

# Electronic Notarization in Virginia



**PRESENTATION TO**

**THE VIRGINIA JOINT COMMISSION  
ON TECHNOLOGY AND SCIENCE  
*RICHMOND, VIRGINIA***

**BY**

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# Discussion Outline



- **National Context: NS-TIC, States, ANSI, and ABA**
- **Virginia Legal Strategy for Electronic Commerce**
- **Electronic Notarization: Legal Requirements**
- **Electronic Notarization: Practical Implementation**
- **New Law: Remote Notarization**
- **Electronic and Remote Notarization: Business Drivers**
- **Electronic Apostilles**
- **Next Steps**

# 3 Crises of Global Network-Based Economy



- **Key Network/Cloud Characteristics:**
  - Borderless - Ubiquitous connectivity and access
  - Multiple copies and locations
  - Decentralized
  
- **3 Resulting Legal Crises:**
  - Authentication Crisis
  - Authenticity Crisis
  - Authority Crises

# National Context



- **National Strategy (NS-TIC)**
  - Private sector leadership
  - Trustmarks
- **State Law Focus**
  - Common law
  - Statutory
- **ANSI (Identity Proofing and Verification Standard)**
  - Standard for issuance of identity ‘breeder’ documents by public entities
  - Standard for relying parties to verify identity ‘breeder’ documents issued by public entities
- **American Bar Association (FIMAC)**
  - Legal barriers to adoption of Federated Identity Management
  - Liability risk containment

# Virginia Legal Strategy – National Leader



- **Electronic Transactions and Digital Property**
  - Uniform Electronic Transactions Act (UETA) (2000)
  - Uniform Computer Information Transactions Act (UCITA) (2000)
- **UCITA Amendment (HB 2259, Delegate May - Sponsor)**
  - Limitation of Liability for Private Credential Issuers
  - Limitation of Liability for Federation Operators
  - First Recognition of the Trustmark
- **Courts**
  - E-Filing of Court Pleadings (2005)
  - Electronic Certified Court Records (2010)
  - Electronic Power of Attorney (2010)
  - Electronic Sheriff Service of Process (2011)
- **Digital Evidence**
  - Electronic Notarization and Apostilles (2007)
  - New Notarial Act: Verification of Fact (2011)
  - Online or Remote Notarization (2012 effective)

# What Does this Mean for Virginia Citizens?



## **Assurance that their identity and data is protected while making government work better and cheaper**

- **Department of Motor Vehicles**
  - Geographically distributed kiosks
- **Medicaid / Medicare Protection**
  - Fraud prevention
- **Health Records Exchange (HIE)**
  - Patient control over who has access to personal electronic health records
- **International Adoptions**
  - Acceptance of electronically certified marriage and birth records
- **Virginia Employment Commission**
  - Fraud prevention
- **First Responders**
  - Making sure that emergency personnel are given access
- **E-Commerce**
  - Real Estate
  - Banking
  - Law

# VA e-Notarization: Legal Requirements



- **Separate Commission (COV §47.1-5 and 7)**
- **Secure Electronic Signature**
  - Unique (COV §47.1-16 B)
  - Independently verifiable (COV §47.1-16 D)
  - Used only for notarial acts (COV §47.1-14 F)
- **Electronic Seal**
  - Forgery resistant (COV §47.1-16 D)
- **Electronic Journal**
  - 5 year storage (COV §47.1-14 C)
  - Exclusive control (COV §47.1-14 E)



**Certified Electronic Copy**

**Protection from Abuse  
Order (DOJ)**

**Goals**

Email Transmission

*OR* URL Access

Authentication

Authenticity

Authority

**Benefits**

Convenience/Co

st

**CERTIFICATE**

COMMONWEALTH OF PENNSYLVANIA )  
 )  
COUNTY OF DAUPHIN )

SS:

I certify that the file found at the referenced site

<https://www.jnet.state.pa.us/PFADFullText/PFADFullTextServlet?pfadcriteria=cG5vPUNJMDUwMTY5NTtjdGk9UEEwMzYwMTVKO2NpZD0wMDAxMTIxMjEx>  
Protection From Abuse Order GV2226069 ammendment 10/12/2005 of order dated 10/4/2005

is a true, correct, and complete copy

of the original Protection From Abuse Order found on site <https://www.pfad.org>

The FIPS 180-1 Secure Hash Algorithm (SHA-1) document authentication  
value is:

2b6e778b01f2f2cbde380b8f6109032645ff9779

In witness whereof, I hereunto set and embed my digital signature in accordance  
with the Pennsylvania Uniform Electronic Transactions Act (UETA) and federal  
Electronic Signatures in Global and National Commerce ACT (E-SIGN).

DN: cn=John H Davenport,  
c=US, st=Pennsylvania,

**First Electronic Notarization in PA**

# Electronic Notarization: Practical Implementation



IP:216.191.253.108

IP-Geo-location



Serial # 1011

Grid Card

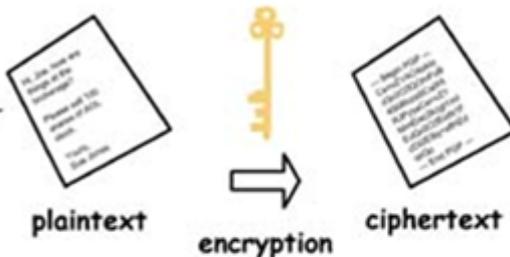


OTP Tokens

Step 1: Give your public key to sender.



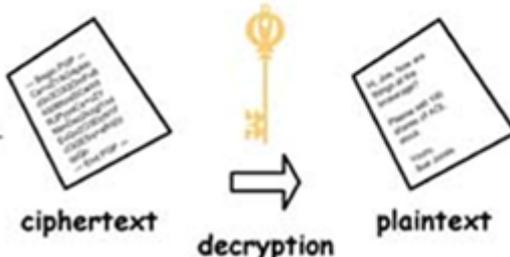
Step 2: Sender uses your public key to encrypt the plaintext.



Step 3: Sender gives the ciphertext to you.



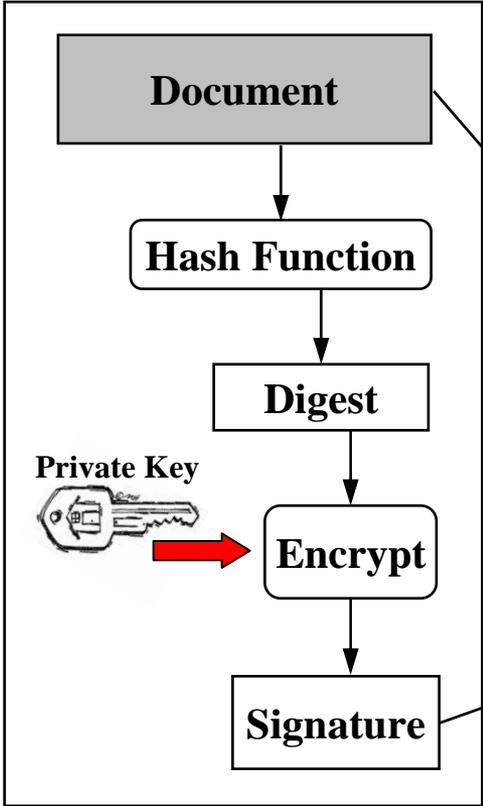
Step 4: Use your private key (and passphrase) to decrypt the ciphertext.



# Electronic Notarization: Practical Implementation



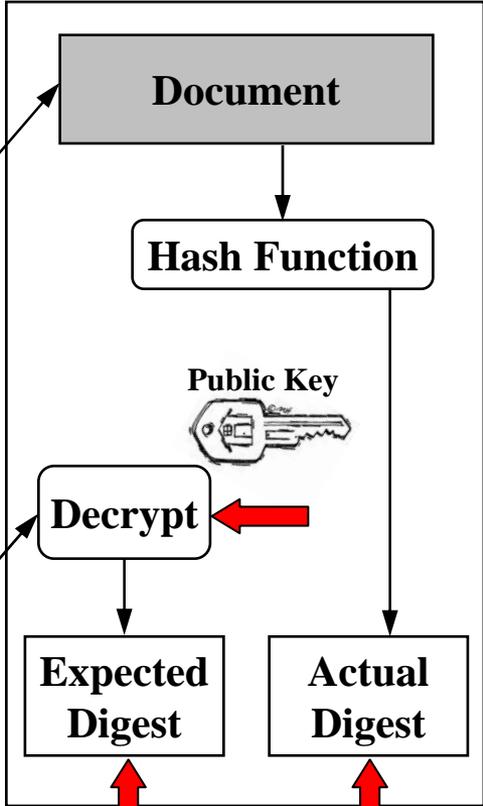
## Creating a Seal



## Electronic Record

The image shows a sample electronic record document titled "DEED OF TRUST". It includes recording information such as "Recording Requested By: Conrad Sims", "Document Services Dept", and "eMortgage Lender". It also contains a "Signature/Seal of Recorder" with a notary seal and recording details like "November 16, 2005 10:01:34 am" and "Marsha Clark". The document includes a "DEFINITIONS" section and a "Borrower's address" section. At the bottom, it features a "Tamper-Evident Seal Signature Value (Digital Fingerprint)" with a key icon and a barcode.

## Verifying a Seal



If there are the same,  
the tamper-evident seal is verified.



# New Law: Remote Notarization

## Benefits

Convenience/Cost +

Authentication

Authenticity

Authority

**Electronic  
Journal**

**Digital  
Recording**



# New Law: Remote Notarization



- **Two-Way Audio-Video Capability (COV § 19.2-3.1 B 1, 2, and 3)**
- **Recording Requirement (COV §47.1-14 C)**
- **Identification Standard – “Satisfactory evidence of identity” definition (COV §47.1-2)**
  - Personal Knowledge
  - Antecedent Identity Proofing
  - Digital Certificate with biometric or PIV card

# New Law: Remote Notarization



- **Audio Video Conferencing**
  - Same Standards for Testimony In Court
- **Electronic Journal Record**
  - 5 Years (longer as required)
- **Digital Recording**
- **Identity Verification Of SIGNER Strengthened**
- **Tamper Evidence Safeguards Protect Notaries**

# Electronic and Remote Notarization: Business Drivers



- **Commercial Sector**
  - Health Care: Telemedicine/HIPPA
  - Land Title/Mortgage
  - Insurance
  - Financial Services
  - International and Interstate Business
  - Legal Documents
- **Technology Sector**
  - Identity Management: Identity Proofing and Credentialing
- **Federal Government Services**
- **State and Local Government Services (PA DOJ Order)**
- **Anti-Fraud**

# Electronic Apostilles



- In 2006, Hague Conference launched the Electronic Apostille Pilot Program (e-APP)
- e-APP has two components:
  - Electronic Apostille
  - Electronic register
- No treaty change is legally required
- All Competent Authorities must recognize an electronic Apostille

# Electronic Apostilles: Participating Jurisdictions



- **Spain (Courts of Murcia; European Union Funded)**
- **Andorra**
- **Belgium**
- **Bulgaria**
- **Colombia**
- **Georgia**
- **Mexico – Federal District**
- **New Zealand**
- **Republic of Moldova**
- **USA – California, Colorado, Kansas, North Carolina, Rhode Island, Texas, West Virginia**

# Electronic Apostilles



- For public documents crossing international borders, establishes content authenticity (origin and integrity of underlying document)
- Removes cumbersome and costly chain certification/legalization requirements
- Common uses:
  - Birth certificates
  - Marriage certificates
  - Death certificates
  - Patents
  - Court rulings/orders
  - Notarial acts
  - Academic credentials (e.g., diplomas)

# Next Steps: Stakeholder Group



- **Stakeholder Meeting For Deployment of Remote Notary**
  - Notary Law Work Group Staffed by FutureLaw, DSG
  - No more than 20 members
  - VA association representatives (Bar, Bankers, Land Title, Circuit Court Clerks, Supreme Court)
  - VA technology sector
  - U.S. armed forces (JAG)
  - Representatives from national notary groups
  - Other stakeholders

# Contact Information



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