

April 14, 2023

FAQ: Electronic Notarization in New York State

Many nonprofits need to have documents notarized, including government contracts, leases, and other fundamental legal documents. New York State has recently changed the laws regarding notarization and is allowing notaries to register to perform electronic notarization.

Effective January 31, 2023, New York Executive Law Section 135-c authorizes notaries to perform electronic notarization, provided they first register with the Department of State and comply with new rules for performing electronic notarizations.¹ Once registered as an electronic notary, notaries can perform electronic notarial acts, which may be conducted remotely online.

What are electronic notarial acts?

Electronic notarial acts are notarial acts performed using software to create an electronically generated and saved record. An electronic notarial act may be done remotely while the notary and signer are physically separated but communicate with each other simultaneously by sight and sound using an audio-visual communication program that meets requirements authorized by the Secretary of State.²

What is the required procedure for electronic notarization?

Electronic notarization is done by a registered electronic notary using commercially available software that complies with Department of State regulations. To provide an electronic notarization, the notary public must be physically located within the State of New York at the time of the notarization.

The notary must identify the remote signer of the document through any of the following three methods:

- the notary's personal knowledge of the signer;
- by means of communication technology that facilitates remote presentation by the signer of an official, acceptable form of ID, credential analysis³, and identity proofing⁴; or
- through oath or affirmation of a witness who personally knows the signer, and who is either personally known to the notary or identified by the previously referenced means of communication technology.

¹ See <https://dos.ny.gov/notary-public>.

² 19 NYCRR, Ch. V, Sub. Ch. E, Sec. 182.8 Communication Technology;
https://dos.ny.gov/system/files/documents/2023/01/public-notice-of-adoption_remote-notary.pdf

³ Credential analysis is a process where a third-party service validates a government-issued identification presented by an individual through a review of public and proprietary data sources.

⁴ Identity proofing is a process or service through which a third party confirms the identity of a signer through review of personal information from public and proprietary data sources. In contrast with credential analysis, which validates the authenticity of the signer's government-issued identification, identity proofing validates the identity of the signer.

During this communication, the notary must be able to see and, in real-time, interact with the remote signer of the document through audio-visual communication technology. In addition, the application used must have security protocols in place to prevent unauthorized access. Following the interaction, the notary must create and save an audio-visual recording of the electronic notarization for ten years.

After the signer has executed the document, it must be transmitted to the notary public for officiating. This is done by presentation to the notary of the executed document through the software platform. The notary must confirm that the document is the same as the one signed electronically in the notary public's (electronic) "presence" before applying the notary stamp and signature to the document. For electronic notarial acts performed remotely, the following statement must be added to the jurat (or the portion of a notarized document where the signer affirms that the contents of a document are true): "This electronic notarial act involved a remote online appearance involving the use of communication technology."

The electronic notarial process does not require transmission of paper records or ink signatures of either the signer or electronic notary. The result of the process is an electronically created, electronically stored document that may be done online, and may be "papered out" (see below) for recording or other purposes.

Does the law require that the signer physically be within New York State for electronic notarization?

Notably, the notary must be in New York State but the "signer" may be anywhere in the world provided that, if the signer is not in the United States, the signer must verbally confirm in the course of the recorded electronic notarial act, that the record or subject of the notarial act:

- (1) is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or
- (2) involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States.

How do I submit electronically notarized documents to the county clerk's office or other government offices, as applicable to my situation?

Electronic notarized documents will be accepted by government and county clerk offices through the use of the "papering out" process. "Papering out" is a process by which the notary who performed an electronic notary service executes a paper printout of the document in question. The notary will then apply a certificate of authenticity to the tangible printout, certifying that it is an accurate copy of the electronically notarized record. The certified document can then be submitted for record. Specific questions regarding filing certified documents should be directed toward the filing office where the document will be submitted.

What about the remote notary practices that were authorized by executive order during COVID? Do those still apply?

No. During the pandemic, like in many jurisdictions the practice of remote ink notarization ("RIN") was authorized by executive order and permitted after the pandemic by temporary statute. Distinguished from an electronic notarial act, RIN is a notarial act using communication technology, where the notary and the signer are in different locations, to generate a paper document. This process involves use of

communication technology to verify the identity of the document signer followed by electronic transmission of an ink-signed document to the remotely located notary for application of an ink signature. As discussed in further detail above, the electronic notarial process does not require transmission of paper records or ink signatures of either the signer or electronic notary. Effective January 31, 2023, RIN is no longer permitted in New York State.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Rafi Stern at rstern@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

For their assistance in preparing this Legal Alert, Lawyers Alliance would like to thank Jonny Gelfand, an extern attorney from the Skadden, Arps, Slate, Meagher & Flom law firm and Gianfranco Spinelli, a Pro Bono Scholar from New York Law School.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations and social enterprises that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, Lawyers Alliance for New York helps nonprofits to provide housing, stimulate economic opportunity, improve urban health and education, promote community arts, and operate and advocate for vital programs that benefit low-income New Yorkers of all ages.