

The Notary Journal: One Of Law Enforcement's Most Potent Weapons Against Mortgage Fraud

A Position Statement From The
NATIONAL NOTARY ASSOCIATION



The Nation's Professional Notary Organization

*“The FBI worked with the Mortgage Bankers Association, the **National Notary Association**, as well as FinCEN,¹ the Department of Housing and Urban Development, and major mortgage lending institutions, to improve the reporting and detection of potential mortgage fraud.”*

FBI Director Robert S. Mueller, III
U.S. Senate Intelligence Committee Testimony
February 16, 2005

In the fall of 2004, the Federal Bureau of Investigation approached the National Notary Association to enlist a new ally in its widening war against mortgage fraud. The focus of the Bureau’s interest was the journal of notarial acts that almost every state, by statute, requires Notaries to maintain or, by instruction, strongly urges them to do so.²

An October 6, 2004, hearing on mortgage fraud held by the Congressional House Subcommittee on Housing and Community Opportunity had 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 FBI’s criminal investigative division at the hearing.

“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 October 6 hearing.

Notary Journal: A Proven Tool Of Law Enforcement

The Bureau’s interest in the Notary journal as a prosecutorial and fraud-deterrent tool was well justified, because local law enforcement agencies around the nation for decades have used the journal as physical evidence to successfully prosecute and discourage forgers.

Indeed, a three-year (1993-1995) pilot program in California requiring Los Angeles County Notaries to capture the thumbprint of every deed signer in their journals proved so successful in

¹ This is the acronym for the Financial Crimes Enforcement Network.

² In 25 states, statute requires Notaries to keep a record of their notarial acts; in 22 other states, Notary-regulating authorities — through official Notary handbooks or Web site postings — strongly encourage Notaries to keep such a record. See 2004-2005 U.S. NOTARY REFERENCE MANUAL (7th Ed.), published by the National Notary Association.

reducing real property frauds in that county that the requirement was enacted statewide effective January 1, 1996.³ Because fingerprints are unique and unchanging, they are the ultimate identifier. Many would-be forgers, therefore, are reluctant to follow through with their crimes when asked by a Notary to leave a journal print, and Automated Fingerprint Identification Systems (AFIS) often enable law enforcement to match a print with a known criminal in seconds.

Even Notary journals without thumbprints are of great fraud-deterrent value. For example, just having each document signer affix a signature in the Notary journal has a multiple utility:

First, a journal signature provides the Notary with the opportunity to spot a forgery in progress, if the forger appears to be taking an inordinate amount of time or care in making a signature. On the other hand, if the forger doesn't take the time, the forgery may be readily spotted by a signature analyst.

Second, a journal signature discourages signers with second thoughts about a document from claiming they never appeared before the Notary, thus deterring groundless lawsuits.

Third, a journal signature is powerful forensic evidence that a signer was an impostor, especially when coupled with the journal's physical description of the individual.

Even when state law does not require the Notary's journal to contain a signature, a thumbprint, or the serial numbers of ID cards, the journal is still of immense value in both criminal and civil lawsuits in jogging the Notary's memory about notarial acts that were performed years in the past.

Journal Critical In Jogging Notary's Memory

Typically, most criminal and civil lawsuits that hinge on the propriety of a notarization will come to court two to four years after the contested notarial act. In such cases, Notaries are often asked to testify about the facts of a notarization. Without a journal record of pertinent details of the act, however, most Notaries will not be able to recall whom they notarized for or what they notarized even a year in the past, much less two or three years.

To be helpful, each entry in a Notary's journal must include, at least:

- Name and signature of the person whose signature is notarized.
- Date, time and type (e.g., acknowledgment, jurat, etc.) of notarial act performed.
- Title or type of document notarized.
- How the signer was identified⁴ — but no ID serial numbers should be listed, to protect privacy.
- Physical description of the person whose signature is notarized.

³ Based on the success of California State Senator Diane Watson's Senate Bill 1842 of 1992, which established a three-year pilot program requiring deed signers for property in Los Angeles County to leave a thumbprint in the Notary's journal, State Assemblyman Cruz Bustamante's Assembly Bill 1828 of 1995 made this requirement statewide and permanent.

⁴ In general, a document signer is identified by a Notary in one of three ways: (a) through the Notary's personal knowledge of the signer's identity; (b) through the vouching under oath of a "credible witness" who knows the identity of the signer; or (c) through a government-issued "ID card" with, ideally, a photograph, signature and physical description of its bearer.

Record-Keeping Too Important To Be Optional

All publicly commissioned officials should keep at least a minimal record of what they do on the public's behalf. Notarized documents are regularly lost, stolen, shredded or fraudulently tampered with — especially when kept in office files — and the Notary's record may be the only available proof protecting the rights and property of the persons named in or affected by those documents.

Notarial record-keeping is too important to be left to the whim of the Notary. Each state must require its Notaries to keep a record of their official acts.

In this era of proliferating identity theft,⁵ the Notary journal is one of law enforcement's — and the FBI's — most potent weapons against mortgage fraud.

⁵ 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.