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Webcam Notarizations

Redefining Physical Presence or
Opening the Door to Fraud?



Webcam Notarizations: Redefining Personal Presence or Opening the Door to Fraud?

By Michael Lewis

FIVE YEARS AGO VIRGINIA ENACTED progressive, yet controversial legislation that permitted notarizations to be performed using webcam technology over the internet. The move sent shockwaves through the industry, and much of the Notary community reacted negatively.

Nine states quickly issued statements prohibiting the practice, and countless people — from Notaries to state Notary commissioning officials — voiced their shock, confusion and opposition. The method seemed to be violating the most essential element of any notarization: that the signer physically appears in the presence of the Notary at the time of the notarization.

But since that tumultuous time in 2011 the atmosphere surrounding webcam notarizations has gradually begun to change. With authentication-based technology continually improving, and the public's growing reliance on on-demand services like Uber and AirBnB, some state and industry leaders are beginning to warm up to the idea.

Last year, Montana became the second state to authorize webcam notarizations, and others are testing the waters. The Uniform Law Commission is now considering an update to its Revised Uniform Law on Notarial Acts that would include provisions for webcam notarizations. And the National Association of Secretaries of State has established a task force to study the issue.

Still, the movement toward webcam notarizations remains in its infancy. There are only 127 Notaries in

Virginia authorized to perform webcam notarizations for signers anywhere in the world. And many regulators, business entities and Notaries remain leery, fearing the potential for fraud.

To date there are many unanswered questions:

- Is it wise to redefine what it means to personally appear before a Notary?
- How will audio-video technology affect a Notary's ability to properly identify signers and determine their willingness and awareness?
- How will it affect their ability to detect potential warning signs of fraud?
- How secure and reliable is the technology?

Identifying Signers

The heart of the debate lies in the question, can Notaries carry out their essential, fraud-fighting duties via webcam technology as well as, or better, than in person?

"From my experience, a webcam notarization provides superior evidence of signer's identity, willingness and awareness to sign and the fact that they did sign," said Timothy Reiniger, Director of the Digital Services Group of Virginia-based FutureLaw.

To its credit, Virginia recognized that forgeries could easily be perpetrated if it allowed an individual appearing before a Notary by webcam to hold up a paper identification card to the camera as proof of identity. Clearly, a more secure method of identifying signers for these notarizations was needed.



The Difference Between Webcam Notarization and eNotarization

There's still a lot of confusion about the difference between webcam notarizations and eNotarizations.

Webcam notarizations: A notarization, either electronic or paper, in which the signer's personal appearance requirement is satisfied via the internet using webcam technology. (Currently Virginia requires the document to be electronic, while Montana allows it to be paper or electronic.)

eNotarizations: A notarization in which the documents being notarized and notarial certificate are in electronic form; the signer and Notary both sign electronically.

While Virginia eNotaries are permitted to use personal knowledge and credible identifying witnesses to verify a signer's identity, a new method allowed under the law is "knowledge based authentication", or KBA, which is used by many companies offering webcam notarizations.

With a KBA, an individual usually provides their Social Security number, which is used by an identity services provider to compile challenge-response questions from various credit bureau databases. The individual is then asked to answer at least five questions related to their personal histories that only they would know, and they must answer a certain number of them correctly within a short period of time. If they fail, another set of questions is randomly generated. If they fail a second time, the Notary refuses to perform the notarization.

"The KBA process required by Virginia law is considered to be highly secure," said Pem Guerry, Executive Vice President of SIGNiX, a company offering webcam notarizations. "These are not questions anyone can research, like 'what is your mother's maiden name.'"

"This is a stronger method of identifying signers than looking at an ID," Reiniger said.

But not everyone is in favor of KBA, as it has certain limitations.

"There are serious questions about the veracity of KBA," said Ozie Stallworth, Electronic Notarization Analyst and Director for the North Carolina Secretary of State's Office, noting that hackers have breached many databases that supply information to KBA systems.

"How many of us have received notices that our personal information has been compromised?" asked Stallworth.

But KBA is widely used by government agencies to verify people's identities. For example, 48 states use a company called VitalChek to process online requests for copies of vital records, such as birth

certificates. And VitalChek relies on knowledge based authentication to identify customers.

KBA systems, however, are only useful for identifying residents of the U.S., Canada and some European countries with established credit histories. KBA is not able to ID other foreign citizens and many young adults who lack credit histories.

In those instances, a Notary can rely on personal knowledge or credible witnesses to verify a signer's identity.

When using technology such as KBA, the burden of identifying the signer seems to shift from the Notary to the technology provider. Depending on the system used, the Notary and signer may not start their video conference until after the signer's identity has been verified.

Determining Willingness and Awareness

As difficult as it is to verify the identity of a signer, determining their willingness and awareness is arguably harder because of the limitations of what can be seen on camera.

The essential argument is that being in the physical presence of a signer makes it easier for the Notary to pick up signs that something is amiss.

"That is one of the things you are giving up when moving to a remote process," Stallworth said.

This is a particularly sensitive subject given the ongoing problem of elder financial abuse, where relatives or caregivers are pressuring or even tricking the signer.

While Notaries are not expected to be experts in detecting abuse, they are expected to make a layperson's common-sense judgment.

Proponents argue that the webcam exchange readily allows a Notary to assess the signer's willingness and awareness. Any advantage lost by not being

"There are questions about the veracity of KBA." — Ozie Stallworth



Companies Offering Webcam Notarization

The companies currently providing webcam eNotarizations are employing Virginia eNotaries to handle the requests. Five companies are providing service using web-based proprietary systems including:

- **DocVerify** (DocVerify.com), Irvine, California
- **Notarize** (notarize.com), Alexandria, Virginia *(service through mobile app)
- **NotaryCam** (notarycam.com), Alexandria, Virginia
- **Safedocs** (safedocs.com), Alamo, California
- **SIGNiX** (signix.com), Chattanooga, Tennessee

in the physical presence of the signer is more than made up for by the fact that Notaries are required to keep a recording of the notarization — for five years in Virginia and 10 in Montana.

“If there is a dispute later, people can look at the recording and confirm the Notary’s assessment,” Reiniger said.

Reiniger added, however, that some best practices may need to be developed for webcam notarizations to help Notaries improve their ability to spot signs of duress or undue influence.

Living Up to the Hype

Anyone who has attended a consumer electronics trade show has probably been dazzled by demonstrations of what the next generation of technology can do. Everything from holographs to artificial intelligence to robots have wowed audiences with their potential. But all too often the technology does not live up to the hype and creates problems of its own.

When the first modems started connecting our computers online to people across the globe, few imagined the global epidemic of identity theft that would come with the internet. Arguably, webcam notarization is the most technologically complex paradigm shift to hit the Notary world, and we’re not quite sure what risks will evolve over time.

For webcam notarization to bring the same level of trust and reliability that an in-person notarization has, the technology behind it must be reliable and secure. In Virginia they are trying to establish that

trust by requiring that webcam notarization technology meet the same security standards used by the state’s criminal courts.

One of the reasons webcam notarization is gaining traction is the “vast improvement of the devices people can use and capabilities of those devices to do business,” Reiniger said.

As for security, proponents place enormous trust in the video recording Notaries are currently required to keep. “Studies have shown that one of the strongest deterrents to identity theft is to record the transaction,” said Adam Pase, Chief Operating Officer of Notarize.

Stallworth pointed out, however, that the technology currently exists to manipulate a video of another person. He pointed to a recent YouTube video that showed a young man manipulating an image of former President George W. Bush. The result was somewhat awkward and clumsy at points, but it’s not hard to imagine how much better it will be in a few years.

“When you talk about the explosion of cyber-crime, criminals are always a step or two ahead,” Stallworth said.

“Every time you do sensitive transactions online, you add some risk,” acknowledged Guerry. “One of the advantages of our technology is the secure protection of data, digital identities and notarized documents.”

Why Now?

The movement toward webcam notarization took root in 2011, when Virginia passed a law allow-



John Cole

A Webcam Notary’s Point of View

When Virginia passed a law permitting remote notarizations in 2011, John Kenneth Cole was one of the first to embrace the opportunity.

Today he is one of just 127 people in the state who are commissioned as electronic Notaries — a requirement to perform webcam eNotarizations.

“This is the wave of the future,” said the Chesapeake, Virginia-based Cole, an NNA 2013 Notary of the Year Honoree. “The world is getting younger, and the younger demographic expects everything to be on their smartphones to get it immediately. They are not willing to wait for a Notary.”

The use of webcam notarization clearly is in its infancy, but Cole says he gets anywhere from 10 to 30 requests a month, and most of his signers are overseas.

“I work with a surrogacy firm and egg donor program, and my signers are in places where a Notary is not available,” he said.

Cole has been a Notary for more than 20

years, and has held commissions in Georgia, Florida and California as well as Virginia.

“Being a Notary lets you into people’s lives at various important moments of their lives.” As a webcam Notary, that can take place anywhere in the world.

“I am not a proponent of webcam notarization for loan signings,” he said. “The technology is not ready to ensure the level of scrutiny that an in-person Notary can provide.”

Another challenge he encounters is the quality of internet connection, particularly with signers in China. But he believes that the identity-vetting elements of webcam eNotarization are very strong, as long as they are done correctly.

Cole would like to see the standards and requirements for the technology improved. He also believes there should be a training requirement for eNotaries.

“Training is one of the best ways to insure that the Notary is performing their duties appropriately.”



ing its Notaries to satisfy the personal appearance requirement via online video-conference technology. A Virginia electronic Notary is allowed to notarize documents for anyone anywhere in the world.

After Virginia passed its law, many states, including California, Colorado, New Jersey, Oklahoma, Oregon, Ohio and Wisconsin, issued public statements that webcam notarizations are prohibited and signers are still required to physically appear before Notaries.

Iowa went even farther. A 2013 law included a provision that notarizations performed in another state would only be recognized in Iowa if the signer physically appeared before the Notary or notarial officer. In West Virginia, a new law explicitly states an individual does not appear personally if the appearance is by video or audio technology.

But momentum for webcam notarizations shifted last year when Montana became the second state to allow them — although in a more limited form. Then Florida enacted a law allowing certain law enforcement and correctional officers to administer oaths using electronic means. And the Louisiana legislature passed a resolution to study eNotarization, including the use of audio-video technology. Two other states — Texas and Maryland — introduced webcam eNotarization bills, but they failed.

As a result of these actions, the Uniform Law Commission — a non-partisan organization of attorneys — is preparing an update to its Revised Uniform Law on Notarial Acts (RULONA) for approval this July that includes provisions allowing webcam notarizations for individuals residing outside of the United States.

In April this year, the National Association of Secretaries of State established a task force to examine the issues and policies surrounding webcam notarizations.

“In addition to reviewing the merits of physical presence versus virtual presence, state policymakers must also address the potential validity and interstate recognition of remotely e-notarized documents,” said Kentucky Secretary of State Alison Lundergan Grimes, who also serves as task force co-chair.

Predicting the Future

So what does all this mean for Notaries? How soon, if at all, will webcam notarizations become widely accepted? Will your services be more in demand or less? Who will it affect more: mobile Notaries or office Notaries?

There’s no clear answer.

What is clear is that the technology isn’t exactly taking off yet. Virginia currently has only 127 commissioned electronic Notaries — out of an estimated Notary population of 114,000. But the technology is here, and the initiatives of NASS and the ULC suggest that it is being taken seriously.

Webcam notarization could be hugely convenient

and potentially much cheaper for businesses. Companies that need a large number of documents notarized could use it to consolidate their operations. Some companies might even outsource their notarial needs to remote Notary call centers.

Webcam notarization could also open up new opportunities for self-employed Notaries. John Cole, one of the first Virginia Notaries to start performing remote notarizations, discovered there’s a sizeable demand for webcam Notary services among U.S. citizens abroad.

Of course, self-employed Notaries may have to change their business model. There won’t be travel fees, but there also won’t be travel expenses. And if every document is in digital form, there won’t be printing costs. But there will be the expense of storing all the data.

Currently, the fees Virginia Notaries can earn for a webcam notarization range from as little as \$5 — depending on the company they work with — to \$25, the maximum allowed under state law.

Perhaps the biggest obstacle facing the growth of this technology is its acceptance by mortgage lenders and government regulators of the lending industry.

Without guidance from the Federal Housing Finance Agency and the U.S. Department of Housing and Urban

Development, mortgage lenders are afraid that they will be unable to sell their loans to the secondary mortgage market, said Kathleen Murphy, President and CEO of the Maryland Bankers Association, testifying before a Maryland legislative committee considering a webcam notarization bill this year.

The hesitation over using webcam notarizations for mortgages demonstrates just how touchy and complex this issue is. In order for the technology to work, consumers, lenders, investors, state officials and Notaries alike need to have a secure system they can trust.

In the next year the National Notary Association will publish its first standalone Model eNotarization Act, which will include an in-depth chapter on webcam eNotarizations. The optional chapter in the legislative model — which will appear in brackets — outlines key procedural and security provisions for webcam eNotarizations. A panel of experts including state, federal and industry officials, as well as Notaries, have joined the MeNA review committee to help establish these standards, which state lawmakers will use to enact sound electronic notarization standards.

“We are putting a lot of focus on this section because of the seriousness of the issues that need to be resolved,” said NNA President and Chief Executive Officer Tom Heymann. “We believe the standards we are establishing, with the help of the review committee, will create a foundation for secure webcam eNotarization systems that everyone can trust.” ■

“One of the strongest deterrents to identity theft is to record the transaction.” — Adam Pase

A Notary's Point Of View: Education Key To Getting It Right

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By John Kenneth Cole

Imagine yourself as an immigrant who's just arrived in the United States. The border agent gives you a handbook entitled "A Guide for New U.S. Citizens," opens the entry doors to the United States and says, "Have a nice life."

Now consider you are **applying for a Notary commission** in one of the 31 states that do not have testing or **training requirements for Notaries Public**. You receive your commission, pay your fee to the state, obtain your seal, and set up shop — but you don't have enough information to guide you through your first assignment. What type of notarization is needed? What information should you record in the journal? Are you even required to keep a journal? How much are you legally allowed to charge as a Notary? Even after reading their state's Notary handbook, many Notaries are left with more questions than answers. For instance, in Virginia (where I am commissioned), Notaries may be removed from office for the unauthorized practice of law. But a new Notary may not realize that unauthorized practice of law can be as innocuous as recommending to a signer what notarial act is needed for a document.



Sometimes newly commissioned novices seek out other more experienced Notaries to ask questions like, "How do I administer an oath?" or "What's the difference between a jurat and an acknowledgment?" But not all experienced Notaries are willing to help a new guy and will refuse to share their expertise for fear that the new Notary may be looking to start a rival business.

If all states required commission applicants to complete a **basic education course**, and to pass a test showing minimum proficiency in the rules and procedures that govern the office of the Notary Public, many "innocent mistakes" could be avoided, reducing the risk of civil and criminal action against a Notary who "just didn't know" the rules of the road. In the end, Notary education is an inexpensive way to avoid costly litigation and uphold the function of the Notary Public office — to be a guarantor of trust.

Note: The author is a Virginia Notary and recently became the state's seventh "e-Notary." He also is part of the NNA's Member Network and is an NNA 2013 Notary of the Year Honoree.