

Introducing the Model Electronic Notarization Act of 2017

By David Thun on May 23, 2017 in Best Practices

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Rapid advances in online communication and electronic signing technology are changing the way notarizations are performed. These changes have sparked a spirited discussion among trade associations, business leaders, Notary regulators, legal experts, technologists and policymakers across the country on how to regulate notarial acts that use this new technology.

As a leading education and support provider for Notaries, the National Notary Association recognized that it was crucial to provide clear support and guidance to policymakers addressing this issue while preserving the integrity and security of notarial acts. Consequently, the NNA has published a resource to guide and inform lawmakers trying to integrate new technologies into the notarization process. The result is the Model Electronic Notarization Act of 2017.



What Is The Model Electronic Notarization Act?

The [Model Electronic Notarization Act \(MENA\)](#) is a comprehensive standard and guide for public officials looking to draft new laws or administrative rules governing the notarization of electronic records. It is the fifth model act published and contributed to the public domain by the NNA, but the first one devoted exclusively to electronic notarization.

The primary intended purpose of the MENA is to allow a U.S. state or jurisdiction to enact progressive electronic notarization provisions alongside its existing paper-based Notary statutes to form an integrated, single system for both electronic and paper-based notarial acts. Drafted by the NNA, the MENA was reviewed by a diverse panel of state officials, legal scholars, law enforcement professionals, technology providers, industry leaders and Notaries.

The MENA itself is not a binding law. To become law, it must be introduced and enacted in state legislatures, adopted by a Notary commissioning official as administrative rules or put into effect by gubernatorial executive order. As with all the NNA's prior model acts, lawmakers may choose to include all or part of the MENA when enacting laws or adopting administrative rules.

How Does The MENA Help Notaries?

At the most basic level, the MENA was drafted with a firm conviction that the involvement of a Notary in electronic transactions is necessary to make those transactions more secure and trustworthy.

The Act's provisions are designed to ensure that Notaries can fulfill their traditional role regardless of the technology being used, be it an ink pen and physical Notary seal or an electronic signature and webcam.

"The MENA provides state lawmakers with a well-conceived model for remote electronic notarization that protects all involved parties — document signers, persons relying on a remotely notarized document, and Notaries themselves," said Charles N. Faerber, MENA Drafting Committee Co-Coordinator.

The Act contains several provisions specifically designed to protect Notaries. Notaries may refuse a request for an electronic notarization for several reasons, one being the poor quality of the audio-video transmission in a remote electronic notarization. In addition, the Act created a new protection absolving the Notary of any liability in using an electronic notarization system if the system fails to comply with the requirements of the Act. Both the model statute and recommended rules are written in such a way as to be flexible enough to apply to future technologies. Given that more than two dozen states and U.S. territories have adopted provisions from the NNA's previous model acts, the MENA could help shape how Notaries will use technology to protect 21st century commerce.

MENA And Webcam Notarization

One of the most significant discussions among the drafting committee and reviewers involved webcam notarization. "The greatest challenge faced by the MENA drafting committee was deciding whether the Act should ignore, outlaw, legitimize or strictly condition so-called remote electronic notarizations," Faerber said.

The committee decided that such notarizations are advisable and in the public interest — but only when they are governed by rigorous rules. In view of the growing interest in webcam notarization, it became clear that the MENA had to address it with provisions to protect both Notaries and members of the public who rely on the integrity of audio-visual electronic notarizations. This is particularly true given that half a dozen states — including Texas and Maryland — are considering webcam notarization bills during their current legislative sessions.

Consequently, Chapter 5 of the MENA allows the use of audio-video technology to communicate with a signer, including the following requirements:

- Remote audio-video communication should only be used for electronic notarizations, not for notarization of paper documents. (It should be noted that this recommended requirement is included in established webcam notarization laws in Virginia, but not in Montana).
- The Notary must archive and protect a recording of the notarization and provide access to the recording to the public, state officials or law enforcement.
- The Notary must still verify the identity of the signer and any required witnesses through appropriate proof of identity.
- The Notary, principal signer and any required witnesses must access the audio-video system through an authentication procedure that is reasonably protected from unauthorized access.
- The notarization must provide reasonable certainty that the Notary and all participants are viewing the same electronic document and any changes or signatures are made in real time.
- Any Notary who performs a notarization using audio-visual communication must have a minimum surety bond of \$25,000 to protect signers from financial damages in addition to any Notary bond they have for their Notary commission.

eNotarization And Electronic Journals

The MENA also updates model language for electronic notarization to address standards for computer systems and software used to perform electronic notarizations, or "eNotarizations." Some states, such as North Carolina, require vendors of eNotarization systems to apply for state approval and have their systems approved by the state Notary regulating agency. The MENA proposes an alternate approach in its model language. Instead of vendors having systems reviewed and approved individually by a state agency, MENA suggests a list of standardized requirements that any eNotarization system can be required to meet. This would simplify and streamline the process of ensuring eNotarization technology meets minimum standards of security and privacy.

The MENA also updates standards for electronic journals. Notaries have often asked if they can use an electronic journal in lieu of a traditional, permanently-bound paper journal. The MENA answers in the affirmative and provides the following requirements:

- The electronic journal must be accessed through a password or other secure means of authentication;
- The electronic journal must be tamper-evident (that is, display evidence of any change to a journal entry);
- The Notary must create a duplicate record as backup, in the event of the original electronic journal being lost, damaged or destroyed;
- The electronic journal must be capable of saving an electronic signature or other biometric identifier such as a retina scan, fingerprint or voiceprint; and
- The electronic journal must be capable of providing tangible or electronic copies of any entry made in the journal.

Though under the MENA a Notary may use an electronic journal for both electronic or paper-based notarizations, the current legislative trend has been to limit electronic journals to electronic notarizations.

Working with the MENA, U.S. states and jurisdictions have a variety of ways to use the MENA. First, the Act can be enacted either as a "plugin" update or complete replacement of a state's electronic notarization statutes. Second, lawmakers can choose to enact select portions of the MENA and leave out sections (such as the chapter on webcam electronic notarizations) that they are not ready to integrate or that they prefer not to include. Finally, for those states that prefer to enact the Revised Uniform Law on Notarial Acts (RULONA) instead of the MENA, an appendix in the MENA provides a model for using the MENA provisions as the source for additional rules to implement the RULONA provisions on electronic notarization. The MENA provides something for every U.S. state and jurisdiction that seeks to modernize their Notary laws while ensuring the integrity of the notarial process.

David Thun is an Associate Editor at the National Notary Association.

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[A Guide To RULONA, MNA And MENA](#)

3 Comments

Ralph H Zucker 29 May 2017

How can you tell via a webcam notarization that there is no off camera coercion involved? That alone would stop me from doing that type of notarization.

Robert G. Gostl 29 May 2017

NNA supporting electronic notarizations is just another reason to underscore that they are not in the business of supporting notaries. It is a disgrace to refer to themselves as the National Notary Association!! Supporting lenders and title companies is their mission!!

Donna Keil 16 Jun 2017

I am not comfortable with electronic notarization, especially using a webcam, and not just because I'm close to retirement age! To me, it goes against the reasons for requiring a notary. If I personally know the person whose signature I am witnessing, maybe. But as someone who is expected to verify the identity of a stranger signing an important document, I don't think so.

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