

ЮРИДИЧЕСКИЕ НАУКИ

GENERAL CHARACTERISTICS AND TRENDS IN THE DEVELOPMENT OF DIGITAL NOTARIES IN THE RUSSIAN FEDERATION

DOI: [10.31618/ESU.2413-9335.2020.10.73.720](https://doi.org/10.31618/ESU.2413-9335.2020.10.73.720)

Kurchinskaya-Grasso Natalia
Grasso Law Firm (Italy – Russia),
International Law Scholar,

ABSTRACT

The article analyzes and summarizes the legal mechanisms for protecting the rights of citizens and their property rights in the sphere of notaries in the Russian Federation, which arose in connection with the introduction of new digital technologies into its sphere, the creation of digital data storage and systematization centres, electronic exchange with structural divisions of various state bodies, and considers new types of notarial actions related directly to the electronic notary, such as certificate of the electronic and paper documents equivalence, it also addresses the problem of protecting personal data of individuals and legal entities when they apply for notarial actions, taking into account the use of digital technologies in the notary office.

Keywords: notaries, notary, notarial activity, electronic notary, digital notary, unified information system of the notary, digital technologies, digital signature, electronic signature, personal data, personal data processing, personal data protection, Russia

Nowadays, almost all organizations and departments are switching to electronic document management. There are all reasons for this, as in the Decree of the President of the Russian Federation of May 9, 2017 No. 203 "On the Strategy of Information Society Development in the Russian Federation for 2017-2030" [3] (hereinafter the Presidential Decree No. 203) as one of priority areas there is covered the scenario of the information society development in Russia. In particular, paragraph 51 notes that the digital economy has a significant impact on the growth rate of the gross domestic product in the Russian Federation.

If we return to the term "electronic document flow", the concept is revealed as a sequence of transactions for the documents exchange between participants in the document flow, providing a certain regulated process for the documents exchange (paragraph 1.3 of the Order of FTS for Russia from 09.11.2010 no.MMV-7-6/535@ [5]. As an example, we can give the workflow for submitting tax returns.

The electronic document management peculiarity is that electronic documents are signed with an electronic signature. A document signed with a digital signature is equivalent in its value to a paper document, subject to the conditions provided for by Federal Law No. 63-FZ from 06.04.2011 "On Electronic Signature" [2].

As one of the features of an electronic document, P. S. Dolgoplov mentions the information certification with an electronic digital signature. He also adds such features as an electronic form and compliance with the requirements for information documentation [8]. In addition, the scientific literature discusses the use of electronic documents in labor disputes [10], in civil relations [12], as well as the emergence of problems in the electronic documents application in the courts activities [9].

Of course, in the light of the state policy of digitalization in various spheres of public life, the electronic technologies development has also affected the sphere of notary services. The electronic

technologies use in the provision of notary services will help solve a number of problems. However, it should be noted that the electronic technologies use does not eliminate the issue of the person's identification who created the electronic document, and the requirements for the availability of all the necessary details for official documents. It is also indisputable that in order to obtain notarial services, the notary must not have any doubts about the person who applied for the service using modern technologies, and about the authenticity of the documents presented by this person.

First of all, the above applies to notary services rendered remotely, i.e. distantly. Thus, on October 16, 2019, in the first reading the State Duma adopted a government draft amendments to Fundamental Principles of Legislation of the Russian Federation on Notaries (Draft Federal Law No. 750699-7 [7]). It has been prepared in order to optimize notarial activities and increase the demand for notarial protection of the rights of citizens and legal entities in the context of the digital society development.

In particular, the draft law provides for the possibility implementation of a transaction certification with the involvement of two or more notaries – in cases where two or more persons participate in the transaction without their joint presence.

The procedure may look like the following. The draft transaction will be created by notaries using the notary's Unified Information System (EIS). The transaction participant signs a copy of the transaction in electronic form with a simple electronic signature in the presence of each notary. An electronic copy of the transaction is signed by notaries' qualified electronic signatures. The parties also sign a transaction copy. The electronic document text immutability will be provided by the means of the notary's EIS.

A contract certified by two or more notaries will be considered a contract concluded in writing by drawing up a single document signed by the parties. The fee for performing this notarial action will be charged by each notary. As a general rule, notaries will

be jointly and severally liable for harm caused by their fault due to the recognition of a transaction certified by two or more notaries as invalid.

Another important handled draft law innovation is the addition of provisions to the Russian Federation's legislation On notaries that define the procedure for performing notarial actions remotely, i.e. without a personal appearance to the notary of the person who applied for such actions.

According to the proposed amendments, with a remote notary, the applicant shall send to the notary through the EIS notary services (including through the Unified Public Services Portal) signed by the enhanced qualified electronic signature a notarization with the necessary documents in electronic form or scanned documents images. Having paid for the performance of such an action, the applicant will receive a notarized document (or a reasonable directive to refuse to perform a notarial act /to postpone its performance) within no more than 5 working days from the date of notary's reception of information confirming the payment.

In the remote mode not all notarial acts can be done, but only some of them under articles 81, 86, 87, 88.1, 89, 103 and 103.7 of The Fundamental Principles of Russian Federation Legislation on Notaries [4] (the witnessing of transfer fidelity; documents transfer of physical and legal entities to other physical and legal entities; adoption in deposit of cash and securities and a number of others listed in the project, etc.).

A special register of notarial acts performed remotely and transactions certified by two or more notaries will be maintained.

The draft law also provides for the following innovations:

- ability to check information about a notarized document using machine-readable markings placed in it. Verification will be carried out through the notary's EIS;

- the notary's right in the absence of the document certifying the citizen's identity, or if you have any doubt about the identity of the citizen presenting such a document, to establish the identity of a citizen, his representative or the representative of the legal person by a Unified Information System of Personal Data;

- the ability to obtain information about the inheritance case opening via the Internet. Such information will be provided at the applicant's request (daily and around the clock);

- expanding the documents list for which debt collection is performed in an undisputed manner on the basis of an notaries' executive inscription. This will be possible for contracts for the communication services provision in the event of obligations non-fulfillment to pay for services within the established time frame, and surety agreements that provide for the guarantor's joint liability under the loan agreement, if the relevant agreement contains such a clause;

- fixing the procedure for correcting a technical error by a notary that does not change the legal content of a notarized document on paper and does not affect the third parties' rights.

It is worth noting that the notary's verification of the person's will and stated wish compliance, who makes the transaction, is a fundamentally important point. It is the will according to article 154 of the Russian Federation's Civil Code [1] that is given special significance for the transaction recognition as valid.

Undoubtedly, we can note the prospects for providing services in a remote mode, but at the same time, we have some questions. What will be the procedure for ensuring the secrecy of notarial acts performed remotely? How will citizens who wish to receive the service remotely be identified by a notary? What will be the cost of services provided remotely? We assume that the cost of services provided in remote access should be less than if a citizen applied to a notary in person. What is the procedure for paying for services rendered in a remote format? What commission will banks charge for money transfers for providing such services? It seems that we will soon get answers to these questions as well.

Next, we will say a few words about the provisions that are already enshrined by law regarding the services provision in electronic form.

First of all, we note that today such services as the ability to certify an electronic document or transfer documents from paper to electronic form and back with the preservation of their legal force are popular among citizens. Notaries also transfer power of attorney, consent, and other documents into electronic form. But with the only difference that you need to visit a notary. Of course, thanks to the use of the Internet, the notary can quickly send an electronic document to another city. The importance of this service can not be underestimated, as the convenience is obvious. For example, such a necessity arises when you need quickly to issue and forward a power of attorney to participate in a lawsuit to a person who lives in another region (district, city, etc.).

If we rely on the current legislation, then article 44.2 on the Basic Legislation on Notaries provides for performing notarial actions in electronic form. At the request of a person who has applied for a notarial act, a notary may perform a notarial act by producing a notarial document in electronic form.

Under the electronic form according to paragraph 200 of the Order of the Justice Ministry for Russia dated 16.04.2014 No. 78 "On approval of Notarial Clerical Work Rules" [6] refers to electronic documents originating from the notary, which must be completed in accordance with the Rules of Notary Records and have the details set for the same document on paper, with the exception of the notary's handwritten signature and seal with the image of the Russian Federation State Emblem. As we noted above, the transition to electronic document management does not cancel the requirements for the presence of details on documents. In addition, all electronic documents issued by a notary must be executed in accordance with the rules established for sending requests to state registers, federal information resources, state registers, as well as to the Unified Information System of the Notary.

There are also serious requirements for confirming electronic documents created and issued by a notary. In order for documents in electronic form to acquire the status of legally significant, they must be confirmed by an notary's enhanced qualified electronic signature. According to the current rules, if a notarial document must be signed by a person who applied for a notarial act, this person must sign the document in the notary's presence with a simple electronic signature.

An important issue is the proper storage of documents compiled in electronic form. We should agree with S. Sidorkina's opinion that document accounting programs should provide reliable storage of documents in electronic form in records in the database [11, p.28]. The proper protection depends on ensuring the notarial secrecy safety, because according to the paragraph 2 article 5 Of the Basic Legislation on Notaries, even a notary after resigning or being dismissed is forbidden to disclose information, publish documents that have become known in connection with the notarial acts performance.

In conclusion, we would like to focus on the following. If the transition to electronic document management has already taken place, does this mean that notaries can refuse to draw up documents on paper?

Nowadays, according to the provisions of chapter XX.2 of the Basic Legislation on Notaries, provides for equivalence certification of an electronic document to a paper document (article 103.8) and equivalence certification of a paper document to an electronic document (article 103.9). There are no clear legally established rules providing for the citizens' right to refuse to draw up documents on paper. According to the current rules, a citizen who applies to a notary first pays for the service of drawing up a document on paper, and his desire to transfer this document into electronic form will also be paid, which is burdensome both in monetary terms and minutes spent in a notary office.

Of course, the possibility of providing a citizen, at his/her request, with a document in electronic form, bypassing the paper counterpart, would help to resolve a number of issues. For example, the legal force of an electronic document will be given by means of an notary's enhanced qualified electronic signature, and the presence of a citizen's personal enhanced qualified electronic signature will lose its relevance in this case.

Surely, the transition to providing notary services in a remote mode opens up wide opportunities. For example, there will be no need to reimburse the notary for actual transport costs when leaving the notary to perform a notarial act outside of their working place, and citizens will not have to bear the costs associated with traveling to the notary, residents of remote areas will have access to notary services, and so on. Probably, we should not wait for the transition of all notary services into electronic form in the near future. But even the possibility of providing those service types that do not require a notary to establish the applicant's will can be called a partial implementation of Presidential Decree No. 203.

References

- 1.The Civil Code of the Russian Federation (part one) from 30.11.1994 No. 51-FZ (ed. from 16.12.2019) // Collection of Legislative Acts of the Russian Federation. 1994. No. 32. Article 3301
- 2.Federal Law No. 63-FZ of 06.04.2011 (ed. from 23.06.2016) "On Electronic Signature" (with amendments and add., Intro. in force from 31.12.2017) //Collection of Legislative Acts of the Russian Federation. 2011. No. 15. Article 2036
- 3.Decree of the President of the Russian Federation dated 09.05.2017 No. 203 "On the Strategy for the Development of the Information Society in the Russian Federation for 2017-2030" // Collection of Legislative Acts of the Russian Federation. 2017. No. 20. Article 2901
- 4.Fundamental Principles of Legislation on Notary Activities. (approved by the Supreme Court of the Russian Federation 11.02.1993 No. 4462-1) (ed. from 27.12.2019) (with amendments and add., Intro. in force from 01.01.2020) // Rossiyskaya Gazeta. # 49. 13.03.1993
- 5.Order of the Federal Tax Service of Russia from 09.11.2010 no. MMV-7-6/535@ (ed. from 25.12.2019) "On Approval of the Unified Format of the Transport Container for Information Interaction with the Reception Complexes of Tax Authorities via Telecommunications Channels Using an Electronic Digital Signature." URL: <http://www.consultant.ru> (accessed: 16.01.2020)
- 6.Order of the Russian Ministry of Justice from 16.04.2014 No. 78 (ed. from 05.07.2019) "On Approval of the Notarial Record Keeping Rules" (registered with the Ministry of Justice of the Russian Federation on 23.04.2014 No. 32095) // Rossiyskaya Gazeta. # 95. 25.04.2014
- 7.Draft Federal Law No. 750699-7 "On Amendments to the Fundamental Principles of Legislation on Notary Activities and Certain Legislative Acts of the Russian Federation" (ed., prepared by the State Duma of the Federal Assembly of the Russian Federation for the second reading on 17.12.2019). URL: <http://www.consultant.ru> (accessed: 16.01.2020)
- 8.Dolgopolov P. S. Electronic Document: Concept and Features of Application. URL: <http://www.consultant.ru> (accessed: 20.01.2020)
- 9.Zabelina O. A. Problems Arising When Applying Electronic Documents in the Courts Activity // Sudiya. 2017. no. 11. Pp. 30-34
- 10.Nizhegorodtsev O. Electronic Documents in Labor Disputes // HR Department and Personnel Management of the Enterprise. 2018. no. 6. Pp. 25-35
- 11.Sidorkina S. Organization of Registration and Storage of Electronic Documents // Raschet. 2018. no. 3. Pp. 28-29
- 12.Shelepina E. A. Application of Electronic Documents in Civil Legal Relations: Conditions and Opportunities // Laws of Russia: Experience, Analysis, Practice. 2017. no. 10. Pp. 31-39