

Identification Standards For Notaries

A Position Statement From The
NATIONAL NOTARY ASSOCIATION



The Nation's Professional Notary Organization

Abstract

In today's mobile society, where business transactions between strangers are common, we rely heavily on the Notary Public to verify that the signers of certain important documents are who they claim to be. This act of identification is the first step in performing a notarization and provides assurance that a signer is not an impostor trying to cheat an innocent and unknowing victim out of valuable rights or property through a phony document.

However, identification of a signer by a Notary is no easy task. It is often a very difficult responsibility to fulfill because of the lack of official guidelines on what exactly constitutes positive identification.

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The general public, the business community and Notaries would all benefit from clear-cut statutory guidelines on how to identify document signers. Official guidelines would give all persons who put their trust in notarized documents the confidence and assurance that the signers' identities have been verified according to certain recognized standards. Identification standards for Notaries would deter document fraud, protect the Notary, and reduce the civil litigation that clogs our courts. The National Notary Association proposes that states adopt identification guidelines for Notaries contained in its *Model Notary Act* of 2002 and as outlined in this position statement. We believe that a Notary's proper identification of document signers is vital to the integrity, reliability and value of notarized documents.

Why Set Standards for Identifying Signers?

Lacking guidelines that define acceptable identification, Notaries often must decide for themselves what is or is not positive identification. A decision of this kind is inappropriate for a ministerial official such as a Notary, who is expected to follow and apply written guidelines without — unlike the judicial official — reliance on significant personal discretion. The absence of identification guidelines can lead to great inconsistencies in how carefully Notaries identify signers, and this undermines public confidence in notarial acts.

Official guidelines for identification of document signers will:

- Protect the integrity of property deeds, wills, powers of attorney and other sensitive documents by assuring that signers have been properly identified according to a state-mandated standard.
- Hinder forgers and impostors by preventing the use of readily counterfeited and altered identification documents.
- Reduce the strain on our burdened civil court system by clarifying the Notary's duties.
- Back up Notaries who hear, "What law says my ID's no good?"
- Discourage frivolous or discriminatory refusal of service by Notaries.
- Prevent Notary misjudgment by providing clear-cut standards of care.

Three Way to Make Positive Identification

A Notary identifies a signer through one of three ways: (1) personal knowledge, (2) reliable identification documents — or “ID cards” — or (3) a personally-known credible witness or witnesses. The latter two, identification documents and credible witnesses, are sometimes labeled “satisfactory evidence of identity” in law.

The best way to establish positive identification is through the Notary’s personal knowledge of the signer’s identity. Most often, however, Notaries perform their duties for strangers, so identification documents have become the predominant method used to identify document signers. In some situations where the signer is neither known by the Notary nor has identification documents, a credible witness may be the sole method available to establish the identity of the signer.

Personal Knowledge of Identity

Identifying a document signer through the Notary’s personal knowledge of that individual’s identity is the most dependable and preferable method. However, this holds true only if the Notary clearly understands what exactly constitutes personal knowledge.

If a Notary fails to understand what is or is not personal knowledge, he or she can become easy prey for impostors who might establish a bogus relationship with the Notary based on a false persona in order to perpetrate a fraud. Or the Notary might wrongly assume that an informal introduction by a friend or employer constitutes knowing the signer, an extremely dangerous supposition that has led to countless lawsuits.

The National Notary Association recommends adoption of the *Model Notary Act’s* definition of personal knowledge. The *Act* — model legislation originally developed by a national committee of secretaries of state and attorneys with the assistance of Yale Law School and the National Notary Association — defines personal knowledge of identity as:

familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

Important to this definition is that the Notary’s knowledge of the signer has been established by numerous interactions over time eliminating any reasonable doubt as to the signer’s identity. The longer the Notary has known the signer, the better; mere acquaintanceship will not do.

When in doubt about whether a signer is personally known, the Notary should consider the signer a stranger for the purposes of notarization and then move to another form of identification.

Satisfactory Evidence of Identity

Because of the great size and mobility of our society, business is conducted primarily

between strangers. Society could not operate if this were not the case. Most document signers are not personally known to the Notary, so in the vast majority of notarizations, identification is determined by satisfactory evidence of identity rather than the Notary's personal knowledge.

As mentioned, there are two recognized ways to obtain satisfactory evidence of identity: (1) reliable identification documents and (2) personally-known credible witnesses. In the *Model Notary Act*, satisfactory evidence of identity is defined as:

identification of an individual based on: (1) at least one current document issued by a federal, state, or tribal government agency bearing the photographic image of the individual's face and signature and a physical description of the individual, though a properly stamped passport without a physical description is acceptable; or (2) the oath or affirmation of one credible witness unaffected by the document or transaction who is personally known to the Notary and who personally knows the individual, or of two credible witnesses unaffected by the document or transaction who each personally knows the individual and shows to the Notary documentary identification as described in Subparagraph (1) of this section.

The National Notary Association recommends that all states adopt or adapt this definition of satisfactory evidence of identity. This statutory standard will prevent Notaries from being pressured or persuaded to accept easily counterfeited documents such as Social Security cards and birth certificates as positive identification, or from relying on the word of a "credible" witness who barely knows the document signer.

Identification Documents

Since phony IDs proliferate, reliance on identification documents tends to be the least dependable method to identify signers. Thus, rigid standards should be prescribed by statute, specifying that an acceptable identification document must include a photograph, signature and physical description of the individual to allow comparison with the bearer's actual appearance and signature on the document. In addition, the identification document should be issued by an authority known to exercise care in identifying persons requesting such documentation — a federal, state, or tribal government agency — to further reduce fraud.

Indeed, states increasingly prescribe statutory lists of identification documents acceptable for notarial acts. For example, Florida and California laws listing acceptable identification include the

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following IDs: a state-issued driver's license or identification card, a U.S. passport, a foreign passport stamped by the Immigration and Naturalization Service, a Canadian or Mexican driver's license, a U.S. military identification card, and a state department of corrections inmate

identification card (for inmates in custody only).

Though a positive identification may be made through one reliable identification document, Notaries are encouraged to ask for as much documentary evidence of identity from a document

signer as possible. Even such documentation as Social Security cards and employment IDs, never reliable alone as primary identifiers, can cumulatively help bring assurance of identity.

Probably the best kind of documentary identification that a person can present to a Notary is a U.S. passport. State-issued driver's licenses and identification cards are also generally reliable, especially if they have built-in security features — state seals, stamps, special type styles, officials' signatures or state seals that overlap photo and background, holograms, scannable data strips and other features that indicate a correctly issued license.

While many countries require their citizens to carry a national ID card, the United States has no such identification document, so U.S. Notaries must rely on a variety of identification documents issued by federal, state, and local governments, as well as private agencies.

Unless guidelines are imposed, the likelihood is high that a Notary may, with all good intentions, be deceived or pressured into accepting a phony identification document.

Credible Witnesses

A credible witness is a reliable individual who personally knows the document signer and can truthfully vouch for that signer's identity under oath. Further; the credible witness must be personally known by the Notary. This chain of personal knowledge from the Notary to the credible witness to the document signer must exist in order for the identification to be acceptable.

The same standard for personal knowledge of identity used when a Notary identifies a signer applies to credible witnesses. That is, knowledge of the witness by the Notary and of the signer by the witness should be established by numerous interactions over a period of time to eliminate any reasonable doubt as to the signer's identity.

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In identifying a signer for a Notary, the credible witness should take an oath and swear or affirm before the Notary that:

1. The signer is truly the person named in the document.
2. The signer is personally known to the witness.
3. That, as a witness, he or she is not personally interested nor named in the document.

By definition a credible witness must be believable and also honest, competent and impartial about the document signed. Individuals who are party to the document and family members who may gain indirectly from the document must be disqualified as credible witnesses.

States increasingly prescribe such rules in statute, particularly the qualification that the witness not have an interest in the document.

Accommodating Persons Without Identification

Many persons, particularly the elderly, do not possess identification documents. They might

not travel or drive, so they have no need for a passport or driver's license, or these documents may have expired long ago. To accommodate these individuals, identification guidelines should allow Notaries to rely on two credible witnesses who are not known by the Notary but identified through their own identification documents. California and Florida presently include such a provision in law.

Same Standards for All Notarial Acts

Whether the Notary is performing an acknowledgment (typically required for recordable documents affecting land titles) or a jurat (typically for evidentiary documents used in judicial proceedings), the statutory requirements for identifying a signer must be the same.

Many states have older laws on the books that technically do not stipulate positive identification of the signer for a jurat — as all do for an acknowledgment. However, both the American Bar Association in its *Uniform Law on Notarial Acts* (1982) and the National Notary Association in the *Model Notary Act* (1984, 2002) stress the importance of identifying every signer, whether an acknowledger or an affiant.

Documenting the Identification

To assure all parties who depend on notarized documents that the signers' identities have been verified, a growing number of states require the notarial certificate to specify how the signer was identified. This information heightens the credibility of notarized documents, and can expedite their acceptance.

Numerous states also require Notaries to keep journal records of their official acts including exactly how the signer was identified. In addition, state law may oblige the signer to affix a signature or even a thumbprint in the Notary's journal. These valuable journal entries can prevent or abort unfounded lawsuits and represent a cost-free but significant step to help reduce the load on our civil courts.

Types of Identification Fraud

The problem of phony identification documents is very real, with fraudulent identification obtained relatively easily through a variety of techniques: imposture, counterfeiting and alteration.

Through imposture, a person obtains identification from a genuine issuing agency by posing as another individual and submitting a false name. This type of identification fraud is virtually undetectable once the identification has been issued, hence the need to rely only on identification documents issued by agencies that employ strict standards in identifying the persons to whom cards are issued.

Counterfeiting occurs when a false identification is made from scratch. These IDs can often be revealed to be fakes with a little effort. Clues to counterfeit IDs are: card wear inconsistent with the date of issuance, misspelled words, inappropriate type, patterns, or textures, and unlikely similarities between different ID cards.

Alteration or tampering is the changing of an identification document to conform to an unauthorized person. These, too, are often readily detectable. Tip-offs include raised edges around the photo, covered official seals and signatures, lamination where the card specifically states “do not laminate” and signatures varying between the document and journal.

Explicit statutory guidelines can prevent usage of identification documents that are easiest to counterfeit, alter or fraudulently obtain. Such guidelines are greatly needed by the many Notaries pressured by employers, clients or acquaintances to wrongly verify the identity of a stranger who lacks adequate documentation of identity.

Guidelines for Identification Are Imperative

We trust Notaries to serve as official impartial witnesses and have high expectations regarding the documents they notarize. Above all, we expect the Notary to guarantee that signers actually are who they claim to be. But lack of official identification guidelines needlessly makes the process of identifying signers more difficult for Notaries and compromises the reliability of their official acts.

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Statutory identification standards would give Notaries Public the direction and authority needed to fulfill their vital fraud-detering role and would impose no costs on the public or government. With such guidelines,

the process of notarization would better protect the property rights of individuals and businesses by more effectively preventing impostors and forgers from committing their crimes.

We believe every state should have written statutory standards for Notaries to apply in identifying document signers. The National Notary Association calls upon legislators to enact these critical and necessary guidelines.

