



AMERICAN SOCIETY OF NOTARIES

Enotarization and Presence Requirement *January 2011*

To Our Members and All Notaries:

There is considerable discussion within the notary community about requirements for electronic notarization, specifically whether a notary may perform an electronic notarization *without* the personal/physical presence of the signer.

This year, as last year, the Commonwealth of Virginia's General Assembly is considering legislation that would eliminate the personal/physical presence requirement for electronic notarizations under certain circumstances. We also know of business entities, today, that are promoting "online notary services" that appear to ignore the personal/physical presence requirement.

American Society of Notaries believes that no state has authorized the performance of electronic notarizations without the personal/physical presence of the signer before the notary. **The traditional fundamentals of the notarial act, including personal/physical presence of the signer, are required whether the transaction is electronic or on paper.**

We also believe that the personal/physical presence of the signer before the notary must *continue* to be a requirement for electronic notarizations.

In every notarial act, notaries carefully assess certain information and carry out actions that are rooted in personal, physical contact with the signer. The integrity of the notary's witnessing act in paper and electronic transactions is founded on performance of these essential assessments and actions:

- Signer comprehension of the notarial act. Notaries must observe whether the signer is aware of the transaction, has a basic understanding of the document, and is fully engaged. If the signer does not seem to be fully competent or aware, the notary will protect the signer by declining to proceed. This is too valuable an assessment of potentially vulnerable signers—such as the sick, impaired, or very elderly—to base it on anything other than a physical, face-to-face exchange. We believe that nuances in the signer's behavior and demeanor can be missed or misjudged if the only notary-to-signer contact occurs electronically.
- The signer's free will in executing the document. The notary must be able to observe that the signer is executing the document of his own free will, and that there is no coercion or

physical threat to the signer. Direct threats such as a gun pointed at the signer's head, for example, could easily be concealed if the notary's perception is limited to what he or she can observe onscreen. The personal/physical presence of the notary with the signer allows the notary to take in the full scope of the signer's environment, and engage all his or her senses to detect when coercion is present.

- Positive identification of the signer, based on the notary's personal knowledge of the signer's identity or satisfactory identification credentials. Both methods depend on the notary's assessment of the identity claimed compared to the characteristics and behavior of the physically-present signer. (For example, is the signer's demeanor unusually nervous or suspicious? Does the identification document presented feel or look as if it has been altered or counterfeited?) We believe that allowing electronic notarizations to occur without physical presence of the signer would open the door to new and ingenious ways of committing fraud, whether by signer impersonation or ID document falsification.

Only after these essential assessments of identification, comprehension and free will are made will the notary take the signer's acknowledgment, or administer an oath/affirmation, and complete the proper notarial certificate. The certificate language for these notarial acts does not differentiate between a paper-based or electronic transaction... there is no need for differentiation since all the requirements for a paper-based notarial act apply to an electronic act, including that of the signer's personal/physical presence.

American Society of Notaries urges all notaries to exercise careful judgment if asked to perform an electronic notarization. First, be sure that electronic notarization is authorized in your state, and be knowledgeable of any specific guidance available to you in your state's statutes or rules. Finally, know that physical presence of the signer before you is an absolute requirement for a lawful notarial act, be it a paper or electronic transaction. If you have any questions at all, do not hesitate to contact us.

We will continue to report to our members and all notaries about this important issue. Thank you.

ASN Board of Directors

Questions, comments? Email [Kathleen @asnnotary.org](mailto:Kathleen@asnnotary.org) or call, 850-671-5164.