenticated like paper documents before recording in the land records?

Yes, electronic records notarized in a foreign country must be authenticated¹ like paper documents. The use of electronic records and signatures has not eliminated the requirement for authentication.

Must documents remotely notarized by a notary in the United States for a person in a foreign country be authenticated like paper documents before recording in the land records?

No, because the notarial act is being performed under the law of the state in which the notary is located and, thus, is treated the same as a paper notarization.

¹ “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.

Implementation of Electronic and 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 they perform with paper records. The format of electronic records submitted to the county is dictated by the capabilities of its Land Records Management System (LRMS). The image received should conform to the 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 may accept the notarized document at face value with both paper and electronic recordings.

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

The use of electronic and remote online notarization is an option for all consumers – not a requirement. These options do 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

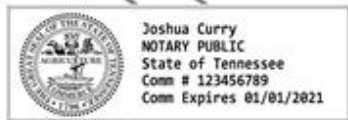
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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

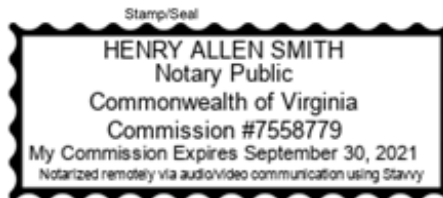
Signed with Stavvy:
Henry Allen Smith
Signature of notary public

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

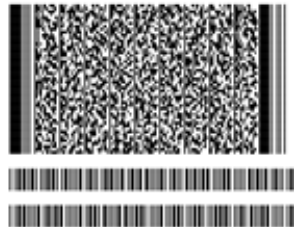
This document is a DocuVerify VeriVaulted protected version of the document named above. It was created by a notary or on the behalf of a notary, and it is also a DocuVerify E-Sign document, which means this document was created for the purposes of Electronic Signatures and/or Electronic Notary. Tampered 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.

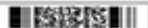
E-Signature Summary

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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On this example, the software generates a script-like representation of the signer's signature. The representation may not look like the signer's autograph but it does indicate the signer's adoption of the script-like representation as the signer's signature.

Affidavit of Residence

SAMPLE NOTARIZATION

I, Sample S. Signer, being of lawful age and a resident at 123 Maple Street Tampa in Florida, 33556, do on oath and under penalties of perjury, depose and say:

- 1. I have resided in Hillsborough County, Florida for 12 years.
- 2. I make this Affidavit for no improper purpose.
- 3. The following individuals reside with me at the above address: Jane Doe

I certify under penalty of perjury under Florida law that I know the contents of this Affidavit signed by me and that the statements are true and correct.

Sample S. Signer
Sample S. Signer

11/04/2020
Date

This notarization is attached to a document of 1 page(s) concerning title, Affidavit of Residence

JURAT CERTIFICATE

State of Florida
County of Hillsborough

Sworn to (or affirmed) and subscribed before me by means of physical presence or online
notarization, this 4th day of November, 2020
(Date) (Month) (Year)

by Sample S. Signer
(Printed Name of Person Making Statement)

JOHN SMITH
MY COMMISSION NUMBER
06 111011317
COMMISSION EXPIRES
MAY 12, 2023

John Smith
(Signature of Notary Public, State of Florida)
John Smith
(Printed Name of Notary Public)

Personally Known Produced Identification
Type of Identification Produced:
Florida Driver's License