



UNIFORM LAW COMMISSION

National Conference of Commissioners on Uniform State Laws

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Memorandum

TO: ULC Study Committee on Revising the Uniform Law on Notarial Acts

FROM: Liza Karsai, ULC Executive Director

Garrett Heilman, ULC Legislative Counsel

DATE: March 24, 2015

RE: Report on Stakeholders Meeting: Foreign Executed Documents

On March 19, 2015, members of the Revised Uniform Law on Notarial Acts (RULONA) Committee met with stakeholders in Chicago to discuss whether the Uniform Law Commission (ULC) should draft amendments to RULONA, amendments providing a solution to U.S. citizens abroad who wish or need notarizations for use in the various States. In advance of the meeting, Chairs Ray Pepe and Pat Fry distributed:

- A report from the ABA Section of International Law (ABASIL) to the House of Delegates recommending the modernization of notarization procedures in cross-border contexts;
- A report to ULC's Executive Committee both recognizing a problem with cross-border notarization and requesting the Executive Committee authorize an in-person stakeholder meeting to discuss how to proceed;
- A list of issues the Chairs sought input on from the stakeholders; and
- A draft of language proposed to amend RULONA and address the problem of cross-border notarizations.

These documents functioned as an agenda to the meeting and are attached to this report. Also included in this report is a list of the stakeholders who attended the meeting in person or by phone. That list is below along with a summary of the meeting and the meeting minutes.

Participants

Commissioners: Pat Fry (Co-Chair), Ray Pepe (Co-Chair), Bob Stein

Reporter: Art Gaudio

Stakeholders: William A. Anderson (National Notary Association), Marc Aronson (Pennsylvania Association of Notaries), Kathleen Butler (American Society of Notaries), Maureen E. Ewing (Notary Public Administrators, President), Richard Field (Drafter of ABASIL Resolution), William Fritzlen (U.S. Department of State), Lori Hamm (Montana SoS's Office), John Harris (Signix), John Jones (ArionZoe), Werner Kranenburg (Former Vice-Chair of ABASIL), Darcy Mayer (DocVerify), Tim Reiniger (FutureLaw), Thomas J. Smedinghoff (ABA Science & Technology Section), Ozie Stallworth (North Carolina SoS's Office), Linda Strite Murnane (ABA US Lawyers Abroad Committee), Rick Triola (NotaryCam), Kay Wrucke (Co-Chair PRIA eNotary Work Group & Minnesota Recorder of Deeds). Ivy Martin (Fannie Mae), Mike Chapperty (Fannie Mae), Raymond Janicko (Pennsylvania Association of Notaries)

ULC Staff: Harriet Lansing (President), Liza Karzai (Executive Director), Garrett Heilman (Legislative Counsel).

Summary

Chair Fry opened the meeting by explaining the meeting had its genesis in the ABASIL report, which asked the ULC to consider amending RULONA to simplify and modernize the procedure for verifying signatures across borders. The ABASIL report spurred conversations among RULONA's Standby Committee to determine whether cross-border notarizations posed a problem that should be addressed by statute. The Standby Committee's investigation confirmed the problem, and the Committee recommended ULC's Executive Committee authorize an in-person stakeholder meeting. The Executive Committee agreed.

With the Executive Committee's consent, invitations were sent to stakeholders, requesting they come prepared to discuss whether a problem exists. At the meeting, the stakeholders universally agreed that many Americans have trouble obtaining notarizations while abroad.

The bigger question was whether to amend RULONA to permit remote notarization solely for foreign executed documents. Some stakeholders at the meeting felt that documents executed domestically should also be eligible for remote notarization. While the issues posed by remote notarization in domestic and foreign contexts pose similar issues, the stakeholders – **with the exception of Tom Smedinghoff and Ozie Stallworth** – agreed to limit any amendments to the foreign context in hope of expediting the process for amending RULONA. Those participants did not object to remote notarization per se. Rather, they would prefer any amendments to RULONA permitting remote notarization undergo a lengthier drafting and review process to address the larger issues of domestic notarizations as well.

With general consensus that RULONA should be amended to permit notarization of foreign executed documents, the question became how. In advance of the meeting, the Chairs distributed a draft of amendments to RULONA, amendments authorizing remote notarizations in cross-border contexts. Generally, stakeholders responded to the draft with two concerns. First, William Fritzlen, on behalf of the U.S. State Department expressed concern that foreign countries may consider remote notarizations to infringe on their sovereignty. Second, stakeholders expressed concern that remote notarization creates a greater or different risk of misidentifying a person than is present during in-person notarizations. The stakeholders resolved each issue in turn.

The State Department raised the first concern, noting that countries like Switzerland would consider a remote notarization an infringement on their sovereignty. Beyond the implications of such a violation on bilateral relations, the State Department explained that Switzerland, and countries like it, may prosecute American citizens who obtain a remote notarization while in that foreign country. To alleviate the State Department's concern, Chair Ray Pepe suggested including a provision that permitted remote notarization "except as prohibited by the law of the jurisdiction in which the document was signed." The State

Department's representative, Bill Fritzlen, stated this alleviated his concern.

A second facet of this concern is limiting the Act's coverage to remote notarizations of *foreign* executed documents. More specifically, stakeholders questioned how a notary could know whether s/he had jurisdiction—that is, whether the person executing the document was truly in a foreign country or across the street. To address these concerns, Reporter Art Gaudio intends to remove the brackets in his draft from the phrase “if the individual is physically located in a foreign state,” and add a provision that only requires the notary to reasonably determine the person is located in a foreign state. Tom Smedinghoff also proposed asking signers to make a representation that they are in a foreign state, rather than imposing a new duty on U.S. notaries.

The last major issue that concerned stakeholders was the risk of misidentifying a person. Stakeholders feared that remote notarizations posed a bigger risk that someone could present fake identification credentials since it is difficult to authenticate documents via video. These stakeholders requested a more secure way of identifying a person. Others argued that it was important to hold notaries—whether performing in-person or remote notarizations—to the same standard. Ultimately, the Chairs agreed that the greater risks of misidentifying a person via remote notarization justified imposing on the notary the obligation to take added steps, such as identity proofing, knowledge-based identification and/or taped interactions with the notary. But, to avoid technology-specific legislation and give implementing agencies the flexibility to change with the times, the Committee agreed to give the commissioning officers rulemaking authority.

Finally, participants discussed a number of issues raised by remote notarizations, including what law would govern the notarization, the consequences of notarizations later determined to be invalid, the duties imposed on notaries to confirm the identity and location of signers, and the ability of commissioning officers to govern the actions of notaries and adapt to evolving and emerging technologies.

When Reporter Art Gaudio finishes his revisions, the Committee plans to seek comments from Virginia since it already permits remote notarizations.

In sum, the stakeholders agreed with the conclusion of the ABASIL report that Americans abroad experience trouble notarizing foreign executed documents. Rather than wait to address the problem in a standalone act that could take more than two years to draft, the majority of stakeholders agreed upon the Committee's proposal to amend RULONA solely to authorize remote notarizations in the context of foreign executed documents. To avoid infringing on the sovereignty of foreign countries, the Act would prohibit remote notarizations where it is also prohibited by the law of the jurisdiction in which the document was signed. Given the risk of misidentifying someone over the internet, the Act will require notaries performing remote notarization to take additional steps to establish identity.