

*The Virginia
Electronic Notarization
Assurance Standard*



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1 **Scope and Intent**

2 The challenges before notaries in the Commonwealth of Virginia, throughout the United States,
3 and around the world are to preserve and strengthen the role of the notary in the rapidly
4 emerging digital economy and to ensure reliability and cross-border recognition of notarized
5 electronic documents in a global economy. Consequently, notaries in the Commonwealth of
6 Virginia should transition to performing electronic notarizations that have the same legal effect
7 and admissibility as currently presumed by their physical-world counterparts.

8 The validity and enforceability of an electronically notarized document rests upon confirming the
9 legitimacy of the notary who signed the record and establishing the integrity of the signed record
10 itself.

- 11 • Legitimacy involves verifying the identity of the electronic notary who created the
12 electronic signature and the electronic notary’s official status.
- 13 • Integrity involves corroborating that the presented record accurately reflects the data and
14 form of the record originally electronically signed by the electronic notary.

15
16 In recent years, distinguished notarial experts from the United States and around the world have
17 studied electronic notarization systems. A consistent message has been that a digital certificate in
18 a public key infrastructure is the technology best suited *today* to achieve these aims.

19 To fulfill the requirements of Virginia Code [§47.1-6.1](#), and in an effort to standardize the
20 processes and procedures for performing electronic notarization, including the issuance of digital
21 certificates used by Virginia electronic notaries, the Secretary of the Commonwealth of Virginia
22 has looked to standards previously promulgated by the National Association of Secretaries of
23 State, Arizona, Colorado, Florida, Kansas, New Mexico, North Carolina, Pennsylvania, and
24 Notary Societies from Common Law and Civil Law jurisdictions to develop the Virginia
25 Electronic Notarization Assurance Standard (the “Virginia Standard”). The goal of this Virginia
26 Standard is to achieve recognition of Virginia electronic notary signatures and seals as well as
27 electronic notarization systems that would facilitate acceptance of Virginia electronic notarial
28 acts worldwide.

29 **Influences on the Virginia Standard**

30 **A. The Virginia Standard Reflects the National Association of Secretaries of State (USA)**
31 **Electronic Notarization Standard for Document Security**

32 The National Association of Secretaries of State has established performance expectations for
33 electronic notary signatures and seals and their use. Consistent with paragraphs 5 and 7 of the
34 Electronic Notarization Standards of the National Association Secretaries of State, the Virginia
35 Standard specifies how the electronic notary must maintain exclusive control over the electronic
36 signature and seal. In addition, the requirement in the Virginia Code that the electronically

1 notarized document be rendered tamper evident is consistent with paragraph 5 of the National
2 Association of Secretaries of State Electronic Notarization Standards. This paragraph specifies
3 that “[w]hen performing an electronic notarization, a notary public shall apply an electronic
4 signature, which shall be attached to or logically associated with the electronic document such
5 that removal or alteration of such electronic signature is detectable and will render evidence of
6 alteration of the document containing the notary certificate which may invalidate the electronic
7 notarial act.”

8 **B. The Virginia Standard Reflects Previously State-Issued Electronic Notarization**
9 **Standards in the United States**

10 The Virginia Standard relies on previously well-considered e-notarization standards issued by
11 Arizona, Colorado, Florida, Kansas, New Mexico, North Carolina, and Pennsylvania. In
12 particular, the Virginia Standard borrows the concept of an Electronic Notarization System from
13 Arizona, Colorado, Florida, and North Carolina. In addition, the Virginia Standard borrows from
14 Arizona, Florida, Kansas, New Mexico, and Pennsylvania the best practice of reliance on digital
15 certificates that are securely issued and managed by a trusted root Certificate Authority.

16 **C. The Virginia Standard is Consistent with Existing Electronic Signature Laws and**
17 **Standards**

18 This standard reflects the requirements of the following authoritative electronic signature
19 sources:

- 20 (a) the United States Electronic Signatures in Global and National Commerce Act (“E-
21 SIGN”),¹
- 22 (b) the Uniform Electronic Transactions Act,² and
- 23 (c) the Uniform Real Property Electronic Recording Act.³

24 The challenge facing the global move toward electronic notarization is establishing a legally
25 reliable approach for performing and evidencing the electronic notarial act and managing
26 notaries’ electronic signatures and seals. Without a Virginia Standard that is aligned to the
27 various national signature laws and emerging industry access control and secure messaging
28 requirements, notaries could face the need to have access to multiple electronic signing
29 credentials and systems. At the same time, every relying party should know that the electronic
30 signature and seal of the Virginia electronic notary are as legally valid and reliable as the
31 electronic signature and seal of a notary in any other jurisdiction.

¹15 U.S.C.A. §§ 7001 *et seq.*

² UNIF. ELEC. TRANSACTIONS ACT (Nat’l Conf. of Comm’rs on Unif. State Laws, 1999) enacted in Virginia at VA. CODE ANN. § 59.1-479 *et seq.*

³ UNIF. REAL PROPERTY ELEC. RECORDING ACT (Nat’l Conf. of Comm’rs on Unif. State Laws, 2004), enacted in Virginia at VA. CODE ANN. § 55-142.10 *et seq.*

1 **Definitions**

- 2 (a) “Accessed by biometric data” means proving the identity of a user by requiring
3 verification of the user’s identity through technologies that require measurement and
4 analysis of one or more human physiological or behavioral characteristics of the user in
5 order to access and use a digital certificate. Biometric data includes fingerprint scanning,
6 retinal scanning, hand geometry, voice recognition, and handwriting analysis.
- 7 (b) “Appear or appears in person” means either in the same physical location or by two-way
8 live video and audio conference communication.
- 9 (c) “Attach” means the electronic notary’s electronic signature and seal are securely bound to
10 the electronic document in such a manner as to make it impracticable to falsify or alter,
11 without detection, either the signature or the document.
- 12 (d) “Capable of independent verification” means that any interested person may confirm the
13 validity of an electronic notarial act, including the electronic signature and seal, through a
14 publicly accessible system and in compliance with the X.509 digital certificate standard.
- 15 (e) “Digital certificate” means a computer-based record or electronic file issued to an
16 electronic notary for the purpose of creating an official electronic signature in
17 conformance with this Standard.
- 18 (f) “Electronic document” means any electronic record or file that can be signed with a
19 digital certificate or an electronic notarization system.
- 20 (g) “Electronic notarization system” means a set of applications, programs, hardware,
21 software, or technology designed to enable an electronic notary to perform electronic
22 notarizations, including online notarizations, in the manner of a security procedure as that
23 term is defined below and in the Uniform Electronic Transactions Act (Virginia Code
24 §59.1-479 *et seq*).
- 25 (h) “Exclusive control” means accessible by and attributable solely to the electronic notary to
26 the exclusion of all other persons and entities, either through being in the direct physical
27 custody of the electronic notary or through being secured with one or more biometric,
28 password, token, or other authentication technologies in an electronic notarization system
29 that meets the performance requirements of Virginia Code [§47.1-14](#) and [§47.1-16](#).
- 30 (i) “Online notarization or online notarial act” means the performance of an electronic
31 notarial act by means of two-way live audio and video conference technology that meets
32 the performance requirements of Virginia Code [§47.1-2](#) and [§19.2-3.1 B1, B2, and B3](#).
- 33 (j) “Security procedure” means a procedure employed for the purpose of verifying that an
34 electronic signature, document, or performance is that of a specific person or for
35 detecting changes or errors in the information in an electronic document. The term
36 includes a procedure that requires the use of algorithms or other codes, identifying words
37 or numbers, encryption, or callback, or other acknowledgment procedures.
- 38 (k) “Signing key” means the private cryptographic key of a digital certificate.
- 39 (l) “Standard” means the Virginia Electronic Notarization Assurance Standard.

1 **Article 1: Electronic Notarization Generally**

2 **1.1 Registration**

3 (a) Before performing any electronic notarial acts, a notary shall register the capability to
4 notarize electronically, including the means for completing online notarizations. The
5 Secretary shall develop a form to be submitted by each notary for this purpose. The form
6 must be resubmitted upon renewal of the electronic notary commission.

7
8 (b) Upon successful completion of all registration requirements, the Secretary of the
9 Commonwealth shall email to the notary’s email address on file an approval letter that
10 confirms the commission to act as an electronic notary.

11
12 (c) The Secretary of the Commonwealth will not render an opinion or determination as to
13 whether a particular electronic notarization system or technology used by a notary is in
14 compliance with this Standard or the Code of Virginia. Responsibility for compliance is
15 solely on the electronic notary.

16 **1.2 Basic Performance Requirements for the Electronic Notarial Act**

17 (a) In performing electronic notarial acts, an electronic notary shall continue to adhere to all
18 rules governing paper-based notarial acts, except that notaries performing online notarial
19 acts can allow signers to appear before the electronic notary via two-way live video and
20 audio conference, consistent with Virginia Code [§47.1-2](#) and [§19.2-3.1 B1, B2, and B3](#).

21
22 (b) An electronic notary shall not perform an electronic notarization if the document signer
23 does not appear before the electronic notary at the time of the notarization either in the
24 same physical location or by means of two-way live video and audio conference.

25 (c) A notary shall not use a digital certificate as the electronic notary’s official electronic
26 signature and seal if that digital certificate has expired or been revoked.

27
28 (d) The official electronic signature and seal of the electronic notary shall be used to digitally
29 sign the electronic document in such a manner that relying parties can detect
30 unauthorized tampering or alteration of the electronic document after it has been digitally
31 signed by the electronic notary.

32 **1.3 Electronic Record of Notarial Acts**

33 In accordance with Virginia Code [§47.1-14](#), an electronic record of notarial acts shall:

- 1 (a) Allow record entries to be made, viewed, printed out, and copied by an electronic notary
2 only after access is obtained by at least one factor of authentication such as a password,
3 biometric verification, token, or other form of authentication.
- 4 (b) Not allow a record entry to be deleted or altered in content or sequence by the electronic
5 notary or any other person after a record of the electronic notarization is entered and
6 stored.
- 7 (c) Have a backup system in place to provide a duplicate electronic record of notarial acts as
8 a precaution in the event of loss of the original record.
- 9 (d) When not in use, the electronic record shall be kept under the exclusive control of the
10 electronic notary, and shall not be used by any other electronic notary nor surrendered to
11 an employer upon termination of employment. The electronic record is at all times the
12 exclusive property of the notary and no employer or vendor of e-notary services may
13 retain control of a notary's electronic record for any reason. Exclusive control is
14 achieved by ensuring that at least one method of authentication is required to verify the
15 identity of the electronic notary requesting access to the electronic record.

16 17 **1.4 Lawful Inspection of the Electronic Record of Notarial Acts**

18
19 To fulfill the requirements of Virginia Code [§47.1-14 C](#), the electronic notary shall respond to a
20 lawful, written request to inspect an electronic notary's record by producing a certified copy of
21 the electronic record that includes an entry in the electronic notary's record documenting the
22 certified copy production. Copy certification is an authorized notarial act pursuant to Virginia
23 Code [§47.1-12](#).

24 **Article 2: Official Electronic Signature and Seal Requirements**

25 **2.1 Official Electronic Signature and Seal**

- 26 (a) In accordance with the requirements of Virginia Code [§47.1-14 E](#) and [§47.1-16 B and D](#),
27 the means by which an electronic notary creates an official electronic notary signature
28 and seal shall be:
- 29 (i) attributed or uniquely linked to the electronic notary;
 - 30 (ii) capable of independent verification;
 - 31 (iii) created using means that the notary can maintain under the electronic notary's
32 exclusive control; and
 - 33 (iv) linked to the electronic document to which it relates in such a manner that any
34 subsequent change of the electronic document is detectable.
- 35

1 (b) In fulfillment of the requirements of Virginia Code [§47.1-16](#), an electronic notary shall
2 use a digital certificate to digitally sign electronic documents requiring notarization.

3 The notary’s official signature and seal consist of both the digital signature and an
4 image or text on the electronic document that includes the following information:

- 5 (i) the electronic notary’s name (as shown on the notary’s electronic notary
6 commission);
- 7 (ii) the electronic notary’s registration or commission number;
- 8 (iii) the words “Electronic Notary Public”;
- 9 (iv) the words “Commonwealth of Virginia”; and
- 10 (v) the electronic notary’s commission expiration date.

11 (c) The digital certificate, along with the image or text displaying the information in Section
12 2.1(b), must be affixed to the document in such a manner that any subsequent
13 unauthorized modification or alteration of the information can be detected.

14
15 (d) A digital certificate used by an electronic notary to digitally sign electronic documents
16 shall conform to X.509 digital certificate standards and be issued and managed by a
17 trusted root Certificate Authority.

18
19 (e) The digital certificate used by an electronic notary to digitally sign electronic documents
20 may not be used beyond the expiration date of the electronic notary’s commission.

21 **2.2 Protected Access to the Official Electronic Signature and Seal**

22 In fulfillment of Virginia Code [§47.1-14 E](#), access to the means by which an electronic notary
23 creates an official electronic signature and seal, including through an electronic notarization
24 system, shall be protected by use of at least one factor of authentication such as a password,
25 token, biometric, or other form of authentication.

26 **2.3 Electronic Notarization Systems**

27 (a) In fulfillment of Virginia Code [§47.1-14 E](#), an electronic notarization system shall, by
28 appropriate technical and procedural means, ensure that the signing key used for
29 generating an official electronic signature and seal:

- 30 (i) is kept reasonably secured such that the signing key remains secret;
- 31 (ii) cannot, with reasonable assurance, be derived; and
- 32 (iii) can be reliably protected from misuse.

33
34 (b) When keyed hardware tokens are used, the delivery shall be accomplished in a way that
35 ensures that the correct token and activation data is provided to the electronic notary.

1 **2.4 Non-Notarial Use Prohibition**

2 In accordance with Virginia Code [§47.1-14 F](#), the electronic notary’s registered electronic
3 signature and seal shall be used together only for the purpose of performing lawful electronic
4 notarial acts.
5

6 **Article 3: Online Notarization**

7 **3.1 Validity of Digital Certificate(s)**

8 Any electronic notarization system used by an electronic notary must ensure that the digital
9 certificate used by an electronic notary has not expired or been revoked at the time the digital
10 certificate is used to digitally sign an electronic document.
11

12 **3.2 Identity Proofing by Digital Certificate or PIV Card**

13 In the event an electronic notary identifies the signer by means of the signer’s digital certificate
14 or PIV card, the electronic notarization system must ensure for the electronic notary that the
15 digital certificate or PIV card used by the signer has not expired or been revoked at the time the
16 notarization is performed.
17

18 **3.3 Antecedent Identity Proofing Process**

19 The electronic notary shall only rely on an antecedent in-person proofing process that conforms
20 to the guidelines of the Federal Bridge Certification Authority.
21

22 **3.4 Standards for Secure Transmission for Electronic Video and Audio Communications**

23 The electronic notary shall take reasonable steps to ensure that the use of two-way live video and
24 audio communication is secure from interception through unlawful means.
25

26 **Article 4: Notarized Electronic Document Requirements**

27 **4.1 Capability for Verifying the Electronic Notary’s Signature and Seal**

28 In accordance with Virginia Code [§47.1-16](#), an electronic notarization system must be capable of
29 producing an electronically notarized document that allows relying parties to verify the following
30 information regarding the electronic notary’s official electronic signature and seal:

- 31 (a) the authenticity and validity of the digital certificate used by the electronic notary to
32 digitally sign the document at the time of the notarization may be reliably verified;
- 33 (b) the electronic notary’s identifying information, including the electronic notary’s
34 commissioned name, registration number, the words “Electronic Notary Public” and
35 “Commonwealth of Virginia,” and the electronic notary’s commission expiration date are
36 correctly displayed;

1 (c) any changes or alterations to the notarized document subsequent to the electronic notary's
2 affixation of a digital signature can be reliably detected.

3 **4.2 Capability for Testing Authenticity of the Electronic Notarial Certificate**

4 In accordance with Virginia Code [§47.1-16 D](#), an electronic notarization system must enable the
5 electronic notary to include an electronic notarial certificate that shall be attached to or logically
6 associated with the electronic document in such a manner that removal or alteration of the
7 electronic notarial certificate is detectable.