

SIGNING AND NOTARIZING A DOCUMENT WITHOUT USING PEN & INK

Instructions: Please do not use a pen to sign a document that will be filed in a court case (“lawsuit”). Instead, have your notary public open an electronic version of the document. You **must** be physically in the notary’s presence; this cannot be done by telephone or webcast. After presenting your identification to the notary, the notary can type your signature on the document and then notarize it electronically, without using an ink-stamp seal, by typing certain information onto the document. Save the signed and notarized document and transfer the electronic version to your advocate by eFax, thumb drive, CD, “chip” or email attachment (if there is no sensitive information such as SSN in the document). More detailed instructions can be found in the Q&A, below.

What follows are questions and answers that may be of interest to you and your notary. Most of this information is taken directly from the Utah Notary Public Study Guide:

<http://notary.utah.gov/Forms/2010%20STUDY%20GUIDE.pdf>

Q: Can the affiant’s signature be indicated by typed characters, e.g., “/s/Name of Affiant”?

A: Yes. See Utah Code §§46-4-101 et seq., “Uniform Electronic Transactions Act,” especially §102(8) defining “electronic signature” as “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.”

Q: Can the notary notarize a document electronically, without using the ink-stamp seal?

A: Yes. Utah Code §46-4-205 explicitly refers to §46-1-16(7), part of the Utah “Notaries Public Reform Act,” which says:

(7) A notary acknowledgment on an electronic message or document is considered complete without the imprint of the notary’s seal if the following information appears electronically within the message:

(a) the notary’s full name and commission number appearing exactly as indicated on the notary’s commission; and

(b) the words “notary public,” “state of Utah,” and “my commission expires on _____ (date)”.

Q: Must the signer of the document and the notary be in each other’s presence at the time of notarization?

A: Yes. No exceptions. The official study guide for notaries points out that all the definitions covering the notarization of someone’s signature (whether or not electronic) – “acknowledgment”, “jurat” and “oath or affirmation” – each require that such an act be performed “in the presence of the notary.” The study guide explicitly rejects video conferencing or telephonic contact as meeting this requirement.

Q: How can the notary get an electronic copy of the document?

A: The signer (“declarant” or “affiant”) should bring a USB thumb drive or chip or a CD/DVD to the notary with a copy of the document in a form that the notary can retrieve onto a computer or tablet screen. Or the

document's author (e.g., ULS advocate) can send the document directly to the notary if that is convenient. A USB thumb drive is recommended because most computers and tablets have USB ports. Alternatively, the document can be downloaded from email or other internet site. The format must be one that allows the notary to add typewritten text. Portable Document Format (PDF) is recommended because PDF documents are extremely common. (The latest versions of Adobe Reader have a typewriter function and are free. <http://www.adobe.com/products/reader.html>) Check with your notary first to find out what type of storage (like a USB drive) and document format (like .PDF) are acceptable.

Q: What should the signer of the document and the notary public do once the document is on the notary's computer screen?

The notary should first verify the signer's identity, e.g., by looking at the signer's driver license or other acceptable ID. The signer should then verbally identify the document as the correct one and say that the signer wishes to sign it. The notary types "/s/" followed by the name of the signer as it appears on the document, e.g., "/s/ John Quincy Public" in the document's signature area as well as the date of signing. In the notarization area, the notary types her or his full name and commission number along with "Notary Public" and "State of Utah" and "My commission expires:" followed by that date, e.g.,

/s/ Notoriously Public Notary Commission No.: 1234567890 Notary Public, State of Utah My commission expires on 1/1/15

The notary could also add a note such as "Recorded in my 2014 journal at page 15, line 8" but this is not required.

Q: How do I give the signed and notarized document to its intended recipient?

A: The notary should save the signed and notarized document, most likely using the same storage medium from which it was retrieved, e.g., the USB thumb drive, which can then be given to the recipient. Alternatively, the document could be saved to a different medium such as "cloud" storage, eFaxed or sent as an email attachment. (eFaxing uses a special kind of printer driver that electronically transfers the document on screen to a faxable format. The sender must have a certain type of telephone line to use an eFax program or have access to internet eFaxing. The recipient must have incoming eFax capability in order to receive the document electronically – otherwise the document is printed on paper which defeats the purpose of electronic notarization. All ULS fax numbers are eFax enabled; local numbers are available in the Ogden, Provo and St. George areas.) *Warning!* If the document contains sensitive information such as a Social Security Number, it should **not** be sent as an email attachment because email is not secure.

This information flyer was prepared by Utah Legal Services. It is not intended as legal advice for any purpose. If a ULS client or a notary who wishes to electronically notarize a document for a ULS client has any questions about this process, please contact the client's advocate. ULS cannot prepare documents for signature and notarization or answer questions except for current clients.

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