NATIONAL NOTARY ASSOCIATION

The National Notary Association and Electronic Notarization

December, 2009

Today, eNotarization is a growing reality. Notaries can now lend the same credibility to electronic document transactions that they do to traditional paper transactions. Indeed, technology enables Notaries to impart an enhanced integrity to their electronic attestations that has never been matched in the paper world.

The growing stature and acceptance of electronic notarization is due in large measure to the active part the National Notary Association has played in adapting the Notary's traditional role as a trusted and impartial third party to the electronic environment, and in exploiting the strengths of electronic technology to boost transaction security to new heights.

For more than a decade, the NNA has been a leader in the advancement of eNotarization, through its advocating for the notarial office, its developing of standards and suitable technologies and its teaching of best practices. At the same time, varying state regulations and industry practices and ever-evolving technologies have precluded the emergence of a unifying universal solution for eNotarization and electronic Notary signatures in particular.

Though there has been widespread acceptance of standard notarial principles and procedures in the electronic environment as a result of the NNA's efforts, there also have emerged multiple technology solutions surrounding electronic signatures for Notaries.

To accommodate these rapidly changing technologies in electronic signature development, electronic Notaries now can access these products directly from the technology providers who service the eNotarization systems adopted or endorsed by particular companies, industries and state governments.

The NNA, in support of this evolving electronic environment, will energetically apply itself to advocacy, education and standard-setting as it continues its pursuit of a secure system of electronic notarization

in the United States that maintains the fundamental principles of notarization including personal appearance before the Notary, proof of identity, screening for volition and awareness, safeguarding the Notary's seal of office and producing a secure permanent record of each notarial act.

The Void in UETA and E-Sign

Following publication of the Uniform Electronic Transactions Act (UETA) in 1999 and enactment of the similar federal E-Sign legislation in 2000, the NNA recognized the need to establish rules and standards for a workable, accessible and, above all, a secure system of electronic notarization in this country.

While UETA, which had been drafted by the National Conference of Commissioners on Uniform State Laws, did legally recognize Notaries' use of electronic signatures, it did not prescribe any rules or procedures for this completely new type of notarial act.

As state after state enacted UETA into law, there was a growing void — an absence of needed principles, practices and procedures for electronic notarization. To fill this void, the Association began its efforts to ensure that a Notary's electronic acts would be as trustworthy as the paper-based acts with which they now had legal equivalency.

We knew it was imperative that there be understanding in pertinent governmental and industry circles, as well as among vulnerable consumers, that the basic protective notarial practices of face-to-face personal appearance, identity screening and careful recordkeeping, and the special trust conveyed by the Notary's official signature and seal, must be preserved in the electronic realm.

Electronic Recordkeeping

Adapting electronic technology to Notary recordkeeping in a secure fashion became a particular priority for the Association. The NNA thus developed Enjoa (the Electronic Notary Journal of Official Acts) which enables both electronic and paper-based notarial acts to be recorded and that record to be protected from tampering in an electronic database.

Enjoa embodies the essence of the notarial act, which is the document signer's physical appearance before a trusted and impartial third party who carefully scrutinizes the signer for identity, volition and awareness. By combining best practices and technology, Enjoa provides the transactional integrity on which the public relies.

Enjoa allows Notaries electronically to capture both a holographic signature and a thumbprint of each document signer, and it offers the additional option of capturing within its database the signer's facial image through a Web camera. Enjoa locks in place each electronic entry, preventing any alteration of a saved document — even by the Notary.

Whether recording eNotarizations or paper-based transactions, Enjoa provides proof of a signer's personal appearance, a complete record of the notarial act, and a level of security that cannot be achieved in a paper-based recordkeeping system.

This innovative electronic recording tool demonstrated that key principles of notarization need not be sacrificed in the electronic realm. Enjoa helped foster an appreciation in business and government that computer-age efficiencies and safeguards could be brought even to paper-based transactions through intelligent application of technology.

The Electronic Notary Signature

The National Notary Association's introduction of ENS (its Electronic Notary Signature solution) in an alliance with preeminent industry leaders in the field of digital technology was critical in providing many Notaries with the ability to perform an electronic notarization and in demonstrating to business and government how a secure eNotarization system could operate. This central component of the electronic notarization process was carefully shepherded to completion by the NNA and its technology partners.

ENS, a digital certificate issued to Notaries for the purpose of authenticating electronic notarial acts, was established in a marketplace and at a time when electronic document vendors were offering systems that could not reliably confirm the identity of the Notary who performed the electronic notarization or ensure the informational integrity of the signed document.

Recognizing the appeal but also the fraud-related risks to consumers and businesses of such systems, the NNA focused instead on the fraud-deterrent capabilities that new technology could provide — specifically, the capacity to render electronic documents tamper-evident and to enable real time verification of a Notary's credentials.

The development of ENS broke new ground and substantiated our claims that notarization could be performed securely and efficiently in the new electronic environment. It allowed all parties relying on an electronic transaction to confirm quickly that a particular Notary with valid authorization to perform electronic notarial acts had signed the document and to have confidence that the substance of the document had not been improperly changed once it had been signed.

In February of 2006, the NNA partnered with the Commonwealth of Pennsylvania in launching the Electronic Notarization Initiative, the nation's first working, comprehensive eNotarization program. All Pennsylvania Notaries participating in the Initiative used a digital certificate to perform electronic acts that were subsequently submitted for recordation in the four original participating counties. Other counties throughout the state soon enrolled in the program.

Most recently, in July of 2009 the NNA teamed up with major technology players SAIC, VeriSign, Adobe and ChosenSecurity in issuing to U.S. Federal Magistrate John Facciola a digital identity credential, which the judge used to execute the first digitally signed judicial order in U.S. history.

To those in business, law and government, we demonstrated that sound and legally acceptable eNotarization could be performed in widely varying commercial and legal venues, with ease and with a trustworthiness equal if not exceeding that of paper-based transactions.

The NNA's ENS proved to be a pioneering tool, allowing many Notaries to gain practical experience in performing electronic acts and providing a platform for the NNA to advocate principles designed to make electronic notarizations secure.

After nearly a decade of advocating for secure eNotarization, we have achieved the broad acceptance and understanding that the Notary's electronic signature must reliably confirm the Notary's identity and authority to perform electronic acts and ensure the informational integrity of the signed document. Now, with electronic Notary signature products available from technology companies that appropriately reflect these sound notarial principles and best practices for affixing an electronic signature, we can direct the Notary community to these competent technology providers.

Having introduced and championed eNotarization standards for nearly a decade, it is our objective to guide and inform industry, government and the legal community on proper notarial practices and procedures. The newly revised Model Notary Act of 2010 will be an indispensable tool toward that purpose.

The Model Notary Act of 2010

In 2002, the NNA introduced a comprehensive update to the Model Notary Act (MNA). For the first time, the Act included an Article III ("Electronic Notary") containing detailed rules and standards for electronic notarization. The 2002 Act asserted that the time-tested fundamental protective principals of traditional notarization must remain the same regardless of the technology used to create a signature.

Providing the needed essential complement to UETA and E-Sign, the MNA's performance standards showed exactly how electronic notarizations should be performed.

The 2010 Act, like its predecessor, is the product of an expert panel of state officials, law professors and attorneys, digital technology experts and notarial authorities, and reflects an electronic landscape vastly changed since 2002. The Act's new Article III ("Electronic Notary") evinces the clear and growing consensus that electronic notarization must be both "capable of independent verification" and render any notarized electronic document as tamper-evident. It permits the eNotary to register with the commissioning official more than one means for creating electronic signatures and electronic Notary seals, because Notaries may need to employ multiple technologies to accommodate the different electronic systems of their various clients. Such electronic versatility benefits both the Notary and the business and legal communities.

With this latest revision of the Model Notary Act and its thoroughly updated Article III, lawmakers, technologists and state officials are provided with carefully crafted guidelines from which they can adopt sound Notary rules for transactions in the electronic arena, while adhering to the protective fundamental principles of notarization.

Personal appearance before the Notary, proof of identity, screening for volition and awareness, safeguarding the Notary's seal of office, and producing a secure permanent record of each notarization represent the fundamental principles of notarization, which the National Notary Association will vigorously promote and defend in the electronic realm.

A Technology-Neutral Advocate

Disassociating from a particular technology and a particular approach to electronic notarization immeasurably strengthens the NNA's hand as a technology-neutral advocate for best practices. This is in keeping with the organization's role over half a century as not a vendor of a particular technology product, but as a professional association advocating for the essential principles that uphold the integrity of notarial acts.

The National Notary Association intends vigorously to carry out its founding mission of teaching, guiding, motivating and thereby professionalizing Notaries Public throughout the United States. Because eNotarization is a growing reality, we must necessarily address electronic notarization in all that we do — particularly in our advocacy efforts to win adoption of strong, fraud-deterrent and, as much as possible, uniform Notary laws in the states.

Through its Notary Public Code of Professional Responsibility, its promulgation of best practices, and the growing professionalism it has fostered among Notaries around the nation, the NNA will continue to

assure the American public that a notarial act is a guarantee of integrity and trustworthiness.

The National Notary Association is committed to building a Notary Public office that is ever responsive to technological innovation and whose notarizations, whether performed on paper or electronically, are secure, reliable, accessible and effective in deterring fraud.

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