

# The Notary After 9-11

**War On ID Theft Demands Trained Notaries Who  
Can Lawfully Ask Signers For Thumbprints**

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A Position Statement From The  
NATIONAL NOTARY ASSOCIATION



*A Nonprofit Educational Organization*

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## Abstract

The tragic events of September 11, 2001, changed America forever.

Customary norms of vigilance became immediately obsolete on that shattering day. 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

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of modernization was the office of Notary Public. Indeed, two poorly prepared Notaries had been tricked into abetting the plane hijackings by helping four of the hijackers obtain false IDs.<sup>1</sup>

Ironically, in the United States it is the very job of Notaries to detect

impostors and thereby protect the public from document fraud and resulting financial loss.

However, 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.

Notaries today often operate under ineffectual state rules drafted in the 19th and sometimes even the 18th centuries.<sup>2</sup>

What statutory reforms are necessary?

Above all, two reforms are widely needed to bring the office of Notary Public into the 21st century.

One is mandatory education and testing of every Notary commission applicant.<sup>3</sup>

The other is requiring Notaries to keep at least a minimal record of every official act and to include in that record the signature and thumbprint of each document signer.<sup>4</sup>

## Education

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 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 — Abdul Aziz Alomari, Amed Saleh Alghamdi, Hani Hanjour and Khalid Almihdhar — obtain phony state driver’s licenses.<sup>5</sup>

One of the two Notaries was in the inexcusable habit of “notarizing” blank DMV forms; the other knowingly notarized false affidavits in which two of the hijackers claimed to be Virginia residents — and was so helpful as to supply the two with his former address to claim as their own residence.<sup>6</sup>

Significantly, Virginia is one of those states that do not require would-be Notaries to take even a simple course on basic notarial duties, do's and don'ts and on fundamental ethical rules.

It is indefensible that functionaries such as security guards, cosmetologists, real estate agents and dental assistants must show proof of training before they can be credentialed, while Notaries in most states need not demonstrate that they have the minimal level of knowledge requisite to operate as a Notary without endangering the public.

Though they are society's designated front line of defense against document fraud and though we live today in an era of burgeoning identity theft, Notaries in most states are provided no training whatsoever on screening signers for identity, volition and basic awareness.

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What, for example, are the telltale clues that an ID card is the product of counterfeiting or tampering, or that it is a genuine ID obtained through imposture?<sup>7</sup> A new Notary won't know these critical tips unless he or she was required to attend a class of at least several hours on basic notarial duties.

What are the rules for dealing with signers who are disabled? Of advanced age? Of dubious mental competence? Again, the new Notary will not know without taking a minimal course of instruction.

The current policy for educating Notaries in too many states is, "You're on your own." But this policy is not working. Too many Notaries fail to learn their jobs and, as a result, make mistakes at the public expense.

Some Notaries never learn their jobs, and the tragic results were seen in Virginia.

Education and testing of Notaries on their critical duties is a necessity if Notaries are to have any meaningful role in the widening 21st century battle against identity theft.

## Notary Journal

Prior to September 11, 2001, it was at best an unbusinesslike practice for a Notary Public to fail to keep a minimal record of his or her official acts.

After that fateful date, however, it became an irresponsible practice for a Notary not to keep such a record.

There have long been many solid reasons for requiring Notaries to keep a "journal of notarial acts," including:

**'Today a Notary without a journal is like a soldier without a rifle. And a Notary journal without each signer's thumbprint and signature is like a rifle without bullets.'**

- Journals protect the rights and property of consumers in the event a deed or other valuable or sensitive document is lost, challenged or fraudulently altered.
- Journals prevent or quickly resolve groundless litigation, helping unclog our overburdened civil and criminal court system.<sup>8</sup>
- Journals provide indispensable evidence for law enforcement to use in finding and prosecuting forgers and other criminal impostors.

- Journals deter impostors who are unwilling to leave a signature or thumbprint in a record-book as irrefutable proof that they have attempted a fraud.
- Because lawsuits hinging on the propriety of a notarial act typically come to trial or settlement years after the act,<sup>9</sup> journals are vital in jogging the memory of Notaries and producing evidence (e.g., a description of ID cards) to fairly resolve a suit.

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## Thumbprints

There is a reason why law enforcement personnel at every level strongly favor the practice of having every signer leave a thumbprint behind in the Notary's journal: journal prints make it

**'Journal prints make it easier for investigators to track down criminal impostors and for district attorneys to successfully prosecute them. They also discourage many impostors from following through with their scams in the first place.'**

easier for investigators to track down criminal impostors and for district attorneys to successfully prosecute them.<sup>10</sup> In addition, journal print requirements discourage many impostors from following through with their scams in the first place.

Indeed, a highly successful three-year journal thumbprint pilot program in Los Angeles County (1993 through 1995) significantly reduced the forgery caseloads of local police departments and, as a result, was enacted statewide in California, effective January 1, 1996.<sup>11</sup>

In a post 9-11 America, all public officials, particularly Notaries, must become more vigilant in protecting the public and use every available "weapon" in their arsenal. Asking for a journal thumbprint is the Notary's most potent weapon against imposture.

## Underutilized Asset

One of America's most underutilized assets is its "standing army" of Notaries Public, who reside in virtually every community of the nation and work in virtually every industry and professional field where authentication of signatures is important. There are, for example, about 250,000 state-commissioned Notaries in New York and 350,000 in Texas; even diminutive Rhode Island has 20,000.<sup>12</sup>

In this era of rampant identity theft, it is inexcusable not to put these dedicated public servants to greater use in detecting and deterring impostors in the widening war against identity theft. Here are ways Notaries can help that will make a big difference right away:

- **Require each person applying for a certified copy of a birth certificate, marriage license or other vital record to prove identity before a Notary Public.** Fraudulently

obtained birth certificates are widely used by criminals as “breeder documents” to procure driver’s licenses, passports and other IDs based on a phony identity. To prevent impostors from using the vital records of other persons to construct a bogus persona, vital records offices should require any person seeking a certified copy of a birth record to be screened by a Notary — especially when the record is sought through the mail.

- **Require each person applying to open a new credit card, checking or savings account to prove their identity before a Notary Public.** Because 67 percent of ID theft cases involve the use of a credit card<sup>13</sup> and because impostors often open bank accounts to back their illegal activities, every person who opens a new credit card, checking or savings account should be screened by a Notary — especially when the account is opened through the mail.

- **Require each person applying for certain sensitive privileges and credentials to prove their identity before a Notary Public.** Because mailboxes are frequently utilized by impostors in their criminal activities, for example, applicants for mailboxes should be screened by a Notary. So should enrollees in flight school.

- **Require all Notaries Public to maintain a secure journal of their notarial acts.** Notaries who fail to keep a record of their official acts are failing to act responsibly as a public official. Litigation involving any notarized document typically requires witness testimony two to four years after the notarization was performed; without a journal, most Notaries will be unable to recall the act in question and, as a result, suits may not be fairly resolved.<sup>14</sup> It is important that a paper journal be “bound” and that an electronic journal have protected access so that unauthorized additions or deletions can be deterred.

- **Require each person proving identity before a Notary Public to leave a thumbprint and signature in the journal of notarial acts.** When asked to leave a thumbprint and signature behind in the notarial recordbook, many impostors will summarily depart the Notary’s office and look for an easier mark. Some won’t even attempt their fraud in the knowledge that a thumbprint is necessary. Those impostors bold or careless enough to leave a print and signature behind also leave indisputable evidence that they have attempted a fraud. Often police, with the journal print, are able quickly to identify the impostor through the computerized AFIS network.<sup>15</sup>

- **Require all applicants for a Notary Public commission to pass a course of instruction and an examination on their critical official duties.** In this age of identity theft, it is foolhardy not to teach society’s front line of defense against impostors — Notaries Public — the basic techniques for spotting fraudulent identification documents. It is also risky not to teach them about the growing phenomenon of electronic notarization.<sup>16</sup>

## Summary

In summary, America must learn from the tragic events of 9/11 and strengthen the institutions of public security that were proven vulnerable. Among the institutions shown to be in dra-

matic need of reform is the office of Notary Public.

Two reforms are widely and immediately needed to bring the office of Notary Public into the 21st century. The first is a mandatory course of instruction for all commission applicants so that they may learn how to effectively perform their critical screening duties. The second is a requirement that Notaries keep a bound record of every official act and include in that record the thumbprint and signature of every document signer. Some but not all states have enacted these two reforms.

America's Notaries are an underutilized national resource in the war against identity theft. Notaries should be used to screen applicants for certified copies of birth certificates, which may be used as breeder documents for generating phony IDs. They should also be used to screen persons opening new credit card, checking and savings accounts.

## End Notes

- (1) 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).
- (2) One example of how anachronistic and out of date state Notary laws have become is the current Tennessee rule prohibiting a "known duelist" from being commissioned as a Notary. See the National Notary Association's magazine *THE NATIONAL NOTARY* of January 2004 ("Unusual Notary Laws Serve Past And Current Needs," page 26).
- (3) At present, only four states require Notary commission applicants to pass a formal course of instruction on notarial duties: California, Florida, North Carolina and Pennsylvania. Just 14 states require some form of test. See *THE NATIONAL NOTARY* of May 2004 ("Guide To Notary Commission Eligibility," page 35).
- (4) Only in 22 U.S. states are Notaries required by law to record some or all of their notarizations in an official record. Only in 6 states must document signers affix a signature in the Notary's record: California, Hawaii, Maryland, Massachusetts, Nevada and Oregon. Only in one state, California, must the signers of certain documents (i.e., real property deeds) affix a thumbprint in the Notary's record. See generally the National Notary Association's *U.S. NOTARY REFERENCE MANUAL*, 7th Edition (2003), by Charles N. Faerber.
- (5) See Note 1 above.
- (6) See Note 1 above.
- (7) For example, one tip to a counterfeit ID is misspellings; a tampered ID might be revealed by a raised surface over a photograph or by a partially covered official seal; and a genuine ID obtained through imposture might be detected by the bearer's unfamiliarity with information on the card. These are a few of many tips on detecting a phony identification document that may be imparted in a short course of instruction on notarial duties.
- (8) Some Notaries are enlightened enough to keep a record of their official acts without statutory prodding: "I've had to use the journal in court twice. A journal is valuable for me, personally, because it provides the extra bit of information and shows that I identified the person in front of me." — Florina Safford, Florida Notary; "Keeping a journal is the right thing to do. If I were called into court, I could show I did what I was supposed to do." — Lisa Morris, Florida Notary. See generally "Notary Journals Protect the Homeowner," a 2003 National Notary Association position statement. Unfortunately, many Notaries do not follow the example of Safford and Morris and our court system suffers as a result.
- (9) In California, for example, a civil lawsuit purporting an improper notarial act can be brought three years from the performance of the act, or one year from the discovery of the act, but in no event further than six years from the

performance of the act (Code of Civil Procedure, Section 338). Thus, in California, a Notary may well be asked to recall the details of a notarization six to eight years after it was performed — a feat impossible in most cases without a journal of notarial acts to jog the memory. California requires Notaries to maintain such a journal.

- (10) Support for Notary journal thumbprints is virtually universal in the law enforcement communities: “I strongly endorse...the requirement that signers of real property deeds leave a thumbprint in the Notary’s journal.” — Oliver M. Thompson, Chief of Police, Inglewood, California; “It makes a property fraud allegation a lot easier to prove.” — Nick Aquino, Investigator, Los Angeles Department of Consumer Affairs. See generally “Report & Analysis: Pilot Anti-Fraud Program,” a 1995 report from the National Notary Association on a pilot program in Los Angeles County requiring deed signers to leave a thumbprint in the Notary’s journal.
- (11) See California Government Code Section 8206(a)(2)(G). It would be an understatement to say that the three-year pilot journal-print program for real property in Los Angeles County was successful: “We’ve seen a significant reduction in (forgeries)...I would hate to see this (journal thumbprint requirement) disappear.” — Don M. Tamura, Los Angeles County Deputy District Attorney, Major Fraud Division; “I can’t remember getting (cases) with forged, notarized signatures...since the legislation went into effect.” — Paul Harvey, Detective, Inglewood Police Department, Bunco/Forgery Detail. See generally again the NNA’s “Report & Analysis: Pilot Anti-Fraud Program.”
- (12) See “The NNA 2002 Notary Census” in *THE NATIONAL NOTARY* of May 2002, page 12.
- (13) According to a 2002 Federal Trade Commission survey and report, 67 percent of ID theft cases involved the use of a credit card. More than 27 million Americans were victims of ID theft in the previous five years, the report said.
- (14) See Note 9 above.
- (15) The Automated Fingerprint Identification System allows computerized search, analysis and matching of prints from vast data banks within seconds.
- (16) 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.

