

Remote Ink Signed Notarization:
*Temporary Accommodation or
Permanent Solution?*



NATIONAL
NOTARY
ASSOCIATION

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INTRODUCTION

In the early weeks of the coronavirus health crisis of 2020-2021 most industries and professions suffered severe disruption to their normal business operations and customer activity.

Notaries Public fared much better than most. Demand for notarizations spiked, but new social distancing norms made the typical arms-length, face-to-face encounter with a Notary unsafe. To mitigate this risk, many states temporarily authorized “remote ink-signed notarization” (RIN) that allowed the Notary and principal to meet using audiovisual communication technology and conduct a notarization on paper documents using ink pens and physical Notary seals.

There is no doubt remote ink signed notarization was uniquely suited to meet the needs of Notaries and users of notarial services during a once in a 100-year global pandemic. The question is whether it is a permanent solution for performing notarial acts once the public health emergency ends and life returns to normal.

WHAT IS REMOTE INK SIGNED NOTARIZATION?

Background. In December 2019, reports of a new infectious disease came out of Wuhan, China. On February 11, 2020, the World Health Organization gave this new disease its official name, COVID-19.¹

On March 11, 2020, the World Health Organization declared COVID-19 a pandemic. Two days later, a national emergency was declared in the United States. State and local health departments sprang into action. Broad stay-at-home orders were imposed, non-essential businesses shuttered, entertainment and professional sports halted, travel between states and outside the United States was curtailed, workers lost their jobs, and the U.S. stock market dropped over 10,000 points in the initial weeks of the crisis.

The pandemic could have decreased demand for the services of Notaries Public, but it did not. Patients sick with COVID-19 urgently needed to have medical powers of attorney and health care directives notarized. People scrambled to establish estate plans. Homeowners, taking advantage of interest rates lowered by the Federal Reserve to prop up a flailing economy, took out and closed mortgage loans in record numbers.

Faced with increased demand for notarial services, a rapidly spreading virus, and the need to keep people socially distant, Notaries resorted to performing notarizations at a safe social distance outdoors, in garages, on porches, through windows, and side by side in cars.

Not everyone wanted to obtain notarial services in this manner, and some were too sick to even try. As a result, many states issued temporary authorizations suspending

¹ See <https://twitter.com/DrTedros/status/1227297754499764230>.

the requirement for a signing party to physically appear before a Notary and allowing audiovisual communication tools such as Zoom, Microsoft Teams, and WebEx to be used instead. Since paper documents were signed and transmitted electronically between the principal and Notary or delivered back and forth through postal mail, this new form of notarization was named “remote ink signed notarization” (RIN) to describe how the parties appear before each other (“remote”) and sign documents (“ink signed”).²

RIN Basics. While individual state implementations vary, the fundamentals of a remote ink signed notarization are:

- The Notary and principal meet in real time using audiovisual communication technology (e.g., Zoom, GoToMeeting, Skype, FaceTime, WebEx, Meet, Teams).
- If not personally known to the Notary, the principal displays to the Notary on camera the front and back of an identification credential that meets state law requirements.
- The principal signs the paper document with a pen.
- The principal electronically transmits the originally signed paper document or mails it to the Notary.
- The Notary prints the transmitted document or receives the originally signed paper document in the mail, and completes, signs with a pen, and affixes an impression of the physical official seal on the certificate of notarial act.
- The Notary electronically transmits the notarized document or mails the originally signed and notarized paper document to the principal.

The chief benefit of RIN is that it protects all parties to the notarization from the risk of transmitting or being infected by the coronavirus. There are secondary benefits as well. Performing a RIN is convenient and saves time. No special software is required to sign the documents. With few exceptions, the Notary is not required to meet additional qualifications to perform a RIN other than being a commissioned Notary Public.

Remote online notarization. RIN was not entirely new. Before the pandemic began, twenty-two states³ had enacted permanent “remote online notarization” (RON) laws that were in varying stages of implementation. These enactments formed the basis for RIN. RON like RIN utilizes audiovisual communication technology for the Notary and principal to meet and satisfy the formalities of a notarization. While RIN produces the notarization exclusively on paper documents, RON, depending on the state, can utilize paper⁴ or electronic documents. RON typically is performed by using a technology solution that

² “Remote ink signed notarization” was coined by Fannie Mae in guidance issued in April 2020. See <https://singlefamily.fanniemae.com/media/22666/display> (last viewed on November 30, 2020).

³ Arizona, Florida, Idaho, Iowa, Indiana, Kentucky, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and Washington.

⁴ Section 14A(c)(2) of the Revised Uniform Law on Notarial Acts uses the term “record” on which a notarial act for a remotely located individual is performed. Under the Act, a record means “means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.”

combines audiovisual communication functionality with the capability to electronically sign and notarize electronic documents. In addition, RON includes enhanced and more secure methods for verifying the identity of the principal and rendering documents “tamper-evident.”⁵ Finally, RON requires the Notary to keep an audiovisual recording or both a recording and a Notary journal to evidence the notarization whereas some states with temporary RIN authorizations do not require Notaries to keep records.

TEMPORARY OR PERMANENT SOLUTION?

It is a testament to the enduring importance of Notaries Public and notarization that in response to the outbreak state governors and legislatures did not suspend outright laws mandating mortgages, deeds, powers of attorney, self-proving affidavits to last wills, and other documents to be notarized.⁶ They could have allowed these documents to be executed by alternative means, but then they would have lacked the foundational assurances and protections of identity verification, the official and impartial witnessing of the signature, and the presumption of genuineness accorded by the courts that are the hallmarks of the notarial act.

Thus policymakers, when faced with the staggering events of 2020 and the choices before them, made the right call in creating temporary accommodations to notarial procedure that are reflected in remote ink signed notarization authorizations. But is remote ink signed notarization needed once COVID-19 is no longer a public health emergency? Should these temporary notarization authorizations become permanent?⁷

There are five reasons remote ink signed notarization is not a viable permanent solution for how documents should be notarized when life returns to normal.

1. Qualifications. Since remote ink signed notarization authorizations were implemented quickly to meet an urgent need for notarizations during the pandemic, most states’ authorizations do not require the Notary to satisfy additional qualifications to perform these notarizations beyond those necessary to obtain a Notary Public commission. In most states, any duly commissioned Notary Public may perform RINs.⁸

⁵ “‘Tamper evident’ means that any change to a record shall provide evidence of the change” (MODEL ELECT. NOT. ACT § 2-19) (National Notary Association, 2017).

⁶ State legislatures did temporarily waive certain notarization requirements. For example, the Oklahoma Legislature enacted Senate Bill 210 that temporarily waived the requirement that absentee ballot envelopes submitted by voters in the 2020 general election must be signed and sworn to before a Notary.

⁷ Already one state thinks it is a good idea and has introduced legislation to make its governor’s temporary RIN executive order permanent. New York A 10497, seeking to codify Governor Cuomo’s Executive Order 202.7 in statute, was introduced in the New York State Assembly on May 22, 2020. That measure failed, but identical A 10569 was introduced on June 3, 2020 and is still alive as of the time of writing.

⁸ However, in Arkansas, the Notary must be a title agent licensed by Arkansas, supervised by either an attorney or a title agent licensed by Arkansas, or employed by a financial institution registered or insured with the Arkansas State Bank Department, Arkansas Securities Department or the National Credit Union Administrative. In Delaware, the Notary must be a Delaware attorney. In Massachusetts, with respect to the closing of a transaction involving a mortgage or conveyance of real estate, any will, nomination of guardian or conservator, caregiver authorization affidavit, trust, durable power of attorney, health care proxy, or authorization under the federal Health Insurance Portability and Accountability Act, only a Notary who is a Massachusetts attorney or a paralegal under the direct supervision of a Massachusetts attorney may perform a videoconference notarial act.

The policy of not requiring Notaries who perform remote ink signed notarizations to qualify was warranted as a stop-gap measure, but there are more weighty policy arguments for imposing qualifications to perform technology-based notarizations on a permanent basis. Commissioning and regulating officials need to know which Notaries are performing these notarizations within their borders to provide appropriate oversight. Reasonable Notary qualifications protect the public who access a Notary's services.

For these reasons, states that have enacted permanent RON laws have established certain minimum qualifications for those who perform these notarial acts. In many states, Notaries must notify the commissioning or regulating official of their intent to perform RONs and identify the technology they are using.⁹ In some states, the Notary must take an instructional course and examination to demonstrate an understanding of the laws governing the use of audiovisual communication technology to perform notarial acts.¹⁰ In others, the Notary must obtain a separate commission to perform RONs.¹¹

2. Identification. The means employed to verify the identity of document signers in a remote ink signed notarization are understandable as a temporal measure but inadequate as a permanent solution. In most states with RIN authorizations, a principal may simply display the front and back of an identification credential allowed by state law to the Notary on camera.

When a principal appears before a Notary for a paper-based notarization, the Notary can ask to handle and inspect the principal's written identification. Holding and examining an ID can reveal if the ID has been altered or if microprinting, holograms, raised lettering, and other security features establishing the genuineness of the ID are present.

In a remote ink signed notarization, the image of an identification credential presented to the Notary on camera alone is not sufficient to reveal tampering with the ID or depict the visual and tangible security features with sufficient clarity for the Notary to have confidence that the ID is genuine.

Remote online notarization requires "identity proofing,"¹² a more appropriate means to verify the identity of principals in the online environment. As many as three forms of identity proofing may be required. First, a principal must successfully pass a knowledge-based authentication quiz comprised of at least five questions based on the principal's unique life history that only the individual could be expected to know. Second, the electronic platform used to perform the RON will prompt the individual to show the front and back of their state-approved identification credential on camera. While this step, called "remote presentation," is conducted in a RIN, the third form of identity proofing in remote online notarization, known as "credential analysis," is not. The remote online

⁹ See, e.g., 57 PA.C.S. § 306.1(f)(1); N.D. CENT. CODE § 44-06.1-13.1.7.

¹⁰ See e.g., 8 CODE CO. REG. 1505-11 § 5.2.2; MONT. CODE ANN. 1-5-615(3)(C); NEV. REV. STAT. 240.1943.

¹¹ Tennessee and Texas are examples of states that require a separate commission to perform RONs.

¹² Identity proofing is defined as "a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources" (IOWA CODE 9B.14A, subsection c).

notarization platform captures a photograph of the identification credential and sends it off to a third-party service to determine in a matter of seconds whether the ID is genuine.

3. Documents. Remote ink signed notarization creates a potential chain of custody issue with exchanging documents electronically or through the mail. If the documents are electronically sent between the principal and Notary during the audiovisual communication session, it will be tedious at best for the parties to confirm they are working with the same document.¹³ If the document is delivered to the Notary through the mail after the audiovisual communication session has ended, the challenges are greater.¹⁴ Documents could be changed easily before or after and no one will ever know.

Both traditional and remote online notarization are superior in this regard. With a traditional paper notarization, the document is passed between the parties while they are at arms-length distance of each other, so the Notary will always know the principal signed or acknowledged the signature on the document before the Notary.

Remote online notarization addresses the chain of custody issue by presenting the electronic document to the principal and Notary within the remote online notarization technology solution while the audiovisual communication session takes place. Both the principal and Notary can observe each other electronically sign the document in real time in a manner comparable to traditional notarization. As an added protection, the remote online notarization solution uses technology to render the document “tamper evident.” By this any changes to the document can be seen and investigated later. This “tamper-evident” technology creates trust in the integrity of the notarized document.

4. Records. It is a significant oversight that some states with temporary authorizations for remote ink signed notarization do not require the Notary to keep records of the notarization¹⁵ when the evidentiary benefits of keeping records of notarial acts are so well established.¹⁶

Especially because of the unique circumstances, the Notary should create an entry in a Notary journal or record book chronicling the date and time of the remote ink signed notarization, the type of document and notarial act, the name and address of the principal, the identification relied on by the Notary to establish the identity of the principal, and the fee for the notarization. Nearly twenty U.S. jurisdictions require Notaries to keep journals for some or all paper-based notarial acts¹⁷ and virtually all states recommend the practice.

¹³ Some RIN authorizations involving multiple signers allow documents to be signed in counterparts (see, e.g., KS. EXEC. ORD. 20-20 and TN. EXEC. ORD. 26) which makes comparing documents executed by multiple parties particularly challenging.

¹⁴ The Massachusetts RIN model requires that if the document involves a mortgage or conveyance of title to real estate, the Notary and each principal must hold a second videoconference during which each principal verifies to the Notary that the document received by the Notary is the same document executed during the first conference.

¹⁵ AR EXEC. ORD. 20-12; DE ELEVENTH MOD. STATE EMER. DECL.; GA EXEC. ORD. 03.31.20.01; KS EXEC. ORD. 20-20; NM EXEC. ORD. 20-015; NY EXEC. ORD. 202.7.

¹⁶ See Peter J. Van Alstyne, *The Notary's Duty to Meticulously Maintain a Notary Journal*, 31 J. MARSHALL L. REV., at 779; Michael L. Closen, *Professor Closen's Notary Best Practices: Expert's Guide To Notarization Of Documents*, 238-247 (National Notary Association) (2018).

¹⁷ See *Unequal Protection Under the Law: All, Not Just Some, Notarial Acts Require the Protections of Notary Journals* (National Notary Association) for the jurisdictions requiring Notary journals. The paper may be found at <https://www.nationalnotary.org/file%20library/nna/knowledge%20center/special%20reports/unequal-protection-journal-laws-white-paper.pdf>.

It is telling that states without a journal requirement for traditional notarizations require or recommend it for remote ink signed notarizations.¹⁸

The Notary also should make a recording of the notarial act and archive the recording for a set period after the date of notarization. This is particularly the case for RIN because certain legal requirements are suspended, and in their place extraordinary procedures are authorized.

Most remote online notarization enactments typically require an audiovisual recording of the notarization to be kept and some states also prescribe the keeping of a Notary journal as well. Remote ink signed notarization authorizations would benefit from these protections.

5. Notarial Certificate. When documents involved in a remote ink signed notarization are transmitted or mailed to the Notary after the audiovisual communication session between the Notary and principal has concluded, the Notary must complete the certificate for the notarial act at a different time and date than when all other parts of the notarial act are performed.

Thus, remote ink signed notarization separates steps in a process that were never meant to be divided. Under the extraordinary circumstances of the coronavirus pandemic, RIN violates the established professional standard of care¹⁹ and the law in many states²⁰ requiring the Notary to complete the certificate of notarial act contemporaneously with the performance of the notarial act.

The certificate of notarial act is the evidence²¹ that *on a specified date* all facts related to the notarization were witnessed and corroborated by the Notary. These facts include:

- The notarization was conducted in a specified state and county with jurisdiction over the notarial act.
- The named parties appeared before and were identified by the Notary.
- The document was signed or acknowledged to have been signed, or the contents of the document sworn to or affirmed in the presence of the Notary.
- The Notary's signature and impression of the Notary's official seal were affixed.

¹⁸ See N.C. SEN. BILL 704 (CH. 2020-3). The Michigan Secretary of State and New York Department of State issued guidance that notaries should keep a journal when performing a RIN. Guidance documents may be found at: https://www.michigan.gov/documents/sos/Notary_Order_v2_687327_7.pdf and https://www.dos.ny.gov/licensing/notary/DOS_COVID19_RemoteNotaryGuidance.pdf.

¹⁹ See THE NOT. PUBLIC CODE OF PROF. RESP. (National Notary Association, 2020) Standard IV-A-3.

²⁰ See, e.g. COLO. REV. STAT. § 24-21-515(1)(a); ID. CODE § 51-115(1)(a); IND. CODE § 33-42-9-12(a)(1); KY. REV. STAT. ANN. § 423.360(1)(a); MD. CODE ANN. (STATE GOV'T) § 18-215(a)(2)(i); MINN. STAT. § 358.65, SUBD. 1(1); 57 PA. C.S. § 315 (a)(1)(i); VT. STAT. ANN. TIT. 26 § 5367(a)(1); WASH. REV. CODE ANN. § 42.45.130(1)(a); W.VA. CODE § §39-4-15(a)(1).

²¹ See REV. UNIF. LAW ON NOT. ACTS § 15(1): "A notarial act must be evidenced by a certificate." To date fifteen states and the District of Columbia have enacted this provision. In addition, seven states that enacted the Uniform Law on Notarial Acts, the predecessor to the RULONA, enacted a substantially similar provision.

If the Notary attests in a certificate of notarial act that some parts of a notarization were performed on a date when they were not, the veracity of the certificate is suspect, and the notarial act could be subject to legal challenge.

Both a traditional and remote online notarial act allow the Notary to complete the certificate of notarial act in full view of the parties when they are together and when all other parts of the notarial act are completed.

CONCLUSION

The value of remote ink signed notarization as a temporary accommodation cannot be overstated. It allowed many people to have documents notarized at a time when it was unsafe to physically meet with a Notary.

Remote ink signed notarization has been compared to firefighters responding to a home engulfed in flames. The extreme measures of RIN were necessary to ensure that notarial services could be provided safely and remain available during a public health emergency triggered by a raging coronavirus. Desperate times call for desperate measures.

But a return to normal times calls for a return to normal measures. The suspensions of law that made RIN defensible during the COVID-19 outbreak make it untenable as a permanent solution for performing notarial acts. Traditional paper and electronic notarial acts performed in the physical presence of the Notary and remote online notarizations are the preferred permanent solutions for imparting the essential assurances and protections of the notarial act once the COVID-19 pandemic has ended and state public health emergencies have been rescinded.

ABOUT THE NATIONAL NOTARY ASSOCIATION

Established in 1957, the National Notary Association (NNA) is the leading professional authority on the American Notary office and is dedicated to educating, serving and advocating for the nation's 4.4 million Notaries. The NNA published the *Model Notary Act* and the *Model Electronic Notarization 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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