

The Enduring Benefits of Interstate Recognition of Notarial Act Laws

A Position Statement from
the 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.

Since 1892, traditional interstate recognition laws enacted by the states have facilitated the cross-border recognition of notarized documents. However, recent developments in electronic communications technology that have expanded the capabilities of Notaries have caused disagreement about so-called "remote notarizations" and whether traditional interstate recognition laws are adequate to recognize these notarizations originating from other states.

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

- (1) Traditional interstate recognition laws look to the law of the jurisdiction where a notarial act is performed to determine its validity.
- (2) Traditional 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) Traditional interstate recognition laws have proven over many decades that they can accommodate new technologies that substantively change state Notary laws regulating notarial acts.

WHAT IS REMOTE NOTARIZATION?

In 2011, the Governor of Virginia approved HB 2318 and SB 827 as Chapters 731 and 834, respectively, of the Acts of the General Assembly of the Commonwealth of Virginia. The new laws permitted Notaries who were qualified and registered to perform electronic notarial acts to utilize audio-video communication technology in lieu of a document signer physically appearing before the Notary.

In the aftermath of these enactments, several states issued consumer alerts on their websites warning Notaries and the public that signers must appear in person before a Notary in order to have their signatures lawfully notarized.¹

¹ *Oregon, Ohio Declare Webcam Notarizations Unacceptable*, NOTARY BULLETIN (Nat'l Notary Ass'n August 3, 2011).

The state of Iowa issued such a warning on April 29, 2011, but it additionally revised its Notary statutes to prohibit document signers from appearing remotely before an Iowa notarial officer. In enacting the Revised Uniform Law on Notarial Acts (RULONA) in 2013², Iowa defined “personal appearance” as a *physical* appearance before an Iowa notarial officer and explicitly excluded any appearance that required the use of video, optical, or technology with similar capabilities.³

Although Iowa was not the first to specifically clarify in statute that a *physical* appearance is required for notarial acts performed within the state,⁴ it took the unprecedented step of applying the same requirement to notarial acts performed outside of the state as a qualification for acceptance in Iowa.⁵

Since 2013, no other state has enacted a similar provision; however, one state has tried. The state of Georgia’s RULONA introductions in 2015 and 2017 would require other jurisdictions to have substantially similar laws as Georgia’s for a notarial act performed in those jurisdictions to be recognized in Georgia.⁶

Early in the 2017 legislative session, no fewer than twelve states already had considered bills to authorize remote notarizations and two states had enacted them.⁷ With the prospect of additional enactments likely in the future, some stakeholders have begun to assert that current interstate recognition statutes are outmoded. They argue that remote notarizations are so fundamentally different than notarizations performed in the physical presence of a Notary that new laws are required to explicitly recognize these acts.

² Chapter 105 of the Acts of the General Assembly of Iowa, 2013.

³ IOWA CODE ANN. § 9B.3(10).

⁴ Prior to Virginia enacting its law allowing audio-video communication technology to satisfy the personal appearance requirement, the terms “personally appears,” “present” and “presence” used in state Notary statutes always meant a *physical* appearance, even if the word “physical” was not used. Colorado, however, was the first to specify in statute that an “appearance” before a Notary must be physical. See COLO. REV. STAT. § 12-55-110(4), which was effective January 1, 1999.

⁵ IOWA CODE ANN. § 9B.11(4).

⁶ Georgia House Bill 120 of 2017, Section 45-17-10(a) and Georgia HB 381 of 2015, Section 45-17-10(a).

⁷ Colorado, Indiana, Kentucky, Maryland, Minnesota, Missouri, Nebraska, Nevada, Ohio, Oklahoma, Pennsylvania, and Texas. Nevada AB 413 and Texas HB 1217 were enacted and take effect July 1, 2018.

INTERSTATE RECOGNITION OF NOTARIZATION LAWS

To many, the Full Faith and Credit Clause of Article IV, Section 1, of the United States Constitution requires the states to recognize the notarial acts of other jurisdictions apart from state law.⁸ The clause reads:

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

The absence of “notarial acts” in the clause explains why interstate recognition laws exist. States enacted these laws to explicitly confirm that they would recognize notarial acts from other jurisdictions. In addition, most people would not instinctively look to the U.S. Constitution to provide the legal basis for acceptance of notarial acts across state lines. They would more likely check state law. Finally, by placing an interstate recognition provision in the Notary chapter of state law, Notaries reading the law would better understand the cross-border implications of the notarial acts they perform.

There are two types of interstate recognition laws that have been enacted over the last one hundred and twenty-five years: “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.

The Uniform Acknowledgments Act of 1892 was the ULC’s first uniform notarial act. It accorded acknowledgments and proofs taken in another state the same legal standing as those taken within the state by its own officers provided that: (a) the other state’s notarial officer completed a certificate for the acknowledgment or proof; and (b) an additional certificate⁹ signed by a designated official¹⁰ that authenticated the authority of the notarial officer to perform the acknowledgment or proof, was attached to the certificate of the notarial act. Currently, two states have versions of this law on its books.¹¹

⁸ The scope of this paper is limited to a discussion of interstate recognition laws. The National Notary Association itself argued the merits of Full Faith and Credit in an amicus brief to the Michigan Supreme Court in a recent case. See *Amicus Curiae Brief of the National Notary Association in Support of Plaintiffs-Appellants’ Cross-Application for Leave to Appeal*, at 6, *Apsey v. Mem’l Hosp.*, 477 Mich. 120, 730 N.W.2d 695, 2007 Mich. LEXIS 952 (Mich. 2007).

⁹ 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 § 30(b)).

¹⁰ 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 to sign the certificate under the seal of the state or court.

¹¹ 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.

The Uniform Acknowledgment Act (UAA) of 1939 (revised 1960) broadened the 1892 Act. 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).¹² The 1939 UAA also required the certificate of authority required by the 1892 UAA.¹³ The UAA is law in five states today.¹⁴

The Uniform Recognition of Acknowledgments Act (URAA), currently the law in twelve states,¹⁵ was adopted by the ULC in 1968. The URAA made three substantive changes. First, it made the Act applicable to all notarial acts 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 1-4,¹⁶ 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). The ULONA simplified the URAA's interstate recognition provision without substantively changing its meaning.¹⁷ Further, it clarified that the signature and title of a notarial officer conclusively established the authority of the officer to perform the notarial act. Today, ten states and the District of Columbia¹⁸ operate under the ULONA's interstate recognition statute.

In 2010, the ULC adopted the Revised Uniform Law on Notarial Acts (RULONA) in part to address the emerging use of electronic signatures and records. While it is the most expansive of the ULC uniform notarial acts, its interstate recognition provision did not substantively change from the ULONA.

¹² 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.

¹³ See CONN. GEN. STAT. ANN. § 1-36.

¹⁴ Arkansas, Connecticut, Maryland, Pennsylvania, and South Dakota.

¹⁵ Alaska, Arizona, Colorado, Connecticut, Illinois, Kentucky, Maine, Michigan, Nebraska, Ohio, South Carolina, and Virginia. Effective July 1, 2018, the Revised Uniform Law on Notarial Acts will take effect in Colorado and the predecessor URAA will be repealed.

¹⁶ 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., and any person serving with or accompanying the Armed Forces of the U.S.).

¹⁷ See UNIF. LAW ON NOT. ACTS, Section 4(c).

¹⁸ Delaware, District of Columbia, Kansas, Minnesota, Nevada, New Hampshire, New Mexico, Oklahoma, Washington, Wisconsin and Wyoming. Effective July 1, 2018, the Revised Uniform Law on Notarial Acts will take effect in Washington and the predecessor ULONA will be repealed.

Currently, nine states¹⁹ have enacted the RULONA. Iowa's enactment includes the non-uniform version of the interstate recognition provision which was discussed earlier.

In all, thirty-six states have one or more uniform law interstate recognition provisions in force today. In the fifteen states that have enacted non-uniform interstate recognition statutes,²⁰ 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 also have laws stating that a notarial act will be recognized if performed in compliance with the laws of the jurisdiction where the act was performed.²¹ 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 commission and regulate the notarial acts performed by Notaries within its 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 also has a "provisional" Notary commission with different qualifications and more limited powers for individuals who perform notarial acts strictly in the course of employment. Louisiana empowers its Notaries to execute "authentic acts," a notarial power no other state authorizes its Notaries to perform.²²

¹⁹ The RULONA is in effect in Iowa, Montana, North Dakota, Oregon, and West Virginia. Effective October 26, 2017, the RULONA will take effect in Pennsylvania. Effective July 1, 2017, the RULONA will take effect in Idaho. Effective July 1, 2018, it will take effect in Colorado and Washington.

²⁰ Alabama, California, Florida, Georgia, Hawaii, Indiana, Mississippi, Missouri, New Jersey, New York, North Carolina, Rhode Island, Tennessee, Texas and Vermont.

²¹ ALA. CODE § 35-4-26; CAL. CIV. CODE § 1189(B), HAW. REV. STAT. § 502-45; N.C. GEN. STAT. § 10B-20(F); R.I. GEN. LAWS § 34-12-1; AND VT. STAT. ANN. TIT. 27 § 379.

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).

²² Alabama and Florida grant civil law Notary or international Notary commissions to qualified attorneys that authorize them to perform authentic acts.

It is therefore significant that states have consistently chosen to recognize notarial acts from other states with markedly different commissioning qualifications. In a 1912 North Carolina case,²³ 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, stating 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...” Similarly, an Arkansas case from around the same time recognized a notarization performed by an Oklahoma Notary who was thought to be a woman.²⁴

These examples demonstrate the efficacy of long-standing interstate recognition statutes that look to the law of the jurisdiction where a notarial act is performed to determine what constitutes a valid notarial act.

These same laws today will recognize Virginia remote electronic notarizations, since they are performed by Notaries commissioned by the Commonwealth of Virginia and are valid under Virginia law.

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 now 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 emergency 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.

²³ *Nicholson et al. v. Eureka Lumber Co.*, 75 S.E. 730 (1912).

²⁴ *Terry v. Klein*, 133 Ark. 366, 201 S.W. 801 (1918).

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. Traditional interstate recognition laws support domestic commerce by creating confidence that documents can be freely exchanged across state borders efficiently and expeditiously.

Conversely, the novel requirements for interstate recognition enacted in Iowa and proposed in Georgia will hinder interstate commerce by creating uncertainty, causing delays, and increasing costs.

First, the Iowa and Georgia provisions will create uncertainty. Parties transacting or relying on a document will not know for sure where in the state their document will be recognized, if at all. In Georgia, as a condition precedent to recognition, document examiners would be required to judge whether another state's laws are "substantially similar" to its own. It is not at all clear what this means and there is no single litmus test. Examiners would be left to apply subjective and disparate standards. As a result, a document recognized in certain parts of the state may not be accepted in others.

Second, these provisions will cause delays that will result from document examiners scrutinizing notarial acts in ways that are unnecessary under existing interstate recognition laws. When a document is inevitably rejected, "correcting" the notarial act so that it may be recognized upon resubmission will cause further delays.

Third, uncertainty and delays mean that documents requiring a notarial act will come at higher costs. Consider, for example, a couple living in Alabama and adopting a child in Georgia. Upon discovering that Alabama's Notary laws are not substantially similar to Georgia's, the couple contemplates traveling to a Notary in a nearby state. But will the laws of State A or B pass muster with Georgia? Given the importance of finalizing the adoption, the couple may pay legal fees for an attorney to provide an opinion of which state to choose.

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 leave a thumbprint in a journal or other notarial record memorializing the notarization. This "friction" is needed to impart trust to the document.

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. Interstate recognition laws 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.²⁵

PAST, PRESENT AND FUTURE

The legislative history shows that most interstate recognition laws have remained unchanged for decades.²⁶ 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. Three examples illustrate this point.

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.²⁷ 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.²⁸ In 2001, another state authorized a Notary seal impression to be affixed by an adhesive label.²⁹ In more recent years, several states clarified in their laws that a physical image of a Notary seal was not required on an electronic record³⁰ or that the seal impression could be created electronically.³¹

²⁵ "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).

²⁶ For example, see LA. REV. STAT. ANN. § 35:6; MD. CODE ANN. (STATE GOV'T) § 19-103 and § 19-110; MASS. GEN. LAWS ANN. ch. 183, § 30(b); and MICH. COMP. LAWS § 565.262 and § 565.265.

²⁷ "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)).

²⁸ Chapter 137 of the Statutes of Nevada, Sixty-Eight Session, 1995 (AB 280), Section 19.

²⁹ Chapter 176 of the Acts of 2001 (Iowa), effective January 1, 2002.

³⁰ See, e.g., FLA. STAT. ANN. § 117.021.

³¹ See ARK. CODE ANN. § 21-14-301(5) (eff. July 31, 2017).

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 allow or specify that Notaries could identify signers with ID cards. This changed with the California case of *Allstate Savings & Loan Assn. v. Lotito*.³² 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.³³ 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.

Electronic signatures. Finally, in 2010 when the ULC adopted the Revised Uniform Law on Notarial Acts, it had an opportunity to explicitly specify in the RULONA’s interstate recognition provision that records with the signer’s and Notary’s electronic signatures would be recognized and accepted across state borders. It had another opportunity in 2016 when it adopted an amendment to the RULONA allowing signers located outside of the United States to appear before a Notary using communication technology. In both cases, the ULC 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,”³⁴ a catchphrase 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.

³² *Allstate Savings & Loan Assn. v. Lotito*, 116 Cal.App.3d 998 (1981) 172 Cal.Rptr. 535.

³³ Statutes of 1982, Chapter 197, Section 1, effective May 12, 1982.

³⁴ “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.

“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 by the receiving state imposing its own laws that regulate Notaries Public within its borders. 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-video 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.

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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