



## **NASS Support for the Revised National Electronic Notarization Standards**

Adopted on July 12, 2006;  
Reaffirmed on July 13, 2011 and July 17, 2016;  
Amended and readopted on February 19, 2018

### **Mission Statement**

It is the goal of the National Association of Secretaries of State (NASS) to endorse and promote these technology neutral standards, developed originally by the National E-Notarization Commission for secure and feasible implementation of in-person electronic notarization, and amended to include remote electronic notarization. In the event of ambiguity of a term or standard, it should be interpreted in favor of technology neutrality.

### **Foreword**

The National E-Notarization Commission, whose formation was endorsed and sanctioned by NASS at our 2006 Winter Conference developed the original in-person, electronic notarization standards. These standards were presented NASS members for consideration at our 2006 Summer Conference. The members voted unanimously to adopt the standards, and voted to reaffirm the standards at the NASS 2011 Summer Conference. At our 2016 Conference, the in-person, e-notarization Standards were again reaffirmed, however this version included several amendments proposed by the NASS Notary Public Administrators Section (NPA) designed to streamline and clarify the standards.

In April 2016, NASS formed the Remote Electronic Notarization Task Force to examine the topic of remote electronic notarization. The Task Force consisted of NASS members, members of NPA, various industry/government stakeholders and private sector advisors. At the Summer 2017 Conference, NASS adopted a resolution authorizing the convening of appropriate parties to develop remote notarization standards enabling remote notarizations that will protect the credibility of the process, help prevent identity fraud and provide accountability to the public in order to advance secure electronic commerce. Through a series of in-person meetings and conference calls the Task Force developed an addendum to the in-person electronic notarization standards to accommodate remote electronic notarization. These changes were adopted by the NASS membership at the Winter 2018 Conference.

These standards do not in any way require the use of one specific technology, nor are they intended to privilege the use of one specific technology over another, nor do they limit the utilization of electronic signatures outside the electronic notarization process.

### **Definitions**

1. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

2. “Electronic document” means information that is created, generated, sent, communicated, received, or stored by electronic means.
3. “Electronic notarial act” means an official act by a notary public on or involving an electronic document and using electronic means authorized by the [commissioning official] or the laws of the jurisdiction of appointment.<sup>1</sup>
4. “Electronic notarial certificate” means the portion of a notarized electronic document that is completed by the notary public, bears the notary public's electronic signature and/or official electronic seal, official title, commission number, commission expiration date, any required information concerning the date and place of the electronic notarization, and states the facts attested to or certified by the notary public in a particular electronic notarization.<sup>2</sup>
5. “Electronic notary seal” and “official electronic seal” mean information within a notarized electronic document that includes the notary public’s name, jurisdiction of appointment, commission number, and commission expiration date, and generally corresponds to data in notary public seals used on paper documents.<sup>3</sup>
6. “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document or record.
7. “Electronically enabled notary public” means a notary public who has registered with the [commissioning official] the capability of performing electronic notarial acts in conformance with these standards.
8. "Non-repudiation" means the inability of the signer of an electronic document to deny their electronic signature without factual basis.<sup>4</sup>
9. “Notary electronic signature” means those forms of electronic signature which have been approved by the commissioning official as an acceptable means for an electronic notary to affix the notary's official signature to an electronic record that is being notarized.
10. “Notary public” means an individual commissioned or appointed to perform a notarial act by the [commissioning/appointing officer or agency] of this State.<sup>5</sup>

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<sup>1</sup> These Definitions and Standards use the terms “commission,” “commissioning” and “appointment” interchangeably, to refer to a state’s authorization of an individual to perform notarial acts.

<sup>2</sup> Although the definitions for “electronic notarial certificate” and “electronic notary seal” have references to “commission number,” “commission expiration” and “notary seal,” it is recognized that some jurisdictions do not issue commission numbers, or require notary seals. Other jurisdictions that issue life-long notary commissions do not have expiration dates.

<sup>3</sup> See footnote 2.

<sup>4</sup> The concept of "non-repudiation" is intended to create a presumption of regularity and reliability of electronically executed documents, so that they may be relied upon by third parties. This presumption is foundational to commissioning authorities’ ability to authenticate notarial acts.

<sup>5</sup> The Revised Uniform Law on Notarial Acts differentiates “notary public” from “notarial officer,” which is a notary public OR another individual—for example, judges, clerks, etc.—authorized to perform a notarial act. These Standards contemplate only notaries public.

11. "Personal appearance" and "appears before the notary" mean that the principal and the notary public:
  - are physically close enough to see, hear, communicate with, and give identification credentials to each other, or;
  - interact through the use of audio- video communication as defined in addendum.
12. "Registration" and "register" mean a separate commission to perform electronic notarial acts under the laws of this State, or registration with the commissioning official in compliance with these standards.<sup>6</sup>
13. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States
14. "Tamper-evident" means that any changes to an electronic document shall display evidence of the change.
15. "Unique to the Notary Public" and "under the sole control" mean with respect to an electronic notarization that the signing device used to affix the electronic signature of the Notary Public and to render the official electronic seal information tamper-evident must be accessible by and attributable solely to the Notary Public to the exclusion of all other persons and entities for the necessary period of time that such device is engaged and operating to effectuate the authorized electronic notarization.<sup>7</sup>

## Standards

### Personal Appearance Requirement

1. A notary public shall not perform an electronic notarization if the document signer does not appear in person before the notary public at the time of notarization.
2. The methods for identifying document signers for an electronic notarization where the signer is in the physical presence of the notary shall be the same as the methods required for a paper-based notarization.<sup>8</sup>

### Registration Requirement

3. The commissioning official shall require a notary public to register the capability to notarize electronically before performing any electronic notarial act. Such registration shall be with the [commissioning official] every time a notary public adopts a new or additional technology with which to perform electronic notarial acts.
4. The commissioning official shall require a notary public who registers the capability of performing electronic notarial acts to provide the following information: a) the electronic technology or technologies

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<sup>6</sup> This new Definition recognizes that some states that have authorized electronic notarization require only a single notary commission for performance of paper-based and electronic notarial acts, while other states require a separate commission for each medium. As such, "registration" and "register" apply to either commissioning or appointment approach.

<sup>7</sup> The definitions of "unique to the notary public" and "under the sole control" are terms that do not require any particular currently existing technology or preclude any signature or seal technology that may emerge in the future for the purpose of electronic notarization that satisfy these standards.

<sup>8</sup> Under no circumstance shall a notary public base identification merely upon familiarity with a signer's electronic signature or an electronic verification process that authenticates the signer's electronic signature when the signer does not appear personally before notary public.

to be used in attaching or logically associating an electronic notarial signature, seal and certificate to an electronic document; b) an exemplar of the notary's electronic signature and official electronic seal, and c) any necessary instructions or techniques supplied by the vendor that allow the notary's electronic signature and official electronic seal to be read.<sup>9</sup>

#### Form and Manner of Performing the Electronic Notarial Act

5. When performing an electronic notarization, a notary public shall complete an electronic notarial certificate and attach or logically associate the notary's electronic signature and seal to that certificate in a tamper-evident manner. Evidence of tampering pursuant to this standard may be used to determine whether the notarial act is valid or invalid.

6. The notary public's electronic signature is deemed to be reliable if the following requirements are met: a) it is unique to the notary public, b) it is capable of independent verification, c) it is retained under the notary public's sole control, and d) it is attached to or logically associated with the electronic document in a tamper-evident manner. Evidence of tampering pursuant to this standard may be used to determine whether the notarial act is valid or invalid.

7. The notary public's official electronic seal is deemed to be reliable if the following requirements are met: a) it is unique to the notary public, b) it is capable of independent verification, c) it is retained under the notary public's sole control, and d) it is attached to or logically associated with the electronic document in a tamper-evident manner. Evidence of tampering pursuant to this standard may be used to determine whether the notarial act is valid or invalid.

8. The notary public's electronic signature in combination with the electronic notary seal shall be used only for the purpose of performing electronic notarial acts.

9 The liability, sanctions, and remedies for the improper performance of electronic notarial acts are the same as described and provided by law for the improper performance of non-electronic notarial acts.

#### Security Requirements

10. The notary public shall not disclose any access information used to affix the electronic notary's signature and seal except when requested by law enforcement, the courts, and with reasonable precautions, electronic document preparation and transmission vendors.<sup>10</sup>

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<sup>9</sup> The technologies that a state may authorize for an electronic notarization will dictate how the attachment or logical association of the electronic notarial certificate, electronic signature, and official electronic seal to the document will be accomplished. It is possible that the electronic signature and seal may be combined in a single element, or that the seal may be a component of the signature or vice versa. The important matter is that all of the notary public's identifying and commissioning information be made a part of, or a secure attachment to, the underlying notarized electronic document. Although Uniform Electronic Transactions Act (UETA) and Uniform Real Property Electronic Recording Act (URPERA) and the federal E-Sign Act can be read to have eliminated the need for a physical seal image as a requirement for determining whether an electronic document is an "original" versus a copy, the seal requirement remains essential to authenticating documents under federal and state rules of evidence. What is important is that the basic identifying and commissioning information – contained in the notary public's holographic signature and traditional inking and embossing notary seals – also be elements of a notarized electronic document.

<sup>10</sup> Control of security aspects such as but not limited to passwords, token devices, biometrics, PINS, phrases, software on protected hardware shall remain only under the control of the commissioned individual.

## Requirements for Authenticating the Notarial Act

11. Electronic notarial acts need to fulfill certain basic requirements to ensure non-repudiation and the capability of being authenticated by the [commissioning official] for purposes of issuing Apostilles and Certificates of Authentication. They are as follows: a) the fact of the notarial act, including the notary's identity, signature, and commission status, must be verifiable by the commissioning official and b) the notarized electronic document will be rendered ineligible for authentication by the [commissioning official] if it is improperly modified after the time of notarization, including any unauthorized alterations to the document content, the electronic notarial certificate, the notary public's electronic signature, and/or the notary public's official electronic seal.<sup>11</sup>

## Requirements for Issuance of Electronic Apostilles and Certificates of Authentication (Appointment)

12. Electronic Apostilles need to fulfill certain basic requirements to ensure non-repudiation: a) the fact of the issuance of the Apostille by the [commissioning official] must be independently verifiable and b) the Apostille must be invalidated if the underlying document is improperly modified as when, for example, a person attempts to remove the Apostille from the public document.<sup>12</sup>

13. Electronic certificates of Authentication (or Appointment) need to fulfill certain basic requirements to ensure non-repudiation: a) the fact of the issuance of the Certificate by the [commissioning official] must be independently verifiable and b) the Certificate must be invalidated if the underlying document is improperly modified as when, for example, a person attempts to remove the Certificate from the public document.<sup>13</sup>

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<sup>11</sup> "Authentication" in this context is "a certification of the genuineness of the official character, i.e., signature and seal, or position of a foreign official. It is an act done with the intention of causing a document which has been executed or issued in one jurisdiction to be recognized in another jurisdiction. Documents which may require authentication include legal instruments notarized by foreign notaries or other officials, and copies of public records, such as birth, death, and marriage certificates, issued by foreign record keepers." (22 CFR 92.36)

<sup>12</sup> The Apostille and the underlying document are legally joined. Therefore, any separation legally invalidates the Apostille. To ensure a recipient the necessary degree of security and trust in deciding whether to accept, an electronic Apostille must, from the time of issuance, provide integrity, authentication and non-repudiation. The term "public document" is used as defined in Article 1 of The Hague Conference on Private International Law's Convention Abolishing the Requirement of Legalization for Foreign Public Documents.

<sup>13</sup> The certificate and the underlying document are legally joined, and any separation legally invalidates the Certificate. Therefore, to ensure a recipient the necessary degree of security and trust in deciding whether to accept, an electronic Certificate must, from the time of issuance, provide integrity, authentication and non-repudiation. The term "public document" is used as defined in Article 1 of The Hague Conference on Private International Law's Convention Abolishing the Requirement of Legalization for Foreign Public Documents.

## Addendum: Audio-Video Communication

In this Addendum, the terms in Standards 1-15 (Definitions) have the meanings ascribed. In addition:

1. "Audio-video communication" means being able to see, hear, and communicate with another individual in real time using electronic means.
2. "Credential analysis" means a process or service operating according to criteria allowed by the commissioning authority through which a third person or party affirms the validity of a government-issued identification credential through review of public or proprietary data sources.
3. "Dynamic knowledge-based authentication assessment" means an identity assessment that is based on a set of questions formulated from public or proprietary data sources for which the principal has not provided a prior answer.
4. "Identity proofing" means a process or service operating according to criteria approved by the commissioning official through which a third person or party affirms the identity of an individual through review of personal information from public or proprietary data sources.
5. "Public key certificate" means an electronic credential which is used to identify an individual who signed an electronic record with the certificate.
6. "Real time" means the actual span of uninterrupted, simultaneous communication during which all parts of an electronic notarial act occur
7. "Remote electronic notarization system" means a set of applications, programs, hardware, software, or technology designed to enable an electronic notary to perform electronic notarial acts through audio-video communication.
8. "Remotely presented" means the transmission of a quality image of a government-issued identification credential to an electronic notary public through communication technology for the purpose of enabling the electronic notary public to identify the person appearing before the electronic notary public and to perform a credential analysis.

### Authority to Perform Electronic Notarizations Using Audio-Video Communication

A notary public may perform an electronic notarial act for an electronic document by means of audio-video communication for a principal who is located:

- in the state where the notary is commissioned;
- outside of the state where the notary is commissioned but within the United States; or
- outside the United States if:
  - the act is not prohibited in the jurisdiction in which the principal is physically located at the time of the act.

A notary public who performs an electronic notarial act for a principal by means of audio-video communication shall be located within the state where the notary is commissioned at the time the electronic notarial act is performed. The notary public shall include a statement in the electronic notarial

certificate to indicate that the electronic notarial act was performed by means of audio-video communication. The statement may also be included in the electronic notary seal.

#### Requirements for Remote Electronic Notarization Systems

A remote electronic notarization system used to perform electronic notarial acts by means of audio-video communication shall:

- provide sufficient audio clarity and video resolution to enable the notary and the principal to see and speak to each other simultaneously through live, real time transmission; and
- include a means of authentication that reasonably ensures only the proper parties have access to the audio-video communication; and
- provide some manner of ensuring that the electronic record that is presented for electronic notarization is the same record electronically signed by the principal; and
- enable the notary public to verify the identity of the principal through multiple identity verification methods, which may include: completion of a dynamic knowledge-based authentication assessment; credential analysis of a remotely presented government-issued identification that contains the signature and a photograph of the principal; a valid public key certificate; or any other identity proofing method adopted by the commissioning official; and
- be capable of creating, storing, and accessing an electronic recording of the audio-video communication; and
- provide reasonable security measures to prevent unauthorized access to: the live transmission of the audio-video communication; a recording of the audio-video communication; the verification methods and credentials used to verify the identity of the principal; and the electronic documents presented for electronic notarization.

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in Washington, DC

EXPIRES: Winter 2023