What Businesses Need to Know About eNotarization

Technology, Trends & Webcams

NATIONAL NOTARY ASSOCIATION

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Introduction

After more than a decade of development, legal review and regulatory scrutiny, the process of performing notarial acts in an electronic environment has reached maturity. Governments, industries and the public have reached a high level of trust in the process, supported by its growing reliability and security.

The day-to-day use of electronic notarization (eNotarization) is increasing, too. In government, eNotarized affidavits are now being submitted in the courts. Law enforcement personnel use eNotarizations to sign criminal complaints. Registered lobbyists are using it before filing their annual reports online.

But the biggest trend is in the business sector, and particularly in the mortgage finance industry. In 2015, the Consumer Financial Protection Bureau (CFPB)[1] published a report concluding that electronic loan closings can benefit consumers significantly by making the process more efficient, less complex and more understandable. And in 2016, Fannie Mae, Freddie Mac and Quicken Loans[2] all announced their support of both eNotarization and webcam ("remote") notarization systems. The statement issued jointly by Fannie Mae and Freddie Mac[2] echoed the CFPB's conclusions and said the technology will improve "the assurance, authentication, security, and documentation of notarial acts."

Electronic and remote webcam notarization systems can transform your business processes by creating new efficiencies reliably and securely. Taking advantage of the benefits for your company or organization begins with understanding the different types of electronic notarization and the legal landscape.

[1] "Leveraging technology to empower mortgage consumers at closing" (August 5, 2015) available at http://www.consumerfinance.gov/data-research/research-reports/leveraging-technology-to-empower-mortgage-consumers-at-closing.
[2] Letter from Quicken Loans to the National Association of Secretaries of State Task Force on Remote Notarization, available at http://www.nass.org/component/docman/?task=doc_download&gid=1813&Itemid=821.
[3] Letter from Freddie Mac and Fannie Mae to the National Association of Secretaries of State Task Force on Remote Notarization, last viewed on October 4, 2016 at http://www.nass.org/component/docman/?task=doc_download&gid=1810&Itemid=821.

Key Terms

ELECTRONIC SIGNATURE

An electronic signature (eSignature) is the functional equivalent of a signature on a paper document. Like a traditional signature, an eSignature expresses a person's intent to be bound by what he or she is signing. eSignatures can be made in a number of different ways to signify the person's intent to sign the document.

ELECTRONIC NOTARIZATION

Electronic notarization (eNotarization) includes all of the elements of, and provides the same function as, a paper notarization except the document being notarized is digital and the Notary uses an eSignature. Depending upon state law, the Notary's seal may be placed on the electronic record as a graphic image, or the information from the seal may be added to the record. But all other elements of a traditional, paper notarization remain, including the requirement for the signer to physically appear before the Notary.

WEBCAM NOTARIZATION

In a webcam notarization, the person signing a document or electronic record appears before a Notary using audio-video technology. Depending on state law, the document can be paper or digital, but the signer and the Notary are in two different places, often across state or international borders. Since webcam notarizations alter the traditional requirement that the signer physically appear before the Notary, extra security measures are taken to establish a signer's identity, including the use of Knowledge-based Authentication (KBA) technology.

VIDEO DEMONSTRATION OF WEBCAM NOTARIZATION

SIGNiX created a video demonstration of a webcam notarization to illustrate the process step-by-step. Go to **Bitly.com/ WebcamDemo** to watch the video.

KNOWLEDGE-BASED AUTHENTICATION

Knowledge-based authentication (KBA) is a method of verifying a signer's identity for webcam notarizations under a person's state laws. KBA compiles and poses questions from an individual's life and credit history. The idea is to make the questions so specific that only the signer would know the answers. A certain number of questions must be answered correctly within a stated amount of time in order to pass.

ESSENTIAL ELEMENTS OF PAPER-BASED AND ELECTRONIC NOTARIZATION

Paper-based and electronic notarization incorporates the following elements, which are intended to deter fraud and protect consumers:

- The signer personally appears before the Notary;

- The Notary positively identifies the signer;

- The Notary screens the signer for willingness and awareness;

- The Notary creates a record of the notarization; and

- The Notary completes a notarial certificate to evidence the act.

Benefits of eNotarization

Virtually every industry that requires or relies on documents to be notarized can benefit from incorporating eNotarization. Mortgages, adoptions and legal filings often require notarization. Thus, the benefits of eNotarization are closely associated with the benefits of automating these larger transactions. eNotarization:

- Offers a convenient way to sign documents

- Provides a higher level of security than paper-based notarizations

- Creates new efficiencies in processes and systems

- Helps businesses "go green" by eliminating the need to print and store paper documents

- Decreases the time needed to complete notarization tasks

- Reduces errors such as omitted or illegible Notary seals

- Achieves measurable cost savings

Benefits of Webcam Notarization

In addition to the benefits noted above, webcam notarization:

- Allows documents to be notarized on demand anytime and anywhere

- Enables businesses to offer notarization services to clients from a central location

- Provides a more reliable way to verify the identity of signers using knowledge-based authentication

- Prevents forgeries by requiring the Notary to archive the audio-video recording of the entire notarization

COMPANIES OFFERING WEBCAM NOTARIZATION

Five companies are currently offering webcam eNotarization services under Virginia law and employing Virginia eNotaries. They are:

- **DocVerify** (DocVerify.com), Irvine, California

- **Notarize** (notarize.com), Alexandria, Virginia (service through mobile app)

- **NotaryCam** (notarycam.com), Alexandria, Virginia

- **Safedocs** (safedocs.com), Alamo, California

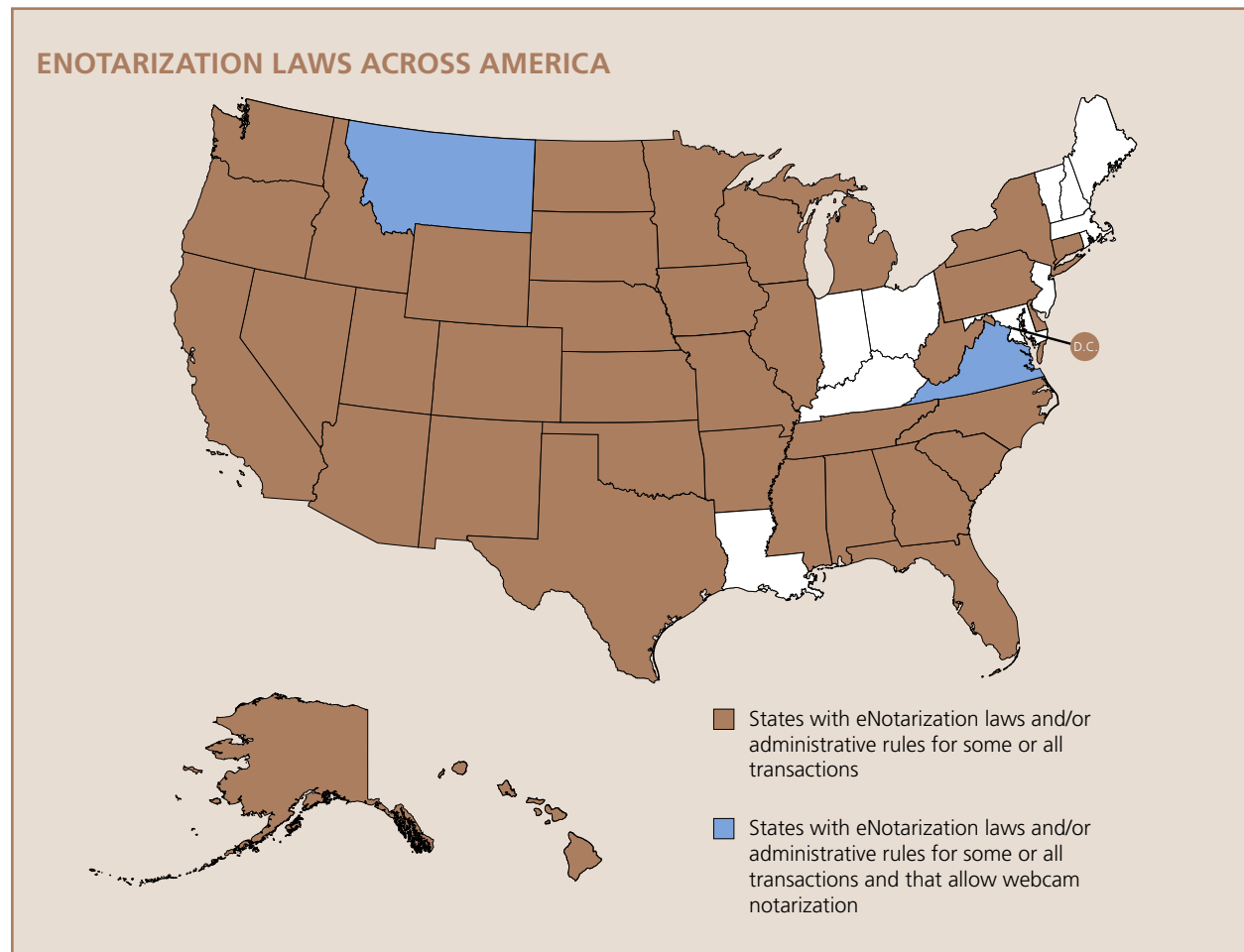- **SIGNiX** (signix.com), Chattanooga, Tennessee

Where Is It Legal?

ENOTARIZATION

All states — except Illinois, New York and Washington — made electronic transactions, signatures and notarizations legal by enacting the *Uniform Electronic Transactions Act* (UETA).

The Electronic Signatures in Global and National Commerce Act (E-SIGN) is a federal law that applies many of the same provisions as the UETA to interstate and national commerce.

In addition to the UETA and E-SIGN, some states have added their own laws regulating eNotarization. The map below shows the states that have done so. Many of these laws broadly apply to any transaction requiring notarization. Others narrowly apply to real property transactions.

ENOTARIZATION LAWS ACROSS AMERICA

■ States with eNotarization laws and/or administrative rules for some or all transactions

■ States with eNotarization laws and/or administrative rules for some or all transactions and that allow webcam notarization

REMOTE WEBCAM NOTARIZATION

Currently, Notaries in Virginia and Montana may perform webcam notarizations.

However, only under Virginia law may anyone in the country or world request an electronic Notary to perform a webcam eNotarization.

In Montana, signers must be residents of Montana and the transaction must meet specific criteria laid out in the law.

- In April 2016, the National Association of Secretaries of State (NASS) established a task force to examine the issues and policies surrounding webcam notarizations.

- In July 2016, the Uniform Law Commission (ULC) adopted an amendment to its *Revised Uniform Law on Notarial Acts* (RULONA) that authorizes webcam notarizations for individuals residing outside of the United States.

- In the fall of 2016, the NNA will publish its *Model Electronic Notarization Act* (MENA). The MENA can be enacted alongside a state or jurisdiction's existing Notary statutes or published as administrative rules to implement the RULONA. The MENA will include a chapter on audio-video communication (webcam eNotarization).

Challenges and Limitations

While there are numerous benefits to adopting eNotarization, there are still a few hurdles to overcome, including:

- **Adoption by the mortgage finance and settlement services industries.** The Introduction mentions the encouraging signs that one day soon consumers will sign their purchase and refinance loan papers electronically. Indeed, there have been pilot programs and pockets of adoption that demonstrate what is possible. However, to transition from pilots to production, all stakeholders in the industry — lenders, closing agents, settlement service professionals, Notaries, county recorders, government-sponsored entities and secondary investors — must be brought on board.

- **State regulatory frameworks** (see map on page 6). While the UETA authorizes Notaries to use electronic signatures in all but three states, many Notary regulating officials and policymakers still insist that specific laws regulating eNotarization first must be put in place.

- **Non-uniform standards.** The states that have supplemental statutes and rules regulating eNotarization (see map on page 6) have different standards for performing them. With states charting their own paths, eNotarization system vendors find it more difficult and costly to develop their platforms.

And, webcam notarization has its own challenges, namely:

- **Insistence on physical presence.** Many people in the Notary community will not trust notarizations performed without the signer in the physical presence of the Notary. It may take time for opinions and state laws to change.

- **Data breaches.** Some warn that the breaches of consumer personal information reported over the last few years could compromise knowledge-based authentications. They worry that private information could end up in the hands of impostors intending to commit forgeries.

- **Coercion and capacity.** Many in the Notary community do not believe a Notary can adequately determine that a signer is acting willingly and with full awareness of what he or she is signing without being in the same room.

- **Limited supply of Notaries.** Currently less than 200 Virginia Notaries out of an estimated population of 114,000 are authorized to perform webcam eNotarizations for signers anywhere in the world.

Conclusion

Any business or organization interested in creating efficiencies, cutting costs, eliminating errors and reducing risk should explore eNotarization as a solution. While certain challenges remain, societal acceptance of eNotarization has never been higher or more accessible. As eNotarization becomes more common and the technology improves, companies will be able to focus more on excellent customer service rather than processes and paperwork.

About the National Notary Association

Established in 1957, the National Notary Association (NNA®) is the leading authority on the American Notary office and is dedicated to educating, serving and advocating for the nation's 4.4 million Notaries. It published the *Model Notary Act* to help lawmakers enact effective legislation and created *The Notary Public Code of Professional Responsibility* — a standard for best practices and professional conduct. To learn more, visit **NationalNotary.org**.

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