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The National NOTARY®

July 2010



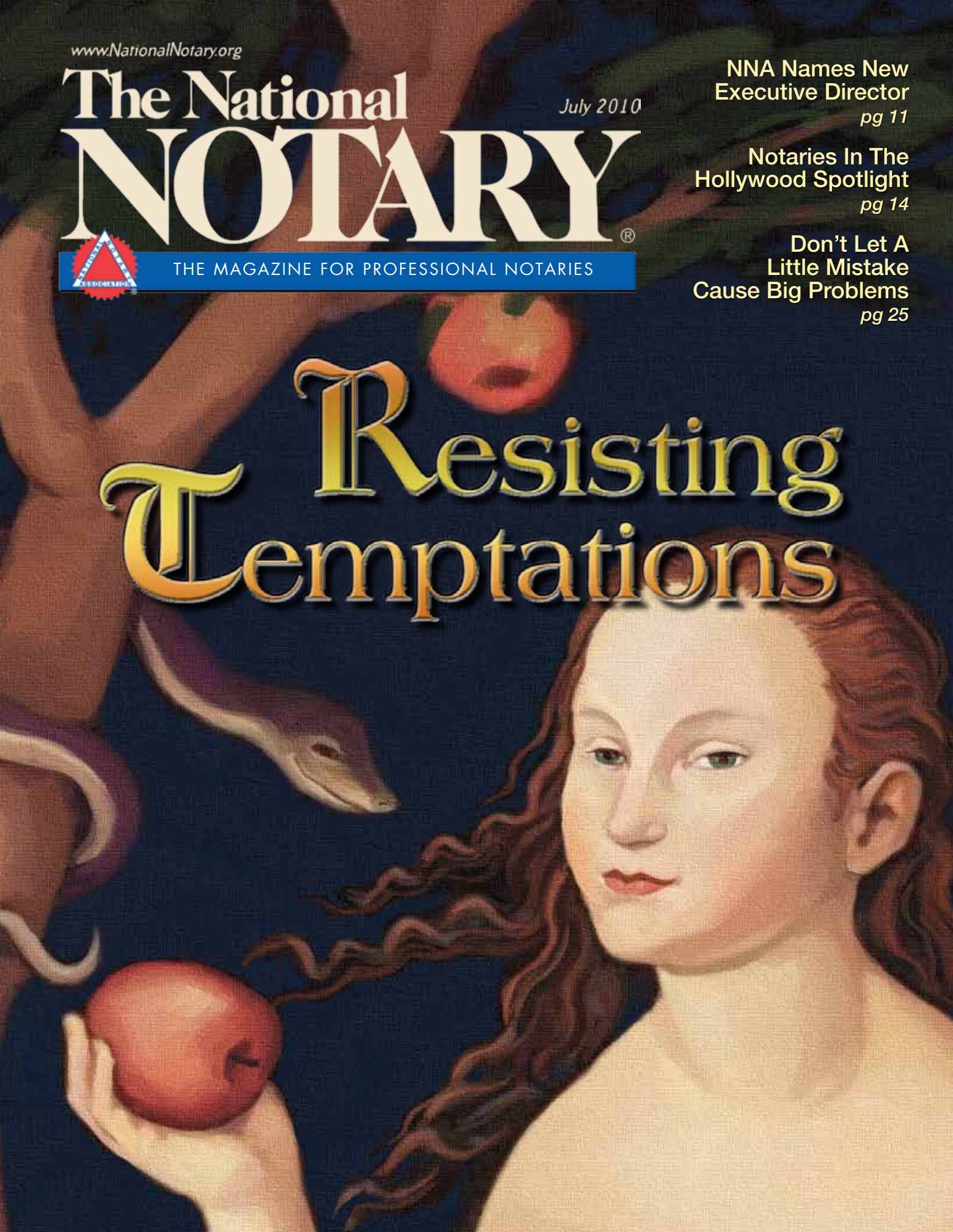
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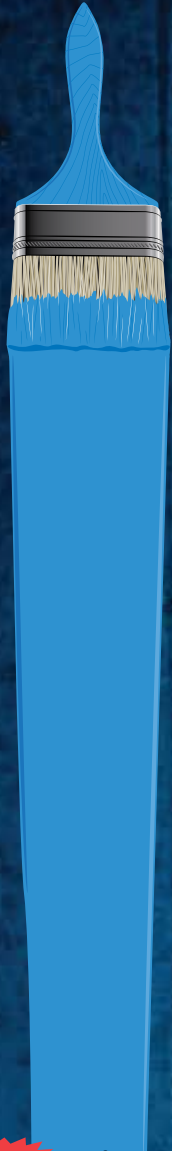
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Resisting Temptations



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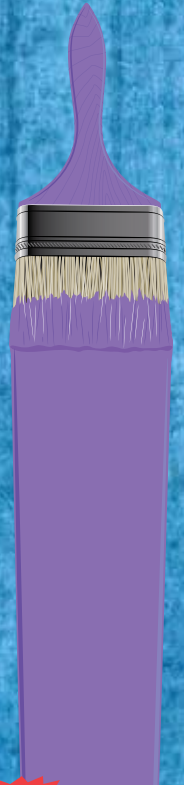
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THE NATIONAL NOTARY is the official publication of the National Notary Association. We enjoy a nationwide circulation, with subscribers in several foreign countries as well, and welcome the readership of all those interested in the important work of Notaries.

PUBLICATION POLICY

The objectives of THE NATIONAL NOTARY are to: (1) publish only quality articles on Notaries, notarization and related subjects; (2) inform our readers of important developments in the field of notarization; and (3) focus on Notary issues and related subjects that are helpful, educational and informative to Notaries and others interested in the field.

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From The Managing Editor



The Right Conditions Will Achieve Results

Several years ago a friend of mine decided he wanted to be a law enforcement officer.

Being the type who walked down many of life's paths without ever reaching his destination, I gave him a pat on the back and wished him the best. I didn't expect much.

Several months later with two failed attempts at the academy under his belt, I figured his typical "woe is me" pattern would kick in.

But this time there was no feeling sorry for himself. Instead, he buckled down. He took another criminal law course, he studied harder, he worked out more. He addressed every deficiency identified by his previous attempts and, a year later, he was hired by a law enforcement agency.

"What inspired you to keep trying?" I asked him. "Oscar Wilde did," he replied, referring to the 19th century Irish writer and poet. "I finally realized what he meant by, 'Success is a science. If you have the conditions, you get the result.'"

His perseverance and dedication made me reflect upon the growing number of Notaries who are going "above and beyond" amid today's increased demands to protect the public. Faced with growing liability and compliance issues, mixed with directives from courts, governments and employers to increase professionalism, it would be easy for many Notaries to give up. Frankly, some have.

But many others are instead continuing their training and education to perform their duties the right way (page 25), they are implementing best practice standards that go above and beyond the requirements of state laws (page 12), and some are even getting involved with legislators or other influential bodies to advocate for increased standards of care in their states (page 22).

And with examples coming in to our Notary Hotline every day, more and more Notaries are resisting the pressure from uninformed bosses, clients and others to ignore best practices (page 16).

While we still have a lot of work to do, I am truly inspired by the growing number of Notaries who are creating the conditions for a stronger American Notary office and, in turn, increasing their own value by being the best.

More and more
Notaries are
resisting the
pressure to
ignore best
practices.

COVER STORY

16 • Resisting Temptations

Whether it's coercion from a pushy boss, an impatient signer or someone committing fraud, every Notary will eventually be tempted to break or ignore the rules. But that one little lapse can lead to a mountain of legal and liability issues, especially today as fraud and forgery concerns skyrocket. Notaries are duty-bound to perform with higher levels of diligence, integrity and attention to detail to better protect the public and themselves. So, before giving into temptation, every Notary must clearly understand responsibilities and practices — and the consequences of ignoring them.



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If you are sued, attorneys may see you as an easy target and your employer will protect its own interests. You must implement your own greatest protection: performing your duties the right way.

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Whether advocating for mandatory education, stronger identification standards or background checks to prevent convicted murderers from receiving a commission, Notaries are taking their concerns to the highest levels of government.

14 • Notaries Gain Fame In Hollywood

This summer's blockbuster film "Iron Man 2" features a Notary as a main character, marking an interesting trend among scriptwriters: America's trusted impartial witnesses are taking center stage.



25 • A Little Mistake Can Cause Problems

In today's business climate, one small oversight can lead to trouble. Use this handy checklist to avoid common mistakes and you won't be bedeviled by trouble down the road.

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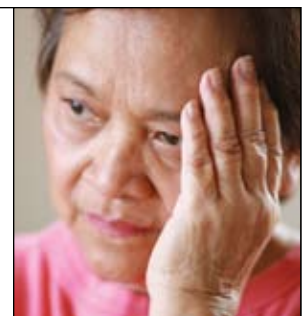
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ON THE WEB

How Notaries Can Help Fight Elder Abuse

NationalNotary.org/
Bulletin





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OUR MISSION

The National Notary Association is committed to the education and service of Notaries throughout the United States. As the foremost authority on the American Notary office, we are dedicated to imparting knowledge, understanding and unity among all Notaries, and instilling in them only the highest ethical standards of conduct and sound notarial practice.

OUR READERS' RIGHT

'Notario' And 'Tinterillero'

I would like to make a comment on the article "Anti-'Notario' Efforts Growing" in the May 2010 issue on page 9.

I was born in South America and became a U.S. Notary in 1995. In South America, the term *Tinterillero* refers to a person who performs legal errands such as going to court to get copies of documents, in addition to notarizing documents. A *Tinterillero* has a legal background, meaning a college degree or some studies in law.

The only people who can become *Notarios Publicos* in South America are attorneys. I hope this sheds some light on the use of the term *Notario Publico* in other countries.

Dora Victoria Mora, Addison, Texas

The Recorder's Role

I write this letter in response to a letter written by Jessie Hinton of Chicago, Illinois, in the January 2010 issue titled "Deeds and Fraud." County recorders are bound by state statutes to record documents in a timely manner. In fact, about 20 years ago an Illinois county was successfully sued by a title company for violating that provision.

If a document is presented for recording and meets all the legal requirements and the proper fees are paid, recorders cannot refuse to record it. That's not to say if we suspect something is wrong, we won't notify the proper authorities.

Most deeds recorded are followed by a mortgage document; if the deed is not recorded, the mortgage cannot be recorded. Recorders are trying to help prevent property fraud by implementing procedures to deter it.

Thomas E. Lyons, LaSalle County Recorder
Ottawa, Illinois
President, Illinois Association of County Clerks and Recorders

Continuing Education Is Essential

I'm all for continuing education for California Notaries. I am, however, not in favor of the testing required to renew our commission. I would propose that the Notary be required to attend at least two continuing education classes during their term in order to renew their commission. Having to retake the test every four years is a hardship for some and I feel an unnecessary burden for current Notaries.

Helen Sager, Santa Rosa, California

Letters To THE NATIONAL NOTARY

We welcome letters, comments and questions from you and reserve the right to edit for space and clarity.

Contact us at publications@nationalnotary.org or by fax at (818) 700-1942. Mail can also be sent to National Notary Association, Editorial Department, 9350 De Soto Ave., P.O. Box 2402, Chatsworth, CA 91313-2402.



Celebrating The Legacy And Heritage Of America's Notaries

As summer approaches, who doesn't start thinking expectantly about the cornerstone of summer: the Fourth of July, parades, the American flag, fresh corn on the cob, stories and

images of our founding fathers and Notaries. Notaries?

While the office of Notary Public and the role of the official witness and record-keeper have been part of social history from the earliest Egyptians to modern times, it is also part of our American heritage.

There are nearly five million Notaries in the United States today who can count as their predecessors the appointees of Roger Williams of the Colony of Rhode Island and Providence Plantations or John Winthrop of the Massachusetts Bay Colony, and their successors in the 13 original American colonies.

It's a legacy that we honor by continuing to adhere to the most basic notarial principles and why appreciating Notaries continues to be important today.

In the 17th century, the world was a smaller place. As our nation grew, written agreements were needed to convey land. It became the Notary's duty to identify the parties, witness their signatures and obtain the parties' acknowledgment that the agreement — and no other — was to be in full force and effect.

Notaries provided security to those entering into agreements by ensuring that the document principal, whether affixing a signature or a mark, was who he claimed to be. Of course, in those days, identification was a simpler task: in almost every case the signer and Notary knew each other personally.

Two hundred and fifty years later, though modern technologies and business processes have changed some aspects of notarization, such as in the growing use of electronic signatures and seals, the basic attributes and

character of the notarial act remain.

The phrase formerly used in most notarizations, "personally known to me," has been replaced by "proved to me on the basis of satisfactory evidence," but establishing a signer's identity is still the unchanging obligation of every Notary. Also unchanged is the duty to ensure that the principal appears in person before the Notary at the time of notarization in order to allow the critical screening for identity, as well as for volition and awareness.

The sanctity of the Notary's oath or affirmation still involves the centuries-old practice of asking oath-takers to raise their hand and invoke a deity or their own conscience to declare that their statements are true.

While we may over-use the proverb that the more things change the more they stay the same, for Notaries, it is entirely appropriate. Change has required that we be more informed about new rules and regulations to ensure we are acting in accordance with the latest official requirements. The advent of electronic documents and transactions has made it necessary to learn new procedures to accommodate technologies required by the legal and business communities.

This Fourth of July reminds us of our nation's birth, its triumphs and its troubles. It evokes the sights and sounds of parades and picnics.

But, for Notaries it reminds us that we are part of a long tradition of responsibility, honor and distinction.

Deborah M. Thaw can be reached at dmtbaw@nationalnotary.org

'Sovereign Citizens' Pose Perplexing Notarial Requests



Notaries and government officials across the nation are reporting a sharp increase in the number of requests for protests and other uncommon and unauthorized acts. The increase is due to efforts on the part of certain people to get out of paying taxes, mortgages and other debts and to assert immunity from government authority.

These individuals often are inspired by the so-called "Sovereign Citizens" or "Freemen" movements. The National Notary Association's Hotline reports a six-fold spike in calls relating to these types of acts.

One of the more common acts being requested of Notaries is a protest — a largely antiquated notarial act involving an unpaid debt. They are rarely performed today due to their replacement by modern electronic financial systems.

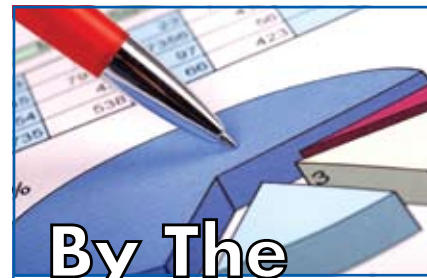
Because protests and related documents, such as Certificates of Service, involve complex procedures and may require performing an act you may not be authorized to carry out, you may

refuse to perform them, explaining that they require specialized training. Notaries should complete protests and related acts only after seeking the advice of a licensed attorney.

Many of these acts require Notaries to perform unauthorized acts or contain certificate wording that does not comply with the requirements in some states. Utah recently passed a law that forbids its state Notary regulator to authenticate the notarization on certain uncommon documents.

In general, Notaries should proceed carefully if presented with one of these requests. If the signer is requesting a lawful acknowledgment or jurat, you generally should comply.

If there are doubts that a requested act is lawful, the Notary is justified in refusing to proceed. In addition, the NNA recommends that if the Notary has knowledge or a clear, reasonable suspicion that the document is going to be used for an unlawful or improper purpose the Notary should refuse to notarize the document.



By The NUMBERS

\$75 billion The amount of money allocated by the U.S. government for the Home Affordable Modification Program (HAMP) to help homeowners avoid foreclosure

Number of homeowners who received foreclosure notices in 2009 **2.8 million**

1.3 million Mortgages that have been placed in trial modifications as of April

Number of permanent mortgage modifications under HAMP as of April **170,000**

5 Number of years a "permanent" mortgage modification typically lasts before payments revert to the previous level



Volunteer Your Services To Help Your Community

As public servants, many Notaries are eager to volunteer their time to help the needy or contribute to their community.

Many people need a Notary, and sometimes they can't afford it, so being available to help can really be a benefit to your local citizens.

In Pennsylvania, for example, the state bar association provides volunteer attorneys and Notaries to help citizens prepare legal documents.

Notaries also frequently volunteer at hospitals and convalescent homes or with visiting nurse services, where patients and their families often need a Notary to acknowledge

advance healthcare directives and medical powers of attorney.

As the school year approaches, opportunities open

up to volunteer services to acknowledge permission forms or other school-related documents.

Before volunteering, it is

important to check your state's laws to determine what acts you are allowed to perform, since many of these may be types of notarizations you rarely encounter. If you have any questions about how to properly handle a request for notarization, you can call the NNA's Notary Hotline at (888) 876-0827 between 5 a.m. and 5 p.m. Pacific time, Monday through Friday.



States Tighten Rules On Protecting Client Data

A growing number of states have enacted strict data protection laws applying to Notaries and anyone else who handles clients' sensitive personal information.

Massachusetts recently joined California and Hawaii to become the latest jurisdiction to enact tough data security regulations that apply to every business or entity that handles personal identity and financial information of clients.

The new rules, issued by Governor Deval Patrick, require organizations to establish written policies detailing how sensitive consumer information will be protected. The rules apply to even the smallest businesses and entities that may not handle a lot of personal information about customers and employees.

For Notary Signing Agents and other Notary entrepreneurs, this means creating written policies describing how information that is either stored or transmitted will be protected. That information could be contained in journals, loan documents or other electronic or paper documents handled by the Notary.

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Training,
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Home Sales Begin Climb To Recovery

The housing sector is showing signs of awakening, marking an increase in opportunities for Notaries and Notary Signing Agents in the real estate sector.

Sales of new homes in March increased by 27 percent, the biggest gain in 47 years, and February's numbers were revised upward as well.

However, the recovery may experience a setback once the effects of the expiration of the federal government's home buyer tax credit make their way through the market. The last day for home buyers to be able to claim the credit was April 30.



Anti-Fraud Measure Invalidates Puerto Rico Birth Certificates

Effective July 1, all Puerto Rican birth certificates will be invalidated as part of a sweeping move by the U.S. commonwealth to combat fraud. That means the 4.1 million people of Puerto Rican descent in the U.S. will need new proofs

of birth and may approach Notaries to assist them in obtaining such documentation. Federal and Puerto Rican officials warn there will be a wave of attempts to commit fraud amid the confusion, as

Puerto Rican birth certificates are in high demand on the black market for those seeking to obtain unlawful passports, driver's licenses and other government benefits. People born in Puerto Rico are natural born citizens of the United States.

The Puerto Rico Federal Affairs Administration (PRFAA) took this

aggressive action because many Puerto Rican businesses improperly asked for certified copies of birth certificates for common transactions, and then stored the copies in unsecured areas. Many were stolen and sold for use in creating fake IDs.



Approximately 40 percent of passport cases investigated by the U.S. Department of State in recent years have involved fraudulent use of Puerto Rican birth certificates. More information about

the Puerto Rico law and where to obtain a lawful certified copy of a Puerto Rican birth certificate can be found at the PRFAA Web site.

Notaries approached with a request to help obtain proof of birth in Puerto Rico should keep in mind that they have no power to "certify" vital records such as birth documents.

Mortgage Fraud Down, But Not Out

While Notaries cannot prevent many fraudulent activities, criminals often try to hide their culpability with some type of identity fraud. By applying the highest standards of care when notarizing loan documents — properly identifying every signer every time — Notaries will be able to prevent many fraudulent transactions.

The rate of home loan fraud is declining but remains at epidemic levels, with the federal government investigating a record number of mortgage fraud cases. All of this makes Notaries as important and relevant as ever at the closing table.

The 2009 mortgage fraud index released by First American CoreLogic showed a 25 percent decrease from its peak in 2007. But the incidence for 2009 still totals \$14 billion in bad mortgages, and the company found that a quarter of foreclosures involved some elements of fraud.

But the federal government sees no slowdown in activity. The most recent report from U.S. Department of the Treasury's Financial Crimes Enforcement Network — reflecting data for the third quarter of 2009 — shows a 7.5 percent increase in reports of suspected mortgage fraud over the previous year.

And the FBI announced recently that it is investigating a record 2,800 active mortgage fraud cases.

Tablet Computers Being Evaluated As Mobile Productivity Tools

Early technology adopters are now taking a hard look at tablet computing devices, which have been deemed revolutionary for watching movies, reading books and viewing Web sites. But the jury is still out on how valuable they are for mobile Notaries and other professionals on the go, who today rely upon laptops and smart phones.



Photo courtesy of Apple Inc.

Notaries who work on the road might find a surprising array of features that can help them leave the laptop at home. Models that offer Global Positioning Satellite (GPS) functionality and wireless connectivity make valuable mobile tools for finding your way and checking your eMail. And many tablets are able to run spreadsheet, word processing and presentation software.

Tablets are much smaller than laptops and weigh less, but they have some limitations. Still, amid the consumer rush on tablets like Apple's iPad, businesses are beginning to see tablets as valuable tools for collaborating, communicating and accessing information. They may prove useful for the mobile Notary entrepreneur as well.

Lapses In Ethics, Best Practices Can Cost You

Some careless Notaries dismiss ethics and best practices as a shortcut or because they are pressured to do so. This may seem harmless at the time of notarization, but it can cost a Notary their commission — and potentially much more.



Several Notaries have recently found themselves answering to criminal charges and stiff fines for their carelessness. For example, a Brockport, New York, Notary was ordered to surrender his commission, shut down his business and pay \$10,000 in fines after improperly notarizing tens of thousands of process server documents. A Pennsylvania Notary is facing a misdemeanor charge for allowing a man to forge his wife's signature on pension documents that he notarized. And in California, a Thousand Oaks Notary is charged with a misdemeanor for notarizing fake real estate documents at the urging of an attorney. She faces the loss of her commission and fines of up to \$1,500.

Notaries who subscribe to the highest standards of their industry and follow a personal code of ethics such as the one outlined in *The Notary Public Code of Professional Responsibility* are better equipped to refuse improper requests and avoid this type of legal risk.

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Essential
Equipment for
Every Notary



Gear Up with NNA Membership

- Eliminates Uncertainty
- Prevents Missteps
- Shields & Protects
- Enables Compliance
- Manages Your Risk

Fraud and forgery are on the rise and the threat of legal exposure has never been higher for Notaries.

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(Left photo) NNA Vice President Jane Eagle presents "Notaries For Haiti" donation to Doug Riffenburgh of Save The Children; (right photo) NNA Vice President Mark Valera presents a Foundation donation to Robert Brennan of The Salvation Army.

Notaries Come Together To Raise Funds For Haiti Survivors

Following the devastating 7.0 temblor that struck Haiti in January, the nationwide community of Notaries and the National Notary Foundation rallied together to deliver thousands of dollars in aid to victims who remain hospitalized, homeless and hungry.

Notaries, their families and friends, and NNA employees contributed selflessly and generously to the Foundation's "Notaries For Haiti" campaign, even amid the economic downturn. The NNA Foundation provided more than half of the donations, allowing The Salvation Army and Save The Children to receive \$20,000 to help both organizations continue their much-needed relief efforts in the island nation.

"We are extremely thankful for the generosity of Notaries," said Doug Riffenburgh of Save the Children. "Every penny counts because the news coverage has ended, but our humanitarian and relief efforts remain extremely important to Haiti's recovery."

The National Notary Foundation delivers 100 percent of all contributions to its charitable and educational efforts, as all administrative costs are donated by the National Notary Association.



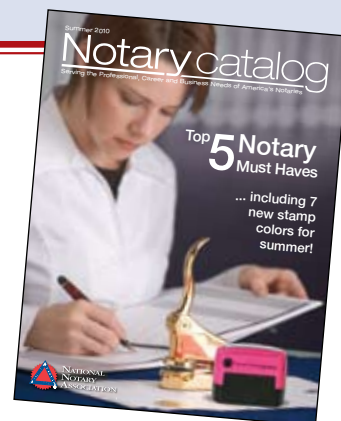
www.nationalnotary.org/foundation

Employer Services Group Helping To Manage Risk, Compliance

In response to increasing requests for assistance in complying with notarial law, implementing best practices and reducing exposure to risk, the NNA has reorganized and expanded its division serving U.S. organizations as the "Employer Services Group."

The restructured unit is now better equipped to address the needs of Notary employers in a more proactive and response-oriented manner.

For more information about the Employer Services Group, please contact Mark Goldfinger, Vice President of Corporate Risk Management, at (800) 876-6827 ext. 4075 or at mgoldfinger@nationalnotary.org.



Summer Specials And The Top 5 'Must Haves'

From seal stamps and journals to educational tools and the Top 5 Notary "Must Haves," the NNA's Summer 2010 Catalog offers everything you need to carry out your duties with confidence and professionalism. The catalog also features specially re-priced items so that you may enjoy discounts on select Notary necessities.

An exciting new design and vivid color scheme highlight the wide variety of services and supplies offered by the NNA. You'll find helpful Notary Tips scattered throughout the pages — all crafted to help you do the best job possible — and great "Stock Up for Summer" specials. Don't miss the Top 5 Notary "Must Haves."

To receive a copy of the new NNA Summer 2010 catalog, call (800) US NOTARY (800-876-6827) or view the high-quality supplies on our Web site at the address below.



www.nationalnotary.org/summer10

Only The Fourth In History

Michael Robinson Named NNA Executive Director



Michael Robinson

The National Notary Association, the largest organization serving the nation's 4.8 million Notaries, has announced its selection of a new Executive Director — only the fourth in its 53-year history — to provide the leadership, drive and innovation to guide the American Notary office at the most critical time in its history.

Michael Robinson, the Association's Director of Marketing & Member Services since mid 2009 and a veteran executive with vital experience in leading membership-based organizations and strategic initiatives, has been elevated to the top NNA position to spearhead the drive for creating new opportunities for American Notaries. Robinson assumes his new role at a time when the industries and sections of the economy on which Notaries are so dependent — real estate, mortgage lending and banking — are dealing with one of the worst downturns in history.

In announcing the new Executive Director, NNA President Milt Valera said that "Michael is a dynamic leader with a proven track record, and his knowledge and ability are important assets that will greatly benefit the nation's Notaries as demands increase for education, sound best practices and strengthened identity verification.

"Michael has the experience and passion to lead the NNA in reinforcing its educational and benefit programs for a membership that has been wounded seriously by a dreadful economy," Valera said.

In the year that he has been at the NNA, Robinson has created major initiatives to add value to our member communications and

specific educational programs. His experience, coupled with his strong communications abilities and innovative approach to challenges, provide a new energy for the Association, Valera said.

"I am both humbled and excited to take on these new areas of opportunity," Robinson said. "The services that Notaries provide have never been more important to the security of the nation and important financial transactions. Our goal is to make certain that the country's Notaries take advantage of all that the NNA is able to provide on their behalf."

Robinson came to the NNA following successful careers as a chief executive officer, a strategic communications executive and other high level positions. He is regarded as an important and influential member

of business communities in several states, and has appeared as an industry commentator on CNBC, CNN, MSNBC and Fox News.

He previously served as President and CEO of the San Diego North Chamber of Commerce, President and CEO of the Vail Valley Partnership in Colorado, and as Director of Communications for the Beverly Hills Chamber of Commerce. In those positions, Michael oversaw all programs for membership, economic development, marketing and media relations. Born and raised in New Hampshire, Robinson earned a Bachelor of Fine Arts degree from the Catholic University of America in Washington, D.C.

"Our goal is to make certain that the country's Notaries take advantage of all that the NNA is able to provide on their behalf."



DOING IT THE RIGHT WAY IS YOUR BEST DEFENSE

PROTECT YOURSELF FROM LIABILITY AND INCONVENIENCE
BY FOLLOWING THE HIGHEST STANDARDS

Becoming a Notary involves following a fairly common set of steps: Study the state handbook, pass an exam, file the necessary paperwork, and wait. Then one day, the commission arrives in the mail, you order your supplies and begin notarizing documents according to your supervisor's instructions.

But what happens if something goes wrong? State laws alone often are insufficient guidance for handling the wide variety of situations you may encounter. If you are sued, you may be an easy target for the plaintiff's attorney, and your employer likely will be more interested in protecting its own interests than yours.

Laws from state to state vary widely and are inconsistent. Most states do not have in place the laws, rules or guidance a Notary needs to properly protect the public, their employers and themselves. So it has become incumbent upon conscientious Notaries to implement their own greatest protection: performing above and beyond the basic state-mandated

requirements, consistently seeking training and following best practice standards of care as outlined in *The Notary Public Code of Professional Responsibility*. Here's why it's important:

BEST PRACTICES ARE THE BEST PROTECTION

Notaries are duty bound to protect the public, but they may only be able to do so by applying standards of care that go beyond state requirements. A few states provide sound guidance through their educational and testing requirements, while many others still have outdated or otherwise inadequate laws that don't require recordkeeping, official seals of office, training or many other best practices.

A faulty notarization is dangerous to the public and Notaries increasingly are finding that even one improperly handled notarization — no matter how innocent — can land them on the wrong side of a lawsuit, or even lead to criminal charges.

A Massachusetts Notary learned that lesson the

hard way after being accused of performing notarizations on power of attorney documents even though the signers weren't there. Now she is accused of unwittingly helping a group of criminals steal homes from their rightful owners. She has been charged with four misdemeanor counts and faces a maximum sentence of four years in prison and \$4,000 in fines.

Had she simply refused to notarize unless the signers personally appeared before her — a basic notarial best practice required by the state — she could have easily avoided the legal trouble she's in today.

"There is no basic rule whose violation is more likely to get Notaries in big trouble than the rule that a document signer must always appear in person before the Notary at the time of notarization," said NNA Vice President of Notary Affairs Charles N. Faerber. "Notaries in this case should know better."

COURTS DEMAND HIGHER STANDARDS OF CARE

Several recent court decisions have stipulated that Notaries and their employers have a responsibility to go above and beyond state law to ensure their duties are performed correctly to protect the public.

In one Illinois case, a major photocopy chain was sued by a man who claimed his name was falsified on documents notarized at one of the chain's outlets. The court determined that the Notary involved failed to follow proper procedures,

was inadequately trained by his employer, and had a duty to uphold a standard of care that goes above and beyond state law to protect the public.

Though Illinois did not specifically stipulate in its laws that employers had a responsibility to train Notary-employees, the court found that the company failed to meet a reasonable standard of care in the training and supervision of the Notary. The same case was cited in a lawsuit against an Illinois branch of a national bank chain soon afterward, in which the court found the bank could be held accountable for the actions of an employee.

The message is clear: Adhering to the bare minimum required by state law is no guarantee of legal protection — and both the Notary and the employer may be held accountable.

NO ONE ELSE WILL TAKE THE FALL FOR YOU

What many proponents of the "do as little as you must" philosophy don't realize is that embracing this

attitude is an invitation to error and trouble. A Notary who dismisses continuing education is far more likely to make a serious error because of outdated or incomplete knowledge. Courts have made it clear that ignorance or good intentions are no excuse for misconduct. The District of Columbia Court of Appeals wasn't sympathetic when deciding the case of an attorney who said he should not be punished for signing documents on behalf of clients and then notarizing them because he claimed he didn't know his conduct was improper. His "lack of intent to defraud does not alter the falsity of his representations or the dishonesty of his conduct," the court wrote in its opinion.


And no one else can take the responsibility for errors you make. A prime example of this was the 1999 case of *McComber v. Wells* in California. In this case, an employer urged a Notary to perform an acknowledgment on real estate documents without the signer being present. It was later determined that the signer had forged his wife's name and the Notary was held liable for negligent conduct.

While in this case the Notary acted contrary to the law's requirements, familiarity with *The Notary Public Code of Professional Responsibility* or the *Model Notary Act*, which is based on the *Code*, could have afforded her the knowledge and confidence to rebuff her employer's unethical request. Guiding Principle V of the *Code* states: "The Notary shall give precedence to the rules of law over the dictates or expectations of any

person or entity."

This principle was written in anticipation of just such a case because it happens so frequently. Knowing that there is an ethical guide and referring to it in defense of her position could have saved this Notary a great deal of difficulty.

Ultimately, the responsibility for your actions lies with you.

You can choose to do the minimum and hope that nothing goes wrong, or you can take the initiative and arm yourself with the protection of knowing that you did the right thing. 

There is no basic rule whose violation is more likely to get Notaries in big trouble than the rule that a document signer must always appear in person before the Notary at the time of notarization.





Scarlett Johansson appears in "Iron Man 2" as Notary Natalie Rushman, an employee of Stark Industries.

NOTARIES GAINING FAME IN HOLLYWOOD

By Jason Cohen
jcohen@nationalnotary.org

AMERICA'S IMPARTIAL WITNESSES ARE BEING THRUST TO THE
FOREFRONT OF FILM IN IMPORTANT LEADING ROLES

NOTARIES AND HOLLYWOOD HAVE HAD a long, but not always cozy relationship. Over the years Notaries have played minor roles in countless productions, usually when the signing of a will, a contract or a power of attorney is necessary to move the storyline in a new direction. In many cases, their portrayals are less than flattering, whether to amuse the audience or to create conflict, drama and action.

It's naive to think that Hollywood would ever portray Notaries as they usually are in real life — as trusted, ethical and impartial third party witnesses. But despite the industry's understandable need to distort reality, an interesting trend has emerged among scriptwriters: Notaries are now being cast as central characters by some of Hollywood's leading storytellers.

Take for instance producer J.J. Abrams, the celebrated director of 2009's "Star Trek" and the creator of what has been described as the most successful dramatic television series in history, "Lost." As part

of his growing list of innovative television dramas, Abrams recently filmed a pilot for television series called "Boundaries," which revolves around a failed cable access psychologist who rediscovers her true purpose when she becomes a mobile Notary.

While "Boundaries" has yet to hit the small screen, Paramount Pictures and Marvel Comics creator Stan Lee have vaulted a Notary to the big screen in the international blockbuster "Iron Man 2," which is now in theaters.

In this story, the character Natasha Romanoff, who goes by the moniker "Natalie Rushman," emerges as "The Black Widow" — an undercover agent of the secretive S.H.I.E.L.D. organization planted to help the superhero Iron Man.

Natasha is introduced into the film when the Iron Man — whose given name is Tony Stark — calls upon her to perform notarizations on documents that transfer control of his company to a trusted colleague. Natasha performs this duty and, as a result,


becomes close to Stark to watch over him.

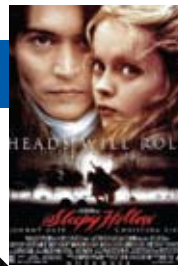
While any Notary watching the movie would scream at the fact that Natasha butchers almost every best practice that Notaries hold dear, they might revel in the fact that she got one thing right: she gets a thumbprint from Iron Man for her records.

It is certainly a sign of the times that Notaries, no matter how they are depicted, are being thrust to the forefront of modern storytelling instead of being buried in the footnotes. It has been more than 60 years since a Notary was featured as a main character: Frank Bigelow, the unassuming Notary Public from Banning, California, who raced against time to solve his own murder in the 1950 film noir classic, “D.O.A.”

Maybe it’s because the public is recognizing the Notary’s growing role in our legal and commercial systems. Maybe it’s because verifying identities is now a major risk management program — whether for businesses or the federal government — as we face increasing threats of fraud, forgery and terrorism. Or maybe it’s because the security of transactions has become more than a necessity — an essential a protective wrap around the documents and dealings that shape our lives and futures. The truth is, we don’t really know.

What we DO know is that Notaries are being noticed. Hollywood has always produced stories that are reflective of the time and address the needs, wants, desires, values — and even fears — of modern society.

So it shouldn’t be a surprise that Notaries have taken center stage. 



NOTABLE NOTARY REFERENCES IN FILM

D.O.A. (1950) — Frank Bigelow, a Notary Public from Banning, California, is poisoned and will soon die. He races against time to solve his own murder.

JFK (1991) — Julia Ann Mercer, a witness to the JFK assassination, explains that her signature in a notarized statement was forged, and there was never a Notary present during her statement.

Sleepy Hollow (1999) — Ichabod Crane goes to the town Notary Hardenbrook’s office and finds him hiding in a closet. They uncover what links all of the story’s murder victims together.

The Royal Tenenbaums (2001) — A Notary Public named Sanchez handles divorce papers for two of the story’s characters.

Big Fish (2003) — Two characters sign a quitclaim deed that already bears a Notary’s seal.

The Merchant of Venice (2004) — an adaptation of Shakespeare’s famous play, with its noted line, “Go with me to a Notary, seal me there your single bond.”

Boundaries (TBD) — A television series concept that revolves around a failed cable access psychologist who rediscovers her true purpose when she becomes a mobile Notary. The series’ status is unknown.

Iron Man 2 (2010) — Natasha Romanoff, or “Natalie Rushman,” performs Notary services for main character Tony Stark. She emerges as “The Black Widow” — who provides assistance to the superhero.



Resisting Temptations

**Enticing Shortcuts
May Look Easier, But
The Safest Path Follows
Diligence, Integrity,
And Detail**

E

very day across America, countless Notaries are backed into a corner. Bosses, friends, relatives and others pressure them to bend, break or ignore the rules of notarization to make life easier.

And all too often, Notaries are tempted to give in to the pressure in order to please others. But that one little lapse can lead to

a mountain of legal and liability issues, especially today as fraud and forgery concerns skyrocket. Because of this, courts, government agencies and employers are demanding that Notaries perform their duties with greater diligence, integrity and attention to detail in order to better protect the public and themselves.

The reason is simple: "Notaries Public have a very important role in our society today," notes

Grant Dixon, an Illinois attorney who has done extensive research on Notary law. "If we didn't have Notaries Public doing what they do — making sure that people are honest and are who they say they are — the entire system of law and commerce that we depend on would completely end. It would come to a halt instantly."

Every Notary will eventually be faced with pressure to ignore proper procedures and details. But regardless of the reason, forging a vital step carries far too much risk. It has never been more important for Notaries to resist the temptation.

Sadly, most people don't understand the importance of what Notaries do, and many view notarizations as insignificant, burdensome and routine. To keep the system intact, every Notary should have a clear understanding of their duties, responsibilities and practices. When faced with the temptation to break the rules, it's important to know the potential consequences of your actions.

A Wedding Without The Groom

What you do is important. Every notarization wraps a layer of integrity and trust around the document or transaction. Typically signers only come to you because a document or transaction requires a notarization. Without it, the transaction cannot move forward.

"The primary purpose of Notaries is protection," says Colorado Secretary of State Bernie Buescher. "It's one of the front-line defenses against fraud and this is very, very important. You put a Notary seal on something when you want to emphasize its importance, and you want to verify the person who signed the document has in fact established their identity."

Your signature and seal permits a deed to be recorded, altering or transferring the ownership of homes and other property. Notarizations are used to deter many forms of fraud, protect the integrity of vital business deals, or even add to families via adoptions. And notarized powers of attorney permit individuals to make critical



healthcare decisions for others.

This means you're the "decider." When you affix your official signature and seal, you make an influential and authoritative determination about the signer's identity, volition and basic awareness. Appreciate and respect this duty of your Notary commission.

With that power comes accountability. Your Notary commission belongs to you, and the responsibility for using the powers it conveys rests solely with you. Never allow others to influence you to relax your professional standards.

Consider the case of Florida Notary Veronica Gonzalez, who certified the marriage of her friend and co-worker. There was just one problem: The groom wasn't at the wedding. Gonzalez lost her job and commission, and was sentenced to one year of probation after pleading guilty to the misdemeanor charge of "false acknowledgment by a Notary Public."

Employers might think they own your Notary commission or can control your actions because they paid for your application fee, bond and seal and cover you under their insurance. This is simply incorrect. The commission bears your name, not your employer's, and the responsibility that comes with it is yours. When notarizing a document, you are doing it as a public official, not an employee or independent contractor.

Letting your guard down can mean giving someone an opportunity to get away with fraud. As long as you perform your duties properly, the chances of encountering problems are greatly reduced. (See "Doing It The Right Way," page 12.)

The Cardinal Sin Of Notarization

With all the changes taking place in our world, recognize that the environment is changing for Notaries. More is expected of you and will likely be expected from you as protecting transactions, both on paper and electronically, becomes more important. Government officials and the courts in recent years have responded to troubling instances of misconduct by introducing new laws, policies and rules. Consider this: 44 percent of the Notary

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misconduct cases examined by the Colorado Secretary of State's office in 2009 involved notarizations performed outside the presence of the signer — the cardinal sin of notarization.

In recent years, Hawaii, Colorado, Illinois, Montana and Rhode Island have enacted new laws or put in place rules strengthening the standards and requirements governing how Notaries carry out their duties. Many of these measures specifically added important recordkeeping or educational mandates.

The courts also increasingly are examining Notary conduct, and recent rulings have sent a profound message: Following the law alone is not enough. Notaries are expected to follow best practices that go above the minimum requirements of statutes and regulations, even if the law doesn't specify it. And for the first time, employers of Notaries are being held accountable if they fail to ensure that their employee Notaries have been trained to apply these standards.

This trend makes it ever more important to continually educate yourself, even if your state does not require it. Your role as protector requires that you know how you are expected to conduct yourself.

'Innocent,' But Indicted

Knowing what to do and actually doing it are two separate things, and Notaries sometimes learn that lesson the hard way. In late 2009, for example, Notary Judith Piette of Worcester, Massachusetts, was indicted as part of a complex mortgage fraud scheme. The state Attorney General's office admitted that Piette had no knowledge of the crime or conspiracy, but it didn't matter. Authorities have charged her with four counts of "creating a false written record by a public official" for notarizing several documents outside of the signers' presence — a violation of a core best practice.

Requests that cross the line frequently come from someone you know. Your boss could ask you

to notarize a signature of an absent client; a valued customer might have forgotten to bring valid, acceptable ID; or a friend could ask you to notarize a power of attorney for a comatose parent confined to a hospice.

Often it's hard to resist the pressure and refuse to comply with such requests, but your responsibility takes precedence. You never know when some one has a fraudulent motive. When the notarization is done right, nothing happens — there is no fraud, no returned document, no lawsuit. The transaction represented in the document successfully comes to a close, and all parties are satisfied.

But when Notaries and other public officials or professionals neglect their duties, the results can be disastrous.

Perhaps nowhere was this more evident than during the meltdown of the mortgage and real estate markets, driven in part by an epidemic of mortgage fraud. Among the more common elements found among the myriad bad loans that costs the industry billions a year — and America's homeowners trillions in equity — was appraisal fraud.

Appraisers are supposed to serve a public trust by acting as impartial evaluators. Just as every party to a notarization depends on it being executed with integrity and impartiality, every party to a real estate transaction or mortgage depends on an honest, accurate appraisal. But that was not the case during the housing boom.

In its 2010 Mortgage Fraud Case Report, the Mortgage Asset Research Institute noted that appraisers were encouraged to falsify their reports under constant pressure to "make things work." Too often, appraisers gave in to temptation, and this common practice contributed to the country's economic downturn.

Beware The Snake In The Grass

Because Notaries have a reputation for honesty and integrity, unscrupulous individuals try to exploit you to lend their scams a veneer of legitimacy. One of the most recent examples is

continued on page 21



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continued on page 21

Know What You Don't Know

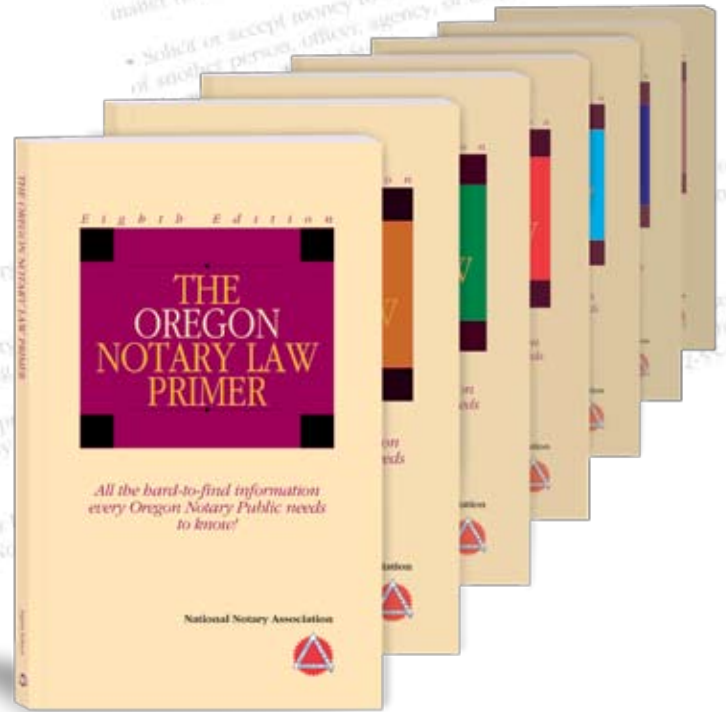
The complexities of notarization demand absolute command of each procedure, and the consequences of slip-ups can be severe. Keep your state's *Notary Law Primer* on your desk or bookshelf and enjoy instant access to crucial information. It's the easy way to know it all, including:

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the nationwide proliferation of loan modification scams seeking to take advantage of financially strapped homeowners who have fallen behind in their mortgages.

In these schemes, the perpetrator will try to con financially strapped homeowners out of thousands of dollars — or their properties — by promising to restructure their mortgage debt. Some scam artists, under the guise of being legitimate companies, hire Notaries to collect signatures and hefty upfront fees from homeowners.

Knowing what's legitimate and what's not means being aware of what the document is, and letting your education and experience guide you. It isn't your job to read every word or verify the accuracy or truth of what a document says, but one warning sign of a fraudulent scheme is being asked not to leave behind any copies of the documents for the signers.

Next, look to authoritative sources — such as your state Notary-commissioning official, the NNA and general news sources — to keep on top of the latest developments. Consider yourself a professional. That means keeping up with the latest trends and developments in your profession — just as good doctors, lawyers, architects and other professionals do.

Actively seeking information and maintaining an awareness of the challenges that constantly spring up to confront Notaries will help you discern if an assignment or request is legitimate. If you're not a regular follower of issues that affect Notaries, become one.

The Power Of Intuition

Every professional activity carries some risk, and serving as a Notary is no different. The trick is to learn to manage your risk to eliminate potential pitfalls, mishaps and threats.

The best action a Notary can take to prevent errors is to create a complete and honest record of every official act. A proper record book or journal can function as a handy checklist, easily guiding you through the steps for each notarization so




you'll be less likely to overlook something. In addition, forgers, imposters and other criminals may be openly reluctant to sign your record or give a thumbprint — a tip-off that something is not right. Your records can serve as reliable evidence of your sound practices if a notarization is ever questioned as well as help law enforcement prosecute those who commit fraud.

Paying attention to your signer also can help reduce risks. If you have doubts about the veracity of an ID, quiz the signer about the information on it or ask for additional identification or supporting evidence. The FBI suggests that a credit card can be valuable as supporting evidence of identification because imposters seldom get credit cards in a fake name.

Even if you're satisfied with the ID, one of your duties is to determine that every signer is willing to sign the document that they have presented, and generally understands what it means. Does it seem as though the 80-year-old man in front of you is being pressured by his son, or a wife by her husband? If so, ask to speak to the signer alone.

Something as seemingly insignificant as a signer trying to hurry you could be a red flag that something is amiss. If you take your time, follow proper procedures and rely on your common sense, you should be able to minimize risks and perform your duties to the highest professional standards.

As a Notary, you are your own greatest ally. You will be pressured to bend and break the rules. You will be faced with a public that sees notarization as burdensome and routine. But by resisting the temptation to dismiss best practices and ethics, you steer clear of liability and compliance issues, and you fulfill your duty to help protect the public from fraud and forgery.

By applying well-established procedures, using basic common sense and being diligent in everything you do, you will more than meet society's expectations while safeguarding our most important daily transactions and protecting yourself. 



NOTARIES TAKING A STAND FOR STANDARDS

By David S. Thun
dthun@nationalnotary.org

THE MOST EFFECTIVE EFFORTS TO INCREASE
PROFESSIONALISM OFTEN START AT THE GRASS-ROOTS LEVEL

When she read the news reports about a convicted murderer who was allowed to become a Notary, Michaela Bennett quickly became an advocate for stronger background checks.

The San Jose, California, Notary was outraged that a fugitive convicted of murder in Montana in the 1950s could launch a career as a Notary Public in Arizona because the state didn't require background checks.

Bennett wrote Arizona Secretary of State Ken Bennett and Governor Jan Brewer urging stronger commissioning requirements. State officials pressed the Legislature to strengthen the state's Notary laws and immediately revoked the suspect's commission.

"How do we prevent notarial fraud if states allow criminals to work as Notaries, and the laws on the books don't have any teeth?" she said.

Bennett is one of a growing number of Notaries working with government and employers to modernize Notary laws and practices. Whether it's a need for mandatory education, stronger identification

practices, background checks or higher fee schedules, advocacy is crucial to elevate the Notary Public office, better protect the public, and help Notaries avoid liability and compliance issues.

Notaries can make positive changes not only by voicing concerns to state officials and lawmakers, but to their employers as well. One Notary who has done both is Chrissey Ladd of Haddon Township, New Jersey. Ladd, who has also been a Notary in California and Oregon, saw an urgent need for change after receiving her New Jersey commission. Having previously gone through California's stringent requirement for a commission, Ladd found New Jersey's rules much looser.

"During my entire commissioning process, I was not once identified, not even by the Clerk of Court who administered my oath," she said.

To make things more difficult, many signers Ladd encountered scoffed at basic notarial practices like signing her record book.

Ladd urged lawmakers to strengthen state notarial education requirements, and decided to improve Notary training in her workplace. In 2008 she launched a training program for Notaries, starting with material from *The Notary Public Code of Professional Responsibility*, and wrote a newsletter on legislative developments. Eventually, her efforts drew the attention of executives from several banks who wanted to start training programs for their in-house Notaries.

Persistence has been the key to Ladd's efforts.

"Notaries should never 'just sign and stamp' anything. Teaching them why has been a much larger undertaking than I thought!" she said. "Regardless of state requirements for education, or lack thereof, there is nothing that should stop a Notary from educating others."


Don't just assume that lawmakers and regulators will automatically oppose efforts for positive change. On the contrary, many state officials are eager to strengthen notarial practices. The help of officials who support best practices can be invaluable. Colorado Notary Carol Salter has made a difference in her state by speaking to officials

— and was able to find a valuable ally at the Secretary of State's office. At a conference in 2004, she met Mike Shea, director of the Licensing and Enforcement Division with the Secretary of State's office. Salter advocated for improved education and training in Colorado — and Shea supported her efforts.

"Notaries need to be seen as professionals because, after all, Notaries are commissioned by the state and it is important to have laws that require more from Notaries in regard to education and training," she said.

Salter saw her hopes rise and fall many times as bills would be introduced, then wither. Though it took years of work, Salter and Shea's efforts

bore fruit with the passage of Senate Bill 299, which requires Notaries to keep and maintain a record of all their acts, and Senate Bill 111, which authorized the Secretary of State to create a training program for Notaries and also ensures bosses can't prevent employee-Notaries from keeping a journal in the course of their duties.

"The day it was signed, we shouted for joy," she said. She credits Shea's leadership for raising standards that protect every Notary in her state from liability. 

Notaries should never
'just sign and stamp'
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How The NNA Can Help

Here are some recommendations from the NNA to help make your voice heard effectively about important notarial issues:

- **Where to start:** For issues relating to Notary commissioning, start with your local legislator or your state's Notary-regulating agency. They are the most likely to be able to respond to your concerns. For workplace issues, your supervisor or manager may be the first person you want to contact.
- **Use the best means of contact:** While eMail is usually the most convenient way to send a message, a written letter is often taken more seriously and more likely to get a response. For office issues, ask to meet with your supervisor to discuss concerns face-to-face.
- **Be courteous and clear.** While many issues facing today's Notaries are frustrating, angry or rude language is counterproductive. Always be polite and professional. Describe your concerns, how they affect you as a Notary and the action you recommend.

The National Notary Association is here to help you contact state officials about Notary laws or work to improve Notary practices in your workplace.

If you have a question about pending legislation in your state, you can contact the NNA's Legislative Affairs Department at publicaffairs@nationalnotary.org. The NNA works to help Notaries support or oppose legislation with an eye to protecting the Notary office, our members and the public.

To educate the public on the role of Notaries and best notarial practices, copies of *The Notary Public Code of Professional Responsibility* and the *Model Notary Act* are available online by going to NationalNotary.org.

The NNA's Employer Services Group helps businesses employing Notaries provide training, education, commissioning and compliance with best notarial practices, including an innovative Employer Risk Management Program. Contact the NNA at (877) 876-0827 for more information.

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DON'T LET A LITTLE MISTAKE CAUSE BIG PROBLEMS

By Michael Lewis
mlewis@nationalnotary.org

PAYING ATTENTION TO THE DETAILS OF EACH NOTARIZATION
CAN HELP YOU AVOID ERRORS OR REJECTED DOCUMENTS

The sticking point that results in a rejected document or a lawsuit is often nothing more than a small detail, so paying attention to the minutiae of your transaction can save you from trouble down the road.

Little mistakes are easy to make. To avoid them, and to save you and your employer headaches, make a checklist and review it each time you complete a notarization, just to make sure you haven't missed any important steps or entered any wrong information. It's easier and more efficient to correct an error with the signer still in the room than it is to defend against a lawsuit, repay a claim filed against your bond or explain to your supervisor that your mistake cost the company that contract.

In one example, a Notary forgot to date several acknowledgments for a set of documents. That was enough to invalidate an Augusta, Georgia, construction company's bid for a million-dollar city contract.

The contract was to build the new city fire

department administration building, and the construction company submitted the lowest bid by nearly \$10,000. But the job was awarded to a competitor simply because of the notarial mistake.

The following items can serve as the basis for your checklist. They are areas in which notarial errors are most commonly found. Get these right, and the chances of problems down the road can be greatly reduced.

KEY PORTIONS OF THE CERTIFICATE

Generally, the contents of the document are not your responsibility as long as it has no missing pages or blank spaces. You are responsible, however, for making sure everything on the certificate — the notarial wording — is correct and accurate. Legalistic certificate wording sometimes can be confusing to a layman, but certain key phrases have very specific meanings and understanding them is the best way to avoid making a mistake.

continued on page 27

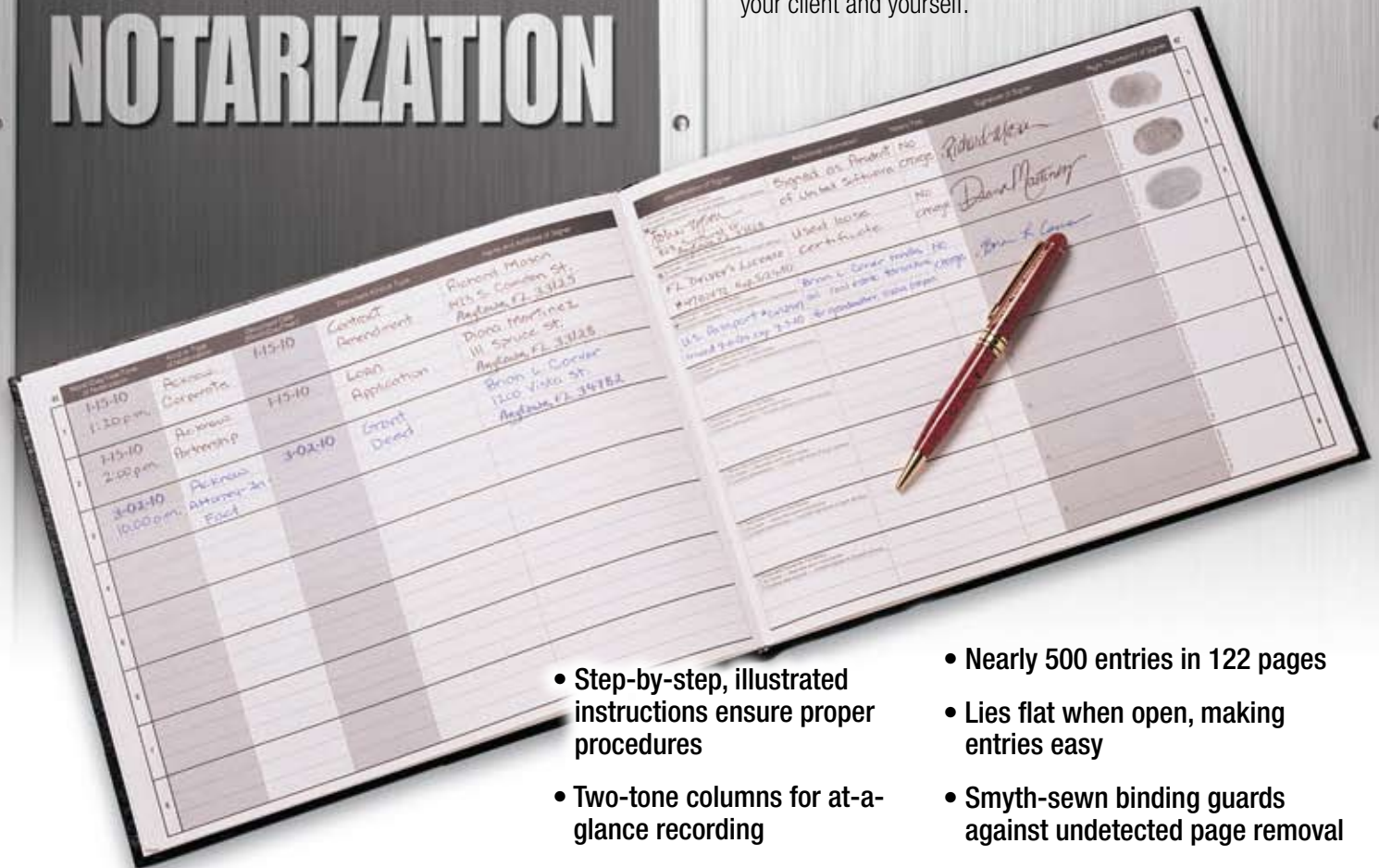
Your Key to a BULLET-PROOF NOTARIZATION

The Paper Trail that Protects You

With identity theft and fraud on the rise, the facts surrounding any notarial transaction can quickly come under fire.

To help Notaries gear up, recent court rulings have looked to the NNA's *Model Notary Act* to set standards of conduct whenever state laws fall short. That means the journal has become an essential tool for every Notary.

With security features others can't match, the NNA journal is a critical piece of the armor you need to protect your employer, your client and yourself.



- Step-by-step, illustrated instructions ensure proper procedures
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The requirements for notarial certificates vary from state to state. Some states, such as California, stipulate the exact wording of notarial certificates while others provide wording but allow any substantially similar phrasing to suffice. Regardless, certificates have several elements in common. Acknowledgments, for example, typically include a venue, statement of particulars, a testimonium clause, and the Notary's signature and seal. Each of these important elements serves a distinct function.

Venue. The venue stipulates where the notarization took place, such as "State of Indiana, County of Kosciusko." Identifying the venue sometimes causes confusion because some Notaries think it's supposed to reflect where the signer lives or where the document is supposed to be filed. The venue always is the location *where the notarization took place*.

Statement of Particulars. The statement of particulars is the section of the certificate where you describe what you're certifying. It typically includes the date, your client's name, and how you identified the client, along with the fact that the signer personally appeared before you. Remember, details matter. For example, the client's name here should exactly match the printed name under the signature line on the document.

Preprinted certificates often have options in the statement of particulars that let you tailor the notarization to a particular client. Make sure to choose the options that properly reflect the number of signers and how they were identified, and cross out the options that do not apply.

Testimonium Clause. This is a short statement by which you formally attest to the facts in the certificate. It might read: "Witness my hand and official seal."

Notary's Signature and Seal. This is where you sign the certificate and place your seal, if required or allowed by your state. Make sure there is enough room to apply your seal without covering any text or writing, and remember to sign the certificate exactly as your name appears on your commission. This easily could be the detail that causes a notarization to be rejected.

KNOW WHAT'S ON YOUR COMMISSION

It may seem surprising, but Notaries sometimes make mistakes regarding information in the certificate about their own commissions. Such was the case recently when a South Dakota referendum on a statewide smoking ban was almost kept off the ballot. Like many states, South Dakota requires notarization of the petition sheets for ballot initiatives. When the Secretary of State's office reviewed the petitions it discovered that 29 different Notaries included

the wrong commission expiration dates on the signature sheets they notarized.

The notarial mistakes led state election officials to reject nearly 2,500 signatures on petitions that would have asked voters to repeal a ban on smoking in bars and gambling establishments. That left the measure 200 signatures shy of the number needed to get it on the November 2010 ballot.

The measure was restored to the ballot after a days-long court hearing, during which nearly a dozen Notaries testified about their gaffes, but had they entered the correct dates in the first place, they would have been spared the inconvenience of having to go to court and testify.

In Maine, a tax reform ballot measure faced a similar challenge in part because two Notaries who notarized petition signature sheets neglected to notify the Secretary of State's office that they had changed their names after getting married.

While these initiatives remain on the ballot, the process cost the Notaries money and time. All the Notaries in both cases had to do was know and follow the state law.

If your information changes, contact your Notary-regulating authority or the NNA to learn the steps you must take to make sure it is updated. And if you are unsure you will be able to remember the information on your commission, such as its expiration date, write out a set of notes and carry them with you along with your seal and journal.


MAKE SURE EVERYONE IS PRESENT

Whether intentional or not, one of the most persistent errors is not requiring the signer to be present at the notarization. A Bronx, New York, Notary last year unwittingly helped a real estate investor commit mortgage fraud.

The investor, who later pleaded guilty to the scheme, forged signatures on numerous documents giving him sole control of the property. He persuaded the Notary across the hall to notarize the documents without the signers being present by claiming they were "stuck in traffic."

The Notary in this case potentially could have prevented the fraud by insisting on waiting until the signers arrived. Notarizing outside the presence of the signer is one of the cardinal sins a Notary can commit — it opens the door to all kinds of fraud.

To avoid an issue, be clear in telling all parties that you cannot proceed until all signers are present.

The lesson of all these cases is simple: Pay attention to the details and make sure you get them right. The tiniest slip can have serious consequences. 

**Make a checklist
and review it each
time you complete a
notarization.**

Welcome to

The End

of Certificate Slip-Ups

NNA Notary Certificates



The convenient solution for common problems:

- ✓ No room for your seal
- ✓ Signers appearing at different times
- ✓ Incorrect wording
- ✓ Signers with multiple representative capacities
- ✓ No certificate at all

Select from the following certificates to meet the requirements of your state:

All States: except AR, CA, FL, HI, MA, MO, NV, NY, OH, TX & WA, see state lists; (8½" x 11", unless noted)

- Individual Acknowledgment — #15936
- Corporate Acknowledgment — #5937
- Partnership Acknowledgment — #5938
- Attorney in Fact Acknowledgment — #5939
- Credible Witness Acknowledgment — #5943
- Signature-by-Mark Acknowledgment — #5945
- Proof of Execution by Subscribing Witness — #5944*
- Copy Certification by Document Custodian — #5946
- Copy Certification by Notary — #5922**
- Jurat with Affiant Statement — #15924

Arkansas: (8½" x 11")

- Individual Acknowledgment — #5947
- Proof of Execution by Subscribing Witness — #5948
- Copy Certification by Notary — #5949
- Jurat with Affiant Statement — #5950

California: (8½" x 11")

REVISED! • All-Purpose Acknowledgment — #5907

• Proof of Execution by Subscribing Witness — #5908

REVISED! • Copy Certification by Document Custodian — #5911

- Copy Certification of Power of Attorney — #5242
- REVISED!** • Jurat with Affiant Statement — #5910

Florida: (8½" x 7")

- Individual Acknowledgment — #5181
- Corporate Acknowledgment — #5182
- Official/Trustee Acknowledgment — #5185
- Partnership Acknowledgment — #5183
- Attorney in Fact Acknowledgment — #5184
- Signature-by-Mark Acknowledgment — #5931
- Disabled Person's Acknowledgment — #5933
- Certification of Photocopy — #5187
- Jurat — #5186
- Signature-by-Mark Jurat — #5930
- Disabled Person's Jurat — #5932

Hawaii: (8½" x 7", unless noted)

REVISED! • All-Purpose Acknowledgment — #5921

REVISED! • Jurat with Affiant Statement (8½" x 11") — #5935

Massachusetts: (8½" x 11")

- All-Purpose Acknowledgment — #5951
- Signature Witnessing — #5953
- Jurat — #5952
- Copy Certification by Notary — #5922

Missouri: (8½" x 11")

- Acknowledgment by Individual — #15936
- Acknowledgment by Corporation — #5937
- Acknowledgment by Partner — #5938
- Acknowledgment by Attorney in Fact — #5939
- Acknowledgment by Individual Who Cannot Write Name — #5940
- Acknowledgment Through Affidavit of Executing Witness — #5941
- Certification of Facsimile — #5942
- Jurat with Affiant Statement — #5924

Nevada: (8½" x 7", unless noted)

- Individual Acknowledgment — #5915
- Attorney in Fact Acknowledgment — #5927
- Representative Acknowledgment — #5917
- Credible Witness Acknowledgment — #5918
- Proof of Execution by Subscribing Witness — #5919
- Copy Certification by Document Custodian — #5946
- Copy Certification by Notary — #5920
- Jurat with Affiant Statement (8½" x 11") — #15924

New York: (8½" x 7", unless noted)

- All-Purpose Acknowledgment — #5925
- Proof of Execution by Subscribing Witness — #5926
- Copy Certification by Document Custodian — #5946
- Jurat with Affiant Statement (8½" x 11") — #15924

Ohio: (8½" x 11")

NEW! • Jurat with Affiant Statement — #15924

NEW! • Individual Acknowledgment — #15936

NEW! • Corporate Acknowledgment — #15937

NEW! • Partnership Acknowledgment — #15938

NEW! • Attorney in Fact Acknowledgment — #15939

NEW! • Credible-Witness Acknowledgment — #15943

Ohio (continued): (8½" x 11")

NEW! • Proof of Execution by Subscribing Witness — #15944

NEW! • Signature-by-Mark Acknowledgment — #15945

NEW! • Copy Certification by Document Custodian — #15946

Texas: (8½" x 7", unless noted)

- Ordinary (Individual) Acknowledgment — #5243
- Credible Witness Acknowledgment — #5943
- Signature-by-Mark Acknowledgment — #5945
- Proof of Execution by Subscribing Witness — #5944
- Copy Certification by Document Custodian — #5946
- Copy Certification by Notary — #5922
- Jurat with Affiant Statement (8½" x 11") — #5924

Washington: (8½" x 11")

- Individual Short-Form Acknowledgment — #5906
- Representative Short-Form Acknowledgment — #5905
- Disabled Person's Acknowledgment — #5904
- Copy Certification by Document Custodian — #5923
- Copy Certification by Notary — #5922
- Jurat with Affiant Statement — #15924

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Can I Notarize Foreign Documents?

HANDLING FOREIGN DOCUMENTS CAN BE A CHALLENGE DUE TO DIFFERING LAWS, LANGUAGES, STANDARDS AND PROCEDURES, BUT DON'T DISMISS THEM. JUST FOLLOW THESE SIMPLE GUIDELINES.

LANGUAGE BARRIERS

Documents from a foreign country may be written in a language you cannot understand, or the signer may speak another language. The Notary and signer must be able to communicate directly in the same language for a notarization to take place. You shouldn't rely on a third-party interpreter to communicate with a signer, because you can't be sure the interpreter is accurately translating what is being said.

Dealing with a document in a foreign language can be tricky. You should only notarize such a document if the notarial certificate wording is in a language you can understand. Also, the signature must be in an alphabet you can understand, so you cannot take acknowledgment of a signature in Chinese characters if you don't recognize them. Even if the certificate wording is understandable, notarizing a document printed in an unfamiliar language can be risky because you might not be able to spot discrepancies. If you don't understand the document language, it is acceptable to refer the signer to another Notary who does.

UNUSUAL REQUESTS

Sometimes, instructions for foreign documents request official acts U.S. Notaries may not perform. For example, some foreign "proof of life" documents ask the Notary to complete a document certifying that the bearer is alive and eligible to collect a pension from another nation. Most Notaries in the United States are not authorized to make this kind of certification. However, if you are just being asked to acknowledge a signature, you normally can proceed. If state law does not authorize the notarization, the

best alternative may be to refer the signer to a consulate of the receiving nation. Consular officers are normally empowered to notarize documents being sent to their home nation.

In nations with civil law codes, Notaries are granted broader powers than their U.S. counterparts, and they can perform more complex legal tasks. Foreign agencies are not always aware of this. If you are asked to perform any act that involves giving legal advice or preparing a document, you should decline and explain that U.S. Notaries have a narrower role than Notaries in other nations, and refer the signer to an attorney or to a consulate of the document's nation of origin.

AUTHENTICATION AND APOSTILLES

A document being sent outside the United States typically requires authentication of the Notary's commission in order to be accepted abroad. To avoid a lengthy process involving certification by multiple government agencies, many countries use a simpler process using just one authentication certificate, an *apostille*. This is a single authentication document issued and accepted by nations that have signed the Hague Authentication Convention. Go to NationalNotary.org/Hague to view the current list of nations accepting *apostilles*.

To obtain an *apostille*, the signer must take the document to the state office that oversees notarial acts, usually the Secretary of State's office. This office will attach the *apostille* to the notarized document after confirming that the Notary bears a lawful, current commission. Issuance of *apostilles* requires paying a fee, with an additional fee for expedited processing.

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Keeping Proper eNotarization Records

By Lori Farmer
NNA Hotline Counselor
lfarmer@nationalnotary.org



A well-kept record book is an essential tool that not only protects you from liability, but also guards the public from fraud and preserves valuable evidence for authorities investigating fraud.

Businesses now realize how critical it is for employee-Notaries to maintain evidence of their acts — even if not required by state law — to protect their companies from liability. Notaries must follow best practices and state rules when recording their acts, especially in unfamiliar situations, like one that **F.B. of Fort Washington, Pennsylvania**, experienced:

After performing an eNotarization, what are the procedures for recording the act in the journal?

The procedure is the same for paper-based and electronic notarizations for Pennsylvania Notaries. For each notarization, the register must contain the following entries (57 PS 161):

- The date of each document notarized
- The character of the notarial act
- The name of the signer, grantor or maker
- The date the act was performed
- The Notary fee paid

We recommend you add a note that the document was notarized electronically.

I need to know if California law specifies that a Notary Public cannot notarize documents for a person known to suffer from dementia or Alzheimer's.

K.K., Fresno, California

There is nothing in California statutes specifically addressing competence.

However, Notaries are responsible for ensuring signers are aware of the significance of the transaction; signing the document of their own volition; and are positively identified.

If the Notary doubts the signer's understanding of the document, he or she should draw the signer into a conversation. If the signer can communicate effectively, the Notary may consider the signer aware. However, if a signer is unable to respond coherently, the Notary should refuse because awareness and comprehension are in doubt.

Lawsuits alleging that signers were "incompetent" to handle their legal affairs sometimes occur. Because Notaries are often dragged into these suits, the NNA recommends refusing to perform the notarization if there is doubt about the signer's awareness.

When applied my rubber stamp seal, I didn't apply enough pressure and some of the wording was omitted. My name, commission expiration date, and commission number are clearly visible. Do I need to stamp the document again or not?

L.K., Lake Worth, Florida

The seal impression should be placed near the signature on the notarial certificate. It must be easily readable and should not cover signatures or words on the document. An illegible or improperly placed seal may result in rejection of the document by a recorder. (FS 117.05[4][i])

If there is no room for a new seal impression, void out the notarial certificate and attach a loose certificate.

You can reach
Lori and all
our experienced
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Hotline answers are based on laws in the state where the question originated and may not reflect the laws of other states. If in doubt, always refer to your own state statutes.
— The Editors



Tread Carefully When A Signer Can't Appear

Personal appearance is at the heart of the notarial act. Without it, notarizations wouldn't be trustworthy in protecting the public from fraud. In the case

of personal appearance, most state laws provide two very narrow and strictly controlled exceptions to this sacred pillar of the Notary Public office. These exceptions are notarization through an attorney in fact and notarization through a subscribing witness.

While both are legitimate alternatives for handling a notarization in most states for an absent signer, you should proceed with caution. Because others are appearing in the place of the person named in the document, these types of notarizations have a higher potential for fraud. Following best practice notarial procedures should help you avoid any claims of liability, but a dose of caution is also warranted. In addition, be aware that a person cannot take an oath on behalf of another person, so these exceptions would not apply to jurat notarizations.

Attorney In Fact

With notarization through an attorney in fact, the Notary is actually notarizing the signature of the attorney in fact who acts on behalf of the person named in the document also known as the "principal." The attorney in fact must personally appear before the Notary.

A person who is appointed as an attorney in fact for another individual has the authority to sign the principal's name and have this signature notarized without the principal being present. Typically, the signature formats would be as follows: "John R. Burns, by Mary S. Anderson, attorney in fact" or "Mary S. Anderson, attorney in fact for John R. Burns, principal."

In this case, Mary S. Anderson is

the attorney in fact signing on behalf of John R. Burns, the principal named in the document. A careful, conscientious Notary following The New Standard of Care would ask to see the power of attorney document that designates Mary S. Anderson as attorney in fact and verify that it authorizes her to act on behalf of John Burns or refuse to proceed. Taking the attorney in fact at her word isn't enough to establish her status and could be part of a fraud that would open you to liability.

Subscribing Witness

Allowed by most states, a proof of execution by a subscribing witness is an even more narrow and strictly enforced exception. The subscribing witness proves the document's signing by swearing that he or she either watched another person sign a document or took that person's acknowledgment that they did so.

Like an attorney in fact, the Notary actually is notarizing the subscribing witness' signature — appearing on the document in addition to the principal's — and not the signature of the principal.

However, states usually only allow proofs of execution by subscribing witnesses in very unusual circumstances, such as if the signer is incapacitated, and even then some states limit them to specific types of documents or prohibit them altogether. Before proceeding, determine that the circumstances meet the criteria outlined under the law. Because of its restrictive nature, be familiar with specific procedures for proofs of execution required by your state law.



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Guard your personal assets. Protect yourself with Notary Errors and Omissions Insurance coverage today.

And, even if you've obtained a bond in compliance with your state's regulations, remember that it will not protect *you* for an improper act. The bond will protect the injured party, *not the Notary*, and you will be compelled to reimburse the bonding company for your wrongdoing. You need E&O Insurance today.

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