

NATIONAL E-NOTARIZATION COMMISSION PROPOSED STANDARDS

Secretary of State Elaine Marshall, Chair

June 21, 2006

Mission Statement: It is the goal of the Commission to set technology neutral standards for secure and feasible implementation of electronic notarization. In the event of ambiguity of a term or standard, it should be interpreted in favor of technology neutrality.

Definitions

1. *"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.*
2. *"Electronic document" means information that is created, generated, sent, communicated, received, or stored by electronic means.*
3. *"Electronic notarial act" means an official act by a notary public on or involving an electronic document and using means authorized by the [commissioning official] or the laws of the jurisdiction of appointment.*
4. *"Electronically enabled notary public" means a notary public who has registered with the [commissioning official] the capability of performing electronic notarial acts in conformance with this Article.*
5. *"Electronic notary seal" and "official electronic seal" mean information within a notarized electronic document that includes the notary public's name, jurisdiction of appointment, commission number, and commission expiration date, and generally corresponds to data in notary public seals used on paper documents.*
6. *"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document or record.*
7. *"Electronic notarial certificate" means the portion of a notarized electronic document that is completed by the notary public, bears the notary public's electronic signature and/or official electronic seal, official title, commission number, commission expiration date, any required information concerning the date and place of the electronic notarization, and states the facts attested to or certified by the notary public in a particular electronic notarization.*

8. "Non-repudiation" means the inability of the signer of a document to falsely deny their signature or the contents of the document signed.

9. "Notary electronic signature" means those forms of electronic signature which have been approved by the commissioning official as an acceptable means for an electronic notary to affix the notary's official signature to an electronic record that is being notarized.

10. "Physical appearance" and "appears before the notary" mean that the principal and the notary public are physically close enough to see, hear, communicate with, and give documents to each other without reliance on electronic devices such as telephones, computers, video cameras or facsimile machines.

11. "Unique to the Notary Public" and "under the sole control" mean with respect to an electronic notarization that the signing device used to affix the electronic signature of the Notary Public and to render the official electronic seal information tamper-evident must be accessible by and attributable solely to the Notary Public to the exclusion of all other persons and entities for the necessary period of time that such device is engaged and operating to effectuate the authorized electronic notarization.

Comment

Although the definitions for "Electronic notary seal" and "Electronic notarial certificate" have references to "Commission number", "Commission expiration" and "Notary seal", it is recognized that some jurisdictions do not issue commission numbers, or require notary seals. Other jurisdictions that issue life long notary commissions do not have expiration dates.

The definitions of "unique to the Notary Public" and "under the sole control" are terms that do not require any particular currently existing technology or preclude any signature or seal technology that may emerge in the future for the purpose of electronic notarization that satisfy these standards.

STANDARDS

Physical Appearance Requirement

1. A notary public shall not perform an electronic notarization if the document signer does not appear in person before the notary public at the time of notarization.
2. The methods for identifying document signers for an electronic notarization shall be the same as the methods required for a paper-based notarization

Comment

Under no circumstance shall a notary public base identification merely upon familiarity with a signer's electronic signature or an electronic verification process that authenticates the signer's electronic signature when the signer is not in the physical presence of the notary public.

Registration Requirement

3. Before performing any electronic notarial acts, a notary public shall register the capability to notarize electronically with the [commissioning official].
4. In registering the capability to perform electronic notarial acts, the notary public shall provide the following information to the [commissioning official]: a) the electronic technology or technologies to be used in attaching an electronic notarial certificate to an electronic document, b) the electronic technology or technologies to be used in attaching the notary's electronic signature to the electronic document, c) the electronic technology or technologies to be used in attaching the notary's official electronic seal to the electronic document, d) an exemplar of the notary's electronic signature and of the notary's official electronic seal, and e) any necessary instructions or techniques that allow the notary's electronic signature and/or official electronic seal to be read.

Comment

The technologies that a state may authorize for an electronic notarization will dictate how the attachment or logical association of the electronic notarial certificate, electronic signature, and official electronic seal to the document will be accomplished. It is possible that the electronic signature and seal may be combined in a single element, or that the seal may be a component of the signature or vice versa. The important matter is that all of the notary public's identifying and commissioning information be made a part of, or a secure attachment to, the underlying notarized electronic document.

Form and Manner of Performing the Electronic Notarial Act

5. When performing an electronic notarization, a notary public shall apply an electronic signature, which shall be attached to or logically associated with the electronic document such that removal or alteration of such electronic signature is detectable and will render evidence of alteration of the document containing the notary certificate which may invalidate the electronic notarial act.
6. When performing an electronic notarization, a notary public shall complete an electronic notarial certificate, which shall be attached to or logically associated with the electronic document such that removal or alteration of the electronic notarial certificate is detectable and will render evidence of alteration of the document containing the notary certificate which may invalidate the electronic notarial act.
7. The notary public's electronic signature is deemed to be reliable if the following requirements are met: a) it is unique to the notary public, b) it is capable of independent verification, c) it is retained under the notary public's sole control, d) it is attached to or logically associated with the electronic document, and e) it is linked to the data in such a manner that any subsequent alterations to the underlying document or electronic notarial certificate are detectable and may invalidate the electronic notarial act.
8. When performing an electronic notarization, a notary public shall apply an electronic seal, when required by law, which shall be attached to or logically associated with the electronic

document such that removal or alteration of such official electronic seal is detectable and will render evidence of alteration of the document containing the notary certificate which may invalidate the electronic notarial act.

9. The notary public's official electronic seal is deemed to be reliable if the following requirements are met: a) it is unique to the notary public, b) it is capable of independent verification, c) it is retained under the notary public's sole control, d) it is attached to or logically associated with the electronic document and e) it is linked to the data in such a manner that any subsequent alterations to the underlying document or electronic notarial certificate are detectable and may invalidate the electronic notarial act.

10. The notary public's electronic signature in combination with the electronic notary seal shall be used only for the purpose of performing electronic notarial acts.

11. The liability, sanctions, and remedies for the improper performance of electronic notarial acts are the same as described and provided by law for the improper performance of non-electronic notarial acts.

Comment

Although UETA, and URPERA, and the federal ESign law can be read to have eliminated the need for a physical seal image as a requirement for determining whether an electronic document is an "original" versus a copy, the seal requirement remains essential to authenticating documents under federal and state rules of evidence. What is important is that the basic identifying and commissioning information – contained in the notary public's holographic signature and traditional inking and embossing notary seals – also be elements of a notarized electronic document.

These standards do not in any way require the use of one specific technology, nor are they intended to privilege the use of one specific technology over another, nor do they limit the utilization of electronic signatures outside the electronic notarization process.

Security Requirements

12. The notary public shall not share the information used in registering with the [commissioning official] except when requested by law enforcement, the courts, and with reasonable precautions, electronic document preparation and transmission vendors.

Comments

Control of security aspects such as but not limited to passwords, token devices, biometrics, PINS, phrases, software on protected hardware shall remain only under the control of the commissioned individual.

Requirements for Authenticating the Notarial Act

13. Electronic notarial acts need to fulfill certain basic requirements to ensure non-repudiation and the capability of being authenticated by the [commissioning official] for purposes of issuing Apostilles and Certificates of Authentication. They are as follows: a) the fact of the notarial act, including the notary's identity, signature, and commission status, must be verifiable by the

commissioning official and b) the notarized electronic document will be rendered ineligible for authentication by the commissioning official if it is improperly modified after the time of notarization, including any unauthorized alterations to the document content, the electronic notarial certificate, the notary public's electronic signature, and/or the notary public's official electronic seal.

Requirements for Issuance of Electronic Apostilles and Certificates of Authentication (Appointment)

14. Electronic Apostilles need to fulfill certain basic requirements to ensure non-repudiation: a) the fact of the issuance of the Apostille by the [commissioning official] must be independently verifiable and b) the Apostille must be invalidated if the underlying document is improperly modified as when, for example, a person attempts to remove the Apostille from the public document.

15. Certificates of Authentication (or Appointment) need to fulfill certain basic requirements to ensure non-repudiation: a) the fact of the issuance of the Certificate by the [commissioning official] must be independently verifiable and b) the Certificate must be invalidated if the underlying document is improperly modified as when, for example, a person attempts to remove the Certificate from the public document.

Comment

The Apostille and the underlying document are legally joined. Therefore, any separation legally invalidates the Apostille. To ensure a recipient the necessary degree of security and trust in deciding whether to accept, an electronic Apostille must, from the time of issuance, provide integrity (assurance that the Apostille and the document have not been altered), authentication (assurance as to where the Apostille and document come from) and non-repudiation (the commissioning official cannot deny having signed the Apostille). In the same way, the Certificate and the underlying document are legally joined, and any separation legally invalidates the Certificate. Therefore, to ensure a recipient the necessary degree of security and trust in deciding whether to accept, an electronic Certificate must, from the time of issuance, provide integrity (assurance that the Certificate and the document have not been altered), authentication (assurance as to where the Certificate and document come from) and non-repudiation (the commissioning official cannot deny having signed the Certificate).

"Authentication" in this context is "a certification of the genuineness of the official character, i.e., signature and seal, or position of a foreign official. It is an act done with the intention of causing a document which has been executed or issued in one jurisdiction to be recognized in another jurisdiction. Documents which may require authentication include legal instruments notarized by foreign notaries or other officials, and copies of public records, such as birth, death, and marriage certificates, issued by foreign record keepers." (22 CFR 92.36)

The term "public document" is used as defined in Article 1 of the Hague Conference on Private international Law's Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.

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July 5, 2006

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8. "Non-repudiation" means the inability of the signer of an electronic document to deny their electronic signature without factual basis.

9. "Notary electronic signature" means those forms of electronic signature which have been approved by the commissioning official as an acceptable means for an electronic notary to affix the notary's official signature to an electronic record that is being notarized.

10. "Physical appearance" and "appears before the notary" mean that the principal and the notary public are physically close enough to see, hear, communicate with, and give documents to each other without reliance on electronic devices such as telephones, computers, video cameras or facsimile machines.

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The concept of "non-repudiation" is intended to create a presumption of regularity and reliability of electronically executed documents, so that they may be relied upon by third parties. This concept does not limit the ability of a person to assert a denial of an electronic signature, but serves to shift the burden of proof to the party seeking repudiation.

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