



## **Our View**

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### **Presence Requirement: Cornerstone of the Notarial Act in Any Medium**

The “personal presence requirement” in notarial acts refers to the mandate that the document signer in need of a notarial act must appear in person before the notary public. Only then may the notarial act be properly performed. The personal presence requirement is considered the cornerstone of notarial practice, enabling the notary to properly assess the document signer’s identity, as well as whether he/she comprehends the effect of the transaction and is entering into it freely and willingly.

The ability to make these various assessments in the presence of the signer is mission-critical to the notary’s objective of deterring fraud. Yet, we are frequently asked whether technology might allow the presence requirement to be eliminated from electronic notarizations. American Society of Notaries believes strongly that, be it a paper or electronic notarial act, the presence requirement is an indispensable element. Here’s why.

In every notarial act, notaries carefully assess certain information and carry out actions that are rooted in direct and personal contact with the signer. These assessments and actions establish the integrity of a notary’s witnessing act, and are equally essential in paper or electronic transactions.

- First, the notary satisfies himself that the person appearing before him is the named signer of the document. The notary may rely on personal knowledge of the signer’s identity, or presentation of a satisfactory identification document, or the oath of a credible witness (where allowed). One of these methods of evidencing identity, together with the physical presence of the person claiming identity, forms the basis of positive identification of the signer by the notary.
- The notary also must observe whether the signer is aware of the transaction and is fully engaged. If the signer does not seem to be fully competent or aware, the notary will decline to proceed. This assessment serves to protect signers who may be sick, or very elderly, or impaired in some way.
- 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 to the signer’s head, for example, could be concealed if the notary is relying on just an audio/video connection to communicate with the signer. On the other hand, such threats or coercion are detectable by a notary who is in the same room as the signer.

- Finally, having made the prior assessments (and assuming that the document itself presents no barriers to notarization), the notary proceeds to the heart of the notarial act by taking the signer’s acknowledgment or administering an oath or affirmation, then completing a notarial statement attesting to the facts of the notarization. These notarial statements (the notarial “certificate”) are commonly set forth in state notary and real property statutes, and are used interchangeably for both paper and electronic notarial acts. They contain the language “Acknowledged before me” and “Subscribed and sworn to before me”—plain evidence that personal presence of the signer is a required element of notarization, be it a paper or electronic transaction.

The formalities and requirements of notarial acts are unaffected by the medium in which the transaction occurs. This principle has been upheld in the National E-Notarization Standards<sup>1</sup> of the National Association of Secretaries of State, by the Uniform Law Commissioners developing the Revised Uniform Law on Notarial Acts<sup>2</sup>, and by states enacting e-notarization statutes and rules.

Personal presence of the signer before the notary is a time-tested requirement that cannot be set aside for the sake of technology or convenience. American Society of Notaries will fight to preserve the assurances provided by notarial acts, by opposing any efforts to eliminate the personal presence requirement from the performance of a paper or electronic notarial act.

<sup>1</sup>*National Association of Secretaries of State, National E-Notarization Standards, adopted July 12, 2006.*

<sup>2</sup>*National Conference of Commissioners on Uniform State Laws, Revised Uniform Law on Notarial Acts, draft as of February 23, 2010.*

## About

# AMERICAN SOCIETY OF NOTARIES

**American Society of Notaries** is the first national nonprofit association for notaries public in the United States. (Website [www.asnnotary.org](http://www.asnnotary.org))

Established in 1965, the **American Society of Notaries** is foremost in education, support and supplies for the notary in America. We are a true nonprofit, with no for-profit subsidiary or shareholders. We are governed by a non-compensated, voluntary Board of Directors with a passion for bettering the office of notary public.

This passion is also reflected in the work of our skilled staff members, who approach their many daily tasks with the desire to achieve excellence in every aspect of their work, and to ALWAYS put the notary first!

