The Enduring Benefits of Interstate Recognition of Notarial Act Laws.

NATIONAL NOTARY ASSOCIATION

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INTRODUCTION

In the United States of America, no principle is more important to the acceptance of documentary transactions among the states than their reciprocating official recognition of each other's acts of attestation, particularly their notarial acts.

Interstate recognition laws enacted by the states are the primary vehicle through which notarized documents are recognized across state borders.

This paper discusses three fundamental principles of interstate recognition of notarial act laws to show why they have worked so well in the past and why we can depend upon them to facilitate cross-state acceptance of notarial acts well into the future. These principles are:

(1) Interstate recognition laws look to the law of the jurisdiction where a notarial act is performed to determine its validity.

(2) Interstate recognition laws allow domestic commerce to proliferate by creating confidence that records with notarized signatures will be received into other U.S. jurisdictions immediately and efficiently.

(3) Interstate recognition laws have proven over many decades that they can accommodate new technologies that substantively change state Notary laws regulating notarial acts.

INTERSTATE RECOGNITION OF NOTARIZATION LAWS

There are two types of laws that have been enacted to facilitate cross-border recognition of notarial acts: "uniform" statutes modeled after one of the Uniform Law Commission's acts, including the Revised Uniform Law on Notarial Acts of 2010 and its predecessors, and "non-uniform" statutes.

Starting first with the uniform acts, the Uniform Acknowledgments Act of 1892 was the ULC's first such act.[1] It accorded acknowledgments and proofs made[2] in another state before any officer of that state, territory or district, authorized by its laws to take the proof and acknowledgment of deeds the same legal standing as those made within the state before its own officers provided that: (a) the other state's notarial officer completed a certificate for the acknowledgment or proof; and (b) an additional certificate[3] signed by a designated official[4] that authenticated the authority of the notarial officer to perform the acknowledgment or proof, was attached to the certificate of the notarial act.

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[1] Iowa, Louisiana, Massachusetts, Michigan, and Tennessee originally enacted the Act. *See Rumph v. Lester Land Co.,* 205 Ark. 1147, 172 S.W.2d 916, 1943 Ark. LEXIS 294 (Ark. 1943) at 1150. Today, Louisiana and Massachusetts remain the only states with the law in force. Hawaii's recognition of acknowledgments provision (*see* HAW. REV. STAT. § 502-45), first enacted in 1909, resembles the UAA of 1892 provision as well.

[2] An acknowledgment or proof is "made" by the individual acknowledging or proving the signature; an acknowledgment or proof is "taken" by an officer authorized to take acknowledgments and proofs.

[3] *See* Section 4. Today, Massachusetts requires this additional certificate of authority for notarial officers other than Notaries Public, justices of the peace, magistrates, or commissioners of deeds appointed by Massachusetts (MASS. GEN. LAWS Ch. 183 § 30(b)).

[4] Section 4 required the secretary of state or a clerk of a court of record of the state, territory, or district in the county in which the notarial officer resides or in which he or she took the acknowledgment or proof was required to sign the certificate under the seal of the state or court.

The Uniform Acknowledgment Act (UAA) of 1939 (revised 1960) broadened the 1892 Act.[5] Most importantly, Section 10 stated that an acknowledgment taken by a notarial officer of another state *in compliance with the manner and form prescribed by the laws of the place of its execution* would enjoy the same effect as an acknowledgment taken in compliance with its own laws (emphasis added).[6] The 1939 UAA also required the certificate of authority required by the 1892 UAA.[7]

The Uniform Recognition of Acknowledgments Act (URAA) was adopted by the ULC in 1968.[8] The URAA made three substantive changes. First, it made the Act applicable to "notarial acts"[9] and not just narrowly to acknowledgments as the title of the Act might suggest. Second, it clarified that if any notarial officer listed in Section 1, paragraphs 1-4,[10] performed the notarial act, the act could be used in the receiving state as if performed by a Notary Public of the receiving state without the additional certificate of authority required by the UAA. Third, it provided rules for the acceptance of certificates of acknowledgment by any of the notarial officers listed in Section 1 (including Notaries Public of other states).

In 1982, the ULC adopted the Uniform Law on Notarial Acts (ULONA).[11] The ULONA simplified the URAA's interstate recognition provision without substantively changing its meaning.[12] Further, it clarified that the signature and title of a notarial officer conclusively established the authority of the officer to perform the notarial act.

In 2010, the ULC adopted the Revised Uniform Law on Notarial Acts (RULONA).[13] While it is the most expansive of the ULC uniform notarial acts, its interstate recognition provision did not substantively change from the ULONA.

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[5] The UAA of 1939/1960 is the law in Arkansas, Connecticut, Pennsylvania, and South Dakota. Pennsylvania's UAA exists alongside its RULONA enactment. *See* Note 13.

[6] The acknowledgment certificate had to contain the seal of the notarizing officer and the additional certificate authenticating the authority of the officer to perform the notarial act introduced in the 1892 Act.

[7] *See* CONN. GEN. STAT. ANN. § 1-36.

[8] The URAA is the law in Alaska, Arizona (until June 30, 2022), Connecticut, Illinois, Kentucky, Maine, Nebraska, Ohio, South Carolina, and Virginia. In Kentucky, the RULONA interstate recognition provision exists alongside KRS 423.110, the URAA recognition provision.

[9] "Notarial acts" are "acts which the laws and regulations of this State authorize notaries public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents" (Section 1). "Rather than preparing another 'minor amendment' which wastes time of state legislatures, it is proposed in this draft that there be a major independent act concerning recognition in the enacting state of acknowledgments and other notarial acts performed elsewhere for use in the enacting state" (Prefatory Note).

[10] These include a Notary Public, judge, clerk or deputy clerk of any court of record in the place where the notarial act is performed; a foreign service officer of the U.S. and person authorized under U.S. law or regulation of the U.S. Department of State; a commissioned officer in active service of the Armed Forces of the U.S. and a person authorized under regulation of the Armed Forces (merchant seaman, member of the Armed Forces of the U.S., any person serving with or accompanying the Armed Forces of the U.S.).

[11] Delaware, Kansas (until January 1, 2022), Nevada, New Hampshire, New Mexico (until January 1, 2022), and Oklahoma operate under the ULONA.

[12] *See* UNIF. LAW ON NOT. ACTS, Section 4(c).

[13] The following jurisdictions have enacted the RULONA: Colorado, District of Columbia, Idaho, Indiana, Iowa, Kentucky, Maryland, Minnesota, Mississippi, Montana, North Dakota, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. Michigan enacted the RULONA interstate recognition provision in 2018. In late fall 2021, the RULONA will take effect in New Jersey, and 2022, in Kansas, New Mexico, and Arizona.

Turning to the states with non-uniform interstate recognition statutes,[14] all, without limitation, recognize acknowledgments made before a Notary Public or notarial officer of another U.S. jurisdiction as having the same legal effect as if performed by a Notary Public or notarial officer of the state. Some will recognize an acknowledgment, proof, or notarial act performed in compliance with the laws of the jurisdiction where the act was performed.[15] Thus, these "non-uniform" statutes reflect the core tenets of the uniform statutes.

VALIDITY OF THE NOTARIAL ACT

States have undisputed authority to qualify applicants for a Notary Public commission and regulate the notarial acts performed within, but not outside, their borders. This may be seen in the widely dissimilar qualifications for obtaining a Notary commission across all fifty U.S. states and the District of Columbia.

Louisiana is one example. It has an extensive commissioning process that for nonattorneys requires passing a pre-assessment examination and a rigorous statewide Notary examination and completing additional post-examination filing requirements. Louisiana empowers its Notaries to execute "authentic acts," a notarial power no other state authorizes its Notaries to perform.[16]

It is therefore significant that states have consistently recognized notarial acts from other states with markedly different commissioning qualifications. In a 1912 North Carolina case,[17] a deed was contested on the sole ground that the Notary was a woman. At the time, only six states had granted women the full right of suffrage with the right to hold office, including being a Notary. North Carolina was not one of them. Nevertheless, the court accepted the validity of the notarization performed by the female Texas Notary.[18] Similarly, an Arkansas case from around the same time recognized a notarization performed by an Oklahoma Notary who was thought to be a woman.[19]

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[14] Alabama, California, Florida, Georgia, Hawaii, Missouri, New Jersey, New York, North Carolina, Rhode Island, Tennessee, and Texas. Effective October 20, 2021, New Jersey will have both a uniform statute (RULONA) and non-uniform statute governing interstate recognition.

[15] ALA. CODE § 35-4-26(b); CAL. CIV. CODE § 1189(b), HAW. REV. STAT. § 502-45; N.C. GEN. STAT. § 10B-20(f); and R.I. GEN. LAWS § 34-12-1.

New York law embodies a unique version of the standard rule: It requires out-of-state notarial acts, under certain circumstances, to be accompanied by an attorney's certificate that the acts comply with the laws of the Notary's state. *See* N.Y. REAL PROP. LAW §§ 299, 299a, 309b, and N.Y. CPLR Rule 2309. *See also Midfirst Bank v. Agho*, 991 N.Y.S.2d 623 (N.Y. App. Div. 2014), opining that out-of-state notarizations using standard the uniform all-purpose acknowledgment form satisfy New York's certificate of conformity requirement).

[16] Alabama and Florida grant civil law Notary or international Notary commissions to qualified attorneys that authorize them to perform authentic acts.

[17] *Nicholson et al. v. Eureka Lumber Co*., 75 S.E. 730 (1912).

[18] Chief Justice Walter Clark, who recused himself from the case, on the collateral question as to whether the certificate of a Notary Public in Texas to a legal instrument is valid in North Carolina, stated that "when a certificate of a notary public is sent to this state from another under a notarial seal, our courts cannot go back of it to inquire into the qualifications of the officer."

[19] *Terry v. Klein*, 133 Ark. 366, 201 S.W. 801 (1918).

Two recent examples illustrate the principle that states have undisputed authority to regulate notarial acts within, but not outside its borders. While in 2013 the state of Iowa enacted a provision requiring notarial acts from other U.S. jurisdictions to be performed in the physical presence of the Notary or notarial officer without using video, optical, or technology with similar capabilities as a condition to being recognized in Iowa,[20] this law was repealed when Iowa enacted its remote notarization provisions in 2019.[21]

The second example was in Indiana. Public Law 59-2018 enacted remote notarization in Indiana and prohibited[22] any individual from performing a remote notarial act under any of Indiana's recognition of notarial acts sections[23] unless the individual was commissioned as a Notary Public and registered to perform remote notarizations by the Indiana Secretary of State. The individual also had to comply with Indiana law when performing the remote notarization and ensure the remote notarial act complied with the law as well. As was the case in Iowa, the law was repealed. Numerous voices, including the National Notary Association, pointed out that the Indiana Secretary of State had neither the authority to commission and register Notaries and notarial officers of other jurisdictions nor regulate how notarial acts were performed outside its borders.[24]

FACILITATING DOMESTIC COMMERCE

Documents with notarized signatures travel far and wide within the United States today. Consider the following scenarios:

- A witness to a friend's last will, who lives out of state, is asked by his friend to sign an affidavit before a Notary to make the will "self-proving."
- An energy company must obtain oil and gas lease agreements that are acknowledged before a Notary by mineral rights owners residing throughout the United States.
- A spouse must sign a mortgage to facilitate the closing of a residential refinance transaction while on business out of state. The closing agent for the transaction secures the services of a Notary where the spouse is visiting.
- A mortgage lender processes mortgage satisfactions and lien releases from a centralized office. An executive acknowledges her signatures on the documents before a Notary-employee so they may be recorded in the 3,600 land title offices in the United States.

[20] *See* IOWA CODE ANN. § 9B.3(10) and 9B.6 (2013).

[21] Chapter 44 of the Acts of the General Assembly of Iowa, 2019. *See* §§ 1, 5, and 6.

[22] *See* IND. CODE ANN. § 33-42-17-12 (2019).

[23] *See* IND. CODE ANN. §§ 33-42-9-8, 33-42-9-9, 33-42-9-10, and IC 33-42-9-11.

[24] *See* Public Law 185-2021, § 62, effective April 29, 2021.

These scenarios represent the countless documents executed by businesses and individuals every single day. Each depends on the notarial act performed in one jurisdiction being recognized in another. Interstate recognition laws support domestic commerce by creating confidence that documents can be freely exchanged across state borders efficiently and expeditiously.

Any limitation to the recognition of notarized documents across state borders — such as the former Iowa and Indiana provisions, and recent failed Georgia legislative bills[25] — will have the opposite effect and make it more difficult for consumers to access notarial services.

The formalities of appearing before a Notary always have added necessary "friction" to a transaction, as signing parties must present proof of their identities, acknowledge their signatures, and in some states sign and even leave a thumbprint in a journal. This "friction" is needed to impart trust to the notarial act.

Another essential element of this trust is the relying parties' confidence that a notarial act performed in one state will be recognized in another. This confidence is foundational to the enduring relevance of the U.S. Notary Public office. Novel interstate recognition ideas that needlessly make the process of notarization even more difficult will leave the public questioning the value of signing documents before a Notary at all. The important benefits of the notarial act — verification of the signing parties' identities, assurance of the authenticity of the signatures, and conferring of prima facie genuineness to the certificate of the notarial act by the courts — could be lost and domestic commerce will suffer the consequences.[26]

PAST, PRESENT AND FUTURE

The legislative history shows that many interstate recognition laws have remained unchanged for decades.[27] This longevity is impressive given the advances in technology and substantive change in laws regulating Notaries over the same period. In the last twenty-five years alone, the statutes in approximately half of the U.S. states and the District of Columbia have undergone major revisions or have been completely replaced. These enactments created new standards by which notarial acts were to be performed and provided ample opportunity for states to modify their interstate recognition laws, but they did not. Three examples illustrate this point.

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[25] The state of Georgia proposed legislation in 2015 and 2017 that would have recognized notarial acts from other jurisdictions only if they had substantially similar laws as Georgia's. Had this legislation been enacted, it would have resulted, no doubt, in varying constructions of "substantially similar," creating confusion and uncertainty. Parties transacting or relying on a document notarized out of state could not know for sure where in the state of Georgia their document would be recognized, if at all.

[26] "Essential to the efficient functioning of domestic ... commerce is the interstate ... recognition of notarial acts. The recipients of documents passing from state to state ... must have some degree of confidence in their trustworthiness, or else commerce would falter. Historically, the principal source of assurance of authenticity of the signatures on documents has been the notary public" (Closen, *The Public Official Role of the Notary*, supra at 694).

[27] For example, *see* LA. REV. STAT. ANN. § 35:6; MASS. GEN. LAWS ANN. ch. 183, § 30(b); and MICH. COMP. LAWS § 565.262 and § 565.265.

Notary seals. At or around the time when the Uniform Law Commission adopted the Uniform Acknowledgments Act in 1892, Notary seals were impressed upon wax that was first pooled upon the document or applied to the document after being impressed.[28] In time wax seal impressions gave way to metal seal embossers, which in turn were replaced or supplemented by rubber stamp seals. Since 1991, several states ceased allowing Notaries to use a seal embosser and required them to use a rubber stamp instead. In 1995, one state clarified that a Notary's use of a "mechanical stamp" — which until that time meant a seal embosser — could include an imprint made by computer or other technology.[29] In 2001, another state authorized a Notary seal impression to be affixed by an adhesive label.[30] In more recent years, several states clarified in their laws that a physical image of a Notary seal was not required on an electronic record[31] or that the seal impression could be created electronically.[32]

Despite these numerous changes in how Notary seals were impressed upon documents, states deemed existing interstate recognition laws sufficient to enable receiving agencies to recognize the certificates of Notaries who authenticated their official acts with seal impressions in these various forms.

Identification documents. Until the 1980s, state laws did not authorize Notaries to identify signers with ID cards. This changed with the California case of *Allstate Savings & Loan Assn. v. Lotito*.[33] The Notary in the case took the grantor's acknowledgment of a deed that later proved to be a forgery by using an ID card to identify the grantor. The court, citing the statute which since 1872 had required a Notary either to personally know the individual who presented for notarization or know a credible witness who could swear to the identity of the individual, found the Notary negligent for improperly identifying the grantor. On disposition of the trial on appeal, the Governor of California signed emergency legislation explicitly permitting specified identification documents to be presented to a Notary.[34] Many other states since have followed suit and yet, changes allowing Notaries to use new means of identification in our increasingly mobile society did not necessitate or warrant corresponding changes to interstate recognition laws.

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[28] "Judicial notice is taken of the seal of a notary public, and such seal, impressed upon the paper or the wax thereunto attached, entitles his certificate of protest to full faith and credit" (*Pierce v. Indseth,* 106 U.S. 546 (1883)).

[29] Chapter 137 of the Statutes of Nevada, Sixty-Eighth Session, 1995 (AB 280), Section 19.

[30] Chapter 176 of the Acts of 2001 (Iowa), effective January 1, 2002. This provision was subsequently repealed by Chapter 105 of the Acts of 2012, effective January 1, 2013.

[31] *See*, *e.g.*, FLA. STAT. ANN. § 117.021.

[32] *See* ARK. CODE. ANN. § 21-14-301(5).

[33] *Allstate Savings & Loan Assn. v. Lotito,* 116 Cal.App.3d 998 (1981) 172 Cal.Rptr. 535.

[34] Statutes of 1982, Chapter 197, Section 1, effective May 12, 1982.

Electronic signatures and remote online notarization. Finally, in 2010 when the ULC adopted the Revised Uniform Law on Notarial Acts, it had an opportunity to make explicit in the RULONA's interstate recognition provision that records signed with electronic signatures would be recognized and accepted across state borders. It had another opportunity in 2016, 2018, and 2021 when it adopted amendments to the RULONA allowing signers to appear before a Notary using communication technology. The ULC, however, let its existing interstate recognition framework stand since it ably provided for recognition and acceptance of out-of-state notarial acts regardless of the changes or differences in technology in performing the notarial act.

CONCLUSION

Few recent marketing slogans are more well-known than "It Just Works,"[35] a phrase made popular by a leading technology company that claimed a consumer could purchase the company's product, turn it on, and it would "just work" with little effort required of the consumer.

"It Just Works" aptly describes state interstate recognition of notarial act laws that allow documents bearing the signature and seal of a Notary Public to cross state borders and to be accepted in other U.S. jurisdictions every day, requiring little effort of the parties transacting or relying on the documents. These laws work so well because the validity of a notarial act, the *sine qua non* for recognition across state borders, is determined by the jurisdiction where the act is performed and not where the document is received. Consequently, traditional interstate recognition laws facilitate domestic commerce by allowing the free exchange of documents across jurisdictions of the United States every single day. Of the current and proposed alternatives for facilitating interstate recognition of notarizations in the future — those involving electronic records as well as the use of audio-visual communication — traditional interstate recognition laws alone hold the best promise because they have demonstrated over many decades that they can accommodate new technologies and changes to Notary laws while retaining the important benefits and protections of the notarial act.

[35] "It Just Works" was used by Apple Inc. CEO Steve Jobs to describe Apple products during his keynote address at the 2011 Apple Worldwide Developers Conference.

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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