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ELECTRONIC TRANSACTIONS,  
NOTARIZATIONS  
& RECORDINGS

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# AGENDA

- ESIGN, 15 U.S.C.A. §§ 7001 *et seq.*
- UETA, § 59.1-479 *et seq.* of the Code of Virginia
- Notaries and Out-of-State Commissioners, § 47.1-1 *et seq.* of the Code of Virginia
- The Virginia Electronic Notarization Assurance Standard
- Uniform Real Property Electronic Recording Act, § 55.1-661 *et seq.* of the Code of Virginia
- Circuit Court Clerk's Office Recordation, § 17.1-223, *et seq.* of the Code of Virginia

# ELECTRONIC CONTRACTS, RECORDS & SIGNATURES

- Electronic Signatures in Global and National Commerce Act or “ESIGN” (federal law)
  - Applies to federal notices and disclosures
- Virginia Uniform Electronic Transactions Act or “UETA” (state law)
  - Applies to contracts and state disclosures

# VIRGINIA UETA

## **§ 59.1-485. Legal recognition of electronic records, electronic signatures, and electronic contracts.**

- (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- (c) If a law requires a record to be in writing, an electronic record satisfies the law.
- (d) If a law requires a signature, or provides for certain consequences in the absence of a signature, an electronic signature satisfies the law.

Code of Virginia

# VIRGINIA UETA

## **§ 59.1-483. Use of electronic records and electronic signatures; variation by agreement.**

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. Except for a separate and optional agreement the primary purpose of which is to authorize a transaction to be conducted by electronic means, an agreement to conduct a transaction electronically may not be contained in a standard form contract unless that term is conspicuously displayed and separately consented to. An agreement to conduct a transaction electronically may not be inferred solely from the fact that a party has used electronic means to pay an account or register a purchase warranty. This subsection may not be varied by agreement.

Code of Virginia

# VIRGINIA UETA

## **§ 59.1-489. Notarization and acknowledgment.**

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Code of Virginia

# LIMITED SCOPE OF VIRGINIA UETA

Note that the Virginia Uniform Commercial Code Articles contain their own electronic document, notice, and signature provisions:

- Title 8.3A –Negotiable Instruments
- Title 8.4 –Bank Deposits & Collections
- Title 8.4A –Funds Transfer
- Title 8.5 –Letters of Credit
- Title 8.9A –Secured Transactions

# SUMMARY

## ELECTRONIC CONTRACTS, RECORDS & SIGNATURES

- Parties agree to conduct transactions by electronic means
- Follow laws and regulations that apply to electronic transactions
- Ensure authenticity of documents

# NOTARY PUBLIC'S POWERS

A traditional or electronic notary has the power to perform various official acts, known as “notarial acts,” including:

- Taking acknowledgments
- Administering oaths and affirmations
- Certifying affidavits or depositions
- Certifying “true copies” of documents
- Verification of fact

§ 32.1-272, § 47.1-12, and § 55-118.1 – § 55-118.6 of the Code of Virginia

# NOTARY PUBLIC

- The Governor may appoint in and for the Commonwealth as many notaries as to him shall seem proper. Any person who acts as a notary in the Commonwealth shall register with and be commissioned by the Secretary of the Commonwealth and otherwise be in compliance with applicable law. § 47.1-3 of the Code of Virginia.
- A notary can work for themselves or may hold the position to serve their employer.
- No employer or supervisor can impose requirements pertaining to a notary that are contrary to Virginia's laws and regulations pertaining to notaries.
- A notary is not required to charge a fee for his or her services. If a fee is charged, it cannot exceed \$5.00 per notarial act related to a writing or \$25.00 per notarial act related to an electronic document. § 47.1-19 of the Code of Virginia.

# ELECTRONIC NOTARY

## § 47.1-7. Additional requirements for performing electronic notarial acts.

A. An applicant shall submit a registration form established by the Secretary for registering and being commissioned as an electronic notary public, which shall include:

1. The applicant's full legal and official notary names;
2. A general description of the technology or technologies the registrant will use to create an electronic signature in performing official acts;
3. Certification of compliance to the Secretary of the Commonwealth with electronic notary standards developed in accordance with § 47.1-6.1; and
4. The electronic mail address of the registrant.

B. The registration form shall (i) be signed by the applicant using the electronic signature described in the form; (ii) include any decrypting instructions, codes, keys, or software that allow the registration to be read; and (iii) be transmitted electronically to the Secretary.

C. Nothing herein shall be construed to prevent an electronic notary from using updated technology or technologies during the term of the commission; however, the electronic notary shall notify the Secretary electronically within 90 days of installation or use of such updated technology or technologies and provide a brief description thereof.

# ELECTRONIC, REMOTE OR ONLINE NOTARIZATIONS

**§ 55.1-661. "Electronic notarization"** means an official act by a notary public in accordance with the Virginia Notary Act (§ 47.1-1 et seq.) and § 55.1-618 with respect to an electronic document.

**§ 47.1-6.1. Standards for electronic notarization.**

The Secretary of the Commonwealth shall develop standards for electronic notarization and the Virginia Information Technologies Agency shall provide assistance to the Secretary of the Commonwealth relating to the equipment, security, and technological aspects of the electronic notarization standards.

“Online notarization” or “online notarial act” means the performance of an electronic notarial act by means of two-way live audio and video conference technology that meets the performance requirements of Virginia Code § 47.1-2 and § 19.2-3.1 B1, B2, and B3. Virginia Electronic Notarization Assurance Standard.

# ELECTRONIC NOTARY – EVIDENCE OF IDENTITY

- Remote notarization requires a very high threshold for identity assurance. An electronic notary must:
  - Have secure video and audio feed to communicate with and identify the principal at the time of the notarial act;
  - Confirm the identity of the signer by:
    1. Personal knowledge.
    2. Oath or affirmation of a credible witness, or
    3. At least two of the following:
      - Credential analysis of an unexpired government-issued identification bearing a photograph of the principal's face and signature,
      - Identity proofing by an antecedent in-person identity proofing process in accordance with the specifications of the Federal Bridge Certification Authority,
      - Another identity proofing method authorized in guidance documents, regulations, or standards adopted pursuant to § 2.2-436 or
      - A valid digital certificate accessed by biometric data or by use of an interoperable Personal Identity Verification card

# TELECONFERENCE PERFORMANCE CRITERIA

An electronic notary's secure two-way live teleconferencing capability must meet all of the following performance criteria for establishing personal appearance:

1. The persons communicating (electronic notary and signer) must simultaneously see and speak to one another;
2. The signal transmission must be live and real time;
3. The signal transmission must be secure from interception through lawful means by anyone other than the persons communicating.

The notary is required by law to keep a record of each video conference notarial act for five years.

§ 47.1-2, § 47.1-14 C, and § 19.2-3.1, B 1, 2, and 3 of the Code of Virginia

# ELECTRONIC NOTARIZATION REQUIREMENTS

## § 47.1-16. Notarizations to show date of act, official signature and seal, etc.

A. Every notarization shall include the date upon which the notarial act was performed and the county or city and state in which it was performed. Every electronic notarial certificate shall include the county or city within the Commonwealth where the electronic notary public was physically located at the time of the notarial act. The electronic notarial certificate shall indicate whether the notarization was done in person or by remote online notarization.

B. A notarial act shall be evidenced by a notarial certificate or electronic notarial certificate signed by a notary in a manner that attributes such signature to the notary public identified on the commission.

C. Upon every writing that is the subject of a notarial act, the notary shall, after his certificate, state the date of the expiration of his commission in substantially the following form:

"My commission expires the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_"

Near the notary's official signature on the notarial certificate of a paper document, the notary shall affix a sharp, legible, permanent, and photographically reproducible image of the official seal, or, to an electronic document, the notary shall attach an official electronic seal.

D. The notary shall attach the official electronic signature and electronic seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent changes or modifications to the electronic document evident.

E. An electronic notary's electronic signature and electronic seal shall conform to the standards for electronic notarization developed in accordance with § [47.1-6.1](#).

# ELECTRONIC NOTARIZATION REQUIREMENTS

- Electronic notaries shall use a digital certificate to digitally sign electronic documents requiring notarization. The notary's official signature and seal consist of both the digital signature and an image or text on the electronic document that includes the following information:
  1. The electronic notary's name;
  2. The electronic notary's registration or commission number;
  3. The words "Electronic Notary Public"
  4. The words "Commonwealth of Virginia"; and
  5. The electronic notary's commission expiration date.
- The means by which an electronic notary creates an official electronic notary signature and seal must be (i) uniquely linked to the electronic notary; (ii) capable of independent verification; (iii) created using means under the electronic notary's exclusive control; and (iv) linked to the electronic document to which it relates in such a manner that any subsequent change of the electronic document is detectable.
- Virginia Electronic Notarization Assurance Standard

# EVIDENCE OF AUTHENTICITY

## § 47.1-11.1. Evidence of authenticity of electronic notarial act.

A. Form of evidence of authority of electronic notarial act. On a notarized electronic document transmitted to another state or country outside of the United States, electronic evidence of the authenticity of the official signature and seal of an electronic notary of the Commonwealth of Virginia, if required, shall be attached to or logically associated with the document and shall be in the form of an electronic certificate of authority signed by the Secretary that is independently verifiable, will be invalidated if the underlying document is improperly modified, and is in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the government of the United States.

B. Certificate of authority for electronic notarial act. An electronic certificate of authority evidencing the authenticity of the official signature and seal of an electronic notary of the Commonwealth of Virginia shall contain substantially the following words:

Certificate of Authority for an Electronic Notarial Act

I,..... (name and title), certify that..... (name of electronic notary), the person named as Electronic Notary Public in the attached or associated electronic document, was commissioned as an Electronic Notary Public for the Commonwealth of Virginia and authorized to act as such at the time of the document's electronic notarization.

To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic signature this ... day of....., 20....

(Electronic signature and seal of commissioning official)

C. For issuing an electronic certificate of authority, the Secretary may charge a fee in an amount set by the Secretary.

# ELECTRONIC NOTARIAL ACTS - JURISDICTION

- Electronic notarial acts performed by Virginia electronic notaries are deemed to have been performed within the Commonwealth of Virginia and are governed by Virginia law.
  - Regardless of whether the electronic document is physically stored in Virginia
- Virginia electronic notaries have limited extraterritorial powers. An electronic notary public may perform any authorized notarial act outside of the Commonwealth for any writing intended to be used in the Commonwealth of Virginia or by the United States government. This type of remote notarial act is not extra-territorial because it is deemed to have been performed within the Commonwealth of Virginia at the place where the electronic notary is located.

# UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

## **§ 55.1-662. Validity of electronically filed and recorded land records.**

- A. If a law requires, as a condition for recording, that a land records document be an original, be on paper or another tangible medium, or be in writing, an electronic land records document satisfying this article satisfies the law.
- B. If a law requires, as a condition for recording, that a land records document be signed, an electronic signature satisfies the law.
- C. A requirement that a land records document or a signature associated with a land records document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic notarization of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the land records document or signature. A physical or electronic image of a stamp, impression, or seal of the notary is not required to accompany an electronic signature.

# UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

## § 55.1-661. Definitions.

- "Electronic," as defined in Uniform Electronic Transactions Act (§ 59.1-479 et seq.), means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- "Electronic document" means a document received by the clerk in electronic form.
- "Electronic notarization" means an official act by a notary public in accordance with the Virginia Notary Act (§ 47.1-1 et seq.) and § 55.1-618 with respect to an electronic document.
- "Electronic signature," as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.), means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- "eRecording System" is the automated electronic recording system implemented by the clerk for the recordation of electronic documents among the land records maintained by the clerk.
- "Land records document" means any writing authorized by law to be recorded, whether made on paper or in electronic format, that the clerk records affecting title to real property.

# RECORDATION

## **§ 17.1-223. Duty of clerk to record writings, etc., and make index.**

**C.** If the clerk has an eRecording System as defined in § 55.1-661, the clerk shall follow the provisions of this section, and the Uniform Real Property Electronic Recording Act (§ 55.1-661 et seq.), for recordation of documents. If the clerk does not have an eRecording System, the clerk shall record a legible paper copy of an electronic document, provided that such copy (i) otherwise meets the requirements of this section for recordation and (ii) is certified to be a true and correct copy of the electronic original by the attorney, settlement agent, or other party who submits the document for recordation. If a clerk's eRecording System is not operational at any time, or the eRecording System does not accept the type of electronic document being submitted, such clerk shall use the process for recording a legible paper copy of an electronic copy as set out herein. An affidavit under this section may be made in the following form, or to the same effect:

# RECORDATION, CONT.

## § 17.1-223 C of the Code of Virginia - Affidavit of Submitter

The undersigned affiant, being first duly sworn, deposes and states as follows, prepared pursuant to § 17.1-223 of the Code of Virginia, that the attached electronic document is a true and correct copy of the electronic original.

- (Name of submitter) \_\_\_\_\_
- (Signature of submitter) \_\_\_\_\_
- (Address of submitter) \_\_\_\_\_
- (Telephone of submitter) \_\_\_\_\_
- (Email of submitter) \_\_\_\_\_
- The foregoing affidavit was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by
- Notary public: \_\_\_\_\_
- My commission expires: \_\_\_\_\_.
- Notary Registration Number: \_\_\_\_\_.

## RECORDATION, CONT.

### **§ 17.1-223 D of the Code of Virginia**

A writing that appears on its face to have been properly notarized in accordance with the Virginia Notary Act (§ 47.1-1 et seq.) shall be presumed to have been notarized properly and shall be recorded by the clerk, if such document otherwise meets the requirements of this section for recordation.

# RESOURCES

Be familiar with federal and state laws, regulations, and standards that apply to electronic contracts, signatures, and recording.

- E-SIGN, 15 U.S.C.A. §§ 7001 *et seq.*
- UETA, § 59.1-479 *et seq.* of the Code of Virginia
- Uniform Real Property Electronic Recording Act, 55.1-661 *et seq.* of the Code of Virginia
- Notaries and Out-of-State Commissioners, § 47.1-1 *et seq.* of the Code of Virginia
- The Virginia Electronic Notarization Assurance Standard:  
<https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/VAe-NotarizationStandard2013Version10.pdf>
- Secretary of the Commonwealth Notary Handbook:  
<https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/2021-Legislation-Revised-Notary-Handbook-2020.pdf>
- Circuit Court Clerk's Office Recordation, § 17.1-223, *et seq.* of the Code of Virginia

THANK YOU!

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