

Department of State

Electronic Notarization Initiative

Fact Sheet

What is the Pennsylvania Department of State's Electronic Notarization Initiative?

The Electronic Notarization Initiative will permit qualified notaries to perform notarizations electronically as part of electronic documents that later will be recorded electronically by participating Pennsylvania county recorders of deeds.¹ Phase I of the Electronic Notarization Initiative is authorized for up to one year, with subsequent Phases possible after the completion of Phase I. The Department plans to evaluate the Initiative six months after initiation of Phase I. It is contemplated that subsequent phases of the Initiative will expand to other counties in which the recorders of deeds have the capability to electronically record documents. This Initiative presents the Department with an exciting opportunity to utilize what is learned from the Initiative as a means of identifying the components of a workable statewide electronic notarization program, while providing safeguards for consumers, recording offices and notaries alike. A multi-phase Initiative will also provide the Department with the ability to assess the level of interest in the use of electronic notarization among Pennsylvania businesses, government and financial institutions, as well as among notaries public and consumers.

What is the background behind the Electronic Notarization Initiative?

The Secretary of the Commonwealth is authorized to appoint and commission all notaries public in Pennsylvania and is charged with the general administration of the Notary Public Law, 57 P.S. §§ 147-169. The Secretary's authority is exercised by the Division of Commissions, Legislation and Notaries within the Department of State's Bureau of Commissions, Elections and Legislation (BCEL).

With the 1999 enactment of the Uniform Electronic Transactions Act (UETA)² and the 2000 enactment of the federal Electronic Signatures in Global and National Commerce Act (E-SIGN),³ electronic documents and electronic signatures became as legally binding as paper documents and pen-and-ink signatures. Section 307 of the UETA,⁴ specifically permits the use of a notary's electronic signature, where the notary is performing services relating to a notarization, acknowledgment, verification or statement under oath. Section

¹ The four participating recorders of deeds offices for Phase I of the Electronic Notarization Initiative are the Recorders of Chester, Lancaster, Philadelphia and Westmoreland counties.

² 73 P.S. §§2260.101-2260.5101, effective January 15, 2000 (with the exception of section 307).

³ 15 U.S.C. §§ 7001-7006, effective October 1, 2000.

⁴ Section 307 of the UETA, 73 P.S. §2260.307, provides in full:

Notarization and Acknowledgment

If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those services, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

307 does not take effect, however, until the Secretary issues a notice that the provisions of section 307 no longer conflict with the requirements and procedures of the Notary Public Law with regard to electronic notarization, acknowledgment and verification.

Revisions to the Notary Public Law, effective July 1, 2003, provided for electronic notarization by adding provisions for the execution and registration of a notary's electronic signature, as well as the requirement that notary education programs preapproved by the Secretary have a core curriculum which includes electronic notarization.

As part of the Secretary's oversight of the notaries public in the Commonwealth of Pennsylvania, the Department of State is launching Phase I of the Electronic Notarization Initiative in conjunction with notice that the provisions of section 307 of the Uniform Electronic Transactions Act no longer conflict with the requirements and procedures of the Notary Public Law. That notice will be published in the Pennsylvania Bulletin on December 31, 2005. (You may access the Pennsylvania Bulletin website at <http://www.pabulletin.com>).

What is electronic notarization (e-notarization)?

Electronic notarization (e-notarization) in its most basic and common form is the process of a commissioned notary affixing a digital signature or certificate (see **What is an electronic signature?**) to an electronic document where the digital signature or certificate is a series of numbers generated by a complex mathematical formula (algorithms) involving coding and decoding (encryption) technology. The fundamental components of notarization, including personal appearance of the document signers before the notary, still apply. But rather than a paper document and a rubber stamp notary seal, the notary digitally places his or her identifying information to a document which exists as electronic data in a computer-readable form.

What is an electronic document?

An electronic document exists as electronic data in a computer-readable form, rather than as words on a printed paper page. Some examples of electronic documents are word processing documents, e-mail messages, portable documents format (PDF) files, documents scanned into an image format, such as the software known as Adobe, and web pages. An electronic document, such as a mortgage agreement, has the same properties as a paper version, but is created and maintained electronically, usually via a computer program or a web site.

The definitions in the Pennsylvania Uniform Electronic Transactions Act (UETA) and the federal Electronic Signatures in Global and National Commerce Act (ESIGN) for relevant terms pertaining to electronic documents are substantially the same:

“Electronic” is defined as “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or other similar capabilities.”

“Record” is defined as “information which is inscribed on a tangible medium or is stored in an electronic or other medium and which is retrievable in perceivable form.”

“Electronic record” is defined as “a record created, generated, sent, communicated, received, or stored by electronic means.”

What is an electronic signature?

The UETA and ESIGN both define electronic signature as “an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” An electronic signature in its most basic form is a representation of a person’s digitized image of his/her handwritten signature or symbol. It refers to any of several, not necessarily cryptographic (encoded), methods for identifying the originator of an electronic message. Electronic signatures have included cable and Telex addresses, as well as facsimile transmission of handwritten signatures on a paper document and the typewritten name at the end of an e-mail. An electronic signature is typically attached to an electronic document or transaction, and, because it is not encoded, can be copied or tampered with, making forgery easy.

The term “digital signature” is often used interchangeably with “electronic signature” and digital signatures are sometimes referred to as Advanced or Secure Electronic Signatures. However, digital signatures or certificates are a result of a cryptographic (i.e. encoding and deciphering) operation. The technology behind digital signatures is an industry standard known as Public Key Infrastructure (PKI), a security framework or architecture which facilitates signed transactions by utilizing cryptography to ensure verifiable authenticity. The digital signature, essentially a complex coded message, cannot be copied, tampered or altered and is unique to both the document and the signer. The digital signature generally contains two complementary algorithms, one for signing and the other for verification, and the output of the signing process is also called a digital signature. The digital signature ensures that the signatory is in fact the originator of the message. Any changes made to the document after it was signed are in an indication to the receiver that the document may have been tampered with, thereby protecting against forgery.

What is electronic recording?

Electronic recording of documents is a combination of software and services that permits the paperless creation, authorization, validation and distribution of documents. Several levels of electronic recording are possible: Level 1 commonly permits faxed or emailed documents. Level 2 permits scanned images and partial index data to be submitted and recorded. Level 3 is fully electronic, where the document originators create, review, digitally sign and notarize the document (often through a computer web-based service), and then submit the document electronically to county offices, such as a recorder of deeds. The office that receives the documents then validates and distributes the submitted documents into its own recording database.

At the present time, electronic recording technology is most often used with real estate and mortgage documents. All traditional recording requirements must be present, including the submission of a document that is signed and notarized. However, these traditional requirements can be met by the submission of a document image, digital signatures and a

digital notarization.

How can I incorporate e-notarization into my notary practice?

You must take into consideration whether your notary practice includes the opportunity to notarize documents which will be electronically filed with an entity which is capable of receiving and recording such documents. In Phase I of the Electronic Notarization Initiative, this consists of the four participating county recorders of deeds. You must determine whether you and/or your employer have the hardware and necessary software to create, authorize, validate and distribute documents electronically.

In order to electronically notarize documents in Pennsylvania, you must participate in the Department of State's Electronic Notarization Initiative. To participate, you must be approved by the Secretary of the Commonwealth as an electronic notary and obtain a digital certificate in the form of an electronic notary seal from an approved certification authority.

How do I become an electronic notary (e-notary) in Pennsylvania?

In order to become an electronic notary in Pennsylvania, you must first be a duly appointed and commissioned notary public in the Commonwealth of Pennsylvania, complete the application to become an electronic notary, verify that you have not had any finalized or pending criminal or disciplinary actions since being appointed and commissioned and submit a non-refundable \$40.00 application fee payable to the Commonwealth of Pennsylvania. (The electronic notary application form is available from BCEL upon request or on the Department's website at <http://www.dos.state.pa.us> (link to Notaries)). Upon approval by the Department of State, a letter will be sent to your business office of record. The letter will authorize you to participate in Phase I of the Department's Electronic Notarization Initiative until the end of the Electronic Notarization Initiative or the end of your four-year commission as a notary public, whichever occurs first. The approval letter will also instruct you on how to obtain a digital certificate from an approved certification authority. The Department is utilizing the National Notary Association's Electronic Notary Seal program for the issuance of digital certificates in the form of an electronic notary seal during the Initiative. You may use only this digital certificate/electronic notary seal to notarize documents as part of the Electronic Notarization Initiative. Prior to the issuance of the digital certificate, you will be required to appear before a participating county recorder of deeds and present your approval letter and satisfactory evidence of identity.⁵ You will also

⁵ What is satisfactory evidence of identity before a participating county Recorder of Deeds?

Satisfactory evidence of identity consists of a current state or federal government-issued photo identification document and includes presentation of one of the following documents:

- Federal Government Issued Photo Identification Document
- Military Photo Identification Document
- U.S. Passport
- State Issued Photo Identification Document
- State Issued Driver's License

be required to pay a \$24.95 fee to the National Notary Association for issuance of the electronic notary seal. You can find more details on the application and approval process in “**Eight Steps to Becoming an Electronic Notary in Pennsylvania**” at <http://www.dos.state.pa.us> (link to Notaries).

What is a digital certificate?

The digital certificate which Pennsylvania notaries will be authorized to receive under the Electronic Notarization Initiative will be issued under the technology of Public Key Infrastructure (PKI). The digital certificate will identify you as a notary authorized to notarize electronically and you will attach the digital certificate to an electronic document, in lieu of your rubber stamp seal and signature. The procedure used to issue the certificate, which includes an in-person proofing step at a local county recorder of deeds’ office, provides assurances of your identity as the subscriber to the certificate. The digital certificate you will receive is considered an “individual” certificate, in contrast to an “organizational” certificate commonly used to secure web-based commercial sites such as online banking. Once the digital certificate is issued, you must safeguard the password or other access procedure, as you would your rubber stamp seal. It is up to you to prevent misuse of the digital certificate by others and to report its loss, theft or compromise.

How can a digital certificate be misused or compromised?

The digital certificate and a public or private key enable a signer to encrypt electronic documents and know if a document has been altered, but these features do not prevent a digital certificate from being used fraudulently to sign a document.

There are a number ways in which a digital certificate may be fraudulently used:

- The certificate may have been issued to an imposter. The Department of State’s Electronic Notarization Initiative will ensure that the identity of the digital certificate holder is verified on several occasions before issuance of the digital certificate.
- The certificate may be accessed and exploited by an unauthorized person. Do not share your access codes with a coworker, friend or spouse. Protect it as you would an ATM number or other sensitive code.
- Less frequently, the certificate owner may be coerced into using the certificate to sign an electronic document against his or her desires or the certificate owner may be intellectually vulnerable and manipulated into signing an electronic document against his or her interest. Medication or mental condition could play a part in rendering certain signers temporarily unaware of the ramifications of making a signature.

If a digital certificate issued under the Initiative is misused or compromised in any way, the electronic notary subscriber must notify both the Department of State and the National Notary Association immediately. In addition to the notification requirement, a Notary subscriber should voluntarily surrender the digital certificate in the event Notary believes the digital certificate is being misused or has been compromised. The act of voluntarily

surrendering the digital certificate effectively revokes the digital certificate and renders it invalid. Instructions and a link to a web-based tool to surrender your digital certificate will be included in the information you receive when you are issued a digital certificate.

Also remember that the impersonation of a notary is against the law and the use of a notary public seal by a person who is not the notary public named on the seal will be deemed an impersonation of a notary public under. Criminal prosecution and penalties are possible under 18 Pa.C.S. §4913 (relating to impersonating a notary public).

Is additional notary education required to become an electronic notary?

There is no additional notary education required to become an electronic notary under the Electronic Notarization Initiative. However, the Department of State strongly suggests continuing notary education for all notaries, with basic and advanced course content that includes electronic notarization. Please see the list of approved notary education providers on the Department of State website at <http://www.dos.state.pa.us> (link to Notaries).

Is additional bonding required to become an electronic notary?

No. The only bond requirement at the present time is the \$10,000 bond required for your notary commission.

Is errors and omissions (E&O) insurance needed if I electronically notarize?

As with paper notarization, it is solely at the notary public's discretion whether to obtain errors and omissions insurance. The Department recommends, if you are insured, that you check with the issuer of your E&O insurance to verify that your coverage includes electronic notarization.

What fees may I charge for electronic notarization?

A notary public may charge fees in accordance with the existing fees established by the Secretary of the Commonwealth. See fee information at <http://www.dos.state.pa.us> (link to Notaries). The eight distinct fees fixed by the Secretary of the Commonwealth are for notarial services regardless of whether the services occur in the traditional pen and paper manner or electronically. As always, the notary public may waive the right to charge a fee and may charge reasonable clerical or administrative fees for services provided in addition to the notarization of a document.

Must I keep a notary register of my electronic notarization acts?

Yes. The fundamental principles and processes of notarization remain the same regardless of the technology used to notarize. Under section 15 of the Notary Public Law, every notary public shall keep an accurate chronological register of all official acts by that notary done by virtue of that notary's office.

How does e-notarization differ from my current pen and paper notarization?

The five major components for valid paper and ink notarizations also apply to e-notarizations:

- Personal appearance - permits the e-notary to observe and interact with the signer.
- Identification - Under the revised Notary Public Law (Act 151 of 2002), an authorized e-notary public is permitted to rely on a current government-issued identification card containing a photo, a signature or a physical description and serial or identification number or rely upon a disinterested credible witness known to the notary and who knows the individual executing the instrument.
- Acknowledgment by signer - In signing before an authorized e-notary public, the signer asserts that he/she is authorized to sign a document and that he/she is signing on their own volition.
- Lack of duress - The presence of a third party (the e-notary) helps ensure that a signer is not being coerced into signing by emotional or physical threats.
- Awareness - Interaction with the signer permits the e-notary to detect whether mental impairment, other infirmity or controlled or alcoholic substances may have affected a person's judgment and his/her decision to sign.

The digital signers must appear before the notary. The digital certificate serves to seal the document and ensure that it has not been tampered with after leaving the notary's possession. The notary must ensure, pursuant to section 12(f) of the Notary Public Law, that the following information is attached to or logically associated with the electronic signature or electronic record being notarized, acknowledged or verified:

- (1) The full name of the notary along with the words "Notary Public"
[the full name should be the name under which the notary has been appointed and commissioned];
- (2) The name of the municipality and the county in which the notary maintains an office
[this is the name of the municipality and the county in which the notary's office of record with the Department of State is located]; and
- (3) The date the notary's commission is due to expire.

This information can be displayed in different and customized ways, depending on the software manufacturer and the document preparation software used.

How long will the Electronic Notarization Initiative last?

The Electronic Notarization Initiative will begin with Phase I, which is authorized for up to one year. The Electronic Notarization Initiative is subject to renewal by the Department after one year. The Department plans to reevaluate the Initiative six months after initiation of Phase I. It is contemplated that subsequent phases of the initiative will expand to other counties in which the recorders of deeds have the capability to electronically record documents. It should be noted that the Department's Electronic Notarization Initiative is

subject to immediate termination by the Office of Administration's Office of Information Technology (OA OIT), should OA OIT establish an e-notarization component as part of its Identity Management Initiative.

Questions about the Electronic Notarization Initiative may be directed to the Bureau of Commissions, Elections and Legislation, Department of State, 210 North Office Building, Harrisburg, Pennsylvania 17120. Telephone: (717) 787-5280. E-mail address: RA-BCEL@state.pa.us.

December 2005