

The Notary Recordbook

**How A Journal Of Notarial Acts
Protects The Public**

A Position Statement From The
NATIONAL NOTARY ASSOCIATION



The Nation's Professional Notary Organization

Abstract

Each year, countless civil and criminal court challenges are made to documents after they have been legally notarized. Claims of forgery, coercion and other misdeeds, real or not, are common, and yet, these documents may have been officially witnessed by a Notary — the very act we rely upon to prevent such questions. In some cases, an original document's loss or theft makes the issue even more difficult to resolve.

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A Notary's journal of notarial acts, however, provides significant protection from fraud and loss. The journal record can actually prevent the frauds and many of the baseless lawsuits that burden our courts, plus it can safeguard personal rights when a valuable document is lost or fraudulently altered. The Notary's journal supplies independent physical evidence that a particular document was signed or acknowledged on a specific day by a person who was positively identified by a public official, the Notary. This becomes an official public record protecting the document signer, the public and the Notary.

The National Notary Association supports statutory requirements that Notaries maintain a record of every notarial act performed — a journal of notarial acts. We believe keeping a journal is one of the most important duties of the Notary Public and essential to preserving the integrity of every notarization.

Why A Notary Journal?

Keeping records is a business-like practice that every prudent and conscientious public officer should observe. By recording critical facts about each notarization, the Notary creates an official public record that safeguards citizens' rights to valuable property and to due process under the law. Properly maintained, the Notary's journal record provides invaluable physical evidence that:

- Protects the signer and other involved parties in the event the document is lost, challenged or fraudulently altered.
- Deters forgers and impostors who are naturally disinclined to leave a signature in a recordbook that would incriminate them.
- Discourages groundless lawsuits by showing that a signer appeared before the Notary.
- Assists law enforcement authorities in prosecuting frauds.
- Protects the Notary from baseless allegations by showing that reasonable care was exercised in identifying the signer and performing the notarial act.
- Prevents or quickly resolves litigation, helping unclutter our overburdened civil and criminal courts.

Often, the Notary's journal is the only physical proof that a particular contested fact about the document is, in fact, true. The journal becomes especially important when a document is lost

or fraudulently altered before it is filed with a county recorder or in the many cases where no archival copy of the document will be made.

As a deterrent to crime, the Notary's journal is extremely effective. When the Notary asks each signer for identification, describes the identification in the journal and then requires this individual to sign — and even leave a fingerprint — for the record, most would-be forgers are deterred from following through with their crime. They know that the signature or fingerprint they leave behind can be the evidence that convicts them.

The Notary's journal can prevent and abort lawsuits that are without foundation. A signer, for example, may have second thoughts about a document and claim that his or her signature was forged. Yet, if the Notary's journal contains this person's signature, as well as data from identifica-

tion documents presented, the claim is readily refuted. Without the Notary's journal record, disputes such as this can be tied up in the courts for years.

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valuable evidence about the document and signer that makes forgeries easier to prosecute. The journal record pinpoints the date and time the crime took place as well as describes the fraudulent identification the forger used.

Conscientious Notaries need the vital documentation only a journal record provides to protect themselves from unfounded allegations of misconduct. Their journal records can prove they performed a notarization properly, having taken reasonable care to identify the signer. Otherwise, it becomes an issue of one party's word against another's.

When a deed, will or other document is contested in court, the Notary's testimony becomes critically important in determining whether a signature was forged, coerced or incompetently made. Without a journal entry to aid the Notary in recalling the event, which may have occurred many years in the past, most would find it extremely difficult to remember the exact circumstances of the notarization. The absence of a notarial record can result in prolonged litigation and unfounded lawsuits that otherwise could be resolved easily.

Supported By The *Model Notary Act*

The *Model Notary Act* (2002) is a model statute governing the commissioning of and performance of duties by Notaries. It was developed by a national committee of state officials, attorneys, recorders, surety experts and software designers, with the assistance of Yale Law School and the National Notary Association. It stipulates:

A Notary shall keep, maintain, protect, and provide for lawful inspection a chronological official journal of notarial acts that is either: (1) a permanently bound book with numbered pages; or (2) an electronic journal of notarial acts...

Many states look to the *Model Notary Act* for guidance when modernizing their outdated notarial laws, and a greater number have adopted the *Act's* requirement that Notaries must record their acts in journals.

Why Don't All States Mandate Notarial Journals?

It is clearly difficult to dispute public benefits of Notary journals. So why, then, doesn't every state require its Notaries to keep such records?

Actually, conscientious Notaries in every state do keep some kind of record of their official acts. To do otherwise would be publicly irresponsible and privately risky. But the public good suffers because too many Notaries, when not required to do so, choose to keep no records of any kind.

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The main argument against Notary journals is inconvenience. This simply does not stand up to scrutiny. The fact is, Notary journals have been

mandatory in many states for over a century without any disruption to commerce or law.

Attorneys represent another frequent voice against Notary journal requirements. Many attorneys claim that law office copies of notarized documents should suffice as a record of notarial acts. They call laws requiring notarial journals unnecessary or redundant and regularly oppose such legislation.

However, copies of documents notarized by attorneys might not always be available to the individual who notarized them nor to the public at large, which may have a legitimate need for the information. Records of any Notary's notarial acts must belong to and go with the individual Notary, wherever employed.

Information A Notary Journal Can Supply

A journal record of a Notary's official acts provides evidence that a person appeared before the Notary and requested a notarization. In addition, a notarial journal confirms the chronology of the various official acts the Notary has performed.

The *Model Notary Act* recommends the following journal entries for each notarization. These entries provide a permanent, safeguarded "picture" of the notarized document that can later prove invaluable in settling disputes and prosecuting fraud.

1. The type of notarial act — acknowledgment, jurat, copy certification, etc.
2. The date and time of the notarial act.
3. The type or title of the document notarized — grant deed, affidavit, etc.
4. How the Notary identified each signer — either the Notary's "personal knowledge of identity," the name of any sworn-in credible witnesses who identified the signer, or a

description of identification documents or cards.

5. The signature, name and address of each document signer and of each witness.
6. Any other pertinent information — Notary fee charged, the signer's thumbprint, the signer's representative capacity, any unusual circumstances, etc.

The importance of items 4 and 5 — how the signer was identified and the signature of each signer and witness — cannot be overstated.

Recording the basis for identifying the signer is critically important. Every Notary should give careful attention to inspection of any identification document offered and to the credibility of all witnesses identifying the signer. The Notary must be reasonably satisfied that the signer is who he or she claims to be. By recording the serial numbers and expiration dates of a signer's identification documents and the names and addresses of identifying credible witnesses for the public

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record, the Notary can deter would-be forgers, prevent groundless lawsuits and provide valuable evidence for fraud prosecutors. In addition, this protects the Notary by demonstrating reasonable care was exercised.

A signature in the Notary's journal offers hard-to-refute proof that a particular person actually did appear before the Notary. A signer may have second thoughts about a document and later claim not to have personally appeared before the Notary, but a journal signature provides evidence that the signer did appear.

In addition, the journal signature creates an obstacle for the forger by serving as a sample the Notary can compare with signatures on identification documents and on the document itself. And it can thus put the Notary on alert to a possible impostor when a person seems to be slowly laboring over a signature in the journal.

Increasingly, Notaries are also asking signers to affix a thumbprint in the journal. A journal thumbprint provides unquestionable proof that a signer appeared before the Notary, and it alerts to the seriousness of notarization. In addition, a journal thumbprint is the Notary's most effective weapon in deterring forgery, since impostors are reluctant to leave behind this irrefutable evidence linking them with a fraud. Signatures can be forged but the thumbprint cannot.

Notary Record Security

All the effort to maintain an accurate journal of notarial acts may be lost unless an effort is also made to keep it safe from theft or tampering.

Permanently bound recordbooks with sequentially numbered pages make the most effective and secure Notary journals. These two features deter and call attention to any fraudulent addition or removal of pages and follow recommendations set forth in the *Model Notary Act*.

Less effective are staple-bound books or books with no page numbers. These books leave open the possibility of pages being added or removed without detection and are not recommended by the National Notary Association.

The least effective and secure notarial recordkeeping systems are loose-leaf binders and — even worse — papers inserted into an office filing system. These are easily removed, destroyed or altered without a trace and without the Notary's knowledge. Of course, the National Notary Association does not recommend this system.

To prevent theft and tampering, Notaries must retain personal control over the journals. When not in use, the journal should be kept in a locked drawer or filing cabinet along with the Notary's seal. An electronic journal must be accessible and manipulable only by the Notary. Even if paid for by an employer, the journal — like the Notary seal — is an official adjunct of the Notary Public office and must go with the Notary upon leaving employment.

Public Access To Notary Journal Records

As a public record, the Notary's journal must be available for inspection or copying by any interested person with a legitimate purpose. This best serves the public need for access to valuable evidence to resolve disputes concerning notarized documents.

However, before providing a viewing or photocopy, the prudent Notary will require interested individuals to identify themselves and to be specific about the entry requested. The Notary would then show or copy only that entry, blocking others from view to protect privacy rights. "Fishing expeditions" through the journal should never be allowed. The Notary should never allow the journal to be viewed outside of the Notary's presence and control.

Disposition Of Notarial Records

When the Notary resigns his or her commission, the journal should be handed over to the designated public agency, typically the county recorder or the secretary of state. This preserves the records and extends their availability for use as evidence. After an appropriate length of time, when the records' usefulness as evidence expires, the public agency may destroy the records.

Notary Journals Should Be Mandatory

The benefits are many; the negatives, few. A requirement that Notaries maintain a journal record would protect citizens' rights when documents are lost or contested, help unclog the courts by settling disputes and discouraging groundless lawsuits, deter forgers from committing crimes, and provide valuable evidence for fraud prosecutors while imposing no significant costs on the public or state. Such a requirement should be mandatory in every state. The National Notary Association encourages and supports legislation mandating Notaries Public to keep a journal of their official acts.