

Notary Digest

Webcam Notarization Issue Update

By Brenda Stone

The notarization-by-webcam debate that rose to a crescendo and dissipated in 2012 has quieted, but it has certainly not disappeared. Promoters of webcam notarization technology have stayed under the radar and at least one has taken a different approach to finding acceptance of the technology.

The AAN has reported on this topic several times over the last two years and we promised to keep you informed as issues developed. The topic has risen again. This issue of The Notary Digest cannot cover in detail all matters that relate to webcam notarizations nor should it be a white paper on the technology that is being used. The purpose of this article is to inform members about the progress that webcam notarization is making.

This summer, officials for notary public administrative offices across the U.S. will hear from a company promoting its webcam technology. Mr. Rick Troia, President & CEO, Settleware Secure Services, Inc. (Settleware) will give a live demonstration and lead a discussion of the video notarial process during his presentation, "Virginia Remote Notarization - Benefit or Detriment?" This gathering of top state notary officials will take place during the sessions of the Notary Public Section of the annual conference of the National Association of Secretaries of State in Anchorage, Alaska, July 18-21, 2013.

■ Impact on the Public and Notaries

Virginia is the only state that has legalized notarial acts through the use of a video conferencing system. We can only speculate about the impact of webcam notarizations at this time. Although the initial hoopla over webcam notarizations has died down, the AAN is not ignoring the issue and has your best interest in focus.

Unfortunately, without additional laws to clarify a state's position on the jurisdiction of this type of notarization, it is hard to determine what impact it will have on traditional notaries. While notaries have obvious concerns about this technology, the points that impact the public are:

- **Notary records** – Notary records in the form of journal entries from past acts do not remain in the sole control of notaries. At first glance, if companies

like Settleware become the keepers of journals, this shift in record keeping significantly changes the relationships notaries have with the people they serve. Where do members of the public go to retrieve copies of their journal entries if necessary?

- **Venue of notary act** – Notary venue and face to face meetings between notaries and signers historically have established that signers were in a particular location during a transaction. Neither laws nor technology address this piece of evidence that is offered by a traditional notary certificate.
- **Competency and willingness** – The signer's competency and willingness become difficult to ascertain.
- **ID documents** – Copies of ID documents become the standard for identification and cloud a notary's ability to determine satisfactory evidence of identification.

The AAN acknowledges that there are a few positive points to consider. It is undeniable that video notarizations certainly have benefits that will improve the facilitation of state and federal government activities. However, aside from the impact that it could have on our members, the AAN is far from convinced that this process is in the best interest of average public citizens.

- **Status** – In June, our source indicated that the number of electronic notaries in Virginia was seven. The low number is a welcome indicator that Virginia is moving forward with caution.

■ Legal Issues

The AAN cannot take a legal position on documents notarized through the use of webcams. However, it stands to reason that while it is illegal in all states except Virginia for a notary to forego physical appearance and use a webcam as a substitute for physical appearance, the documents that result from a Virginia webcam notarization outside of the Commonwealth of Virginia may be perfectly acceptable to those who must depend on them. To our knowledge, no official decision or case law has established that these types of notarizations are legally acceptable or that they invalidate documents. There is a strong case for both sides of the argument. On one hand, a notarization that is legal and valid in one

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state is generally considered to be legal and defensible in all 50 states. On the other, a notarization that took place without the most basic of notary requirements (personal appearance) for all states except for Virginia may be deemed invalid. Since there is not a law in any state that specifically states that documents notarized under Virginia's new technology are invalid, the courts will ultimately make a ruling when a court case is generated by a disagreement between parties and the webcam notarization is used as an infraction of normal protocol.

One of the best arguments we have been given against public use of online notarizations is that any person with a webcam, a computer, and a little bit of technology knowledge can create a fake electronic seal, set up a simple webcam operation, and perform illegal notarizations. A fake cyber notary would be harder to catch than a fake real notary and cyber-notarizations are currently easier to fake because they look like copies. Clerks' offices do not routinely check for fake notarizations before recording them.

■ In summary:

- We want to keep notaries informed on this topic and we will continue to monitor it.
- We can see that this technology may have a useful place in government transactions. Video notarization is a process that can streamline government business. However, it should be used only in government offices for government business (in any state) until it is thoroughly tested and perfected.
- We hope that webcam notarizations ultimately will be performed only within the state of the jurisdiction of the notary. Without this restriction in place, notaries and notary acts could become a federal issue and not a state issue.
- Most importantly, we urge state lawmakers to decide whether they will allow webcam notarizations from another state to be valid for the purpose of financial and real estate transactions when their own states require traditional *personal appearance*.

■ What Notaries Should Do

Stay tuned to our Facebook page (Facebook.com/notaries). Subscribe to the AAN's free emailed newsletter. (Visit usnotaries.com/signup.asp.) This way, we can communicate significant updates regarding webcam notarizations to you faster.

Know how to connect with your lawmakers. Visit and bookmark this website: Ncsl.org. All state legislatures' websites are listed there. Determine who represents you. Lawmakers want what is best for the public, but may not be in tune to what they currently perceive as minor issues like the sanctity of notarial acts. If the webcam train starts rolling faster toward all states, it will take your collective

voices to make certain that webcam notarization laws have the right restrictions in them.

■ History of Webcam Notary Issues

January 2011 - Notaries reported an online company that claimed to be able to notarize legally using a webcam and the internet. The site went fully active in late 2010 and boasted that its online notaries' acts were available 24/7, fast, and legally binding.

- Notaries report that Craigslist.org published ads that were for the purpose of recruiting New Jersey notaries to be online notaries.
- Notaries across the U.S. wrote to their notary public officials and asked for opinions on this type of transaction.
- "Issues and Trends in State Notary Regulation" was published by the National Association of Secretaries of State Report. It is in definite opposition of online notarizations.
- Notaries in Virginia became aware of SB 827, a bill to allow the use of video and audio internet conferencing for notarization.

March 2011 - In response to notaries' letters of concerns, several notary public administrator published public alerts that notaries must still require physical presence of signers. Statements came from California, Florida, Nevada, New Jersey, Oregon, Ohio, Rhode Island, Texas, and Wisconsin.

- Virginia's legislature passed a new law that allowed video conferencing technology to be used to notarize documents. However, the law was clear that it did not go into effect until July 2012.

July 2012 - The original online notary site claimed that it is now "legal" to perform online notarizations and hired Virginia notaries to notarize documents online.

August, 2012 - The online notary site seemed to have stopped promoting its technology and the excitement surrounding the technology began to dissipate.

May 2013 - Pandodaily.com reported that Barracuda Networks, an internet technology firm, acquired the first webcam-enabled remote notary service and its parent company for an undisclosed sum.

June 14, 2013 - A press release from a second online company based in Tennessee touted that it is the first to use a Virginia "cyber notary," web conferencing, and secure digital signatures to electronically notarize a property deed for an American couple living in France.

June 28, 2013 - The AAN became aware of a third company and that Rick Triola, a promoter of webcam software, is listed on the agenda of the annual conference for the Notary Public Administrator's division of the National Association of Secretaries of State.

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You Have a Voice

You have a right to be heard. The business of lawmakers grows more complex each year; they will not know how critical their decisions will be if their notary constituents do not keep them informed about notary issues such as the ones that have been reported in this issue of The Notary Digest.

In fact, because they seem so innocuous, notary matters are the least of concern in the minds of many. Don't assume that those you elect are aware of the best policies for notaries. Become an ambassador for notaries in your state. Stay current on issues.

- Subscribe to Scout.SunlightFoundation.com. Set up alerts for your state for documents with the words "notary," "notarize," or "notaries."
- **Know your lawmakers.** If they are nearby, visit them; let them know that you care about notary laws. Offer to help them personally or refer them to the AAN if they encounter bills about notary laws that they would like assistance with.
- Familiarize yourself with Change.org - so far, we have not seen that it causes a lot of unwanted spam. It can be a useful tool to contact your entire body of lawmakers with a few clicks of a button.
- **Let us know of any changes that you hear of in your state!** We will help if we can.
- Stay tuned on Facebook.com/notaries.

Secret Questions Proposed for Establishing ID over Webcams

During research for the article, "Webcam Notarization Issue Update," the AAN became aware of methods that have been proposed to establish a signer's identification during online notarizations. The promoters of technology and software for notarial acts performed through video conferencing is to ask "shared secret questions" or request information of the signer that can be obtained through databases that holds thirty years of public records. Common questions include:

- last four digits of an account number
- date of birth
- signer's mother's maiden name
- place of birth
- residence addresses
- SSA number
- questions that appear on credit reports

For instance, if you are the signer and lived on Hackberry Street in 1996, you might be asked to give your name, birthdate, address, SSA number, and confirm or deny that Hackberry Street was the location of your residence in 1996.

You might be asked if you had a mortgage loan related to a property at another address on a certain date. You would confirm or deny if you had that account. Also suggested as a means to determine identity were the uses of mobile phone numbers, text messages, and email account authentication.

It is claimed that these types of test questions are also used for loan documents, high value trades, or real estate closings. The AAN does not agree that notarizations should be conducted in this manner. Taking away a notary's personal encounter with a signer removes value from the transaction. There is more to establishing that a notarial act should go forward than using the kind of information that appears in public records to ask questions of the signer. It does not seem appropriate that one's private identity can be conclusively established by use of information in records that are admitted to be public.

It is overstating the obvious to say that secret questions and answers are not really "secret" and known only to the signer if they are based on public records.

If an online notary is not able to read previously established biometric information about a signer such as fingerprints, facial, or retina data, the only way that one can conclusively determine identification through the use of a webcam is to have a trusted third party such as a notary establish the identification using standard identification techniques. Webcam technology has a long way to go before it can securely manage mainstream notarial acts of importance.

Technology Talk: Warranties on Notary Equipment

In the past, notaries who were savvy about technology chuckled at the thought of purchasing pricey warranties on desktop PCs. Most computer problems were easily solved.

However, advances in technology have left the majority of notaries feeling fearfully challenged by the mysteries that lurk under the glossy Gorilla® Glass of touchscreens and tablets or the internal workings of wafer thin laptops. It is obvious that retailers are well aware of this shift in the confidence of consumers.

When notaries hit checkout lanes with new electronic equipment, they are undoubtedly met with a friendly suggestion to upsize purchases with extended warranties. If the purchase is a \$350 laptop, it is easy to decline the purchase of a \$99 extended warranty. However, if it is your first iPad, the \$99 might seem to make sense. Depending upon where you purchase the iPad, after you suggest that you will purchase the \$99 warranty, the next thing out of the clerk's mouth is that the \$99 warranty is basically the "public transportation" version of the retailer's warranties and that it not even cover half of what you hope it will.

Before you know it, you are buying a fancy warranty that the clerk says is the "White Limousine" treatment and it's only \$259 (plus sales tax) for three years, but you will go to the top of the list and cut in line past all the \$99 warranty work.

Notaries are strong consumers of electronics and they are especially susceptible to fears of broken equipment. They are required to keep their equipment in good working order and their phones must keep ringing or their cash flows cease. The costs of extended warranties are generally used as

deductions on tax returns, so without a second thought, notaries often agree to purchase an expensive extended warranty. However, there may be cheaper alternatives.

Do a bit of research before you shop for your next electronic device. For instance, find out if one of your credit cards extends warranties. The Discover Card website states, "When you use your Discover card we'll add up to one additional year of coverage to your existing warranty of 36 months or less." The cost? Absolutely nothing. This feature is a complimentary benefit of using a Discover Card to make purchases. American Express, MasterCard, and Visa tout similar benefits. Check into the fine print of your card issuer and determine if this meets your needs. Some of these options may even include theft of your electronics purchases.

Another option to consider is SquareTrade's protection plans (<http://www.squaretrade.com/>). Ebay and Amazon have made SquareTrade a leader in warranty coverage of online purchases. However, many consumers are not aware that SquareTrade offers warranties on new purchases of jewelry, watches, smartphones, tablets, computers, and other items that are bought at neighborhood stores such as Best Buy.

Check with the manufacturer of an item that you plan to buy. Some offer extended warranty and onsite maintenance plans that do more and cost up to 30% less than those that can be purchased at the point of sale. Finally, if you are not certain what to do, ask the clerk how many days you have to make up your mind about purchasing a warranty. Most retailers allow you to return within 30 days and purchase their extended warranties and maintenance plans.

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Sources for this article:

[NPA-Section.com](#) (Final agenda for NASS/NPA 2013 Summer Conference)

[Pandodaily.com](#) (Barracuda Networks gobbles up e-signature startup)

[PRWeb.com](#) (Various reports on startups of online notary act providers)

[Virginia.gov](#) (Code of Virginia, relating to electronic notaries)

AAN Newsletter <http://goo.gl/p6Vp9>

Disclaimer: The AAN does not provide legal opinions. All opinions, suggestions, and information stated in this article are for informative purposes only.



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California Notary Alert: "Notaries as Mandated Reporters"

The AAN recently learned of problems for notaries with California Assembly Bill 477. If it passes, it can affect notaries in ways that can be quite negative to them and to senior citizens. The Notary Digest and the newsletters of the AAN will update you on this issue as we have more information. On Sunday, June 30, 2013 the AAN posted the following on its Facebook page:

"This is about California Assembly Bill 477. Time is growing short to be heard.

Read the entire bill here: <http://goo.gl/aMMY5>

Notaries in California should contact their Senators and, in particular, the members of the Judiciary committee of the Senate about AB 477. Let them hear your voice. Contact links are below

■ **Bill description:** *This bill would include notaries public in the definition of mandated reporters of suspected financial abuse of an elder or dependent adult and would require a notary public, except as provided, to report known or suspected instances of financial abuse of an elder or dependent adult if the notary public has observed or has knowledge of suspected financial abuse in connection with providing notary services.*

The bill would also prohibit a notary public from performing a notarial act for an elder or dependent adult under specified circumstances, including when, in the notary

public's judgment, the elder or dependent adult is not acting of his or her own free will.

Notes: It sounds acceptable at first glance, but the problem is that notaries who do not report problems will be subject to fines and penalties. Existing law makes a violation of the reporting requirements subject to a civil penalty.

■ **The problem:** *Notaries will be required to learn legal definitions that this bill relates to. They will be reluctant to work with elders for fear of punishment or fines. This is not good for notaries or senior citizens. This bill has passed through the Assembly and is now under consideration for hearing in the Judiciary Committee.*

■ **To act:** *Write the Judiciary committee members first and follow up with a letter or call to your senator.*

Judiciary Committee contacts: <http://sjud.senate.ca.gov/>

Find your California senator: <http://senate.ca.gov/senators>

If you want to have input, you must do so immediately. We welcome comments from California notaries on how to help you with this matter."

(Follow discussions on this issue on our Facebook page at <http://goo.gl/XIYjp>.)

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