

# Issues and Trends in State Notary Regulation



## NASS Report on State Notarization Policies and Practices

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Table of Contents

Executive Summary..... 3

I. Basic Notary Practices..... 4

II. State Commission and Regulation of Notaries ..... 5

    Uniform and Model Acts ..... 7

III. Electronic Notarization ..... 7

    Overview of Electronic Notarization Acts and Standards ..... 9

    State Electronic Notarization Laws and Procedures ..... 10

IV. Recognition of Out-of-State Notarizations..... 11

Interstate Recognition of Notarizations Act ..... 13

Conclusion..... 14

Appendix I ..... 16

Appendix II: State Notary Requirements ..... 17

Appendix III: Sample Notary Seals ..... 19

Appendix IV: State Electronic Notarization Laws..... 20

Appendix V: State Recognition of Notarial Acts ..... 24

## Executive Summary

President Obama's recent veto of a bill that would have required courts and other entities to recognize notaries licensed in any state generated a significant amount of attention to a topic that rarely garners headlines. However, while many think of the notarization process as a formality, state government officials who oversee the commission of notaries recognize the weight and gravity of this function. Notaries establish the bona fides of signatures, playing an important role in preventing fraud and forgery. Their own signature is meant to be that of a trusted, impartial third party, intended to bolster a document's authenticity. In fact, notaries are a critical part of many legal, commercial, and financial transactions.

In order to assist those who work on notarization issues, the National Association of Secretaries of State (NASS) developed this comprehensive resource on current state notarization practices. NASS members (Secretaries of State and Lieutenant Governors) in 45 states and the District of Columbia oversee or administer some aspect of the state notary process.

This report consists of four sections. Section one describes the different functions of a notary, highlighting both common and unique practices. Section two gives an overview of state notary regulations, including qualifications for becoming a commissioned notary and use of a notary seal. Section three discusses electronic notarization practices, including the uniform and model acts upon which most states have based their current laws. Finally, section four examines legal issues and debate concerning the recognition of notarizations from other states.

While the notarization process varies in each state, state notary laws and procedures share a number of important similarities. These include the basic functions of notaries, the qualifications for becoming a commissioned notary, and the elements of a proper notarization. The use of a journal or a record book of notarial acts is also a common requirement or recommendation, and a number of states have adopted statewide requirements for notary training and education. There is a lot of variation in state laws and penalties related to notarial misconduct, but all states recognize notarizations as official acts and have standards and procedures for revoking notary commissions and punishing serious offenses.

With electronic notarization already a widespread practice throughout the U.S. thanks to the 2000 Electronic Signatures in Global and National Commerce Act (E-SIGN), which gave notaries the authority to use electronic signatures in performing their duties, the process is continually evolving. Several states have adopted new standards and procedures to regulate this process and eliminate obstacles to its use. A number of federal and uniform state statutes have been developed—and updated—to assist states with this work. The list includes the NASS National E-Notarization Standards, the Uniform Electronic Transactions Act (UETA), the Uniform Real Property Electronic recording Act (URPERA), the Revised Uniform Law on Notarial Acts (RULONA), and the Model Notary Act. All of these measures have helped to guide states in their efforts to protect the integrity of the electronic notarization process while providing flexibility for the type of technology used to meet these requirements.

It should be noted, however, that electronic notarizations involve the same basic elements as paper-based notarizations. Among these elements is the requirement in nearly all states that a document—whether paper or electronic—be notarized in the presence of the signer.<sup>1</sup> As a result, most of the discussion surrounding electronic notarizations has typically had less to do with issues like personal appearance and seals than it does with encryption and secure technology.

Another hot topic in the notary community is the recognition of documents notarized in other states. This was the driving issue behind the Interstate Recognition of Notarizations Act, the federal law passed by Congress that would have compelled state and federal courts to accept out-of-state notarizations, regardless of the rules in those states. Supporters saw it as a vehicle for easing restrictions on interstate commerce. However, President Obama refused to sign the law after consumer advocates argued that it would make it difficult for some homeowners to fight fraudulent home foreclosures. Others—including NASS—opposed the bill because all 50 states already have laws and guidelines for dealing with documents notarized in other states, including court decisions, federal and state rules on evidence, and the Full Faith and Credit Clause of the U.S. Constitution.

While this report is not intended to advocate for particular positions or policies in relation to notarization practices, it does seek to highlight some of the major issues that have emerged in this field—particularly as debates play out in state capitals across the country.

Secretaries of State and other state officials who oversee the notarization process are working diligently with their federal leaders, local notary officials, national notary groups—including the NASS Notary Public Administrators (NPA) Section, and other key stakeholders to ensure the integrity of the notarization process and address major concerns at all levels of government.

States are ultimately responsible for the role that notaries play in enhancing the veracity of the notarial act, preventing fraud and forgery while protecting the public interest. Moving forward, policy discussions will include the growing demand to identify employers or industries that allow or sanction notaries to do things that are wrong or unlawful. The future also points to electronic notarizations and the state promulgation of rules related to the use of new and sophisticated technologies that increase its use and enhance security. Meanwhile, in an era of tight state budgets, there will be continuing need to ensure that adequate resources are available for notary education, commissioning procedures, and remedies for improper acts. NASS hopes to foster dialogue between the states on these issues and serve as a forum for innovation.

## **I. Basic Notary Practices**

A notary public is an individual who is authorized by state law to witness the signing of documents, administer oaths and affirmations, and perform a variety of other duties. Having a document notarized helps to prevent fraud and forgery and provides confidence that a signature is authentic and was made voluntarily.

One of the most common notary functions is the completion of an acknowledgment certificate (see Appendix I, Figure 1). Acknowledgments are often required by official documents (such as contracts, deeds, and mortgages) to ensure that the person named in the document is the one who signs it, and does so voluntarily. Generally, to have an acknowledgment notarized, the signer of the document must personally appear before the notary; the notary must confirm the signer's identity the notary must observe that the signer is not under duress; and the signer must acknowledge that the signature on the document is his/her own. The document can be signed prior to, or at the time of, the acknowledgment.

Another common notary function is completion of a jurat certificate (see Appendix I, Figure 2). Jurats are often required with legal documents such as affidavits and depositions to ensure that the individual signs the document under oath or affirmation. Generally, to have a jurat notarized, the signer of the relevant document must personally appear before the notary and swear or affirm to the truthfulness of the statements in the document. The document must be signed in the presence of the notary at the time the jurat is completed, and the notary confirms the identity of the signer.

While not as common as acknowledgments or jurats, notaries in many states are authorized to certify that a copy of a document is an accurate reproduction of the original document (see Appendix I, Figure 3). The types of documents that notaries may certify include licenses, diplomas, and passports – documents where the individual has possession of the original (unlike vital records such as birth and death certificates). When certifying a copy of a document, the notary must view the original document and verify that the copy is an accurate representation of the original.

In addition to acknowledgments, jurats, and copy certifications, notaries perform a variety of other duties, depending on the particular state. For example, in some states a vehicle title must be notarized before it can be transferred to someone else. In several states, notaries certify the contents of a safety deposit box or safe when the owner fails to make payments. Three states—Florida, Maine, and South Carolina—even authorize notaries to perform marriage ceremonies.

## **II. State Commission and Regulation of Notaries**

Although basic notary functions are similar throughout the country, the laws guiding the commission and regulation of notaries often vary from state to state. All states require that an individual apply for a notary commission from the appointing authority, which in most states, is either the Secretary of State's office (27 states) or the Governor's office (15 states).<sup>2</sup> In almost all states, notary commissions are issued for a specified, renewable term. The length of the term depends on the state, but typically lasts between four and seven years (see Appendix II).

In order to receive a notary commission, all states require that an applicant be at least 18 years old and meet state residency requirements. A number of states, including Oklahoma and Washington, permit non-residents to apply for a notary commission if they are employed in the state or if they regularly conduct business in the state.<sup>3</sup>

Many states have restrictions on applicants with criminal histories, although in most of these states the restrictions depend on a variety of factors, including the type of crime that was committed (e.g. whether it involved fraud or dishonesty) and the duration of time that has passed since the crime occurred.

It is also becoming more common for states to require that applicants complete a notary training course and/or pass a test on relevant subject matter. Eleven states currently have an education requirement for notaries, and fourteen states have an examination requirement (see Appendix II).

Thirty states also require notaries to file a bond prior to receiving their commission. The bond amount varies by state, but tends to be somewhere between \$5,000 and \$15,000.

### **State Procedures and Penalties Regarding Notarizations**

Commissioned notaries must follow detailed procedures when performing a notarization. For example, each state prescribes the identification used to confirm a signer's identity, and the contents of the notarial certificate. The notary certificate generally contains statements about the notarial act (e.g. acknowledgment or jurat language), and information about the notary, such as the notary's name, state, title, commission number, and commission expiration date. In 40 states and the District of Columbia, some or all of this commissioning and identifying information must be contained in a seal that is applied to the notary certificate (see Appendix II). Twenty-four of these states allow notaries to use either an embosser, which creates a raised design on the paper, or an ink stamp to apply the seal (see Appendix III, Figures 1 and 2).<sup>4</sup> The remaining sixteen states require that the seal be placed on the document with an ink stamp, and the District of Columbia requires an embossed seal.

In Arkansas, for example, a notary's seal must be embossed or stamped on the notary certificate, and it must contain the notary's name, the county where the bond is filed, the notary's commission number, and the commission expiration date. In Arizona, the notary must use a stamp containing the notary's name, title, county where commissioned, commission expiration date, and the Great Seal of Arizona. Arizona also permits a notary to use an embossed seal, but only in conjunction with the stamp.<sup>5</sup> And in Idaho, the notary must use a stamp containing the words "Notary Public" and the name of the state.<sup>6</sup>

In the ten states that do not require the use of a seal, the notary's commissioning and identifying information must still be contained on the notary certificate. In eight of these states, the notary has the option of including some of this information in a seal.<sup>7</sup> For example, Maine does not require a seal, but if a notary chooses to use one there, it must be applied with a stamp or an embosser, and it must include the notary's name, title, and state.<sup>8</sup>

Nineteen states require notaries to maintain a journal or record book of notarial acts (see Appendix II), while many of the remaining states recommend the practice. The information maintained in the journal varies by state, but often includes the date of the notarial act, the type of act performed, the means of confirming the identity of the person for whom the notarization was performed, and the signature of the person for whom the notarization was performed.<sup>9</sup>

Performing a notarization is an official act and many state notary laws authorize specific criminal penalties for notarial misconduct. The penalties vary depending on the state and type of wrongdoing, but may include revocation or suspension of the notary commission and fines. Serious offenses are considered misdemeanors or felonies in many states. For example, notarizing a signature without the signer personally present is a gross misdemeanor in Nevada.<sup>10</sup> In Florida, preparing a false or fraudulent acknowledgment is a felony.<sup>11</sup>

### **Uniform and Model Acts**

Several uniform and model acts have been developed in an effort to standardize state notary practices. The most recent and comprehensive of these acts are the Revised Uniform Law on Notarial Acts (RULONA) and the Model Notary Act of 2010.

RULONA was approved and recommended in July 2010 by the Uniform Law Commission (ULC), an organization of attorneys, judges, and law professors that drafts proposals for uniform legislation and fosters their adoption by state legislatures. RULONA has also been submitted for approval by the American Bar Association.<sup>12</sup> It is an updated version of the ULC's 1982 Uniform Law on Notarial Acts (ULONA), which has been adopted in eleven states and the District of Columbia.<sup>13</sup> ULONA specifies the content and form of specific notary acts and provides for recognition of notarized materials from other jurisdictions.<sup>14</sup> RULONA expands on the provisions in ULONA and includes new requirements in several areas, including notary qualifications and electronic notarization.<sup>15</sup>

The Model Notary Act, published in 1973 by the National Notary Association (NNA) and updated in 2010, covers most notarization subject areas.<sup>16</sup> More than forty states and territories have adopted provisions from the Model Notary Act.<sup>17</sup>

In addition to RULONA and the Model Notary Act, several other uniform acts impact the notary process: the Uniform Acknowledgment Act (UAA); the Uniform Recognition of Acknowledgment Act (URAA); the Uniform Electronic Transaction Act (UETA); and the Uniform Real Property Recording Act (URPERA). Each of these acts is discussed in subsequent sections of this report.

### **III. Electronic Notarization**

During the past decade, electronic notarizations have played an increasing role in electronic commerce and other official transactions, saving businesses—and state and local governments—millions of dollars each year in transaction, processing, and storage costs while adding convenience to the process. New state and federal laws, such as the 2000 Electronic Signatures in Global and National Commerce Act (E-SIGN), authorize every state-commissioned notary in the nation to use electronic signatures in performing official acts.

Like the traditional, paper-based process, electronic notarizations must meet legal and technical requirements in order to be considered valid and binding. While the Revised Uniform Law on Notarial

Acts (RULONA) and the updated Model Notary Act contain electronic notarization provisions, most state laws use the 1999 Uniform Electronic Transactions Act (UETA) as their starting point, or template. UETA was designed to facilitate electronic commerce and government transactions by making electronic records and digital signatures legally equivalent to paper documents and manual signatures.<sup>18</sup> Approved and recommended in 1999 by the National Conference of Commissioners on Uniform State Laws—now called the ULC, UETA has been adopted in 47 states and the District of Columbia.<sup>19</sup>

UETA includes language that recognizes electronic signatures used by notaries as legally binding and enforceable. For example, Section 11 contains the following provision:

*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 acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.*<sup>20</sup>

Therefore, UETA permits a notary public and other authorized officers to act electronically, effectively removing the stamp/seal requirements. However, it does not eliminate any of the other requirements of notarial laws.<sup>21</sup> The process of notarization remains the same under UETA. Only the technology used to make a signature is different.

As with UETA, the federal government's E-SIGN law facilitates electronic commerce through the use of electronic records and signatures in business, commercial, and consumer transactions. E-SIGN contains the same provision as UETA concerning the use of electronic signatures in notarial acts. States can supersede E-SIGN by adopting UETA, or by adopting alternative provisions that are similar to E-SIGN and do not require use of a specific technology.<sup>22</sup>

Both UETA and E-SIGN have limitations. They do not require that anyone use an electronic signature, or that anyone accept an electronic signature, unless both parties agree to do so. When two parties do agree to conduct a transaction electronically, UETA and E-SIGN give the electronic document and electronic signature legal effect.<sup>23</sup>

In 2004, the ULC approved the Uniform Real Property Electronic Recording Act (URPERA), which outlines more specifics on electronic notarizations and electronic commerce. URPERA provides for the recording of electronic real estate documents, many of which require a notarized acknowledgment.<sup>24</sup> URPERA also includes the electronic notary provision found in both UETA and E-SIGN. However, the provision in URPERA contains an additional sentence specifically stating that "a physical or electronic image of a stamp or seal does not have to accompany the electronic signature."<sup>25</sup> Twenty-two states and the District of Columbia have adopted URPERA.<sup>26</sup>



While UETA, E-SIGN, and URPERA include nearly identical language concerning the use of electronic signatures for notarial acts, none of these laws actually define electronic notarization, or provide standards or procedures for performing an electronic notarization.<sup>27</sup> In response to this lack of clarity, several organizations have developed standards and practices for states to utilize in drafting legislation implementing electronic notarization procedures. The National Association of Secretaries of State (NASS) developed national electronic notarization standards in 2006.<sup>28</sup> During the same year, the e-Trust Subcommittee of the American Bar Association issued recommendations on electronic notarization practices.<sup>29</sup>

### **Overview of Electronic Notarization Acts and Standards**

Under the NASS electronic notarization standards, RULONA, and the most recent version of the Model Notary Act, an electronic notarization must meet the same basic standards as a paper-based notarization. The traditional components remain present, including the notary certificate, the notary signature and the notary seal information. In most states, the signer must still appear before the notary public face to face in the same room.<sup>30</sup> Requiring personal appearance allows a notary to interact with and affirm the identity of the signer, ensuring that he or she is authorized to sign and is not doing so under duress.

The major difference with electronic notarization is that there is sufficient technological neutrality to allow for flexibility in how the notarization is implemented. Under the NASS standards and the Model Notary Act, a document notarized electronically includes an electronic notarial certificate, an electronic notary seal and the notary's electronic signature.<sup>31</sup> Both the NASS standards and the Model Notary Act note that the electronic seal and electronic signature could potentially be combined into a single element, or one could be a component of the other.<sup>32</sup> The NASS standards also note that while UETA, URPERA, and E-SIGN can be read to have eliminated any requirement for an electronic seal image, the important thing is that the identifying and commissioning information included in a seal is contained within the electronic document.<sup>33</sup>

RULONA contains similar requirements for an electronically notarized document. It must include a notarial certificate and the notary's electronic signature. The notary may either include the identifying and commissioning information as part of the electronic notarial certificate, or as an electronic image of the official stamp.<sup>34</sup>

The NASS standards, RULONA, and the Model Notary Act all include the same definition of electronic signature, which is based on UETA. UETA defines 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."<sup>35</sup>

While UETA does not define the phrase "attached to or logically associated" that is part of its language, the comments explain that the phrase has to do with how the information is linked to or connected with

the document.<sup>36</sup> This would be comparable to ensuring that a signature or seal is physically attached to, or contained somewhere within, a paper document that is notarized. Under the NASS standards and the Model Notary Act, the electronic signature must also be unique to the notary, capable of independent verification, and retained under the notary's sole control.

The NASS standards, RULONA, and the Model Notary Act all outline a similar process for protecting the integrity of the electronically notarized document. Essentially, all require that the components be "attached to or logically associated" with the electronic document in a way that will provide evidence of any unauthorized changes or alterations to the electronic notarial components or the electronic document.<sup>37</sup> However, notaries who perform electronic notarizations must register with the commissioning officer (e.g. Secretary of State) and identify the technology that will be used to carry out the process.<sup>38</sup>

### **State Electronic Notarization Laws and Procedures**

At least 16 states have electronic notarization laws or policies that go beyond the basic UETA provision, although they vary in terms of how comprehensive and specific they are with respect to electronic notarization procedures (see Appendix IV for a summary of each state's electronic notary provisions). It is also important to note that states may have additional or alternative policies and standards in place that are not included in state statutes or regulations.

As previously mentioned, all states require that an individual seeking to have a document electronically notarized appear in person before the notary at the time of notarization. Colorado's law specifically emphasizes that electronic notarization is not remote notarization—the signer must appear in the presence of the notary and swear, affirm, or acknowledge the electronic document being notarized.<sup>39</sup>

Many state electronic notarization laws use definitions and requirements found in the NASS standards, allowing for flexibility in the type of technology used, but specifying the basic requirements for securing the different notarial components to the electronic document (e.g. electronic signature and seal). For example, five states (Florida, New Mexico, North Carolina, Pennsylvania, and Virginia) require that the electronic notarial components be attached to or logically associated with the electronic document in a way that will reveal any subsequent changes to the document.<sup>40</sup> Other states have similar provisions. Arizona requires the electronic notary token and electronic signature to be invalidated if there are any subsequent changes to the electronic document. In Delaware, the electronic seal and signature must be attached in a way that prevents any subsequent changes to the electronic document. Meanwhile, Minnesota requires the electronic seal to be logically and securely affixed to or associated with the electronic record.

State electronic notarization laws also include a number of additional similarities that are derived from the NASS standards. For example, nine states require that a notary register with the Secretary of State's office prior to performing electronic notarizations.<sup>41</sup> In Nevada, an individual may apply to become an

electronic notary if he/she has been a notary in the state for at least four years, completes an electronic notary education course, and passes an electronic notary exam. Seven states (see Appendix IV) require that a notary's electronic seal and/or signature be capable of independent verification.<sup>42</sup> In North Carolina, the electronic seal and signature are independently verifiable, capable of government or third-party authentication of a notarial act, a notary's identity, and a notary's authority. Eight states (see Appendix IV) require that the notary's electronic seal and/or signature be unique to the notary and under the notary's sole control (or have a similar requirement).<sup>43</sup> In New Mexico, the technology used to perform electronic notarizations must be attributed solely to the electronic notary, and the electronic notary must have exclusive access to that technology.

In each of the states that require electronic notaries to register, the notary must identify the type of technology that will be used to carry out electronic notarizations. In five of these states (Arizona, Kansas, Nevada, North Carolina, and Pennsylvania), an electronic notary must use the services of a state-approved vendor. In Virginia, an electronic notary must obtain a digital certificate/signature that complies with technical requirements, such as PKI infrastructure and use of a certificate authority (see Appendix III, Figure 3).<sup>44</sup>

More states will develop electronic notarization procedures in the coming years, particularly those that are implementing URPERA. URPERA requires states to adopt standards for the electronic recording of real estate documents, many of which require a notarized acknowledgment.<sup>45</sup> In 2009, Wisconsin approved electronic recording standards that require electronic documents to be notarized under standards adopted in state statutes.<sup>46</sup> In 2010, South Carolina adopted electronic recording standards requiring electronic notarizations to comply with rules developed by the Secretary of State.<sup>47</sup> Also in 2010, Illinois adopted electronic recording standards that require electronic notarizations to comply with existing state laws.<sup>48</sup>

#### **IV. Recognition of Out-of-State Notarizations**

All states have laws regarding the validity of documents notarized out of state. Many of these provisions are based on one of the several uniform laws that have dealt with this topic. The first of these uniform laws was the Uniform Acknowledgment Act (UAA). Adopted by the ULC in 1939, UAA authorized the recognition of notarized acknowledgments from other states, without the need for any authentication of the notary's authority.<sup>49</sup> Four states (Arkansas, Maryland, Pennsylvania, and South Dakota) still have some form of UAA.<sup>50</sup> In 1968, UAA was superseded by the Recognition of Acknowledgments Act (URAA), which expanded the recognition provision of UAA to include all notarial acts. Fourteen states (see Appendix V) have adopted URAA.<sup>51</sup> In 1982, URAA was superseded by the Uniform Law on Notarial Acts (ULONA), which also recognizes the validity of all out-of-state notarial acts.<sup>52</sup> Eleven states and the District of Columbia have adopted ULONA (see Appendix IV).<sup>53</sup> In 2010 ULONA was superseded by the Revised Uniform Law on Notarial Acts (RULONA). One state (North Dakota) has adopted RULONA.

Four of the 24 states that have not adopted either URAA, ULONA, or RULONA have laws that recognize the validity of all out-of-state notarial acts.<sup>54</sup> The remaining 20 states recognize the validity of an acknowledgment prepared by an out-of-state notary, and each also has laws that recognize other types of notarial acts or notarized documents that generally require a jurat (typically covering both affidavits and depositions).

When the Model Notary Act was updated in 2010, it included a provision concerning recognition of notarial acts for the first time.<sup>55</sup> Its comments acknowledge that it may be redundant given the existence of the Full Faith and Credit Clause, but add that notarizations performed in some jurisdictions may be improperly rejected due to cosmetic inconsistencies or policy differences between states.<sup>56</sup>

State and federal rules of evidence also deal with the recognition of notarized documents. Under the Federal Rules of Evidence (FRE), which govern the introduction of evidence in civil and criminal federal courts, an acknowledgment certificate prepared by a notary public is considered self-authenticating.<sup>57</sup> As a result, when a party seeks to have a notarized acknowledgment admitted into evidence, no additional evidence is necessary to prove the authenticity of the acknowledgment.<sup>58</sup> Additionally, public documents with the seal of a public official are self-authenticating under the federal rules.<sup>59</sup>

Many states have incorporated the Federal Rules of Evidence into their laws in order to standardize the process of introducing evidence in state courts. Forty-four states use FRE provisions regarding self-authentication of notarial acts (see Appendix IV).

Yet even with so many model statutes and other legal sources to rely upon, challenges remain. One case that highlights the difficulties of interpreting what constitutes a valid out-of-state notarization is *Apsey v. Memorial Hospital*, a Michigan court case on this topic.<sup>60</sup> In that case, an affidavit notarized in Pennsylvania was presented to a Michigan court as part of a medical malpractice claim. The Michigan trial court would not admit the affidavit into evidence, however, because it did not comply with a state law requiring out-of-state affidavits to be notarized and accompanied by a certificate from a court clerk certifying the authority of the notary and the authenticity of the notary's signature.

In 2005, the Michigan Court of Appeals agreed with the defending hospital's argument that state law technically required certification of an out-of-state notary's authority in a medical malpractice suit. Two years later, in 2007, the Michigan Supreme Court overturned the Court of Appeals decision. In doing so, the court noted that Michigan's Uniform Recognition of Acknowledgements Act (URAA) laid out different requirements for certification of out-of-state affidavits. While noting that the various laws might seem to be in conflict, the court focused on a provision in the URAA which states that the Act "provides an additional method of proving notarial acts." The ruling determined that URAA was an alternative to the affidavit law, and that either provision could be used to validate an out-of-state affidavit.

## Interstate Recognition of Notarizations Act

As previously noted, a significant amount of controversy surrounded the White House's rejection of the Interstate Recognition of Notarizations (IRON) Act. After several years of unsuccessful attempts, the bill quietly passed out of Congress as H.R. 3808 in September 2010 and was sent to the President for his signature. However, based on concerns about the new law's effects on consumer protections for mortgages, President Obama vetoed it less than a month later.<sup>61</sup>

In the notary community, reaction to this mostly under-the-radar bill was mixed. Written well before concerns about the robo-signing of mortgage foreclosure documents came to light, the IRON Act was touted by its congressional sponsors as a bill that would enhance interstate commerce by creating a federal standard for the notarization of documents. The law would have required federal and state courts to recognize any lawful notarization made by a notary public licensed or commissioned under the laws of any state, if:

*(1) Such notarization occurs in, or affects, interstate commerce; and*

*(2)(A) A seal of office, as a symbol of the notary public's authority, is used in the notarization; or*

*(B) In the case of an electronic record, the seal information is securely attached to, or logically associated with, the electronic record so as to render the record tamper-resistant.*<sup>62</sup>

The law also required identification of notaries by means of their seal and would render any electronically notarized documents tamper-resistant.

Proponents of the IRON Act argued that it was necessary to ensure that state and federal courts admit notarizations from other states into evidence (pointing to the Michigan affidavit law and the protracted legal battle exemplified by *Apsey v. Memorial Hospital* as key examples of the need for federal legislation).<sup>63</sup> They also claimed that the new law would reduce the number of out-of-state notarizations that are rejected on technicalities, such as the wording of the notary certificate, or differing seal requirements.<sup>64</sup>

Opponents of the law, which included NASS, argued that it was unnecessary. This group did not see the need to sidestep state laws that already recognize the validity of out-of-state notarizations, the state and federal evidence rules that recognize notarial acts as self-authenticating, and the Full Faith and Credit Clause of the U.S. Constitution. They also noted that under E-SIGN, UETA, and URPERA, the phrase "logically associated" refers to how information is connected to (or stored) in an electronic document, while the bill's definition of the phrase "logically associated" would require the use of restrictive security measures that are unrelated to the intended use of the phrase in other laws.<sup>65</sup>

Although the IRON Act was ultimately rejected by the President, federal and state leaders continue to search for ways to make the notarization recognition process easier, simpler, and cheaper. Many members of the notary community believe there is a good chance that a new version of H.R. 3808 will be introduced in the 112<sup>th</sup> Congress. The debate has also underscored the responsibility that states have to vigorously investigate and prosecute bad notarizations.

## **Conclusion**

Compiling a thorough overview and summary of state issues and trends in notarization is essential for understanding this important profession and its growing prominence. The vigor of our economy rests upon the ability of states to facilitate legal, commercial, and financial transactions with both speed and integrity. As a result, notaries play a critical role in this process. With identity scams and fraud schemes being carried out just about everywhere these days, notaries as impartial third parties have more opportunities than ever to prevent fraudulent transactions and help protect the public interest.

While state notary laws and procedures each have unique components, they share similar features in a number of key areas. Among them are the basic functions of notaries, the qualifications for becoming a commissioned notary, and the elements of a proper notarization. State requirements for notary training and education, as well as penalties for acts of notarial wrongdoing, are also current topics that many states have addressed. However, the increasing levels of professionalism and accountability within the notary profession will keep these issues at the forefront of discussion.

Meanwhile, thanks to the growing use of electronic notarizations—both in the U.S. and around the world—the day is fast approaching when paperless transactions are as routine as paper-based ones. As laws and technology have enabled e-notarizations, several states have implemented specific practices and regulations based upon national standards and model state statutes. While electronic notarizations have already been widely embraced in the mortgage/banking and real estate industries, the expansion of notary technology will soon push this process into other industries as well. States are going to be key players in overseeing and regulating this process.

Finally, states are grappling with federal and state proposals to make the interstate recognition of notarizations easier, simpler, and clearer. Congress passed the Interstate Recognition of Notarizations Act in 2010 amidst a firestorm of media controversy over fraudulent foreclosures, resulting in a presidential veto of the law. While all states already provide for recognition of documents notarized in other states, the scope of these laws varies. Many also rely upon court decisions, rules of evidence and the Full Faith and Credit Clause of the U.S. Constitution in determining their procedures for this process.

Although the IRON Act was vetoed, there is growing sentiment that the bill may be introduced again in the 112th Congress. For now, the reaction in the notary community is mixed.

While federal and state oversight of the notarization process is clearly on the rise, state budgets are heading in the opposite direction. Funding for notary training and education is becoming more important than ever at a time when mandatory state programs in this area could face significant cuts. States will be challenged by this dilemma moving forward. While they may differ on their approaches and solutions, there is no lack of agreement that the notarial process is at the center of many important areas of our daily transactions in this nation. If adequately funded and implemented, these new state approaches can move America down a path of greater prosperity and help strengthen the integrity of our legal, financial and commercial systems.

## Appendix I: Sample Acknowledgment and Jurat Certificates

Figure 1: Acknowledgment Certificate

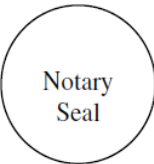
State of Colorado	
County of _____	
The foregoing instrument was acknowledged before me this (date) by (name of person acknowledging).	
	_____ (Notary's official signature)
	_____ (Commission expiration date)

Figure 2: Jurat Certificate

State of New Hampshire	
County of _____	
Signed and sworn to (or affirmed) before me on (date) by name[s] of person[s] making statement).	
_____ (Signature of notarial official)	
	seal
Title (and Rank) _____	
My commission expires: _____	

Figure 3: Copy Certification

State of _____	
County of _____	
On this ____ day of _____, 20____, I certify that the preceding/attached document is a true, exact, complete and unaltered photocopy made by _____	
Of _____.	
(SEAL/STAMP)	<u>Notary Signature</u> _____ Print, Type or Stamp Name of Notary
	My commission expires _____



## Appendix II: State Notary Requirements

Note: **e** indicates states where a course, exam, or journal is a requirement only for electronic notaries.

State	Appointing Authority	Term	Seal Requirement	Course	Exam	Journal
Alabama	Probate Courts	4 years	Optional <sup>66</sup>			✓
Alaska	Lieutenant Governor	4 years	Stamp or Emboss			
Arizona	Secretary of State	4 years	Stamp			✓
Arkansas	Secretary of State	10 years	Stamp or Emboss			
California	Secretary of State	4 years	Stamp	✓	✓	✓
Colorado	Secretary of State	4 years	Stamp or Emboss	✓	✓	✓
Connecticut	Secretary of State	5 years	Optional <sup>67</sup>		✓	
Delaware	Governor	2 years	Stamp or Emboss	<b>e</b>		<b>e</b>
DC	Mayor	5 years	Emboss		✓	✓
Florida	Governor	4 years	Stamp	✓		
Georgia	Superior Courts	4 years	Stamp or Emboss			
Hawaii	Attorney General	4 years	Stamp or Emboss		✓	✓
Idaho	Secretary of State	4 years	Stamp			
Illinois	Secretary of State	4 years	Stamp			
Indiana	Governor	8 years	Stamp or Emboss			
Iowa	Secretary of State	3 years	Stamp or Emboss			
Kansas	Secretary of State	4 years	Stamp or Emboss	<b>e</b>	<b>e</b>	
Kentucky	Secretary of State	4 years	Optional <sup>68</sup>			
Louisiana	Secretary of State	Lifetime	Signature <sup>69</sup>		✓	
Maine	Secretary of State	7 years	Optional <sup>70</sup>		✓	
Maryland	Governor	4 years	Stamp or Emboss			✓
Massachusetts	Governor	7 years	Stamp or Emboss			✓
Michigan	Secretary of State	7 years	Optional <sup>71</sup>			
Minnesota	Governor	5 years	Stamp			
Mississippi	Governor	4 years	Stamp			✓
Missouri	Secretary of State	4 years	Stamp or Emboss	✓		✓
Montana	Secretary of State	4 years	Stamp	✓		✓
Nebraska	Secretary of State	4 years	Stamp		✓	
Nevada	Secretary of State	4 years	Stamp	✓	<b>e</b>	✓
New Hampshire	Governor	5 years	Stamp or Emboss			
New Jersey	State Treasurer	5 years	Optional <sup>72</sup>			
New Mexico	Governor	4 years	Stamp or Emboss			
New York	Secretary of State	4 years	Optional <sup>73</sup>		✓	
North Carolina	Secretary of State	5 years	Stamp or Emboss	✓	✓	
North Dakota	Secretary of State	6 years	Stamp or Emboss			
Ohio	Secretary of State	5 years	Stamp or Emboss			✓

State	Appointing Authority	Term	Seal Requirement	Course	Exam	Journal
Oklahoma	Secretary of State	4 years	Stamp or Emboss			
Oregon	Secretary of State	4 years	Stamp	✓	✓	✓
Pennsylvania	Secretary of State	4 years	Stamp	✓		✓
Rhode Island	Governor	4 years	Optional <sup>74</sup>			
South Carolina	Governor	10 years	Stamp or Emboss			
South Dakota	Secretary of State	6 years	Stamp or Emboss			
Tennessee	Governor	4 years	Stamp			✓
Texas	Secretary of State	4 years	Stamp or Emboss			✓
Utah	Lieutenant Governor	4 years	Stamp		✓	
Vermont	Superior Courts	4 years	Optional <sup>75</sup>			
Virginia	Governor	4 years	Stamp or Emboss			<b>e</b>
Washington	Dept. of Licensing	4 years	Stamp or Emboss			
West Virginia	Governor	10 years	Stamp			
Wisconsin	Governor	4 years	Stamp or Emboss			
Wyoming	Secretary of State	4 years	Stamp or Emboss			

### Appendix III: Sample Notary Seals

Figure 1: Stamp Seals

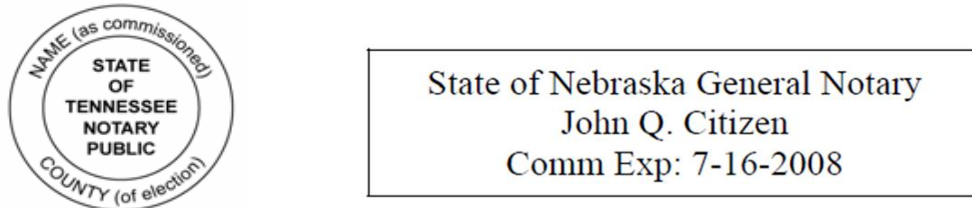


Figure2: Embossed Seal

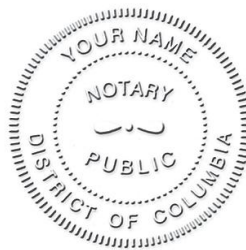
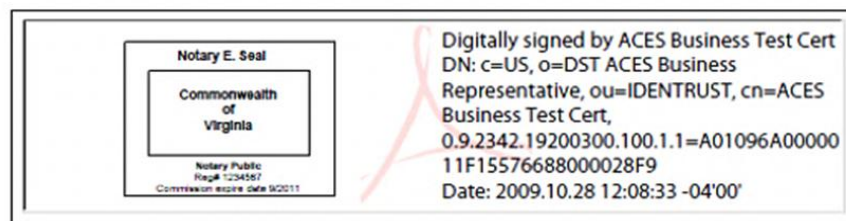


Figure 3: Digital Seal and Signature



## Appendix IV: State Electronic Notarization Laws

### Alaska

A notary public may use an electronic signature and electronic seal to notarize an electronic document according to regulations adopted by the Lieutenant Governor.<sup>76</sup>

### Arizona

An individual must apply to the Secretary of State for an electronic notary commission and register an approved electronic notary token. A document notarized electronically must include an electronic notary token containing the notary's name, commission number, commission expiration date, a link to the notary's commission record on the Secretary of State's website, and a time and date statement.<sup>77</sup> An electronic notarization is performed in the presence of the electronic notary. The electronic document must also include the notary's electronic signature. The electronic notary token and electronic signature must be linked to the document in a way that both are invalidated if the document changes. An electronic signature must be unique to the notary, capable of verification, and under the notary's sole control. An electronic notary must keep a journal of all electronic notarial acts.<sup>78</sup>

### California

When a document is filed with the electronic recording delivery system, a notary seal or stamp requirement is met if the electronic signature of the notary contains the notary's name, title, jurisdiction, the notary's sequential identification number (if any), and seal vendor's sequential identification number (if any).<sup>79</sup>

### Colorado

A notary must file a notice of intent with the Secretary of State to notarize electronically. Electronic notaries are issued document authentication numbers. This includes a system validation number and a series of randomly generated document authentication numbers. A notary must take reasonable measures to secure the authentication numbers against access or use by other persons. When used together on an electronic document, the system validation number and random authentication number constitutes the notary's electronic signature. The notary's title, state, and commission expiration date must accompany the document authentication number. A notary may use an alternative electronic signature instead of document authentication numbers, in which case the notice of intent must describe the technology that will be used to perform electronic notarizations. An electronic notary must maintain a log of electronic notarizations acts.<sup>80</sup>

### Delaware

In order to electronically notarize documents, an individual must complete an electronic notary education course and register with the Secretary of State. The application must describe the type of technology that will be used. When notarizing an electronic document the notary must use an electronic signature and an electronic seal which contains the notary's title, state, and commission expiration date. The electronic seal and signature must be attached to the electronic document in a manner that is capable of independent verification and prevents any subsequent changes or modifications to the electronic document. An electronic notary must only notarize an electronic document when the signer of the document is personally present. The electronic notary's electronic seal and signature must remain under the notary's exclusive control. An electronic notary must maintain a journal of electronic notarizations.<sup>81</sup>

### **Florida**

When electronically notarizing a document the notary's electronic signature must be attached to or logically associated with the electronic document in a manner that any subsequent alteration to the electronic document displays evidence of the alteration. When a seal is required, that requirement is satisfied if the electronic signature must contain the notary's name, title, commission number, and commission expiration date. The notary's electronic signature must be unique to the notary, capable of independent verification, and under the notary's sole control.<sup>82</sup>

### **Illinois**

County recorders are only required to record documents containing electronic signatures and notary acknowledgements that they have the technology to support. Any electronic signature or notarization submitted to a county recorder must comply with all applicable state and federal laws, including the Illinois Notary Public Act.<sup>83</sup>

### **Kansas**

In order to electronically notarize documents, an individual must complete an electronic notary course, pass an electronic notary exam, register with the Secretary of State, and obtain a digital certificate authorized by the Secretary of State. For each electronic notarization, the notary must use a digital signature. A notarial certificate must be attached to or logically associated with the electronic document. An electronic notary must only notarize an electronic document if the principal appears in person before the notary at the time of electronic notarization.<sup>84</sup>

### **Michigan**

A notary may use an electronic process to notarize a record if the electronic process contains the notary's name, title, jurisdiction, commission expiration date, and date of the notarial act.<sup>85</sup>

### **Minnesota**

A notary public must register the capability to notarize electronically with the Secretary of State. A notarized electronic document must contain a notarial certificate with notary's electronic signature and electronic seal. An electronic seal must contain the notary's name, jurisdiction, and commission expiration date, and must be logically and securely affixed to or associated with the electronic record being notarized.<sup>86</sup>

### **Nevada**

An individual who has been a notary in Nevada for at least four years may apply to the Secretary of State to become an electronic notary. The application must identify the technology approved by the Secretary of State that the notary will use for an electronic signature. The applicant must complete an electronic notary education course and pass an exam. The notary's electronic signature, electronic seal, and wording of the notarial certificate must be attached to or logically associated with the electronic document, and immediately perceptible and reproducible in the electronic document. An electronic notary must not electronically notarize a document for a person unless that person is in the electronic notary's presence at the time of notarization. The electronic signature and seal must remain under the electronic notary's exclusive control. An electronic notary must maintain a journal of electronic notarizations.<sup>87</sup>

### **New Mexico**

An electronic notary must register with the Secretary of State and identify the technologies that will be used in conducting electronic notarizations. An electronic notary must not electronically notarize a document for a person unless that person is

in the electronic notary's presence at the time of notarization. In electronically notarizing a document, the notary's electronic signature, electronic seal, and electronic notarial certificate, must be attached to or logically associated with the electronic document such that removal or alteration of any of these components is detectable and will render evidence of alteration of the document containing the notary certificate which may invalidate the electronic notarial act. An electronic notary signature and seal are reliable if they are unique to the notary, capable of independent verification, under the notary's sole control, attached to or logically associated with the electronic document, and linked to the document such that subsequent alterations to the document are detectable and will render evidence of the alteration of the document containing the notarial certificate which may invalidate the electronic notarial act. An electronic image of the seal does not need to accompany an electronic signature.<sup>88</sup>

### North Carolina

A notary must register the capability to notarize electronically with the Secretary of State and describe the technology that will be used to create the notary's electronic signature. An electronic notary must take an electronic notary education course and pass an exam. An electronic notarization must not be performed unless the signer of the electronic document is in the presence of the electronic notary at the time of notarization.<sup>89</sup> When notarizing an electronic document, the electronic signature and seal must be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination. An image of the electronic notary's seal and handwritten signature must appear on any visual or printed representation of an electronic notary certificate regardless of the technology being used to affix the electronic notary's electronic signature and seal. The physical appearance of the electronic seal must replicate the appearance of an ink seal on paper and contain the notary's title, name, state, and county of commission. The electronic notary seal and signature must be independently verifiable, unique to the notary, and under the notary's sole control. An electronic notary solution provider must meet all applicable criteria and apply to the Secretary of State for approval. Access to electronic signature and seals must be protected by a password, token, biometric, or other form of authentication approved by the Secretary of State.<sup>90</sup>

### Pennsylvania

A notary must apply to the Department of State to become an electronic notary. The individual for whom an electronic notarization is performed must personally appear before the notary. When electronically notarizing a document, the notary's name, title, jurisdiction, and commission expiration date must be attached to or logically associated with the electronic record. An electronic notary must use a digital certificate from an approved electronic notary solution provider.<sup>91</sup> An electronic notary solution provider may apply to the Department of State for review and approval.<sup>92</sup> The electronic seal provided by the electronic notary solution provider must be unique to the notary, capable of independent verification, under the notary's sole control, attached to or logically associated with the electronic document, and linked to the data in a way that that any subsequent alterations to the underlying document or electronic notarial certificate are detectable.<sup>93</sup>

### Texas

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 acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.<sup>94</sup> The

person for whom the electronic notarization is performed must personally appear before the notary. The notary's electronic seal must reproduce the elements of the notary seal.<sup>95</sup>

#### Utah

A notary may acknowledge an electronic document without the seal if the electronic document contains the notary's name, state, title, commission number, and commission expiration date. The electronic signature of the notary, and any other information required by law, must be attached to or logically associated with the electronic document.<sup>96</sup>

#### Virginia\*

An individual must apply to the Secretary of the Commonwealth for commission as an electronic notary. The application must include a description of the technology that will be used to notarize electronic documents, and a certification of compliance with Secretary of the Commonwealth notary standards. An electronic notary must maintain exclusive control of the electronic seal and signature. An electronic notary must keep records of electronic notary acts. Each electronically notarized document must include an electronic notarial certificate. The notary must attach an electronic signature and seal to the electronic notarial certificate in a manner that is capable of independent verification and renders any subsequent changes or modifications to the electronic document evident. A notary may electronically notarize a document if the signer is not in the presence of the notary at the time of notarization if satisfactory evidence of the identity of the signer is established according to applicable provisions. In the case of an electronic notarization, "satisfactory evidence of identity" may be based on video and audio conference technology, in accordance with applicable standards for electronic video and audio communications, that permits the notary to communicate with and identify the principal at the time of the notarial act, provided that such identification is confirmed by (a) personal knowledge, (b) an antecedent in-person identity proofing process in accordance with the specifications of the Federal Bridge Certification Authority, or (c) a valid digital certificate accessed by biometric data or by use of an interoperable Personal Identity Verification card that is designed, issued, and managed in accordance with the specifications published by the National Institute of Standards and Technology in Federal Information Processing Standards Publication 201-1, "Personal Identity Verification (PIV) of Federal Employees and Contractors," and supplements thereto or revisions thereof. A notary may perform verification of fact. Verification of fact permit a notary to review public or vital records to (i) ascertain or confirm facts regarding a person's identity, identifying attributes, or authorization to access a building, database, document, network, or physical site or (ii) validate an identity credential on which satisfactory evidence of identity may be based. If video and audio conference technology is the basis for satisfactory evidence of identity and the principal's identity has been ascertained upon presentation of such satisfactory evidence of identity, the electronic notary shall keep a copy of the recording of the video and audio conference and a notation of the type of any other identification used.<sup>97</sup> An electronic notary must use a digital signature/certificate that complies with state requirements.<sup>98</sup>

**\*note:** underlined provisions indicate recent changes to Virginia notary law.

## Appendix V: State Recognition of Notarial Acts

State	Valid Out-of State Notarizations	State Evidence Rules Include FRE Self-Authentication Provisions
Alabama	Acknowledgments; Jurats <sup>99</sup>	✓
Alaska	All Notarial Acts (URAA)	✓
Arizona	All Notarial Acts (URAA)	✓
Arkansas	Acknowledgments (UAA); Jurats <sup>100</sup>	✓
California	Acknowledgments; Jurats <sup>101</sup>	✓
Colorado	All Notarial Acts (URAA)	✓
Connecticut	All Notarial Acts (URAA)	✓ <sup>102</sup>
Delaware	All Notarial Acts (ULONA)	✓
DC	All Notarial Acts (ULONA)	
Florida	Acknowledgments; Jurats <sup>103</sup>	✓
Georgia	Acknowledgments; Jurats <sup>104</sup>	
Hawaii	Acknowledgments; Jurats <sup>105</sup>	✓
Idaho	Acknowledgments; Jurats <sup>106</sup>	✓
Illinois	All Notarial Acts (URAA)	✓
Indiana	All Notarial Acts <sup>107</sup>	✓
Iowa	All Notarial Acts <sup>108</sup>	✓
Kansas	All Notarial Acts (ULONA)	
Kentucky	All Notarial Acts (URAA)	✓
Louisiana	Acknowledgments; Jurats <sup>109</sup>	✓
Maine	All Notarial Acts (URAA)	✓
Maryland	Acknowledgments (UAA); Jurats <sup>110</sup>	✓
Massachusetts	Acknowledgments; Jurats <sup>111</sup>	
Michigan	All Notarial Acts (URAA)	✓
Minnesota	All Notarial Acts (ULONA)	✓
Mississippi	Acknowledgments; Jurats <sup>112</sup>	✓
Missouri	Acknowledgments; Jurats <sup>113</sup>	
Montana	All Notarial Acts (ULONA)	✓
Nebraska	All Notarial Acts (URAA)	✓
Nevada	All Notarial Acts (ULONA)	✓
New Hampshire	All Notarial Acts (ULONA)	✓
New Jersey	Acknowledgments; Jurats <sup>114</sup>	✓
New Mexico	All Notarial Acts (ULONA)	✓
New York	Acknowledgments, Jurats <sup>115</sup>	
North Carolina	All Notarial Acts <sup>116</sup>	✓
North Dakota	All Notarial Acts (RULONA)	✓
Ohio	All Notarial Acts (URAA)	✓
Oklahoma	All Notarial Acts (ULONA)	✓



State	Valid Out-of State Notarizations	State Evidence Rules Include FRE Self-Authentication Provisions
Oregon	All Notarial Acts (ULONA)	✓
Pennsylvania	Acknowledgments (UAA); Jurats <sup>117</sup>	✓
Rhode Island	Acknowledgments; Jurats <sup>118</sup>	✓
South Carolina	All Notarial Acts (URAA)	✓
South Dakota	Acknowledgments (UAA); Jurats <sup>119</sup>	✓
Tennessee	Acknowledgments; Jurats (Depositions) <sup>120</sup>	✓
Texas	Acknowledgments; Jurats <sup>121</sup>	✓
Utah	All Notarial Acts (URAA)	✓
Vermont	Acknowledgments; Jurats <sup>122</sup>	✓
Virginia	All Notarial Acts (URAA)	
Washington	All Notarial Acts <sup>123</sup>	✓
West Virginia	All Notarial Acts (URAA)	✓
Wisconsin	All Notarial Acts (ULONA)	✓
Wyoming	All Notarial Acts (ULONA)	✓

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<sup>1</sup> Legislation recently passed in Virginia permits electronic notarization when the signer is not personally present, provided that satisfactory evidence of the identity of the signer established. Under the law, satisfactory evidence may be based on video and audio conference technology in accordance with applicable standards. See Va. Code Ann. §§ 47.1-2, 47.1-15 (2010). Also see Digital Journal, *Virginia Passes Law Allowing Webcam Notarization* <<http://www.digitaljournal.com/pr/264577>> (accessed on April 4, 2011).

<sup>2</sup> Regardless of the appointing authority, the Secretary of State is responsible for processing notary applications and/or maintaining notary records in 44 states and the District of Columbia.

<sup>3</sup> Okla. Stat. tit. 49, § 49-1 (2010); Wash. Rev. Code § 42.44.020 (2010).

<sup>4</sup> Although not included in the number of states with a seal requirement, Louisiana considers the notary's signature to be the seal. See <http://www.sos.louisiana.gov/tabid/198/Default.aspx>.

<sup>5</sup> Arizona Rev. Stat § 41-313 (2010).

<sup>6</sup> Idaho Code 51-106 (2010).

<sup>7</sup> Vermont does not provide any guidelines for use of a seal, and Louisiana considers the notary's signature to be the seal.

<sup>8</sup> Maine Secretary of State, *Notary Public Handbook and Resource Guide* <<http://www.maine.gov/sos/cec/notary/notbk406.pdf#page=10>> (accessed November 4, 2010).

<sup>9</sup> For an example of notary journal, see the [Colorado Notary Basic Journal](#) (Colorado Office of Secretary of State).

<sup>10</sup> Nev. Rev. Stat. § 240.155 (2010).

<sup>11</sup> Fla. Stat. § 117.105 (2010).

<sup>12</sup> The ULC is also referred to as the National Conference of Commissioners on State Laws (NCCUSL).

<sup>13</sup> Delaware, District of Columbia, Kansas, Minnesota, Montana, Nevada, New Hampshire, New Mexico, Oklahoma, Oregon, Wisconsin & Wyoming. See Uniform Law Commission, *Uniform Notarial Acts Legislative Fact Sheet* <[http://www.ULC.org/Update/uniformact\\_factsheets/uniformacts-fs-una.asp](http://www.ULC.org/Update/uniformact_factsheets/uniformacts-fs-una.asp)> (accessed November 3, 2010).

<sup>14</sup> Unif. Law on Notarial Acts (ULC 1983). Available online at <http://www.law.upenn.edu/bll/archives/ulc/fnact99/1980s/ulna82.htm>.

<sup>15</sup> Rev. Unif. Law on Notarial Acts (ULC 2010). Available online at [http://www.law.upenn.edu/bll/archives/ulc/ulona/2010am\\_draft.htm](http://www.law.upenn.edu/bll/archives/ulc/ulona/2010am_draft.htm). New provisions in RULONA include use of a journal for chronicling notary acts; methods of identifying individuals before performing a notarial act; electronic notarization procedures; contents of the notary stamp; qualifications for commission as a notary; prohibited notary acts and grounds to impose sanctions; development of a state database of notaries; offering notary instruction courses; and an exam for new notaries.

<sup>16</sup> Model Notary Act (NNA 2010). Available online at [http://www.nationalnotary.org/userimages/2010\\_Model\\_Notary\\_Act.pdf](http://www.nationalnotary.org/userimages/2010_Model_Notary_Act.pdf).

<sup>17</sup> National Notary Association, *Model Notary Act Adoptions* <[http://www.nationalnotary.org/userimages/US\\_Jurisdictions\\_%20Adopting\\_Model\\_Notary\\_Act.pdf](http://www.nationalnotary.org/userimages/US_Jurisdictions_%20Adopting_Model_Notary_Act.pdf)> (accessed November 4, 2010).

<sup>18</sup> Unif. Elec. Transactions Act (ULC 1999). Available online at <http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ueta99.htm>.

<sup>19</sup> Uniform Law Commission, *Electronic Transactions Act Legislative Fact Sheet* <[http://www.ULC.org/Update/uniformact\\_factsheets/uniformacts-fs-ueta.asp](http://www.ULC.org/Update/uniformact_factsheets/uniformacts-fs-ueta.asp)> (accessed November 5, 2010). Only Illinois, New York, and Washington State did not adopt UETA. However, each of these states has similar laws.

<sup>20</sup> Unif. Elec. Transactions Act § 2.

<sup>21</sup> The comments to Section 11 of UETA provide examples of electronic notary acts under this provision. In the first example, a real estate buyer seeks to send a notarized real estate contract to the seller via email. The notary would have to appear in the room with the buyer and verify

the buyer's identity (as required by other state laws). All required information about the notarization must be reflected in the electronic document, along with the notary's electronic signature. In another example, a buyer needs to send the seller a notarized affidavit. A court clerk, present in the room with the buyer, administers the oath, and then includes the statement of the oath, and any other information required by law, in the electronic record to be sent to the seller. The clerk then witnesses the buyer apply his electronic signature to the electronic record, and then applies his own electronic signature to the electronic record.

<sup>22</sup> Pub. L. No. 106-229, § 101(g), 114 Stat. 464, 467, 468 (2000).

<sup>23</sup> See Unif. Elec. Transactions Act § 5; Pub. L. No. 106-229, § 101(g), 114 Stat. 464.

<sup>24</sup> Unif. Real Prop. Elec. Recording Act (ULC 2004). Available online at [http://www.law.upenn.edu/bll/archives/ulc/urpera/URPERA\\_Final\\_Apr05-1.htm](http://www.law.upenn.edu/bll/archives/ulc/urpera/URPERA_Final_Apr05-1.htm). Although UETA and E-Sign gave legal enforceability to electronic documents resulting from real estate transactions, there was confusion about whether those electronic documents could be recorded in local land records offices. URPERA was enacted to specifically authorize those recordings.

<sup>25</sup> Unif. Real Prop. Elec. Recording Act § 3(c).

<sup>26</sup> Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Minnesota, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, Washington, Wisconsin. See Uniform Law Commission, *Uniform Real Property Electronic Recording Act Fact Sheet* <[http://www.ULC.org/Update/uniformact\\_factsheets/uniformacts-fs-urpera.asp](http://www.ULC.org/Update/uniformact_factsheets/uniformacts-fs-urpera.asp)> (accessed November 3, 2010).

<sup>27</sup> Sources discussing the notary provisions in these Acts provide varying descriptions of their impact on state law, particularly with regard to whether these provisions alone are sufficient to authorize electronic notarizations. For example, see Property Records Industry Association, *URPERA Enactment and eRecording Standards Implementation Guide* <[http://www.pria.us/files/public/Committees/Real\\_Property\\_Law/2006\\_Docs/PRIAURPERAGuideCertified2006.pdf#page=35](http://www.pria.us/files/public/Committees/Real_Property_Law/2006_Docs/PRIAURPERAGuideCertified2006.pdf#page=35)> (accessed November 6, 2010). Indicating that the notary provision in UETA and E-SIGN has resulted in a number of differing interpretations among stakeholders, with notary regulators of the opinion that these Acts do not permit electronic notarization without rules or enabling legislation, while mortgage banks, title companies, and county recorders take issue with those interpretations.

<sup>28</sup> Available online at [http://www.law.upenn.edu/bll/archives/ulc/ulona/2010feb26\\_standards.pdf](http://www.law.upenn.edu/bll/archives/ulc/ulona/2010feb26_standards.pdf).

<sup>29</sup> Available online at <http://meetings.abanet.org/webupload/commupload/ST231005/newsletterpubs/eNotarization.pdf>.

<sup>30</sup> See note 1.

<sup>31</sup> Under the NASS standards and the Model Notary Act, the electronic notarial certificate is the portion of the electronic document that bears the notary's electronic seal, electronic signature, and any statements required to be on the certificate (e.g. acknowledgment or jurat certificate language). The NASS standards and the Model Notary Act describe the electronic notary seal as corresponding to the data in a notary seal used on a paper document, including the notary's name, jurisdiction of appointment, commission number, and commission expiration date.

<sup>32</sup> NASS E-Notarization Standards § 4 (comment); Model Notary Act § 19-1.

<sup>33</sup> NASS E-Notarization Standards § 11 (comment).

<sup>34</sup> Under RULONA, instead of a "seal" a notary's identifying and commission information is included in the "official stamp," which the Act defines as a physical or electronic image. See Rev. Unif. Law on Notarial Acts § 2.

<sup>35</sup> Unif. Elec. Transactions Act § 2 (Comments).

<sup>36</sup> Unif. Elec. Transactions Act § 2.

<sup>37</sup> Under the NASS standards, the electronic signature, seal, and certificate must be "attached to or logically associated with the electronic document, such that removal or alteration of the electronic [certificate, seal, and signature] is detectable and will render evidence of alteration

of the document containing the notary [certificate, seal, and signature] which may invalidate the electronic notarial act.” Under the Model Notary Act, electronic signature must be attached or associated with the certificate “in such a manner that any subsequent alteration of the certificate or underlying electronic document prominently displays evidence of the alteration.” Under RULONA, the electronic certificate must be affixed to or logically associated with the electronic record, and the notary must “select one or more tamper evident technologies to perform notarial acts with respect to electronic records.”

<sup>38</sup> See National Association of Secretaries of State, *National E-Notarization Standards*, § 3, 4 (2006). Also see Model Notary Act § 16-1, 19-1.

<sup>39</sup> See Colorado Secretary of State, *Electronic Notary Public* <[http://www.sos.state.co.us/pubs/notary/electronic\\_notary\\_home.htm](http://www.sos.state.co.us/pubs/notary/electronic_notary_home.htm)> (accessed on November 8, 2010).

<sup>40</sup> FL, NM, NC, PA, VA.

<sup>41</sup> AZ, CO, DE, KS, MN, NV, NM, PA, VA. For example, see [Minnesota’s E-Notarization Authorization Form](#).

<sup>42</sup> AZ, DE, FL, NM, NC, PA, VA.

<sup>43</sup> AZ, DE, FL, NV, NM, NC, PA, VA.

<sup>44</sup> Virginia Secretary of the Commonwealth, *Electronically-enabled Notary Public Instructions and Application* <<http://www.commonwealth.virginia.gov/Notary/eNotary.cfm>> (accessed November 10, 2010).

<sup>45</sup> Unif. Real Prop. Elec. Recording Act § 5.

<sup>46</sup> Wis. Admin. Code, Dept. of Admin. §70.07 (2010).

<sup>47</sup> S.C. Code Regs. 113-330 (2010).

<sup>48</sup> Ill. Admin. Code tit. 14, pt. 1400.30 (2010).

<sup>49</sup> For example, prior to passing the UAA in 1943, Arkansas’ law required that a notarized out of state acknowledgment be accompanied by a court issued certificate of authenticity as to the official character of the notary. See *Rumph v. Lester Land Co.*, 205 S.W.2d 916 (Ark. 1943).

<sup>50</sup> AR, MD, PA, SD.

<sup>51</sup> AK, AZ, CO, CT, IL, KY, ME, MI, NE, OH, SC, UT, VA, WV.

<sup>52</sup> In 2010 ULONA was superseded by the Revised Uniform Law on Notarial Acts (RULONA). No state has yet adopted RULONA.

<sup>53</sup> DE, DC, KS, MN, MT, NV, NH, NM, OK, OR, WI, WY.

<sup>54</sup> IA, IN, NC, WA.

<sup>55</sup> Model Notary Act § 11-2.

<sup>56</sup> *Id.*

<sup>57</sup> Fed. R. Evid. 902(8). The notes to Rule 902 explain that paragraph 8 used to refer to acknowledgment certificates “under the hand and seal of a notary public, but was later amended to refer to certificates “executed in the manner provided by law by a notary public” in recognition of the fact that a seal requirement was inconsistent with the law in some states.

<sup>58</sup> The other party could still seek to challenge the validity of the acknowledgment, but they have the burden of proving that it is not authentic.

<sup>59</sup> Fed. R. Evid. 902(1) (2010).

<sup>60</sup> *Apsey v. Memorial Hosp.*, 730 N.W. 2d 695 (Mich. 2007).

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<sup>61</sup> The White House, *Presidential Memorandum—HR 3808* <<http://www.whitehouse.gov/the-press-office/2010/10/08/presidential-memorandum-hr-3808>> (accessed on November 4, 2010).

<sup>62</sup> H.R. 3808, 111th Cong. (2010).

<sup>63</sup> See H.R. Subcommittee. on Courts, the Internet and Intell. Prop. of the Comm. on Jud., *Hearing on H.R. 1458*, 109<sup>th</sup> Cong. 5 (March 9, 2006).

<sup>64</sup> *Id.* at 4-6 (March 9, 2006).

<sup>65</sup> Letter from Michael Houghton, Vice Pres., Natl. Conf. of Commissioner on Uniform State Laws, to Senator Joseph Biden, Senate Jud. Comm. (July 2007) (copy on file with NASS).

<sup>66</sup> Ala. Atty. Gen. Op. 95-00289 (Aug. 16, 1995). Available at <http://www.ago.state.al.us/oldopinions/9500289.pdf> (establishing that a notary is not required to use a seal, but if one is used, it must be embossed).

<sup>67</sup> A seal is optional, but if used it must contain the notary's name, title and state. See Connecticut Secretary of State, *Notary Public Manual* <<http://www.sots.ct.gov/sots/lib/sots/legislativeservices/forms/notarymanual.pdf#page=18>> (accessed November 4, 2010).

<sup>68</sup> Use of a seal is optional, but if one is used it should contain the notary's name and title. See Kentucky Secretary of State, *Commonwealth of Kentucky Notary Public Handbook* <<http://sos.ky.gov/NR/rdonlyres/30443403-123C-446C-8B62-24B24F7E6DCA/0/notaryhandbookfinal.pdf#page=6>> (accessed November 4, 2010).

<sup>69</sup> In Louisiana, the notary's signature serves as a seal.

<sup>70</sup> Use of a seal is optional, but if one is used it must contain the notary's name, title and state. See Maine Secretary of State, *Notary Public Handbook and Resource Guide* <<http://www.maine.gov/sos/cec/notary/notbk406.pdf#page=10>> (accessed November 4, 2010).

<sup>71</sup> Michigan does not require use of a seal. If one is used, it must contain the notaries identifying and commissioning information. See Michigan Department of State, *Notary Public Information* <[http://www.michigan.gov/sos/0,1607,7-127-1638\\_8736-85771--,00.html](http://www.michigan.gov/sos/0,1607,7-127-1638_8736-85771--,00.html)> (accessed November 4, 2010). Also see Mich. Stat. Ann. § 55.287 (2010).

<sup>72</sup> If a notary does not use an ink stamp, the notary's commissioning and identifying information must be printed on the notarial certificate. See New Jersey Department of Revenue, *New Jersey Notary Public Manual* <<http://www.state.nj.us/treasury/revenue/dcr/geninfo/notarymanual.htm>> (accessed on November 4, 2010).

<sup>73</sup> A seal is not required. If one is used, it should contain the notary's name, authority, and jurisdiction. See New York Department of State, *Notary Public License Law* <<http://www.dos.state.ny.us/lcns/lawbooks/notary.html>> (accessed November 5, 2010).

<sup>74</sup> Use of a seal is not required, but considered prudent. A seal contains the notary's name, title, and state. See Rhode Island Secretary of State, *Notary Public Frequently Asked Questions* <<http://sos.ri.gov/business/notary/faq/>> (accessed on November 5, 2010).

<sup>75</sup> Use of a seal is not required. See Vermont Secretary of State, *Short Guide for Notaries Public* <<http://vermont-archives.org/notary/guide/pdf/NotaryGuide2011.pdf#page=9>> (accessed on November 5, 2010).

<sup>76</sup> Alaska Stat. §§ 44.50.063, 44.50.065 (2010). A summary of revisions to Alaska's notary laws in 2005 states that this language was added to accommodate future electronic notarization procedures. A search of Alaska Regulations and the Alaska Administrative Code indicates that electronic notary regulations have not yet been adopted.

<sup>77</sup> Ariz. Admin. Code § R2-12-1204, R2-12-1201 (2010).

<sup>78</sup> Ariz. Rev. Stat. § 41-351, 41-355. Arizona Revised Statutes § 41-356 authorized electronic notarization without the presence of an electronic notary. That provision was repealed in 2010 by Ariz. Sess. L. ch. 313).

<sup>79</sup> California Govt. Code Ann. § 27391 (2010). While this particular law does not define electronic signature, California has adopted UETA, which requires that the electronic signature be attached to or logically associated with the electronic record. See Cal. Govt. Code Ann. § § 1633.11 (2010).

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<sup>80</sup> 8 Colo. Code Regs. 1505-11 (2010).

<sup>81</sup> Del. Code. Ann. tit. 29, §§ 4302, 4309, 4310, 4314 (2010).

<sup>82</sup> Fla. Stat. §§ 117.021 (2010).

<sup>83</sup> Ill. Admin. Code tit. 14, pt. 1400.30 (2010).

<sup>84</sup> Kan. Stat. Ann. §§ 7-43-2, 7-43-3, 7-43-4 (2010).

<sup>85</sup> Mich. Stat. Ann. §§ 55.287 (2010).

<sup>86</sup> Minn. Stat. §§ 358.47, 359.01, 359.03 (2010).

<sup>87</sup> Nev. Rev. Stat. Ann. §§ 240.192, 240.195, 240.198, 240.199, 240.201, 240.202 (2010).

<sup>88</sup> N.M. Admin. Code 12.9.2.8, 12.9.2.9, 12.9.2.11 (2010).

<sup>89</sup> N.C. Gen. Stat §§ 10B-106, 10B-107, 10B-116 (2010).

<sup>90</sup> 18 N.C. Admin. Code 07C.0401, 07C.0402, 07C.0501, 07C.0604 (2010).

<sup>91</sup> 35 Pa. Bull. 7068 (December 31, 2005). Also see 57 Pa. Consol. Stat. Ann. § 158 (2010).

<sup>92</sup> 40 Pa. Bull. 2065 (April 17, 2010).

<sup>93</sup> Pennsylvania Department of State, *Frequently Asked Questions about the Department of State's Electronic Notarization Program* <<http://www.portal.state.pa.us/portal/server.pt?open=18&objID=488579&mode=2>> (accessed on November 8, 2010).

<sup>94</sup> Tex. Bus. Com. Code Ann. § 322.011 (2009). The law cited is the Texas UETA provision concerning electronic notarial acts. Texas appears to permit electronic notarization based solely on this provision. See subsequent note.

<sup>95</sup> Texas Secretary of State, *Frequently Asked Questions for Notaries Public* <<http://www.sos.state.tx.us/statdoc/faqs2300.shtml#np22>> (accessed November 10, 2010).

<sup>96</sup> Utah Code Ann. §§ 46-1-16, 46-4-205 (2010).

<sup>97</sup> Va. Code Ann. §§ 47.1-14, 47.1-16, 47.1-7, 47.1-2, 47.1-15 (2010).

<sup>98</sup> Virginia Secretary of the Commonwealth, *Electronically-enabled Notary Public Instructions and Application* <<http://www.commonwealth.virginia.gov/Notary/eNotary.cfm>> (accessed November 10, 2010).

<sup>99</sup> An acknowledgment or affidavit may be taken in another state by a notary public. A deposition may be taken in another state by any person authorized to administer oaths. See Alabama Code §§ 12-21-4, 35-4-26 (2010); Al. R. Civ. P. 28(a) (2010).

<sup>100</sup> An acknowledgment or affidavit may be taken in another state by a notary public. A deposition may be taken in another state by any person authorized to administer oaths. See Ark. Code Ann. §§ 16-47-203, 16-45-102 (2010); Ark. R. Civ. P. 28(a) (2010).

<sup>101</sup> An acknowledgment or affidavit may be taken in another state by a notary public. A deposition may be taken in another state by any person authorized to administer oaths. See Cal. Civ. Code Ann. § 1182 (West 2010); Cal. Civ. P. Code §§ 2013, 2026.

<sup>102</sup> The Connecticut Code of Evidence does not identify particular documents as self-authenticating, but instead relies on common law and other statutes for those determinations. The comments note that common law examples of self-authenticating documents or writings include those carrying the impression of official seals, and that the URAA recognizes acknowledgments as self-authenticating. See Ct. Code Evid. 9-1(b) (2009) (commentary to section 9-1(b)).

<sup>103</sup> Oaths, affidavits, or acknowledgments may be taken or administered in another state by a notary public. See Fla. Stat. § 92.50 (2010).

<sup>104</sup> An acknowledgment may be taken in another state by a notary public. All affidavits, petitions, answers, defenses, or other proceedings required to be verified or sworn to under oath may be made in another state by a notary public. A deposition may be made in another state by any person authorized to administer oaths. Ga. Code Ann §§ 44-2-21, 9-10-113, 9-11-28 (2010).

<sup>105</sup> An acknowledgment or oath may be taken or administered in another state by a notary public. A deposition may be taken in another state by any person authorized to administer oaths. See Haw. Rev. Stat. §§ 502-45, 621.13 (2010); Haw. R. Civ. P. 28(a) (2010).

<sup>106</sup> An acknowledgment may be taken in another state by a notary public. A deposition may be taken in another state by any person authorized to administer oaths. See Idaho Code § 55-703 (2010); Idaho R. Civ. P. 28(a) (2010).

<sup>107</sup> An acknowledgment may be taken in another state by an officer with an official seal. A certificate or instrument made by a notary public in another state is valid as evidence without further proof. A deposition may be taken in another state by any person authorized to administer oaths. See Ind. Code §§ 32-21-2-5, 34-37-1-5 (2010); Ind. R. Civ. P. 28(a) (2010).

<sup>108</sup> Iowa Code §§ 9E.11, 622.86, 721-43.3 (2009).

<sup>109</sup> Oath, acts, and acknowledgments may be taken or administered in another state by a notary public. A deposition may be taken in another state by any person authorized to administer oaths. See La. Stat. Ann. §§ 35:5, 13:3720, 13:3823 (2010).

<sup>110</sup> A deposition may be taken in another state by any person authorized to administer oaths. See Md. R. Civ. P. 2-414 (2010).

<sup>111</sup> Oaths, affidavits, and acknowledgments may be taken or administered in another state by a notary public. A deposition may be taken in another state by any officer authorized to administer oaths. See Mass. Gen. Laws ch. 183, § 30; ch. 233, § 73 (2010); Mass. R. Civ. P. 28(a) (2010).

<sup>112</sup> An acknowledgment may be taken in another state by a notary public. An affidavit, deposition, or oath may be taken or administered in another state by any person authorized to administer oaths. See Miss. Code Ann. §§ 11-1-1, 13-1-81, (2010); Miss. R. Civ. P. 28(a) (2010).

<sup>113</sup> An acknowledgment, affidavit, or deposition may be taken in another state by a notary public. See Mo. Rev. Stat. §§ 442.150, 490.530, 492.090 (2010); Mo. R. Civ. P. 57.05 (2010).

<sup>114</sup> An oath, affirmation, or affidavit may be taken or administered by a notary public in another state. A deposition may be taken in another state by any person authorized to administer oaths. See N.J. Stat. Ann §§ 41:2-17, 46:14-21 (2010); N.J. R. Ct. 4:12-2 (2010).

<sup>115</sup> A notarized out of state acknowledgment, oath, or affirmation must be taken in the manner required by New York state law, or accompanied by a certificate from an attorney or other qualified person in the state where the acknowledgment, oath, or affirmation originates stating that it conforms with the laws of that state. See N.Y. Real Prop. Law § 299-a (2010); N.Y. Civ. Prac. L. R. § 2309(c) (2010).

<sup>116</sup> N.C. Gen. Stat. § 10B-40 (2010).

<sup>117</sup> An acknowledgment may be taken in another state by a notary public. A Deposition may be taken in another state by any person authorized to administer oaths. See 42 Pa. Consol. Stat. Ann. §§ 5325, 6105 (2010).

<sup>118</sup> An acknowledgment may be taken in another state by a notary public. A deposition may be taken in another state by any person authorized to administer oaths. See R.I. Gen. Laws § 34-12-2 (2010). R.I. R. Civ. P. 28(a) (2010).

<sup>119</sup> An affidavit or deposition may be taken in another state by any person authorized to administer oaths. See S.D. Codified Laws §§ 15-6-28, 19-4-1 (2010).

<sup>120</sup> An acknowledgment or deposition may be taken in another state by a notary public. See Tenn. Code Ann. §§ 66-22-103, 8-16-121 (2010).

<sup>121</sup> An oath, acknowledgment, or deposition may be taken or administered in another state by a notary public. See Tex. Govt. Code Ann. §§ 20.001, 121.001, 602.005 (2010); Tex. R. Civ. P. 201.1 (2010).

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<sup>122</sup> An acknowledgment may be taken in another state by a notary public. A deposition may be taken in another state by any officer authorized to administer oaths. See Vt. Stat. Ann. tit. 27, § 379 (2010); Vt. R. Civ. P. 28(a) (2010).

<sup>123</sup> Wash. Rev. Code § 42.44.130 (2010).