PRIA Participates In ABA E-Notary Panel

-Mark Ladd, Racine County Register of Deeds
-John Jones, Arion Zoe

If you think that notarial acts and notarial laws are sleeper topics, you clearly weren't in San Francisco for the symposium hosted by the American Bar Association's Science and Technology Law Section on August 6th & 7th. Twenty-one participants from a broad cross-section of industries who generate or rely on notarized documents met for a day and a half to discuss the role of the Notary in the electronic document world. John Jones of Arion Zoe and Mark Ladd, Racine County Register of Deeds represented PRIA and were supported in their efforts by John Richards, an attorney with Fannie Mae.

The ad hoc meeting was officially "off the record" so as to encourage free flowing discussion and brainstorming. The format proved quite successful. The discussions were lively and productive.

In addition to discussions between the participants there were also presentations from the United States Postal Service, the National Notary Association and the land records office of British Columbia.

The Postal Service presented their Electronic Postmark (EPM) and In Person Proofing (IPP) products. EPM will provide secure time and date stamping for electronic documents. IPP is their concept to authenticate identity for electronic commerce. The Electronic Postmark is a finished product that the USPS will be rolling out to the public in the near future. The In Person Proofing service is in use today to provide ID services for the Department of State for passports. The USPS is investigating additional areas of marketability for this product.

The National Notary Association demonstrated their Electronic Notary Journal of Official Acts, "ENJOA" for short. ENJOA is an electronic signature device coupled with indexing software that enables notaries to keep an electronic journal of the notarial acts they perform, including the name of the individual, a digitized copy of the signature, a thumbprint, a digital photo of the individual, the time and date of the appearance and a reference of the identification document provided. The signature device is about half the size of a laptop computer. While some participants expressed concerns about some of the product's current shortcomings, it is so portable and easy to use it may even find a home in states that do not have a journal requirement in their notary statutes.

The presentation from British Columbia focused on their upcoming electronic land records registration project and the differences between land transactions in British Columbia compared to the United States.The role of the notary and the requirements to become a notary are much different in British Columbia than they are in the US. British Columbia operates on the concept of a civil law notary wherein the notary is a quasi-legal council. The notary has to have an advanced degree, then take 2 additional years of college level coursework, pass a series of 6 examines and meet some other requirements that I have forgotten to become a notary in British Columbia. A notary or an attorney is required for every land transaction under their law.

Interestingly, the original document is not retained in this Torrens-based transaction. The attorney or notary completes a form, signed by the attorney or notary, and submits the

form to the land registration office with a reference to the original and a reference to the contents, e.g. a reference to a master filed mortgage and to any appendices to the mortgage (also filed). The original documents are not necessarily archived by the notary or attorney. The transactions are not supported by original signatures. The entire process is based on the trust in the notary and attorney.

Between presentations there was broad ranging discussion among the participants regarding the role of the notary in the electronic world. Discussions included a historical perspective on notaries, their traditional roles and how those roles and that history translate into the electronic world.

Consensus developed around a couple of ideas. First, for the foreseeable future, a human being, in the form of the notary, still plays a vital role in establishing the identity, awareness and willingness of the parties signing documents despite the fact that some studies demonstrate technology can do a more credible job in the identity authentication task. Second, the future role of notaries must not be more costly, more time consuming nor more difficult than the current processes, otherwise adoption of any new standards will not be embraced.

At the end of the second day of meetings, participants agreed that this forum had proven to be very productive and that additional work is needed. We assigned follow up tasks to several workgroups created for the respective purposes.

One workgroup will review opportunities for standards around the notary space to see if recommendations can be made for coordinating their development. The PRIA e-notary DTD will be a part of this consideration. PRIA representatives, John Jones and Mark Ladd are on this workgroup along with representatives from the National Notary Association and the Notary Public Administrator's (NPA) section of the National Association of Secretaries of State (NASS).

Another workgroup will review documents and transaction types with a view to what type of authentication is really necessary for each. The idea is to develop a matrix of security and authentication requirements and identify which individuals or what technology best meet those requirements at various levels of transactions. A focus question for this workgroup is, "Do we really need to notarize all the documents we currently notarize? Could some document or transaction types be authenticated in other ways?" Mark Ladd, chair of the PRIA DTD Workgroup will be co-chairing this effort.

A third workgroup will review the various identity authentication roles of various human intermediaries as they currently function. What do various human intermediaries do to establish the identity of various parties to transactions and how will they provide those services in the future?

A final group was created to investigate liaisons with related groups of interest. These include: Electronic Financial Services Council (EFSC), Standards and Procedures for Electronic Records and Signatures (SpeRS), MISMO, PRIA, LegalXML/OASIS, and others, such as the American Bar Association's Science and Technology Section, NASS, etc.

The group will continue to function as an ad hoc committee under the auspices of the ABA Science & Technology Law section. This provided the least restrictive intellectual

property rights umbrella to operate under until recommendations begin to be developed for e-notary standards. At that time, the group will consider which standard setting organization is best suited to moving the proposed standards forward.

Special thanks are extended to John Messing of the ABA for facilitating the meeting and also to the law offices of Fenwick & West (San Francisco) for making their conference room available for the meeting.