

Notarizing Documents for an Incarcerated Person

How to Prepare, Prevent Problems, and Set the Session Up for Success

Notarizing a document for someone who is incarcerated can be completely legitimate - and sometimes critically important - but it is rarely as simple as scheduling an ordinary notary appointment.

An incarcerated signer may need a notarization for a **power of attorney, affidavit, property transaction, vehicle matter, court filing, estate-planning document, authorization, sworn statement, financial document, family matter, or other legal transaction**. The need may be urgent, but the correctional environment adds layers that do not exist with an ordinary signer.

There may be restrictions on telephone calls, video communications, electronic devices, identification documents, document delivery, signatures, witnesses, outside visitors, appointment times, and even which documents the person is permitted to possess.

The key is preparation.

A successful correctional notarization begins **before the notary and signer ever meet**.

Incarceration Does Not Automatically Prevent Someone From Having a Document Notarized

Being incarcerated does not, by itself, mean that a person loses the ability to execute documents or receive notarial services.

The notary's fundamental responsibilities remain largely the same:

- Establish the signer's identity according to applicable law.
- Confirm that the signer is appearing before the notary in the manner permitted by law.
- Determine that the signer appears willing to sign.
- Determine that the signer appears aware of what he or she is doing.
- Perform the correct notarial act.
- Complete the certificate properly.
- Maintain whatever records are required by the commissioning jurisdiction.

The difficult part is often not the notarization itself.

It is **getting all of the necessary pieces into the same place at the same time**.

Challenge No. 1: Finding Out What the Facility Actually Allows

One of the biggest mistakes is assuming that every jail, prison, detention center, or correctional institution operates the same way.

They do not.

A county jail may have completely different procedures from a state prison. A federal correctional institution may have different procedures from both.

Before scheduling anything, determine:

- 1 Where the signer is incarcerated.
- 2 Whether the person is in federal, state, county, municipal, or private custody.
- 3 Whether the facility provides its own notarial services.
- 4 Whether outside notaries are permitted.
- 5 Whether remote online notarization is permitted.
- 6 Whether the inmate can participate in an approved video conference.
- 7 Whether documents must be submitted to staff before the appointment.
- 8 Whether the notary must receive visitor clearance.
- 9 Whether witnesses are permitted or can be supplied by the facility.
- 10 Whether the signer will have access to acceptable identification.

Do not assume that because a facility permits video visitation, it will permit **remote online notarization**.

Those are two different things.

RON requires a legally compliant notarial session - not simply the ability to see the signer through a screen.

Challenge No. 2: The Facility May Already Have Its Own Notary Procedure

Before hiring an outside notary, determine whether the institution already provides the service.

This is especially important in the federal system.

Federal Bureau of Prisons guidance recognizes that certain BOP personnel may administer oaths and acknowledgments under federal law. BOP materials also explain that, for many documents being submitted to federal courts or agencies, an unsworn declaration under penalty of perjury may sometimes serve instead of a notarized declaration.

That does **not** mean notarization is unnecessary for every incarcerated signer or every document.

Real-estate documents, automobile transactions, state filings, powers of attorney, private transactions, and documents governed by state law may still require - or practically benefit from - a conventional notarization.

Some BOP institutions specifically advise that when an institution's internal process will not satisfy the receiving authority, arrangements may have to be made for an outside notary. Facility procedures can include advance approval or a background check before an outside notary is admitted.

First rule of correctional notarization:

Determine whether a notarization is actually required and who is authorized and available to perform it before spending money or scheduling an outside session.

Challenge No. 3: Identification

Identification is frequently the biggest obstacle.

A person in custody may not physically possess his or her:

- driver's license,
- state identification card,
- passport,
- military identification,
- or other ordinarily accepted identification document.

The institution may have possession of those items.

The signer may instead have a correctional identification card - which may or may not satisfy the law governing the particular notarial act.

This must be resolved **before the appointment**.

The notary should determine:

- What identification does the signer have?
- Is it current?
- Is it accessible during the notarization?
- Does the commissioning state's law permit that identification?
- Can a credible witness procedure legally be used?
- If RON is contemplated, can the signer satisfy the required electronic identity-proofing process?

Do not wait until the session begins to discover that the signer cannot establish identity.

Remote Online Notarization Creates an Additional Identity Challenge

Remote online notarization can provide an extraordinary solution when distance makes traditional notarization difficult.

But incarceration creates unusual RON problems.

A RON session may involve:

- audiovisual communication requirements,
- identity proofing,
- credential analysis,
- knowledge-based authentication,
- electronic document access,
- electronic signatures,
- platform access,
- recording requirements,
- and additional security controls.

The correctional facility must permit the signer to participate in the process.

The signer must also be able to satisfy the identity requirements applicable to the notarization.

For example, Virginia expressly permits remote online notarization but imposes specific identity-assurance and audiovisual requirements. Virginia law requires a high degree of care when determining a signer's identity and provides multiple mechanisms for establishing identity in an electronic notarization.

Virginia's official notary guidance also requires the communication to permit the participants to see and speak with one another simultaneously through a live, real-time connection, and electronic notaries have recordkeeping obligations associated with their electronic acts.

Other states have their own requirements.

That is why an incarcerated signer should **never simply be dropped into an online notary session without advance preparation**.

Challenge No. 4: Knowledge-Based Authentication Can Be Difficult

Some RON transactions use knowledge-based authentication, commonly called **KBA**.

KBA asks questions derived from information associated with the signer's identity or history.

An incarcerated individual may have difficulty answering these questions because:

- addresses may be old,
- credit histories may be limited,
- the person may have been incarcerated for years,
- the questions may concern transactions long forgotten,
- the available response time may be short,
- or the correctional session may have strict time limits.

For example, current Virginia law defines a KBA assessment with specific requirements governing the number of questions, passing score, response time, and additional attempts after a failed assessment.

A failed KBA attempt does not mean that the signer is committing fraud.

It means the identity-verification method did not successfully authenticate the person.

The appropriate response is not to bypass the system.

The appropriate response is to determine whether another **lawfully permitted identity-proofing method** is available.

Challenge No. 5: Getting the Document to the Signer

Never assume that a document can simply be emailed to an incarcerated person.

Depending upon the institution:

- email attachments may not be permitted,
- physical mail may be screened,
- legal mail may have special requirements,
- electronic documents may require staff assistance,
- printing may be restricted,
- outside USB drives may be prohibited,
- personal devices may be prohibited,
- or the document may need advance approval.

The document-delivery method should therefore be confirmed before scheduling the notarization.

How will the signer actually receive the document?

Then ask:

How will the completed document get back out?

Those two questions can prevent days - or weeks - of frustration.

Challenge No. 6: The Signer May Need Witnesses

Some documents require more than notarization.

Depending upon the document and applicable law, witnesses may also be required.

That can create another substantial problem inside a correctional facility.

Never assume that:

- a correctional officer can act as a witness,
- another incarcerated person can act as a witness,

- the notary may serve as a witness,
- facility employees will participate,
- or remote witnesses will satisfy the governing law.

Determine the witness requirements **before the session is scheduled**.

If two witnesses are legally required, finding that out after the signer is already sitting in front of the notary accomplishes nothing.

Challenge No. 7: Privacy May Be Limited

Ordinary notarizations are generally conducted without guards, correctional staff, monitoring systems, security cameras, or institutional restrictions.

Correctional environments are different.

A notary may not be able to promise complete privacy.

An incarcerated signer may be participating:

- from a monitored room,
- through an institutional telephone,
- through an approved tablet,
- with a correctional employee nearby,
- or through a facility-controlled video system.

This distinction becomes especially important for documents involving sensitive family, financial, medical, estate, or legal matters.

The notary should determine whether the conditions still permit the notary to evaluate **willingness and awareness** adequately.

If the signer appears to be threatened, coached, forced, or unable to communicate voluntarily, the notarization should not simply proceed because an appointment has been scheduled.

Set the Session Up for Success Before You Schedule It

A strong intake process prevents most problems.

Before confirming the appointment, collect the following information.

1. Signer's Information

Obtain:

- full legal name,
- inmate or identification number,
- institution name,

- institution location,
- housing unit if required,
- and any information necessary for the facility to identify the signer.

2. Document Information

Determine:

- document title,
- number of pages,
- number of signatures,
- number of notarizations,
- whether witnesses are required,
- whether an acknowledgment, jurat, oath, affirmation, or another act is requested,
- whether the document has already been signed,
- and where the completed document must be delivered.

A nonattorney notary must remain within the limits of notarial practice and should not select legal documents, draft legal instruments, or provide legal advice when prohibited by applicable law. Virginia, for example, expressly prohibits a nonattorney notary from assisting another person in drafting, completing, selecting, or understanding a document or transaction requiring notarization.

The signer or document preparer should determine what document and notarial act are required.

3. Receiving-Agency Requirements

Ask where the document is going.

Is it going to:

- a court?
- county recorder?
- Department of Motor Vehicles?
- bank?
- attorney?
- title company?
- real-estate closing?
- government agency?
- family member?
- business?

Then determine whether that recipient will accept the intended form of notarization.

A legally performed RON may still create practical complications if the recipient requires an original paper instrument or has another document-specific requirement.

4. Facility Requirements

Contact the facility when appropriate and determine:

- whether outside notarization is permitted,
- whether RON is permitted,
- who coordinates the appointment,
- whether prior authorization is required,
- what technology is available,
- whether identification can be provided,
- whether documents can be printed,
- whether witnesses can participate,
- whether recordings are permitted,
- whether the notary requires security clearance,
- and what happens if the institution enters lockdown.

Do this **before collecting unnecessary fees or promising a completion date.**

The Correctional Notarization Pre-Session Checklist

Before the session, confirm all of the following:

- ☐ Correct legal name of signer
- ☐ Correct correctional facility
- ☐ Inmate/register number
- ☐ Correct document received
- ☐ All pages are present
- ☐ No impermissible blanks or incomplete sections
- ☐ Correct notarial certificate is already provided or otherwise lawfully determined
- ☐ Signer has acceptable identification
- ☐ RON identity-proofing requirements have been reviewed, if applicable
- ☐ Facility permits the proposed method
- ☐ Video/audio access has been confirmed for RON
- ☐ Signer can access the document

- ☐ Signer can electronically sign if RON is being used
- ☐ Required witnesses have been identified
- ☐ Witness access has been confirmed
- ☐ Facility appointment or authorization is confirmed
- ☐ Recipient's document requirements have been checked
- ☐ A backup plan exists if the session cannot be completed

Preparation is not unnecessary bureaucracy.

It is what prevents a twenty-minute notarization from becoming a three-week problem.

What Should Happen at the Beginning of the Session?

Do not immediately begin clicking signatures.

First verify the environment.

Confirm:

- 1 The signer is the expected person.
- 2 The signer has access to the complete document.
- 3 The required identity-verification process can be completed.
- 4 The audio and video connection is adequate if performing RON.
- 5 The signer appears alert and able to communicate.
- 6 The signer appears to be acting voluntarily.
- 7 Any required witnesses are available.
- 8 The document is complete enough to notarize legally.
- 9 The requested notarial act is clear.

Only after those preliminary matters are resolved should the notarial act proceed.

What If the Signer Cannot Access Their Identification?

Do not improvise.

Do not accept an identification document merely because correctional staff says, "That's him."

Do not photograph an institutional computer screen and treat it as identification unless applicable law specifically permits the method being used.

Instead, determine whether applicable law permits another method of satisfactory evidence, such as:

- personal knowledge,
- credible witnesses,

- credential analysis,
- approved identity proofing,
- antecedent identity proofing,
- KBA,
- or another legally authorized procedure.

The available alternatives depend upon the commissioning jurisdiction and type of notarization.

When none of the lawful options can be satisfied, **stop the session and resolve the identification issue before rescheduling.**

What If the Technology Fails?

Technology failures are especially common when multiple systems are involved.

The facility's system, the RON platform, the notary's computer, the signer's connection, institutional security settings, and identity-proofing technology may all have to work simultaneously.

Problems can include:

- no camera,
- blocked microphone,
- weak connection,
- expired session links,
- inability to receive verification codes,
- inability to open the document,
- identity credential upload failure,
- KBA failure,
- electronic signature failure,
- facility firewall restrictions,
- or abrupt termination of the correctional video session.

When that happens, **do not force the transaction through.**

Document what happened.

Determine whether the problem is:

- a notary issue,
- platform issue,
- signer issue,

- identification issue,
- document issue,
- or institutional restriction.

Then correct that specific problem before trying again.

What If the Facility Suddenly Cancels the Session?

Correctional facilities operate according to security needs - not the notary's appointment calendar.

A facility may suddenly:

- enter lockdown,
- conduct a count,
- restrict movement,
- move the inmate,
- suspend visitation,
- terminate communications,
- experience staffing shortages,
- or cancel outside appointments.

A cancellation does not necessarily mean anyone did anything wrong.

For correctional notarizations, flexibility should be built into the process from the beginning.

The client should be told beforehand that **facility operations can delay or interrupt the appointment.**

What If the Signer Does Not Understand the Document?

This is another area where the notary must understand the limits of the role.

A notary generally verifies matters associated with the **notarial act**.

The notary is not automatically the signer's:

- attorney,
- financial adviser,
- estate planner,
- real-estate adviser,
- paralegal,
- or document preparer.

If the signer asks:

"Should I sign this?"

or

"What rights am I giving up?"

or

"What happens to my property if I sign this power of attorney?"

those may be legal questions - not notarial questions.

The proper response may be for the signer to consult the attorney, document preparer, agency, or another qualified professional before proceeding.

A notary should never use the signer's incarceration as a reason to relax professional boundaries.

Do Not Notarize an Incomplete Document Just Because Access Is Difficult

The fact that another appointment may be inconvenient does not justify improper notarization.

If applicable notary law prohibits notarizing materially incomplete documents, the notary must follow that law.

Virginia, for example, prohibits a notary from placing an official signature or seal on an incomplete notarial certificate.

Correctional difficulty does not override notarial law.

What If the Session Cannot Be Completed?

Sometimes the correct professional decision is to stop.

A notarization should not be completed merely because:

- the family paid for an appointment,
- a filing deadline is approaching,
- the signer has limited telephone time,
- the attorney urgently needs the document,
- the facility may not provide another appointment soon,
- or everyone has already spent significant time arranging the meeting.

Stop when necessary.

Examples include:

- identity cannot be satisfactorily established,
- audiovisual communication is inadequate,
- the signer cannot access the document,

- required witnesses are absent,
- the signer appears coerced,
- the signer appears unable to understand the act,
- the document is materially incomplete,
- the requested notarial act is unclear,
- the facility prohibits continuation,
- or applicable legal requirements cannot be satisfied.

A failed appointment is inconvenient.

An improper notarization can create far greater consequences.

Have a Backup Plan Before the First Appointment

For incarcerated signers, **Plan B should exist before Plan A begins.**

Option 1 - Facility Notary

Determine whether a staff member or institutional notary can perform the act.

Option 2 - Reschedule RON

Correct the technology, identification, document, or access issue and schedule a second session.

Option 3 - Traditional In-Person Notary

If permitted, determine whether an outside notary can obtain clearance to enter the facility.

Option 4 - Credible Witness or Alternative Identification Procedure

Use only when permitted by governing law.

Option 5 - Attorney Coordination

For complicated legal documents, counsel may be able to coordinate directly with correctional personnel.

Option 6 - Determine Whether Notarization Is Actually Required

For some federal matters, an unsworn declaration under penalty of perjury may be legally sufficient instead of notarization. The Federal Bureau of Prisons recognizes this possibility for many federal documents.

Never assume this alternative applies to a particular document without checking the governing requirements.

Communication With the Family Is Critical

Often the person arranging the appointment is not the incarcerated signer.

It may be a:

- spouse,

- parent,
- adult child,
- sibling,
- attorney,
- friend,
- business partner,
- or other representative.

That person should understand exactly what is - and is not - within the notary's control.

A professional correctional-notarization intake should explain:

The notary controls the notarial act. The correctional facility controls access to the incarcerated signer.

That distinction prevents misunderstandings.

The notary cannot guarantee:

- facility access,
- inmate movement,
- video availability,
- release of identification,
- institutional printing,
- witness availability,
- successful identity authentication,
- or uninterrupted communication.

What the notary **can** do is prepare carefully, communicate clearly, identify foreseeable barriers, and refuse to cut corners when an unexpected problem occurs.

Document Everything

Correctional notarizations deserve particularly careful recordkeeping.

Record, as applicable:

- appointment date and time,
- facility,
- signer's identity information,
- identification method,

- document description,
- type of notarial act,
- witnesses,
- interruptions,
- failed identity-proofing attempts,
- rescheduling,
- significant technical problems,
- and any refusal to complete the notarization.

Follow the recordkeeping law of the notary's commissioning jurisdiction.

Virginia law, for example, requires notaries to maintain records containing specified information about notarial acts, including the date and time, type of act, document description, principal information, evidence of identity, and applicable fee information.

Proper documentation protects the signer, the receiving party, and the notary.

The Goal Is Access - Without Sacrificing Compliance

People do not stop having families, property, businesses, legal rights, lawsuits, financial obligations, or personal affairs simply because they are incarcerated.

Sometimes a single notarized signature can determine whether someone can:

- authorize a trusted family member to handle property,
- complete a court filing,
- transfer a vehicle,
- resolve an estate matter,
- execute a power of attorney,
- complete a financial transaction,
- protect a legal right,
- or meet an important deadline.

That makes correctional notarization an important service.

But providing access does not mean weakening safeguards.

In fact, the circumstances require **more preparation, not less**.

The Five Questions to Answer Before Scheduling Any Incarcerated-Signer Notarization

1. Does this document actually require notarization?

Do not assume.

2. Will the correctional facility permit the proposed notarization?

Confirm the facility's procedures.

3. Can the signer establish identity under applicable notary law?

Resolve identification before the session.

4. Can every required participant and document be present?

That includes witnesses when required.

5. Is there a backup plan?

Assume that a correctional restriction, identification issue, or technology failure could occur.

If those five questions are answered before the appointment begins, the chances of a successful session increase dramatically.

Final Thoughts

Notarizing documents for incarcerated individuals is not impossible.

It is **process-intensive**.

Successful sessions require coordination among the signer, family or requesting party, correctional facility, notary, technology provider when RON is involved, witnesses when required, and sometimes attorneys or receiving agencies.

The strongest approach is therefore:

Verify first. Prepare second. Schedule third. Notarize fourth.

Not the other way around.

When problems arise, do not improvise around the law. Identify the obstacle, determine the legally permissible solution, document what occurred, and reschedule when necessary.

An incarcerated signer deserves the same careful, lawful, impartial notarial service as every other signer.

The surroundings may be different.

The integrity of the notarization should not be.

Reference Resources

The blog post discusses general notarial principles and includes examples from federal Bureau of Prisons guidance and Virginia notary law. Because statutes, facility rules, and platform requirements change, readers should verify current requirements before relying on them.

- Federal Bureau of Prisons - Legal Activities, Inmate (Program Statement 1315.08):
https://www.bop.gov/policy/progstat/1315_008.pdf
- Virginia Code, Title 47.1 - Notaries and Out-of-State Commissioners:
<https://law.lis.virginia.gov/vacode/title47.1/>
- Virginia Secretary of the Commonwealth - Notary Public resources:
<https://www.commonwealth.virginia.gov/official-documents/notary-commissions/>

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Notaries should follow the laws and official guidance of their commissioning jurisdiction and the policies of the applicable correctional institution. Individuals with questions concerning the legal effect, preparation, interpretation, or appropriate execution of a document should consult a licensed attorney or other qualified professional.