

A Position On Mandatory Training For Notaries

A Position Statement From The
NATIONAL NOTARY ASSOCIATION



The Nation's Professional Notary Organization

Though they are society’s designated front line of defense against document fraud and though they operate today in an era of proliferating identity theft and mortgage scams, Notaries in most states are provided no training whatsoever on their critical screening duties.

The current policy for educating most Notaries is, “You’re on your own.” Too many Notaries fail to learn their jobs and, as a result, make appalling mistakes at the public expense.

What, for example, are the clues telling a Notary that an ID card is the product of counterfeiting or tampering, or that it is a genuine ID obtained through imposture? What does the Notary do when asked to notarize a blank or partially complete document? Or to administer an oath over the telephone? When is a medicated patient in a hospital bed not ready for a notarization?

A new Notary won’t know how to respond in these situations unless he or she was required to attend a short class on basic notarial duties. With no training, Notaries learn their duties on the job by trial and error — and the public suffers their mistakes.

Training Of Notaries Is Left To Chance

At a time when vocationists from cosmetologist to pest control specialist are required by law to take a course of training on their duties in order to protect the public, it is inconceivable that holders of the office of Notary Public, who safeguard the rights and property of American consumers from document fraud, undergo no training whatsoever in a majority of states.

Notaries regularly are depended upon to screen the signers of sensitive documents that assign control of assets worth hundreds of thousands of dollars; and their certificates are regarded as *prima facie* evidence by our nation’s courts that the facts stipulated within are truthful and accurate.

Yet, the training of Notaries is for the most part left to chance.

The argument is often heard that the duties of a Notary Public are so simple and insubstantial that no training is required — that the ministerial¹ Notary merely follows written instructions and is not expected to exercise significant judgment or discretion. Those who make such arguments have not spent any appreciable time performing notarial acts or observing Notaries.

Today, operating lawfully, ethically and effectively as a Notary has become increasingly difficult in an era of rampant identity theft. Indeed, one can think of few offices in which contrasting pressures are so actively in play. Here are just some of the challenges that the Notary may face in any given notarization:

- Determining whether a medicated hospital patient is sufficiently aware to qualify as a competent signer.
- Determining whether a particular “credible witness”² is qualified to identify an unknown document signer.

¹ According to BLACK’S LAW DICTIONARY (7th Ed.), “ministerial” is defined as “of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill.”

² The National Notary Association’s NOTARY HOME STUDY COURSE (7th Ed.) defines a “credible witness,” also known as a “credible identifying witness,” as a “believable person who identifies a document signer to the Notary after taking an oath or affirmation. The credible identifying witness must personally know the document signer and should also be personally known by the Notary.”

- Determining whether an identification card has been fraudulently tampered with or is a counterfeit.
- Determining how to handle a belligerent signer who demands that an out-of-date ID card be honored.
- Determining how to handle an employer who paid for the Notary’s commission and who is now asking the Notary to notarize the signature of an absent spouse.
- Determining the propriety of notarizing for the Notary’s own spouse, parent, son or daughter, aunt or cousin, or significant other.
- Determining whether a notarization may be performed based on a telephone call from an absent document signer.
- Determining whether a “subscribing witness”³ may lawfully present a document for notarization on behalf of an absent signer.
- Determining what to record in a journal of notarial acts.

On a daily basis, the practicing Notary must deal with these and many other significant questions, and the Notary’s failure to respond appropriately can invalidate a transaction, if not subject its participants to devastating financial loss and civil or criminal penalties.

Notarization Cannot Be Learned By Trial And Error

Anyone who believes that all a Notary Public does is simply identify a signer is out of touch with the realities of modern commerce and law.

Notaries must not only carefully screen each principal signer for identity, willingness and awareness and qualify each witness for impartiality, they must also complete an appropriate notarial certificate for each transaction and make a detailed, accurate record. They are expected to know when to disqualify themselves in countless conflicted situations⁴ for which there is hardly ever any official guidance, and to know how to handle the special situations, varying from blind or deaf signers to persons who need to sign by mark or give their oral proxy for someone to sign on their behalf.

Notarization is not a function that one can learn by trial and error, nor can Notaries “learn on the job” on their own without endangering the public welfare.

Unfortunately, too often the “teachers” of fledgling Notaries are the employers who pay for their commissions and who may expect them to ignore vital rules of notarization that are inconvenient, such as requiring each signer to appear in person before the Notary at the time of notarization. As a result, too many Notaries never learn one of the most important rules of notarization: The Notary must always give state law priority over the unlawful demands of an employer.

³ The National Notary Association’s NOTARY HOME STUDY COURSE (7th Ed.) defines a “proof of execution by subscribing witness” as a “notarial act in which a person (called the subscribing witness) states under oath or affirmation before a Notary that he or she either watched another individual (called the principal) sign a document or took that person’s acknowledgment of an already signed document. The witness must affix a signature to the document, in addition to the principal’s.”

⁴ According to Guiding Principle II of the National Notary Association’s NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY, “The Notary shall act as an impartial witness and not profit or gain from any document or transaction requiring a notarial act, apart from the fee allowed by statute.”

Such mis-schooled Notaries account for a large percentage of the forgery lawsuits now clogging our courts.

There is no room for trial and error or for learning on the job for a public officer who is regularly called upon to authenticate transactions valued at hundreds of thousands of dollars for which no error is tolerated.

Certain basic principles and practices of notarization must be clearly grasped and applied by every Notary from the first notarization on, yet the majority of Notaries are never schooled on such matters as not notarizing one's own signature, not notarizing if one has a direct personal interest in a transaction, and not notarizing if the document signer does not appear in person at the time of notarization.

Three Significant Developments

A small but growing number of states have decided that the education of Notaries — society's front line of defense against document fraud — is no longer something that can be left to chance.

Since the year 2000, four states⁵ have enacted statutes requiring Notary commission applicants to take a short course of instruction on their official duties, joining the state of North Carolina, which has mandated Notary education since 1983.

This new realization of the importance of Notary education has been sparked by three significant developments: (1) the tragic events of September 11, 2001, (2) the current identity theft and mortgage fraud epidemics, and (3) the emergence of electronic notarization as a viable mechanism in commerce and law.

After 9 / 11, No More Business As Usual. Customary norms of vigilance became immediately obsolete on September 11, 2001. Agencies and institutions responsible for public security — from local police departments to the Border Patrol to the Coast Guard — were put on notice that business as usual was no longer good enough. One of the institutions of public security shown that day to be vulnerable and in dire need of attention was the office of Notary Public.

Nothing points out the need for educating Notaries more than the fact that at least four of the terrorists who commandeered aircraft on September 11 obtained their phony identification by taking advantage of less than knowledgeable and dutiful Notaries. Indeed, two Virginia Notaries, by their utter ignorance and neglect of the most basic of notarial rules, unwittingly abetted the terrorist plot by helping four of the Saudi hijackers obtain phony state driver's licenses.⁶ Significantly, Virginia is one of the many states not requiring Notaries to receive even the most minimal training.

⁵ The four states that, since 2000, have established a requirement that Notary commission applicants pass a short, formal course of instruction on their notarial duties — either in a classroom or online — are Florida, Pennsylvania, Missouri and California, in that order. In 1983, North Carolina became the first state to mandate education for Notaries.

⁶ Exactly how two Virginia Notaries Public unwittingly assisted four of the Saudi plane hijackers with their terrorist plot is chronicled in the National Notary Association's NOTARY BULLETIN (National Edition) issues of February 2002 ("Notary Admits to Fraud, Notarizing for Hijackers," page 5) and June 2002 ("Notary's Scam Aided Hijackers," page 1).

On September 11, it became vividly clear that the impostors who circulate among us are not all intent on financial scams; some are intent on terrorist mayhem. And the fact that these impersonators often visit Notaries in an attempt to give their affairs a patina of legitimacy lends urgency to the need for statutory reform of state Notary laws — and particularly to the need for educating Notaries about the seriousness of their duties.

Identity Theft and Mortgage Fraud Epidemics. According to the Federal Trade Commission, complaints about identity theft accounted for 39 percent of the 635,173 consumer fraud complaints filed with the agency in 2004. This marks the fifth straight year identity theft complaints topped the list of all consumer complaints fielded by the agency.

Because the payoffs are high, the prize target of opportunity for identity thieves, of course, is real estate. An October 6, 2004, hearing on mortgage fraud held by the U.S. House Subcommittee on Housing and Community Opportunity disclosed a sobering statistic: An estimated 5 to 10 percent of all mortgage loan applications contain some kind of fraud or misrepresentation.

“Based on industry reports and FBI analysis, mortgage fraud is pervasive and growing,” testified Chris Swecker, assistant director of the Bureau’s criminal investigative division.

“It’s not only increasing, but the types of fraud are becoming more severe,” said William Matthews, vice president and general manager of the Mortgage Asset Research Institute, another witness at the Congressional hearing.

With Notaries serving as society’s front line — and sometimes only line — of defense against such real estate frauds, it is inexcusable that most Notaries receive no training at all on their critical screening duties.

Emergence of Electronic Notarization. Now that the federal “E-Sign” act⁷ is the law of the land and virtually every state has enacted some form of the Uniform Electronic Transactions Act, every one of the nation’s state-commissioned Notaries are authorized to use electronic signatures in performing notarial acts.

Already, electronically notarized conveyances are being recorded in pilot programs around the country, and electronic documents and “eNotarization” are now realities in commerce and law. It is inconceivable that Notaries will be able to participate in electronic transactions in any significant way without training. Indeed, both Florida and Pennsylvania law now stipulate that the Notary training programs mandatory in those two states contain instruction on electronic notarization.

Education Is Positive, Proactive and Preventative

In most states, a surety bond is the present remedy for Notary misconduct. A Notary bond, however, is an after-the-fact “mopping up” tool to compensate victims of the misconduct — and

⁷ The federal ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (“E-Sign”) (15 U.S.C.A. Sections 7001 *et seq.*) now authorizes every state-commissioned Notary in the nation to use electronic signatures in performing official acts.

in most states the bond funds are entirely inadequate to help a victim recover.⁸

Education, on the other hand, is prevention before the fact. It is much preferable to prevent victimization (with its attendant financial damage and human suffering) in the first place through education, rather than mopping up with the bond after the damage and suffering have occurred. “An ounce of prevention is worth a pound of cure.”

There are other after-the-fact remedies for Notary misconduct, including civil lawsuits, criminal lawsuits and administrative penalties against the Notary. These are often of no value to the victim and merely serve to further saturate our already clogged court system.

When weighed against the alternatives of formally disciplining and prosecuting Notaries for their violations, education offers compelling advantages in preventing misconduct in the first place:

Education is positive. Education emphasizes how a notarization should be correctly performed, and appeals to the better nature of human beings to engage in ethical conduct. Surety bonds, disciplinary measures and court proceedings are negative and wasteful of societal resources.

Education is preventative. Education can stop misconduct before it happens by warning would-be Notaries of potentially compromising situations and imparting techniques for resolving difficult situations in an ethical and professional manner.

Education is proactive. Education provides more than instructions on how to redress a wrong. It shows how to prevent the wrong from happening in the first place.

The welfare of Notaries should not be lost in this discussion. Requiring education is only fair to Notaries themselves. What new military recruit would be pressed into battle without the proper weapons and training. Incredibly, the majority of states are yearly placing tens of thousands of new Notaries on the front lines of the widening war on fraud and identity theft with no training whatsoever!

These unfortunate Notaries are thereby exposed to situations of great potential personal liability without being warned of the potential dangers.

Education of Notaries is important not just in imparting legal, technical and procedural information, but also in teaching ethical principles, such as “impartiality,” to guide the Notary when laws and regulations are silent or — as is the case in many states — absent altogether on important matters.

Summary

The training of Notaries can no longer be left to chance. The public suffers when Notaries learn on the job by trial and error.

The Notary’s role as an identity-verifying gatekeeper has a new urgency in this post-9/11

⁸ Notary surety bond amounts in the United States range from \$500 (New Mexico, Wisconsin, Wyoming) to \$15,000 (California). In 20 states, Notaries are not bonded

era of rampant identity theft and mortgage fraud. In the public interest, a small but steadily growing number of states are establishing requirements that Notary commission applicants take a short course of instruction on their official duties.

The approach of investing resources to educate Notaries in order to prevent misconduct that can financially devastate innocent consumers is much to be preferred over the approach of investing resources to “mop up” after the damage is done. Notary education is positive, proactive and preventative.

