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# THE E-NOTARIZATION INITIATIVE, PENNSYLVANIA, USA

By Joan Decker

## Introduction

In February 2006, Pennsylvania launched an electronic notarization pilot program that enabled authorized county Recorder of Deeds offices to record electronically notarized documents. In 2007, the pilot program was made available to all Recorder of Deeds Offices in Pennsylvania County. The program was the result of several years of preparation during which time various components, such as security, technology, structure, business case, and of course, legislation and regulation, were reviewed and evaluated.

## Background

The Pennsylvania program emerged after two very important prerequisites were put in place: the legal foundations, both federal and state, and the technology foundations. Without this framework, such an initiative would not have been possible. On 30 June 2000, President Clinton signed Senate Bill 761, entitled the Electronic Signature in Global and National Commerce Act (E-Sign). E-Sign authorized the use of electronic signatures in a broad spectrum of transactions, enabling the use of electronic signatures in domestic and international transactions. Additionally, at the beginning of 2000, several U.S. State Governments adopted the Uniform Electronic Transactions Act (UETA).<sup>1</sup> UETA permits the use of electronic technology in a wide array of transactions, including land records.

While legislative changes occurred, technological changes were not far behind. In fact, a number of established technology platforms already supported electronic transactions, and it was only necessary to consider the details of how electronic processing was to be effected.

The convergence of changes in both the legislative and technology landscapes ushered in a new era in document processing in local Recorder of Deeds Offices.

Many Recorders of Deeds participate in a variety of industry associations that provide educational forums in which information about legislative changes, standards and best practices are presented and discussed. These organizations include the International Association of Clerks, Recorders, Election Officials, and Treasurers (IACREOT), the National Association of County Recorders, Election Officials and Clerks (NACRC), and the Property Records Industry Association (PRIA). In the late 1990s and 2000, some U.S. Recorder of Deeds offices began using electronic technology to process digital transactions. Their experiences were well communicated to attendees at industry association forums. Naturally, many issues were raised, such as why the technology should be used; the risks associated with using technology; whether there was a business case and how the process can be implemented.

The issues relating to the technology were relatively easily addressed, because some offices were already utilizing scanning and imaging technology and private networks to exchange information. The business case was relatively straightforward, because increased efficiency occurred both internally within the office and for customers, partly because turnaround times (the time to receive, process and return a document) were significantly reduced. This had a positive effect on transactions, because the speed and efficiency of operations improved measurably. This proved to be the case for both the person submitting documents and for the recording of transactions. The principal benefit for businesses lies in greatly improved efficiency. Rapid turnaround provides businesses with a competitive advantage, including lower operational costs and shorter return of documents to their respective customers, partly because there is no longer a need for documents to be delivered by hand or sent by post.

Commercial organizations and their customers are not

<sup>1</sup> Only Georgia, Illinois, New York, and Washington have not enacted UETA, although these states have laws that recognize electronic signatures. A list of those States that have passed the Act is provided

on the web site of the National Conference of State Legislatures at <http://www.ncsl.org/programs/lis/CIP/ueta-statutes.htm>.

the only beneficiaries of the business efficiency that is brought about by the electronic processing of records. Because many of the recording rules are automated, errors or omissions are brought to the attention of officials before being submitted by companies to Recorders' offices. This in itself saves time and money for the Recorder. When a document is rejected, it is returned to the sender, who must correct and re-submit it. Recorders' offices have experienced faster processing that requires less manual manipulation. This leads to streamlined offices, which has helped reduce operating costs, and because there are less people attending the office, Recorders' offices tend to be paperless, less congested, much quieter, and even physically smaller. In a fully digital environment, not even scanning equipment is required.

As the advantages of the new working processes emerged and it became clear that there was an opportunity to improve working practices for the better, many county Recorders wanted to learn more about the electronic recording process, whilst others were determined to embrace it quickly. There was also increasing discussion about handling the process of notarization, an integral part of the land records presented for recording in the county Recorder of Deeds offices. Joint industry groups (private and public) continued to meet to discuss how the laws and technology should be applied. Issues around electronic notarization included: concerns over best practice; what could realistically be put in place; the role of government in cyber space, and whether the process should be prescriptive or unfettered. Various points of view emerged as state legislatures, Secretaries of State, and industry groups considered the matter.

## Pennsylvania

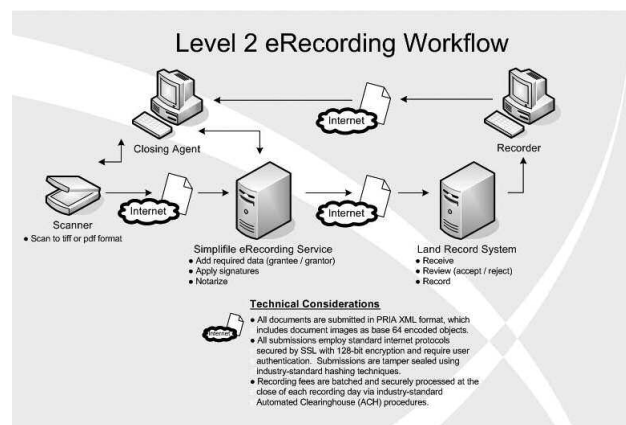
### Legislation and administrative requirements

On 16 December 1999, Governor Tom Ridge signed Senate Bill 555 (the Electronic Transactions Act), a Pennsylvania version of UETA, previously adopted by the Pennsylvania General Assembly. This version differed somewhat from the UETA in that the section on notarization required that the Pennsylvania Notary Public Law address electronic notarization and that such rules for electronic notarization be published in the *Pennsylvania Bulletin*, a Pennsylvania government rules

publication under the provisions of Chapter 5 § 2260.502, Acceptance and distribution of electronic records. This latter requirement would result in the involvement of the Pennsylvania Secretary of State Office's in prescribing an electronic notary program. (The Secretary of State's Office is responsible for Notary Commissions.) This series of events led to the formation of the Pennsylvania electronic notary program.<sup>2</sup>

Prior to the Pennsylvania electronic notary program, several Recorders in Pennsylvania had already adopted electronic recording. These implementations processed paper documents. In the physical world, documents prepared, signed and notarized with manuscript signatures are scanned and converted into electronic documents by specialist companies, and sent via a secure internet connection to participating county Recorder of Deeds' offices. Paper based electronic recording proved to be successful. The volume of this type of scanned document has increased substantially, comprising between 25 to 40 per cent of incoming document volume in some of the participating Recorders' offices.

However, to achieve even greater operational efficiencies, there remained great interest in implementing a purely digital document recording process, comprising a fully digital process including both electronic documents and electronic signatures and notarization.<sup>3</sup>

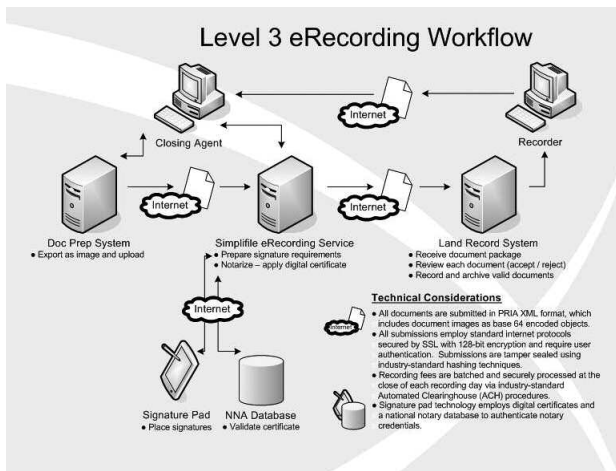


<sup>2</sup> 35 Pa.B. 70. Phase I of the Electronic Notarization Initiative began on January 30, 2006.

<sup>3</sup> The Department of State permitted the recording of documents prepared on paper and signed with manuscript signatures by the parties to the

transaction and the notary. However, the Department of State was concerned with electronic notarizations performed by Pennsylvania notaries. E-notarizations performed by out-of-state notaries were outside the scope of the program. Under the

principle of reciprocity, out-of-state notarizations were acceptable in Pennsylvania provided the other state did not explicitly disapprove of the e-notarization.



In order to make fully digital recording possible, several steps had to be taken, including some legislative changes, publication of the rules and the development of the official Pennsylvania E-Notarization Program.

The *Pennsylvania Notary Public Law* (Act of 1953, P.L. 1323, No. 373) required revision to permit electronic notarization. This law was changed in Act 2002-151 (H.B. 851) Section 6, approved on 9 December 2002, effective from 1 July 2003. Additionally, the Pennsylvania Mortgage Satisfaction Act required an original mortgage or copy (paper) to be submitted when a satisfaction of mortgage was presented for recording. This law was revised with a new Act (Act of 2002, P.L. 1530, No. 197), which was brought into effect on February 7, 2003. Following these necessary legislative changes, representatives of the Secretary of State, legal counsel, the Pennsylvania Deputy Director of the Notarization operation, the Secretary of State's Information Technology staff and a number of technology vendors that supplied Recorders' offices began to meet to discuss the proposed program. This took place over a number of years.

Security was the group's greatest concern. Recorders were required to submit structured written documentation that addressed the business case for electronic recording and electronic notarization; the credentials of technology vendors; transaction and system security; the process by which record retention requirements would be met, and a generic listing of the parties who would be engaged in electronic recording (this is a statement that Recorders would conduct transactions with 'trusted business partners,' that is, title insurance companies, banks and other financial institutions and law firms known to the participating

Recorders and not with unknown entities).

Initially, the program was limited to four Pennsylvania county Recorder of Deeds offices. The pilot participants reflected geographic variety from the eastern and western parts of the State. Pilot participants reviewed a Memorandum of Understanding (MOU) agreement prepared by the State. The MOU listed the responsibilities of both the participants in the pilot and the Pennsylvania Secretary of State's office. The MOU included the time frames for the submission and response (approval or disapproval), notification of any changes in the program and the software vendors, and the submission of monthly reports to the Department of State documenting the number of e-notaries verified, the number of acceptances or rejections due to an e-notarization performed by authorized or unauthorized Pennsylvania notaries, and the total number of electronic transactions by document type, such as deed or mortgage.

### Electronic Notarization System

One pre-requisite remained. The Secretary of State preferred that a certificate authority recognized by the Federal Government issue the electronic certificate for the electronic notary. The actual electronic notarization verification process was developed through a public-private partnership. The National Notary Association (NNA) provided the electronic notarization infrastructure by using a system known as the Electronic Notarization System (ENS). Through this mechanism, the NNA prepared a method to issue electronic certificates to notaries approved by the Pennsylvania Secretary of State.

The process works as follows. An interested commissioned notary in good standing applies to the Secretary of State's office to become an electronic notary. Once approved, the notary receives an *Electronic Notary Approval* letter. The notary is instructed to bring the letter to an approved notary 'ID' office, that is, a Recorders office authorized by the State to provide this function. The Recorder undertakes a check of two items of proof of identity, one of which is a government issued identity card. Once identity is verified, the Recorder enters the basic information identifying the notary into the ENS. The notary then has 45 days to download the digital certificate, an 'Electronic Notary Seal,' from the ENS. The digital certificate can be downloaded to a personal computer or a security token device such as a memory stick. The Electronic Notarization System operates in real-time, and is available to the Department

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of State at all times. This provides for faster action should the certificate need to be revoked or suspended. In the physical world, such activity may take days or weeks.<sup>4</sup>

Due to the rise in the misuse of identity and the potential for computer related misuse of identity schemes, the Department of State was especially interested in the technology infrastructure used by the Recorders that took part in the pilot. Participating Recorders follow industry standards developed by standards setting agencies, notably the Property Records Industry Association (PRIA), technology that is proven and widely adopted. Components include Secure Socket Layer (SSL), PKI technology, 128 bit encryption and tamper evident digital wrappers. Should a transmitted packet be compromised in any way, the receiving Recorder automatically rejects it. Digital certificate security was also addressed. As previously mentioned, the Department of State requires that the notary certificates be issued by a certified certificate authority. The authority must use sound and proven technology, structured processes and methodology and data backup and retention practices. To comply with the requirements, the ENS is certified by the Secure Identity Services Accreditation Corporation (SISAC), the body set up by the Mortgage Banker's Association for setting appropriate technical standards for secure digital identity credentials.

### **Launch of the program**

Completion of the ENS design and process set the stage for the final step in the chain of events, the publication of the notice in the *Pennsylvania Bulletin*. The notice authorizing the pilot program was published on December 31, 2005.<sup>5</sup> In January 2006, the pilot participants, Chester, Lancaster, Philadelphia, and Westmoreland Recorder of Deeds, as well as the Department of State, signed the formal MOU agreement. The pilot was formally launched at the

Constitution Center in Philadelphia in February 2006. In 2007, the Department of State officially terminated the pilot program and provided the option to all other interested Pennsylvania Recorders of Deeds to participate in the electronic notarization process. By March 2007, six counties were authorized to conduct electronic recording (fully digital) and identity verification, and an additional seven counties were authorized to perform identity verification. Since the inception of the program, 444 applications for electronic notarization certificates have been submitted, 258 applications approved and 142 applications rejected. The number of applications reflects the interest in e-notarization project across the State.

### **Pennsylvania Programs – A Perspective**

Pennsylvania is one of the first states in the USA to develop an electronic notarization program that has been implemented and is currently working. Other states have passed enabling legislation. Some have yet to take action. As those who are involved in the electronic transaction dialogue are aware, there was and continues to be discussion about the role of the notary in electronic transactions and the role of the State in prescribing technology, processes and rules. The Pennsylvania Secretary of State's office chose to move forward with electronic transactions and created a well thought-out program with strict requirements and paid attention to detail. Overall, the program embraces change while retaining tradition; it supports electronic processing while preserving notary tradition, including physical presence. It is also practical and workable. The State monitors the program by authorizing electronic notaries, confirming identities and monitoring activity through a continuing process of reporting by county Recorder of Deeds' offices.

Some question the level of involvement of the State in prescribing technology and rules, and argue that the technology ought to remain outside the provenance of

<sup>4</sup> Information about Pennsylvania's Electronic Notary program is available on-line at <http://www.dos.state.pa.us/notaries>.

<sup>5</sup> 35 Pa.B. 7068.

government, suggesting that a *laissez-faire* marketplace ought to prevail. The extensive knowledge gathered about this issue over the past has confirmed that the government's involvement provided the necessary leadership and stability in the move towards electronic notarization.

First, this is a new initiative, a new electronic commerce age. As the new technology expands into commerce, citizens expect government to protect their interests, whether or not explicitly stated in law. Second, businesses need some direction as to what will be acceptable in transactions involving government entities (transactions such as the recording of land documents including deeds and mortgages, in which citizens, companies and governments participate). In particular, companies conducting large-scale operations will invest millions of dollars in technology infrastructure. Our industry colleagues make it clear that they would rather have some direction and some certainty in the form of specific government parameters, before leaping into such a costly venture.

With initial benchmarks of success achieved, including the first fully digital and electronically notarized deed by Lancaster County,<sup>6</sup> and the first government to government fully digital and electronically notarized deed by Philadelphia County,<sup>7</sup> the Pennsylvania program has confirmed that government can successfully prescribe program requirements and ensure progress occurs.

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<sup>6</sup> *The Lancaster County deed transaction was submitted by Home Sale Settlement Services Lenders and took place in the fall of 2006. (This was the deed, so the Lender's name does not appear. The transaction was handled by Home Sale, the servicing and presenting company for the transaction.)*

<sup>7</sup> *The Philadelphia County government to government transaction involved the transfer of property ownership from the City of Philadelphia to the Redevelopment Authority. The deed was signed by the Public Property Commissioner and the City Solicitor and e-notarized by a legal assistant in the City's Law Department. A digital signature pad was*

*used to capture e-signatures and a legal assistant embedded the electronic notary seal in the document. This transaction signified official confidence in the electronic recording and notarization process.*