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**Guiding Principles for
Remote Notarization Standards**

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Produced by

**Notary Public Administrators' Section
Drafting Committee**

Convened by

NASS Remote Notarization Task Force, 2017

Task Force Co-Chairs:

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Guiding Principles for Creation of Remote Notarization Standards

As the concept of remote notarization garners more attention and interest, many organizations, in both the public and private sectors, are searching for leadership, clarification, and direction. This document focuses on fundamental issues that have been raised by various interested parties over the past several months and identifies underlying principles that should be considered as states move forward into this new environment.

I. APPLICABILITY

Existing remote notarization enactments differ on allowing paper notarial transactions to be performed remotely, and on the specific notarial duties that may be performed remotely.

1. Virginia (*Since 7-1-12*) – Allows remote notarization of a document only when the duly commissioned notary performs an electronic notarization on an electronic document, electronically signed by the principal (document signer). All notarial duties authorized for a traditional Virginia notary (acknowledgments, oaths and affirmations; certifying affidavits or depositions; certifying true copies; and verifications of fact) may be performed in a remote, electronic notarization.
2. Montana (*Since 10-1-15*) – Allows remote notarization of a document when the duly commissioned notary performs an electronic notarization on an electronic document, electronically signed by the principal; and when the notary performs a “wet-ink” notarization on a paper document that was wet-signed by the principal. Only two of the notarial acts authorized for traditional Montana notaries (acknowledgments and verifications on oath or affirmation) may be performed remotely.
3. Texas (*Effective 7-1-18; administrative rules mandated to “develop and maintain standards for online notarization.”*) – Allows remote notarization of a document only when the duly commissioned notary performs an electronic notarization on an electronic document, electronically signed by the principal. All notarial duties authorized for traditional Texas notaries (acknowledgments or proofs; oaths and affirmations; certifying copies; taking depositions; and issuing protests) may be performed in a remote, electronic notarization.
4. Nevada (*Remote notary provisions effective 6-9-17 for rule-making and administrative purposes; and effective 7-1-18 otherwise.*) – Allows remote notarization of a document only when a duly commissioned notary performs an electronic notarization on an electronic document, electronically signed by the principal. Authorizes remote performance of the same electronic notarial acts (acknowledgments, jurats, oaths/affirmations, plus effective 7-1-18, certifying a true copy and “performing other such duties as prescribed by law”) that a Nevada electronic notary may perform.

Leading sources of model statutory language (2016 Amendment to Revised Uniform Law on Notarial Acts¹ and the Model Electronic Notarization Act²) also differ on applicability of remote notarization to paper or electronic documents.

¹ Offered by the Uniform Law Commission –see 2016 Amendment

(http://www.uniformlaws.org/shared/docs/notarial_acts/2016_ARULONA_Final%20Act.pdf), whose remote notarization provisions apply to paper or electronic documents (“records”) for principals located outside the United States.

² A model act by the National Notary Association –(<https://www.nationalnotary.org/file%20library/nna/reference-library/model-enotarization-act.pdf>), whose remote notarization provisions (see Chapter 5A) apply only to electronic records that are electronically signed by both the principal and the notary.

Remote notarization standards should clarify:

- a) *Whether remote notarization should be permitted only for electronic notarization of electronic documents (Virginia, Texas and Nevada enactments); or if it should also be permitted for traditional, “pen and ink” notarization of paper documents (Montana enactment).*
- b) *Whether only certain authorized notarial duties are suitable for remote performance.*

II. JURISDICTION

Existing remote notarization enactments have raised questions about multiple aspects of jurisdiction, including:

1. How the geographic location of the notary inside or outside the commissioning jurisdiction might influence (i) notation of the venue (“State of _____, County of _____”) in the notarial certificate; and (ii) prevailing domestic regulatory authority over the notary’s actions.
2. How the geographic location of the notary, or principal, or subject property (if applicable) might influence choice of law should the transaction be subject to a legal proceeding.
3. Whether a foreign jurisdiction with a nexus to a remote notarization (for example, the notary or principal is physically located abroad) has an actionable legal or regulatory interest in any aspect of the remote transaction.

Remote notarization standards should clarify issues related to:

- a) *Geographic location of the notary for performance of a remote notarization.*
- b) *Geographic location of the principal for participation in a remote notarization.*
- c) *Geographic location of property that is subject of a remote notarization.*
- d) *Determination of the venue of the remote notarization (“State of _____, County of _____”).*
- e) *A commissioning authority’s regulatory or enforcement powers over notaries whose laws allow them to be located outside of their commissioning jurisdiction when performing a remote notarization.*
- f) *Choice of law (domestic and foreign jurisdictions).*

III. IDENTIFICATION OF PRINCIPAL

Existing remote notarization enactments differ in their treatment of methods for identifying principals.

1. Virginia (Since 7-1-12) – Satisfactory identification of a principal in a remote notarization may be based on audio-video conference technology that permits identification of the principal at the time of the notarial act, and is confirmed by personal knowledge; a credible witness; or an antecedent in-person identity proofing process³ that meets certain federal standards; or a valid digital certificate accessed by biometric data or by use of an interoperable Personal Identity Verification card meeting specific federal standards. Compliant methods of principal identification under Virginia’s remote notarization enactment include dynamic knowledge-based authentication, a high-level form of “challenge questions” for which no answer has previously been given. These questions are dynamically generated from a person’s extensive online history, sourced from public and private data.

³ Virginia’s Notary Public Handbook, published by the Secretary of the Commonwealth, explains that an antecedent in-person identity proofing process is “*Reliance on prior in-person identity proofing by a third party such as an employer, a law firm, or a bank. Otherwise known as antecedent proofing, this security standard relies upon a prior trust relationship having been created between the signer and a third party.*” See <https://commonwealth.virginia.gov/media/6260/2016-july-1-2016-handbook-update.pdf>

2. Montana (*Since 10-1-15*) – Identification of a principal in a remote notarization may be achieved by personal knowledge or use of a credible witness (who is in the physical presence of the notary), two traditional identification methods applicable to paper-based notarizations.
3. Texas (*Effective 7-1-18; administrative rules pending*) –Principals in a remote notarization may be identified through personal knowledge or the following, together: remote presentation⁴ of a government-issued ID credential containing the principal’s signature and photograph; and credential analysis;⁵ and identity proofing.⁶
4. Nevada (*Remote notary provisions effective 6-9-17 for rule-making and administrative purposes; and effective 7-1-18 otherwise.*) –Principals in a remote notarization may be identified through personal knowledge, or the following, together: remote presentation⁷ of a government-issued ID credential containing the principal’s signature and photograph; and credential analysis;⁸ and a dynamic knowledge-based authentication assessment.⁹ Also allowed is “any other method” that complies with rules or regulations adopted by the Secretary of State; or a valid digital certificate that complies with any rules or regulations adopted by the Secretary of State.

It is a common practice to establish the identity of participants in certain online transactions using multiple identification methods for a single transaction. This practice is deemed to be more robust than reliance on just one method of identification. For example, the identity of a participant in an online transaction might be established through dynamic knowledge-based authentication and real-time, digital analysis of the participant’s remotely presented government-issued ID credential (such as a driver’s license).

Remote notarization standards should clarify:

- a) *When reliance on traditional, “paper-based” methods of principal identification (personal knowledge, identification documents, credible witness) is appropriate for use in a remote notarization, and when it is not.*
- b) *Identification methods which are satisfactory for identifying principals in a remote notarization.*
- c) *Performance metrics for remote notarization identification methods, including whether multiple identification methods should be employed for each transaction.*

⁴ Texas enactment: “Remote presentation” means “transmission to the online notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to: (A) identify the individual seeking the online notary public’s services; and (B) perform credential analysis.”

⁵ Texas enactment: “Credential analysis” means “a process or service operating according to criteria approved by the Secretary of State through which a third person [party] affirms the validity of a government-issued identification credential through review of public and proprietary data sources.”

⁶ Texas enactment: “Identity proofing” means “a process or service operating according to criteria approved by the Secretary of State through which a third person [party] affirms the identity of an individual through review of personal information from public and proprietary data sources.”

⁷ Nevada enactment: “Remote presentation” means “the transmission of a quality image of a government-issued identification credential to an electronic notary public through communication technology for the purpose of enabling the electronic notary public to identify the person appearing before the electronic notary public and to perform a credential analysis.”

⁸ Nevada enactment: “Credential analysis” means “a process or service that complies with any rules or regulations adopted by the Secretary of State through which a third party affirms the validity of a government-issued identification credential or any data thereon through the review of data sources.”

⁹ Nevada enactment: “‘Dynamic knowledge-based authentication assessment’ means an identity assessment that is based on a set of questions formulated from public or private data sources for which the person taking the assessment has not previously provided an answer and that meets any rules or regulations adopted by the Secretary of State.”

IV. TECHNOLOGY NEUTRALITY

Existing remote notarization enactments do not dictate use of specific remote notarization solutions or platforms. Instead, they provide technology performance metrics that can be met by solution providers. This promotes uniformity in baseline capabilities of remote notarization technologies, while providing for marketplace diversity and choice.

Remote notarization standards should clarify that:

- a) *Remote notarization enacting statutes or implementing rules, if applicable, should not require or accord greater legal status or effect to the implementation or application of a specific technology or technical specification.*
- b) *Remote notarization enacting statutes or implementing rules, if applicable, should recognize that this is a developing area of notarial practice, and contemplate the likelihood of future advancements in remote notarization principles or technologies.*

V. SECURITY OF REMOTE NOTARIZATIONS

Remote notarization has raised general questions about transactional security. Remote notarization participants must be assured of reasonable transactional security.

Remote notarization standards should clarify that:

- a) *Participants in a remote notarization must be authenticated in some way that provides assurance of their authorization to participate.*
- b) *Electronic documents presented for remote notarization must be reasonably secure from interception, unauthorized access or tampering.*
- c) *An electronic record presented for remote notarization must evidence in some manner that it is the same record signed by the principal.*
- d) *Audio-video communications during a remote notarization session must be reasonably secure from interception.*
- e) *Methods of identifying remote notarization session participants must provide identity assurance in ways that are no less secure than methods used for paper notarizations.*
- f) *The video technology used in a remote notarization session must provide sufficient high-definition for the notary to reasonably assess the principal's comprehension and volition.*
- g) *Recordings of remote notarization sessions must be securely captured, archived and stored.*

VI. ADMINISTRATIVE RULES

Administrative rules provide additional details and requirements that clarify how notaries public and technology providers may function compliantly under enacting laws.

Remote notarization standards should clarify that:

- a) *Administrative rules may be promulgated by the commissioning authority to implement remote notarization statutes.*
- b) *Administrative rules may provide for online verification of a notary's commission status and authority to perform a remote notarization.*

2017 Remote Notarization Legislation – Quick Reference

Prepared by the Notary Public Administrators Section for the

NASS Remote Notarization Task Force

Enacted or Still-Live Measures Only | Report Date – 6-22-17 | Bill text current as of 6-22-17

STATE	BILL NUMBER	STATUS	COMMENTS
Florida	<u>FL HB 277</u>	WITH GOVERNOR	Allows a notary public to remotely notarize an electronic will.
Nevada	<u>AB 413</u>	ENACTED	Effective 7-1-18 (notary provisions)
Texas	<u>HB 1217</u>	ENACTED	Effective 7-1-18
Minnesota	<u>HF 1609/SF 893</u> (House bill)	Carried over	In House/Senate committees. RULONA introduction that includes remote notarization provision for individuals outside of the U.S.
Nebraska	<u>LB 388</u>	Carried over	In committee
Ohio	HB 49, Excerpt (House language)	Passed House	Remote provisions included in the House FY 2018-2019 budget bill. Bill version passed by Senate does not include remote provisions. House refuses to concur (6-21-17).
Oklahoma	<u>HB 1366</u>	Carried over	Passed House; referred to Senate Committee
Pennsylvania	<u>SB 595</u>	In committee	Reached third reading on Senate floor, but re-committed to committee.

Draft submitted for consideration by NASS Remote Notarization Task Force

06/23/17

WHEREAS, the National Association of Secretaries of State (NASS) formed the NASS Remote Notarization Task force in April 2016 with state notary professionals, industry stakeholders and private sector advisors to promote greater understanding of the issues and policies surrounding the adoption of remote notarization amongst the states.

WHEREAS, notaries public are among the oldest public officials in the United States commissioned and regulated by the Secretaries of State or other state authority; and,

WHEREAS, the Secretaries of State or other notary public commissioning authorities possess essential and unique knowledge of the regulation of the notarization process; and,

WHEREAS, notaries public are the time-tested defense against identity fraud by providing an impartial, third-party witness in a broad spectrum of transactions, giving a higher level of credibility and reliability to signatures on vital documents; and,

WHEREAS, as digital technology evolves, remote video notarization is being addressed in numerous state legislatures, by the Uniform Law Commission and by industries such as the financial and real estate sectors.

WHEREAS, the long-held notarial principle that 'personal appearance' requires physical presence,' is being reassessed to review the merits of physical presence versus virtual presence.

WHEREAS, the advent of remote notarization demands that issues of security and identity fraud in the remote notarization process be subject to accountability and standards in order to continue to foster public trust and protect consumers.

WHEREAS, for remote notarizations to provide the same level of credibility and reliability as traditional paper and electronic notarizations, it is imperative that appropriate, substantive and secure standards and procedures be adopted.

THEREFORE BE IT RESOLVED that NASS will convene the appropriate parties to develop remote notarization standards enabling remote notarizations that will protect the credibility of the process, help prevent identity fraud and provide accountability to the public in order to advance secure electronic commerce.

