

# Notarization's Fundamental Tenets Are Preserved in Electronic Notarial Acts

*Notary Public Administrators Section of the National Association of Secretaries of State  
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*For centuries*, notaries public have acted as impartial, trusted third-party witnesses to the execution (signing, and other formalities) of documents. The notary's certification that specific formalities of document execution occurred allows relying parties to have trust in the transaction—essential to the smooth operation of government, commerce, the judicial system and our private lives.

The assurances provided by the fundamental tenets of traditional “paper” notarization are so important that most U.S. states with laws and/or rules allowing electronic notarization require strict adherence to them.<sup>1</sup> These tenets are strongly upheld and advanced by the National Electronic Notarization Standards, promulgated by the National Association of Secretaries of State.<sup>2</sup>

The NASS Standards provide states wishing to actively implement electronic notarization a thoughtful blueprint for reliable and trusted technology-assisted notarial acts, while preserving the fundamental principles that have made notarization an indispensable element of document execution for centuries. (See related discussion, “*NASS National Electronic Notarization Standards—Harmonizing Technology and the Fundamental Tenets of Notarial Acts.*”)

Fundamental notarial tenets that apply to both traditional (paper) and electronic notarial acts include:

- ***The notary as an impartial, third-party witness to the document execution.*** The notary's impartiality is critical to establishing trust in the transaction. The notary cannot have a direct or beneficial interest in the transaction. Most all states either prohibit the notary from notarizing for a family member, or advise the notary to decline to do so.
- ***Personal (physical) presence of the signer required.*** In order to properly identify a document signer, reasonably assess the signer's comprehension and volition, and administer an oath or take the signer's acknowledgment, the notary must have the signer physically present for the notarial act.<sup>3</sup>
- ***Positive identification of the signer.*** The notary positively identifies the document signer based on state-specific guidelines applicable to paper and electronic transactions.<sup>4</sup> The notary's act of independently vetting the identity of the signer is unquestionably valuable, and has been an effective fraud deterrent for centuries.

*More....*

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<sup>1</sup> Notably, two U.S. jurisdictions—Virginia and Montana—permit the option of “remote” notarization, allowing the signer to appear before the notary through audio/video technology instead of physical presence. Specific restrictions and requirements apply.

<sup>2</sup> National Electronic Notarization Standards of the National Association of Secretaries of State: <http://npa-section.com/images/resolution-notary-standards-reaffirm-summer2011.pdf> In particular, please note Standards 1, 2, 5, 6, 8 and 11.

<sup>3</sup> Virginia and Montana permit physical presence exceptions; see Footnote 1.

<sup>4</sup> Signer ID exceptions: Virginia's audio/video-enabled notarization process allows reliance on personal knowledge, a credible witness, or (the following subject to specific requirements) an antecedent in-person identity proofing process or a valid digital certificate. Montana's audio/video-enabled notarization process allows only personal knowledge and credible witness methods of signer identification.



- **Signer awareness and volition.** The notary may (or must, in some jurisdictions) reasonably assess the signer’s awareness and free will in executing the document, in the interest of detecting undue coercion or fraud. The notary may refuse to proceed if the signer’s awareness and volition are in doubt.
- **Notarial act and signature event.** The notary administers an oath or affirmation, takes the signer’s acknowledgment or performs a signature witnessing (where authorized), whichever is appropriate. The notary witnesses the document signing or personally takes the signer’s acknowledgment of an earlier signing.
- **Notary’s certification under official signature and seal.** The notary completes a notarial certificate, citing the venue, date, type of notarial act, presence of the signer and other essential facts of the transaction, then certifies to these facts by signing the certificate and applying an official seal of office (where required).<sup>5</sup> The notarial certificate is prima facie evidence (presumed to be factual unless proven otherwise) that the notarial act occurred as described in the certificate.

With all these fundamentals present for both paper and electronic notarial acts, the assurances of notarization are preserved regardless the medium in which the transaction occurs. Electronic notarization, far from creating a different type of notarial act, is indeed just a different tool for the notary to use in carrying out the same time-tested functions.

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<sup>5</sup> These states presently do not require use of an official seal for (paper) notarial acts: CT, KY, LA, ME, MI, NJ, NY, RI, VT.