The Official Record:

Custody, Control, and Access to Remote Notarial Recordings

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National Notary Association

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INTRODUCTION

The popular saying “a picture is worth a thousand words” originated in a 1921 streetcar advertisement as “one look is worth a thousand words” before taking its familiar form in 1927.[1] A century later, its modern counterpart may well be “a video is worth a thousand words,” especially when that video is the audiovisual recording of a remote notarial act.

Increasingly, parties relying on a remote notarial act preserve the audiovisual recording of the act itself, in addition to the notarized record. To meet this need, most state laws require recordings to be retained and made accessible.

This paper examines how modern remote online notarization (RON) statutes address custody, control, and access to notarial recordings during a Notary’s commission and after it ends. It contends that notarial recordings, no less than traditional notarial records, must be governed by a clear and continuous chain of public authority and accountability grounded in longstanding notarial principles that the public and private sectors must rediscover and honor.

REMOTE NOTARIAL ACT RECORDING AND RETENTION LAWS

In 2012, Virginia was the first state to implement electronic notarial acts performed using audiovisual communication technology as an alternative to the traditional requirement of a signer appearing physically before the Notary Public.[2] To address concerns that remote appearance could increase the risk of fraud, the new law required Electronic Notaries Public to create an audio and video recording of each remote notarial act and retain the recording for at least five years.[3] In the years that followed, most states

[1] http://www2.cs.uregina.ca/~hepting/projects/pictures-worth (last visited Mar. 18, 2026).

[2] Chapters 731 (House Bill 2318) and 834 (Senate Bill 827) of the 2011 Acts of the General Assembly, effective July 1, 2012.

[3] See Va. Code Ann. § 47.1-2 (“satisfactory evidence of identity”), § 47-1.14.C.

adopted similar recording requirements,[4] many with longer retention periods.[5]

Although Virginia led the way on remote recording requirements, the duty to keep, preserve, and make accessible notarial records long predates remote notarization. From the earliest American statutes, the Notary Public, acting under legal authority, kept and retained notarial records and provided access to those records when necessary.

EARLY RECORDKEEPING AND RETENTION LAWS

Early American statutes addressed notarial recordkeeping directly, answering whether records had to be created, who controlled them, how access was provided, what legal effect they carried, where they were placed when a Notary left office, and who thereafter was responsible for access. What follows is a necessarily selective but remarkably consistent set of laws drawn from across a broad geographic expanse of early America, including territories that later became states.

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[4] See Ala. Code § 36-20-73.1(d)(2); Alaska Stat. § 44.50.075(b)(3); Ariz. Rev. Stat. § 41-263.B.3; Ark. Code Ann. § 21-14-309(a)(2)(C); Cal. Gov't Code § 8231.6(a); Del. Code tit. 29, ch. 43 § 4320(c)(3); D.C. Code Ann. § 1-2131.13a(b)(3); Haw. Rev. Stat. § 456-23(b)(3); Idaho Code § 51-114A(3)(c); 5 Ill. Comp. Stat. § 312/6A-104(a); Ind. Code Ann. § 33-42-17-3(f); Iowa Code Ann. § 9B.14A.3.c; Kan. Stat. Ann. § 53-5a15(b)(3); Ky. Rev. Stat. Ann. § 423.455(5)(b); La. Rev. Stat. § 35:629.A(2); Mass. Gen. Laws Ann. ch. 222, § 28(a)(iv); Md. Code Ann. (State Gov't) § 18-214(a)(3); Me. Rev. Stat. Ann. tit. 4, ch. 39 § 1915.3.C; Minn. Stat. Ann. § 358.645, Subd. 4(b); Mo. Ann. Stat. § 486.1195.1; Mont. Code Ann. § 1-5-618(1)(a); N.C. Gen. Stat. § 10B-134.13; N.D. Cent. Code § 44-06.1-13.1.3.c; Neb. Rev. Stat. Ann. § 64-409(1)(f); Nev. Rev. Stat. Ann. § 240.1995.1; N.H. Rev. Stat. Ann. § 456-B:6-a.III(c); N.J. Stat. Ann. § 52:7-10.10.d(3); N.M. Stat. Ann. 14-14A-5.C(3); N.Y. Exec. Law § 135-c.2(b); Ohio Rev. Code Ann. § 147.65(D)(3); Okla. Stat. Ann. § 49-206.B; Or. Rev. Stat. § 194.277(3)(c); 57 Pa. Cons. Stat. Ann. § 306.1(b)(3); R.I. Gen. Laws § 42-30.1-12.1(b)(3); S.D. Cod. Laws § 18-1-11.2(5); Tenn. Code Ann. § 8-16-308(a)(6); Tex. Gov't Code § 406.108(a)(6); Utah Code Ann. § 46-1-3.6(3)(a); Vt. Code Ann. tit. 26, ch. 104, § 5379(b)(4); Wash. Rev. Code Ann. § 42.45.280(3)(c); W.V. Code § 39-4-37(c)(3); Wis. Stat. Ann. § 140.145(3)(c); Wyo. Stat. Ann. § 32-3-118(a). Colorado makes the recording conditional upon disclosure of the recording, including where and for how long it will be stored, the consent of the remotely located individual, and compliance with storage and security rules adopted by the Secretary of State. Colo. Rev. Stat. § 24-21-514.5(9)(a). Florida requires the Notary to ensure the recording includes the proper information, as specified, but puts retention of the recording on the service provider (Fla. Stat. Ann. § 117.245(2)). Michigan does not mandate a recording but prohibits a Notary from making a recording without proper consent. It does, however, authorize a Notary to refuse the notarial act if the remotely located individual objects to being recorded (Mich. Comp. Laws § 55.286b(6)). Connecticut does not mandate recordings.

[5] See Alaska Stat. § 44.50.0b 75(d); Ca. Gov't Code § 8231.6(d); Colo. Rev. Stat. § 24-21-514.5(9)(c), 24-21-519(1); Del. Code tit. 29, ch. 43 § 4320(k); D.C. Code Ann. § 1-1231.13a(j); Fla. Stat. Ann. § 117.245(4); Haw. Rev. Stat. § 456-23(e); Idaho Code § 51-114A(6); Iowa Code Ann. § 9B.14A.6; Kan. Stat. Ann. § 53-5a15(e); Ky. Rev. Stat. Ann. § 423.355(5)(c); La. Rev. Stat. § 35:629.A(2); Mass. Gen. Laws Ann. ch. 222, § 28(f); Md. Code Ann. (State Gov't) § 18-214(j)(3); Me. Rev. Stat. Ann. tit. 4. ch. 39, § 1915.11; Mich. Comp. Laws § 55.286b(9); Minn. Stat. Ann. § 358.645, Subd. 4(d); Mo. Ann. Stat. § 486.1195.2; Mont. Code Ann. § 1-5-618(1)(d)(i); N.C. Admin. Code tit. 18, ch. 07H R. .0507(a); N.D. Cent. Code § 44-06.1-13.1.11; Neb. Rev. Stat. Ann. § 64-409(3); N.H. Rev. Stat. Ann. § 456-B:6-a.VI; N.J. Stat. Ann. § 52:7-10.10.I; N.M. Stat. Ann. 14-14A-5.F; N.Y. Exec. Law § 135-c.2(b); Okla. Stat. Ann. § 49-206.D; Or. Rev. Stat. § 194.277(6); 57 Pa. Cons. Stat. Ann. § 306.1(e)(2)(i); R.I. Gen. Laws 42-30.1-12.1(e); S.D. Cod. Laws § 18-1-11.3; Vt. Code Ann. tit. 2, ch. 103 § 5379(k); Wash. Rev. Code Ann. § 42.45.280(6); W.V. Code § 39-4-37(f). Not all states require Notaries to keep recordings this long. See, e.g., Ala. Code § 36-20-73.1(d)(2); Ariz. Rev. Stat. Ann. § 41-263.E; Ark. Code Ann. § 21-14-31(c); 5 Ill. Comp. Stat. 312/6A-1-4(d); Nev. Rev. Stat. § 240.1996.4; Ohio Rev. Code Ann. § 147.65(F)(1); Tenn. Code Ann. 8-16-308(c); Tex. Gov't Code § 406.108(c); Utah Code Ann. § 46-1-3(3)(c); Va. Code Ann. § 47.1-14.C; Wis. Code Ann. § 140.145(6). Indiana and Wyoming do not require recordings to be retained for a specific period of time.

A 1791 Pennsylvania statute required Notaries to keep records, provide certified copies to individuals who paid the customary fee, and deposit records with the recorder of deeds of the county where the Notary resided upon leaving office. These records could not be seized, attached, or taken in execution for debt or subjected to any other demand.[6] A 1798 Massachusetts statute imposed penalties for the failure to preserve notarial records, required courts to safeguard deposited records, and accorded certified copies of records issued by the courts the same legal validity as copies issued by the Notary.[7] An 1802 New Hampshire statute similarly granted public access to notarial records deposited with the Secretary of State and declared that certified copies of records issued by the Secretary carried the same legal weight as those issued by the Notary.[8]

As the nation expanded westward, these principles followed. In the vast Territory of Louisiana, an 1807 law required Notaries to keep registers of official acts, issue certified copies of notarial records on request, and transfer records to a public recorder upon leaving office. Like the earlier Pennsylvania statute, Territory law also protected these records from seizure, attachment, or execution for debt or other claims, thereby confirming that private legal process could not displace public control over notarial records.[9]

By the mid-nineteenth century, Texas,[10] the Colorado Territory,[11] and California[12] had adopted notarial recordkeeping and records retention provisions of their own. The notarial records of Notaries in California and Texas were to be deposited with a successor to ensure continuity of access. The Texas law further provided that certified copies of notarial records were to be received as evidence of the facts recited in them.

Even beyond the continental United States, the Hawaiian Kingdom mandated Notary Public recordkeeping and transfer of notarial records to the clerk of the nearest court of record on resignation, removal from office, or death of the Notary Public. The law further underscored that copies of any records made by a Notary Public were to be received as evidence of such transactions a century before Hawaii became the fiftieth state.[13]

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[6] Act of Mar. 5, 1791, ch. MDXXXII, 1791 Pa. Laws, recorded in Ledger Book No. 4 (An Act to Enable the Governor to Appoint Notaries Public, and for Other Purposes Therein Mentioned.).

[7] An Act Providing For The Safe Keeping The Records Of The Several Notaries Public In This Commonwealth, St. 1798 c. 69, §§ 1–2.

[8] Act for Providing for the Preservation of the Records and Papers of Public Notaries, and for Giving Them Further Powers, in Certain Cases, ch. 33, 1802, reprinted in Laws of New Hampshire, vol. 7, at 93-94 (Evans Printing Co. 1918).

[9] An Act to enable the Governor to appoint notaries public, and defining their duties, §§ 4, 5, 1807 Laws of the Territory of Louisiana, reprinted in Laws of a Public and General Nature, of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri, and of the State of Missouri, up to the Year 1824, vol. 1, at 94-96 (W. Lusk & Son, Jefferson City 1842).

[10] An Act Defining the office and duties of Notaries Public, §§ 10, 11, 13, 1846 Tex. Gen. Laws, reprinted in The Laws of Texas, 1822–1897, vol. 2, at 341-43 (H.P.N. Gammel ed., Gammel Book Co. 1898).

[11] A modern secondary compilation reproducing this act appears in Colorado Territory Notary Laws 1861, https://www.abclegaldocs.com.

[12] An Act Concerning Notaries Public, 1850 Cal. Stats. §§ 7, 12-14. This Act was the 41st chaptered law of California's first legislative session.

[13] Article LII, Of Notaries Public, §§ 1273, 1274, 1859 Laws of the Hawaiian Kingdom reprinted in The Civil Code of the Hawaiian Islands, Passed in the Year of Our Lord 1859: To Which Is Added an Appendix Containing Laws Not Expressly Repealed by the Civil Code; the Session Laws of 1858-9; and Treaties with Foreign Nations, at 250-255 (Honolulu: Printed for the Government 1859).

Across jurisdictions, these early statutes reflect a consistent understanding of notarial records as official records governed by public law, with control and access vested in public authority. From that consistent practice emerge five principles:

1. Notaries Public must record their official acts.
2. Notarial records remained under the control of the Notary Public and were not subject to transfer to private parties through private legal claims or arrangements.
3. Notarial records serve as official evidence relied upon by the courts, public authorities, and private parties.
4. The public is entitled to access and obtain copies of notarial records.
5. When a Notary Public leaves office, notarial records must be transferred to a successor or public authority, which thereafter assumes responsibility for access to the records.

CONTEMPORARY STATUTORY FAULT LINES

We next examine current issues involving recordings of remote notarial acts and consider them through the lens of early notarial law.

As an introductory matter, the recording of a remote notarial act carries significant evidentiary value today, as notarial records have for centuries. For example, in title insurance litigation, a recording may show whether a Notary Public properly verified a grantor's identity; in probate matters, whether the Notary Public assessed a testator's or trustor's mental capacity; and in foreclosure proceedings, whether the Notary Public ascertained that a mortgagor signed willingly and without duress.

Parties relying on remote notarial acts are now able to review the entire interaction between the Notary Public and the remotely located individual, rather than relying solely on a journal entry or completed certificate of the notarial act. This change has increased interest in obtaining and preserving RON recordings.

Notarial or Business Records? Remote notarization has fundamentally changed how records of notarial acts are kept. Where a Notary once documented official acts in a personally owned paper journal,[14] Notaries now rely on a third party platform — one they do not own — to create the audiovisual recording of the act. Yet the law is silent on whether that recording is an official record belonging to the Notary or a business record

[14] William Aspinwall, the first Notary appointed by the Massachusetts Bay Colony in 1644, considered the notarial records of his office "… privat Records of my owne Acts…." (original spelling retained) (John E. Seth, Notaries in the American Colonies, 32 Marshall L. Rev. 863, 873 n. 88 (citing William Aspinwall, Aspinall Notarial Records i (1903)). Contemporary laws in several states likewise provide that a Notary's journal is the Notary's property. See, e.g., Ariz. Rev. Stat. Ann. § 41-319.E (the Notary's journal of public records is the property of the Notary); Ca. Gov't Code § 8206(d); N.C. Gen. Stat. § 10B-134.15(a); Nev. Rev. Stat. Ann. § 240.143.1; Pa. Cons. Stat. Ann. tit. 57, § 319(h)(2). See also N.C. Admin. Code tit. 18 R. 07B .0111 (the Notary's journal and audiovisual recordings are the personal property of the Notary); S.C. Code of Regs. 113-480.A; Tx. Atty. Gen. Op. GA-0723; VA Electronic Notarization Assurance Standard 1.3; Wash. Rev. Code Ann. § 308-30-200(3).

belonging to the platform. That silence has practical consequences: ownership begets custody; custody determines control; and control determines who has authority to grant or deny access.

Some RON platform vendors insist that recordings stored on their systems are their sole business records. But this claim mistakes the platform for the legal authority. Recordings exist because the Notary Public acts under authority of law, not because a vendor owns and provides the technology used to create or store them.

Third-Party Custodians. While nearly all states authorizing remote notarization require audiovisual recordings[15] and most mandate ten-year retention periods,[16] expecting Notaries to store large volumes[17] of those recordings for that period is often impractical.

For this reason, many statutes authorize Notaries Public to contract with third party custodians[18] to store audiovisual recordings.[19] Yet those statutes are largely silent on who controls the recordings while under custodianship or who has authority to grant access to them.

Early notarial recordkeeping laws resolved these issues by preserving a continuous chain of public authority over official notarial records. Custodians operating within that chain today do not act as proxies of the Notary, but as holders of records subject to the Notary's authority and control. While a Notary's commission is in force and records are stored with a custodian, depository, or repository, the Notary should retain control over granting access to recordings for all requestors, whether transacting and relying parties, the public, the courts, and government agencies. Retention limits and custodianships are legislative policy choices; control of and granting access to official notarial records are not.[20]

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[15] See *supra* note 4.

[16] See *supra* note 5.

[17] One mortgage industry representative told the NNA the estimated file size of a 1-hour mortgage refinance loan signing session could be as high as 1 gigabyte.

[18] Statutes use the terms "custodian" (e.g., Utah Code Ann. § 46-1-15(2)(b)(i)), "repository" (e.g., W.V. Code § 39-4-37(f)), and "depository" (e.g., Ariz. Rev. Stat. Ann. § 41-374) to describe third parties who maintain notarial records on the Notary's behalf.

[19] Most state laws that follow the Revised Uniform Law on Notarial Acts state that the repository "retains" audiovisual recordings (see, e.g., Haw. Rev. Stat. § 456-23(e); Idaho Code § 51-114.A(6); Md. Code Ann. (St. Gov't) § 18-214(d)(1)); others indicate the custodian "stores" them (Nev. Admin. Code § 240.684.2; Wash. Admin. Code §308-30-330(4); and still others say the custodian "maintains" them (La. Rev. Stat. Ann. § 35:629.B; Minn. Stat. Ann. § 358.645, Subd. 4(d); Ohio Rev. Code Ann. § 147.65(F)(2)).

[20] Some state laws require custodians to execute a contract with the Notary to store recordings, but they do not explicitly authorize the contract to allow custodians to provide access to recordings on behalf of the Notary. (See e.g., Ill. Admin. Code tit. 14, § 176.960 e); Utah Code Ann. § 46-1-15(2)(b)(ii) (LexisNexis 2025); Wash. Admin. Code § 308 30 330(8)).

Non-Custodial Service Providers. Retention periods for remote notarial act recordings may be adequate for most purposes but insufficient for others, such as estate planning documents and mortgages that routinely outlast statutory retention periods. In the absence of a public mechanism to ensure continued access to audiovisual recordings beyond the statutory retention period, third party non-custodians have arisen to fill the void by retaining copies of recordings their customers obtained from the Notary Public.

These arrangements place long term control over access to official notarial recordings outside the historical statutory chain of public authority. Early notarial law recognized no parallel private regime for controlling or distributing such records.[21] Yet, once mandated retention periods expire, non-custodial platforms may become the only available source of access to recordings.[22]

As a result, these platforms are positioned to assume *de facto* control over long term access to official notarial records, even though they lack statutory authorization or public accountability. The problem is not the private possession of recordings for legitimate personal or business purposes; it is the absence of any legal framework to govern retention and access once recordings outlive the Notary's commission and any mandated retention period, despite the need for longer preservation for evidentiary and public purposes.

CUSTODY, CONTROL, AND ACCESS: A UNIFYING FRAMEWORK

Early American notarial recordkeeping laws allocated responsibility for notarial records with notable precision, specifying who controlled records during a Notary Public's commission, how access was granted, where records were placed when a commission ended or the Notary died, and who assumed responsibility for access thereafter. In each instance, authority rested first with the Notary Public and, upon the commission's conclusion, transferred to a successor or public official acting under statutory authority. Modern statutes governing recordings of remote notarial acts fail to maintain that continuity, regulating retention and custody while leaving authority over control and provision for access unevenly defined or unaddressed.

[21] See the Pennsylvania statute, supra note 5, and the Louisiana Territory statute, supra note 8, which prohibited the transfer of notarial records to private parties through private legal processes.

[22] MERSCORP's MERS RON Video Storage Service houses only remote notarial act recordings for mortgage finance transactions of its members. This illustrates one notable difference between statutory custodians and non-custodial providers: the former stores all the Notary Public's recordings and the latter may limit storage to only those records that meet its business purpose.

The table below compares how early law, current law, and preferable policy rules based on early law principles address these questions.

Table. Custody, Control, and Access: Comparative Framework

Issue	Early Law (Notarial Records)	Current Law	Preferable Policy
Custody of Recordings During Commission	Held by Notary Public	Held by Notary Public or Custodian	Held by Notary Public or Custodian
Custody of Recordings After Commission Ends	Held by Successor or Public Authority	Varies: Held by Notary Public, Custodian, or Public Authority	Held by Public Authority or Custodian
Control of Recordings During Commission	Vested in Notary Public	Rarely Addressed	Vested in Notary Public
Control of Recordings After Commission Ends	Vested in Successor or Public Authority	Rarely Addressed	Vested in Public Authority
Access to Recordings During Commission	Provided by Notary Public	Rarely Addressed	Provided by Notary Public
Access to Recordings After Commission Ends	Provided by Successor or Public Authority	Rarely Addressed	Provided by Public Authority

Today's RON statutes, by contrast, tend to regulate custody and retention without clearly assigning authority over control or access, particularly once recordings leave the Notary's hands. That silence allows both custodial and non custodial providers to exercise practical control over audiovisual recordings of remote notarial acts that early law uniformly placed under public accountability. The preferable policy, drawn directly from historical practice, is to preserve continuity of public authority: while a Notary remains in office, the Notary retains control over and responsibility for providing access to recordings, even when they are placed with a custodian for storage; when the commission ends, that control and responsibility transfers to a public official, who may authorize custodians to store recordings but remains accountable for access.

CONCLUSION

Remote notarization has changed how notarial acts are performed, but not the legal character of the records that evidence those acts. Audiovisual recordings of remote notarial acts are part of the long settled tradition of notarial records dating back centuries.

Departing from this tradition, modern RON statutes have failed to define who controls these recordings, who may make them available, and how access is to be handled once a Notary Public leaves office. That silence permits both custodial and non-custodial private actors to exercise practical authority over notarial records that early American law consistently placed within a continuous chain of public responsibility.

Addressing this statutory silence requires legislatures to restore that continuity. During the Notary Public's commission term, recordings should remain under the Notary's

authority even when stored by a custodian. When the commission ends and the Notary is not reappointed, control and responsibility for providing access should pass to a public official acting pursuant to statute, with any private dissemination of recordings occurring only through legally defined mechanisms that preserve public responsibility for access.

Implementing this approach requires deliberate policy choices and may also require public resources. However, those practical considerations do not change the legal traditions that enshrine the treatment of notarial records as official records.

If an audiovisual recording of a remote notarial act is worth a thousand words, it must also remain subject to the centuries of settled law that have long governed notarial records.

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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