

November 2019

# The National NOTARY®

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NOTARIZATION**

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## OUR MISSION

The National Notary Association is committed to the education and service of Notaries throughout the United States. As the foremost authority on the American Notary office, we are dedicated to imparting knowledge, understanding and unity among all Notaries, and instilling in them the highest ethical standards of conduct and sound notarial practice.

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## OUR CORE VALUES

The National Notary Association serves its membership by promoting five essential core values that empower and protect Notaries when they assume their responsibilities of the office and perform their official notarial acts.

Our Core Values of Membership promote:

- **Compliance** with state laws and regulations
- **Liability Protection** for Notaries, signers and employers
- **Risk Management** to reduce fraud and identity crimes
- **Professionalism** with reliability, competence and integrity
- **Opportunities** to increase earning potential

The National Notary (ISSN 0894-7872), November 2019 Vol. LXIII, No. 6, is published bimonthly by the National Notary Association, 9350 De Soto Ave., Chatsworth, CA 91311, a non-profit organization, to educate Notaries about the legal, ethical and technical facets of performing notarial acts and to instill in them a sense of self-respect and professional pride in their important role of public servant. • ALL RIGHTS RESERVED. Reproduction in whole or in part without the express written permission of the publisher is prohibited. • SUBSCRIPTION to all NNA members in the United States and its possessions comes out of their \$59 annual dues. International subscriptions are \$76 annually. Six dollars of membership dues are designated for a one-year subscription to the publications. • For address changes, send new and old addresses including ZIP code, suite or apartment number, and mailing label, if possible, to the NNA. PERIODICALS POSTAGE paid at Chatsworth, CA, and at additional mailing offices. • POSTMASTERS: Please send address changes to Customer Service, 9350 De Soto Ave., P.O. Box 2402, Chatsworth, CA 91313-2402.

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## The State Of Remote Online Notarization

*David Thun*

As remote online notarization (RON) has become a reality in more states, the way Notaries traditionally carry out their duties is being redefined. That includes such essential responsibilities as verifying signers' identity and keeping a record of each notarization. This growing trend has raised many questions and concerns about this radical departure from traditional notarizations. In the cover story, we compare the differences between remote notarization and traditional pen-and-paper notarization, take a look at how signer appearance and identification methods have evolved as remote notarization has been enacted in different states, discuss the most urgent concerns Notaries have raised about RON, and look at new remote notarization business models emerging for Notaries and Signing Agents.

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## How To Impress Judges And Juries

*Michael Closen*

No Notary wants to have to go to court to testify about a notarization they performed. But Notary law expert Michael Closen discusses what Notaries should do to make sure that if called, they can demonstrate proper conduct to the judge and jury and avoid legal trouble through methods such as continuing education, keeping meticulous journal records and proofreading journal entries and certificates before completing each notarization.

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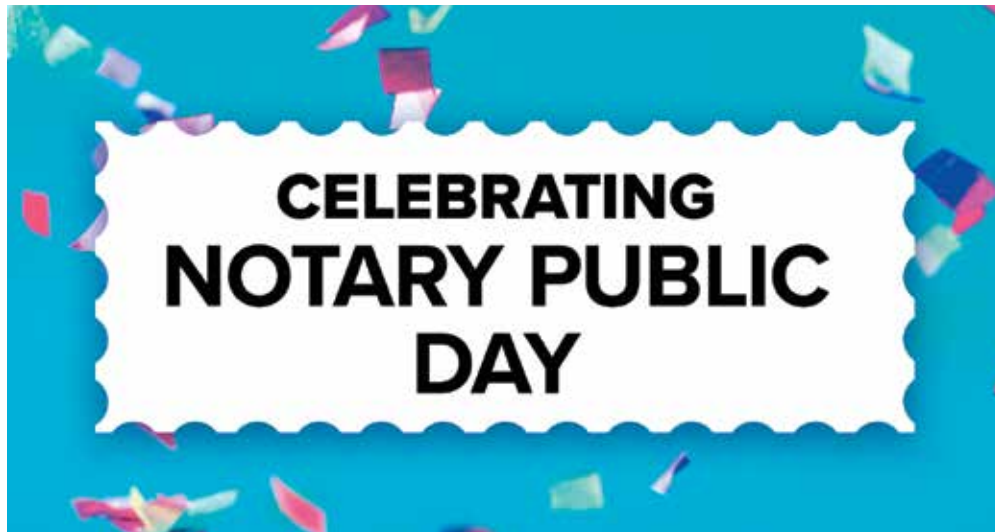
## The Great Hawaii Notary Frame-Up

*Kelly Rush*

This is the strange but true story about how a prosecutor, her police chief husband and two other police officers were convicted of trying to frame an innocent man by creating a fake Notary.

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Notary Public Day 2019 was celebrated on November 7, and we want to say thank you to the greatest Notaries on earth. We appreciate your commitment to excellence in all that you do.

### How To Find A Good Notary Mentor

**We understand how hard it can be for new Signing Agents to find a good mentor. Members of our community responded to this post.**

“Thank you for the informative article. I was unaware of the privacy concerns in observing a loan signing with a mentor. I have reached out to two different signing agents who were open to being a mentor, however,

each one never called me back. Now, I understand why. So if you are approached by a new Notary and signing agent, be upfront and let them know why you cannot have a shadow at a loan signing.”

*Emily Perreault, CA*

“Don’t forget, all across the U.S. there are your local SCORE agencies. They are a resource partner of the Small Business Administration which provide free business mentors (and many happen to be Notaries).”

*Michael Gilman, NY*

### Finding Your Best Customers For Notary Services

**NOTARIES CAN FIND potential customers just about anywhere — from a coffeehouse to social media platforms. All it takes is for you to sell your service with a smile — or a smiley face.**

“Family and friend referrals, hanging out in the law libraries and courts. Social media helps also.”

*Sunshine Rae Monie, TX*

“Giving business cards to hospice case managers.”

*Jan Codgill, OR*

“Schools and local Chambers of Commerce!”

*Hugo Salazar, TX*

“I’ve worked for attorneys for three decades, and I notarize for clients. I have

also notarized for my youth group, like permission slips, etc.”

*Joni Aitken, CA*

“I have my own website so most of my customers are from online. I also have a Yelp account and I get customers there. I give out flyers and advertise on my car. I also get customers by word of mouth and am signed up with quite a few Notary companies online.”

*Vivienne Caldwell, NY*

### Motivated To Become A Notary

**FROM PERSONAL GOALS and their own history to meeting a need to help others, members of our Notary community shared highly personal reasons why they chose to get a commission and provide a public service.**

“My father-in-law was in the hospital dying from cancer, and there was a shortage of mobile Notaries that would come to the hospital to notarize some important documents to make sure he and the rest of our family would be good. After he passed away, I became a mobile Notary to help others.”

*@20/20 Services, CA*

“It’s gratifying to help young first-time buyers, and I have a special place in my heart for elderly widows refinancing alone for the first time. I have a lending, escrow and title background, so I can put it all to use.”

*Paula Berriz, CA*

“I wanted to help and serve the community. My husband and I already volunteer for the city where we live. More than ever, there is a tremendous need for Notaries across the board.”

*Monica Pluma, CA*



## Dealing With Requests For Legal Advice

**MOST MEMBERS OF our community know that giving a signer legal advice is considered the unauthorized practice of law. But customers will continue to ask. Here's how Notaries said they handled such requests.**

"I advise them that I am not an attorney and have not passed the bar exam, therefore, I am not authorized to give legal advice. Depending on the situation I tell them to contact their lender, attorney, etc. Practicing law without a JD is illegal."

*Beth Patterson, AZ*

"I told them what I learned in training: 'I don't advise, I notarize!'"

*Lena Padilla, Borrowman, CA*

"I quickly suggested they speak to a lawyer and explain my role as a Notary."

*Alisha Allen, NC*



"For NSA work I say, 'I'm sorry, but I can't answer that question. I will be glad to get a hold of someone who can.' For general Notary work: 'That's really outside my expertise. I

encourage you to speak to an attorney about that.' Another one I like, 'I am not an attorney, nor do I play one on TV. Please contact someone who is.'"

*Justin R. Jones, TN*

**Join our online communities and interact with the NNA and Notaries everywhere!**



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[yelp.com/biz/national-notary-association-chatsworth](https://yelp.com/biz/national-notary-association-chatsworth)

## The Case Of The Immobilized Signer

**WE RECENTLY SHARED A TRUE STORY about a signer who was immobilized and unable to make a mark or speak. Surprisingly, many Notaries said they have encountered similar situations and offered some good advice.**

"I would not do it if the person cannot sign. They would have to have a POA in place. I tell people all the time they need one for just this reason. If something happens and you can't sign, it can create a lot of problems that are not simple to solve."

*Valise Jackson, TN*

"Great article. If the signer had a POA, and their agent was there to sign for them, and the signer was alert and understood what was going on, then I would complete the notarization. If the signer did not have a POA, then, no, I would not be a party to this transaction."

*Yolanda Thunderworlf, CA*

"You would have to have the signer appoint a designee to sign for them and have two witnesses present."

*Susan Matthews Brown, NC*



## Veterans Program Returning To NNA Conference In 2020

CONTINUING THE TRADITION of honoring America's veterans, the National Notary Foundation will again offer a full-day of complimentary education and training workshops to honorably discharged service members at the upcoming NNA 2020 Conference on Monday, June 8, at the Talking Stick Resort in Scottsdale, Arizona.

Now in its seventh year, the Veterans Program provides a new path to income and an opportunity for veterans to once again serve — on the front lines of fraud detection and document security.

Additional information on the NNA 2020 Veterans Program will appear in a future issue of *The National Notary*.



For general information on what's to come at the Conference in June, visit [NationalNotary.org](http://NationalNotary.org) or call 1-844-4NNA-CONF.

## NNA, Ohio Bankers Come Together Via Webinar On New Notary Laws



SEVERAL KEY MEMBERS OF NNA STAFF presented a webinar on September 12 to more than 70 Ohio banking associates on the new laws now affecting their Notary-employees and all Notaries in Ohio.

The NNA's Vice President of Business Development Chris Sturdivant and Sr. Product Manager Craig Tew reviewed the new laws' effects on Notaries in the banking industry.

The new laws fall under Ohio's recent Notary Modernization Act which took effect September 20. The Act requires significant changes, including designating the Secretary of State as commissioning agent rather than individual counties. The Act also mandates Notary education. For new commission applicants and those whose commissions expire prior to renewing, an exam also is required. Revised seal stamp impressions and new state-specific Notary certificates also are now required for all Notaries in Ohio.

## YouTube Channel Exclusively For Notaries

NOTARIES ARE JUST A mouse click away from learning how to earn extra income, avoid common Notary mistakes, perform a Notary acknowledgment and more on the NNA's growing YouTube Channel.

YouTube, the second most popular search engine next to Google, gives the Notary audience the opportunity to view and learn about topics that specifically interest them when they visit the NNA's channel. Mobile Notaries, veteran Notaries and those just starting out can view videos containing helpful information, how-to guidance, educational and skill-building tips in addition to special speakers and NNA Conference workshops and highlights.

The video offerings consist mainly of educational information meant to help Notaries. But there are fun videos, too, so feel free to laugh at Ugly Christmas Sweater Day, NNA style. They all can be found at [YouTube.com/NationalNotary](http://YouTube.com/NationalNotary)







## Notaries And Election Documents: There Will Be Challenges

**THE 2020 ELECTION SEASON IS FAST approaching, and with it will come a blizzard of election-related documents — ballot petitions, candidacy forms, campaign finance reports, signature sheets and others. And many of those documents will need a Notary's signature and seal.**

These notarizations are no mere formality. Every election cycle brings with it a plethora of challenges in an effort to boot candidates and voter initiatives off the ballot, and faulty notarizations are among the most common reasons cited.

In 2018, a candidate for the Florida House of Representatives was disqualified when his financial disclosure form was signed and

dated but the Notary forgot to include their seal, according to local press reports.

In Pennsylvania, a woman campaigning for a seat in Congress lost her place on the ballot because the Notary forgot to sign the signature sheets on the candidate's ballot petition. Additionally, the Notary was unable to provide a Notary log or journal when questioned in court, according to media reports.

These are just a couple of examples that come up every campaign season. Because Notaries play such a pivotal role in the democratic process, their actions will be scrutinized. Any skipped step or forgotten detail could be grounds to throw an election into turmoil.

Diligent Notaries working with election documents should have no issues if insisting upon personal appearance, requiring proper identification, including their seal and a signature and, whether required or not, keeping a journal.

## Notarization Now Required For Marriage In Alabama

**ALABAMA NOTARIES MAY be seeing a bump in traffic from couples wanting to get married. And no, Alabama Notaries cannot serve as wedding officiants.**

Rather, a new law that went into effect this summer requires prospective brides

and grooms to obtain a marriage certificate form as an official record of marriage, get it notarized and submit it to the county probate judge for recording, according to local media reports.

Previously couples had to go to the probate judge first to get a

marriage certificate. Now they download the form from a local government website. But then they have to find a Notary.

Couples will have 30 days to complete the form, have it notarized and return it to the probate judge's office to be recorded.

## Forgeries Top Trait In Mortgage Fraud

**MORTGAGE GIANT FANNIE Mae investigates hundreds of reports of mortgage fraud every quarter, and the most common element in these cases is forgery. Because many mortgage documents must be notarized, Notaries are right in the mix of mortgage fraud.**

These findings were reported earlier this year in Fannie Mae's "Mortgage Fraud Tip Trends" report, which looked at fraud investigations over a two-year period ending May 31, 2019.

All manner of real estate-related fraud has been coming under greater scrutiny recently (see March 2019 edition of *The National Notary*). It highlights the need for Notaries to take extra care whenever dealing with real estate or mortgage documents.

### Top 10 Mortgage Fraud Elements

The following are the most common elements in mortgage fraud cases found by investigators.

1. Forgery
2. Liabilities Fraud
3. Occupancy Fraud
4. Income Fraud
5. Asset Fraud
6. Employment Fraud
7. Loss Mitigation Fraud
8. Identity Theft
9. Debt Elimination/  
Sovereign Citizen Fraud
10. Credit Fraud

*Source: Fannie Mae*



# THE STATE OF **REMOTE ONLINE NOTARIZATION**

By David Thun

**A FEW YEARS AGO, IF YOU HAD ASKED IF IT WERE POSSIBLE TO NOTARIZE** for a signer who was hundreds or thousands of miles away from you, you'd have been told you were crazy. But today, nearly two dozen states across the nation have authorized Notaries to perform notarizations remotely using audiovisual technology via the internet. This is called remote online notarization, also known as RON.

RON makes substantive changes to the way notarizations are performed. Some Notaries worry that RON deviates too far from traditional safeguards. Others are excited about the prospect of notarizing for customers hundreds or even thousands of miles away without needing to leave home and counter that RON is actually more secure than paper notarizations.

One of the challenges faced by Notaries and others in embracing remote online notarization is the fact that the laws authorizing it redefine many of the elements of traditional notarization, including what it means for a signer to personally appear before the Notary, how the signer is identified and how records of notarizations are made and kept.

In this article, we'll compare how remote notarization differs from traditional pen-and-paper notarization, discuss the most urgent concerns Notaries have raised about RON, and look at new remote online notarization business models emerging for Notaries and Signing Agents.

### The Most Radical Change

The most radical change the requirement for the signer to personally appear before the Notary at the time of the notarization. Until recently that requirement meant that the signer had to be in the *physical* presence of the Notary so they could communicate directly, face to face with each other.

With remote online notarization, states have broadened that definition. Now, that face-to-face contact can be satisfied online using audiovisual technology such as a webcam. The signer can be in another town, another state or even another country.

Naturally, many questions have been raised about this change. If you aren't face-to-face with a signer, how can you verify their identity? What if there is a person holding a gun off-camera? How do you meet your journal-keeping requirements?

"I really want to learn more about remote notarization, but I have concerns," said Donna Laird, a Notary in San Bernardino County, California, a state that has not authorized remote online notarizations but is considering it. Living

in a mountain community, Laird says the idea of reaching customers without needing to drive long distances is very appealing. At the same time, she worries whether RON remote notarization has enough safeguards against fraud.

Proponents assert that the means for identifying signers of RONs produces greater confidence of a person's identity than the means of identifying signers for a paper notarization and that with today's communication technologies, a Notary can make determinations of a signer's willingness and mental competence just as well as a Notary who is physically present with the signer.

### Identifying Signers

So how does a remote Notary confirm a signer's identity without being able to hold and examine an ID? State RON laws have crafted rules for the identity-vetting task that are tailored for the online environment in which a RON takes place. The main ways a Notary

verifies an identity online include:

- Knowledge-based authentication, known as KBA
- Credential Analysis
- Remote Presentation (Viewing IDs via webcam)

With knowledge-based authentication, the signer must correctly answer a set of computer-generated questions related to their life, credit and financial history. State rules and industry standards allow for the signer to take a second KBA with a subset of different questions if they fail the first one. If the signer cannot successfully pass the KBA, the Notary will not perform the notarization. One drawback to KBA is that it often cannot be used to verify the identities of minors and young adults because they lack sufficient credit histories to generate the KBA questions. KBA also cannot be used to identify foreign citizens who lack a Social Security number.

With credential analysis, the RON technology solution is used to scan the signer's ID credential for the presence of identifiers and security elements to confirm that the ID is valid.

KBA and credential analysis are typically incorporated into the technology used by the Notary.

"I really want to learn more about remote notarization, but I have concerns."

— Donna Laird, Notary,  
San Bernardino, CA

With remote presentation, the signer holds their ID to the camera and the Notary can check that the signer's appearance and other details match the information on the ID.

Credential analysis and remote presentation compare and correspond to the Notary's handling of the physical ID during a paper notarization today.

Many existing RON laws require Notaries to use at least two of the methods mentioned above, but most require all three. These states typi-

document electronically, and the Notary affixes an electronic seal. *(See the infographic on page 15 for a step-by-step example of a typical remote online notarization.)* When finished, the notarized electronic document can be retrieved by the signer at any time.

### Remote Notarization Journal Entries

In addition to keeping a journal of the remote online notarization, Notaries are also required to create an

notarization law took effect November 1 and, according to the Lieutenant Governor's website, Notaries there may apply for certification to perform remote notarizations. *(For more information, please see the map on page 14.)* Most of the remaining RON laws will take effect in 2020.

For signers, there are no restrictions on where they can be. A signer literally can be anywhere in the world and still get their document notarized remotely. A Notary, however, must be physically located in the state where they are commissioned.

### RON Providers Vs. Independent Services

If you are in a state that permits remote online notarization and want to offer these services as part of your business, there are two main business models available.

The first is signing on with a platform provider — such as NotaryCam or Notarize — that offers remote online notarization services to customers. The RON provider sets up the Notary with access to the company's platform, trains them how to use the platform and directs customers to the Notary.

The second is building your own system.

"The biggest advantages working for a provider is that they take care of all your technology, data privacy and customer service needs for remote online notarizations," said Dushunna Scott, a Notary from North Chesterfield, Virginia, who has performed remote online notarizations since 2016. In addition, the service provider also stores her audiovisual recordings. Typically, she is on-call for remote notarizations on Wednesday nights and weekends and works as a mobile Notary and Signing Agent during the rest of the week. Scott receives part of the fee for each remote notarization she performs with Notarize, who also pay her for her time spent on-call.

## Remote Notaries are also commonly required to save and securely store audiovisual recordings of their remote notarizations.

cally also allow a Notary to identify a signer based on the Notary's personal knowledge or through the oath or affirmation of credible witness, just like for a paper notarization.

As more states enact remote online notarization laws, they may have different requirements for identifying signers. South Dakota, for example, only permits its Notaries to use personal knowledge to verify a remote signer's identity.

### How A Remote Online Notarization Is Performed

To start a remote notarization, both the signer and Notary must access a RON platform. In most cases, the document for a remote online notarization must be in an electronic format such as a PDF. The document is uploaded to the RON platform. The platform provides the audiovisual technology allowing the Notary and signer to see, hear and communicate with each other. Once the Notary verifies the signer's identity and the Notary is confident the signer is willing and mentally competent, the signer and Notary both sign the

audiovisual recording of each remote notarization. Most RON platforms create both the electronic journal entry and the recording of the RON event. If a remote notarization is ever challenged in court, the electronic journal entry and recording provide evidence that the notarization took place as claimed.

Depending on state law and the Notary's business model, Notaries may be permitted to store their audiovisual records through a RON service provider they choose to work with.

### Where Remote Online Notarizations Can Be Performed

Remote online notarization is not permitted in all U.S. jurisdictions. As of November 2019, Virginia, Texas, Nevada, Minnesota, Montana, Ohio and Tennessee permit qualifying Notaries to perform RONs. North Dakota also permits remote online notarizations, but the Secretary of State has not published rules for the process. South Dakota limits remote online notarizations to paper documents only. Utah's remote online

Scott likes utilizing a RON provider because it's convenient having customers directed to her, and she gets to work from home. "But even though I work with Notarize, I still market myself as an individual Notary," she said. Remote online notarizations are just one component of her business.

Melissa Johnson Eldridge of Mansfield, Texas, also started out doing remote notarizations through a company, but eventually wanted to strike out on her own. She purchased a web-based, remote online notarization platform from technology provider DocVerify and started her own company, Certified Texas Electronic Notary.

Going independent was very different than using a RON provider that handles customer contact, initial identity

screenings and sending the signer's documents to the Notary. Eldridge had to learn how to do all these things on her own. "I had to simulate a mock remote online notarization by sending a document to myself so I could figure out how to use it," she said.

"While I had to learn and be responsible for more aspects of the process," she said. "I work when I choose to and have more flexibility. And I don't have to share the fee with anyone."

### Concerns About Remote Online Notarizations

Notaries and others — especially those in states that have not adopted remote online notarizations — have raised many questions and concerns about the process.

In a letter to a California State

Assembly member opposing a remote online notarization bill, the ACLU cautioned that remote online notarization "... creates significantly greater data privacy issues than traditional notarization."

Notary Matt Miller of San Francisco, California, who organized opposition to the same RON legislation in California, says his biggest concern is possible electronic privacy breaches of sensitive signer and Notary information.

"How can a Notary be held to account for the exclusive control of their journal data if you have an online platform involved that then sends this data on to yet another third party? Also, what happens when one of these companies goes out of business?" Miller said.

## States Where Remote Notarizations Are Available

In the past two years, there has been a surge in new state laws authorizing remote online notarizations. The map below shows the current status of remote online notarization throughout the United States as of November 2019.

### States Where RONs May Be Performed Today:

Virginia, Texas, Nevada, Minnesota, Montana, Ohio, Tennessee, South Dakota (paper documents only, and signers may only be identified by personal knowledge), North Dakota, Utah (Effective November 1, 2019)

### States Where RON Laws Are In Effect But Rules Are Not Finalized:

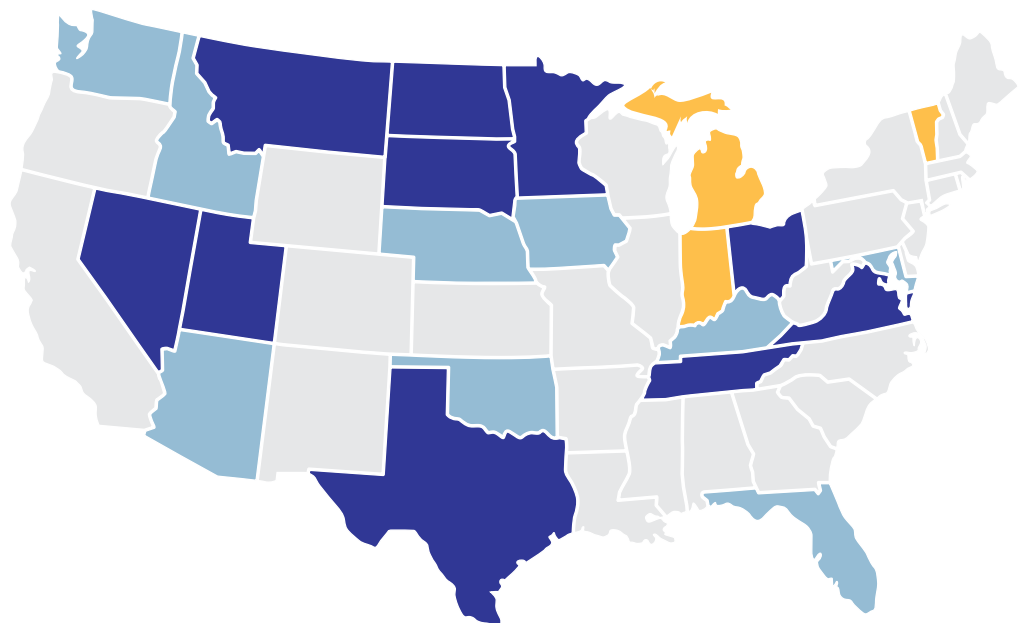
Indiana, Michigan, Vermont

### States With RON Laws Scheduled To Take Effect In 2020:

Effective January 1, 2020  
Florida, Idaho, Kentucky, Oklahoma

Effective July 1, 2020  
Arizona, Iowa, Nebraska

Effective October 1, 2020  
Maryland, Washington



Rick Triola, founder and CEO of NotaryCam, said that his company takes numerous steps to ensure signer and Notary privacy. For example, NotaryCam and other RON platform providers do not retain any KBA answers provided by signers. NotaryCam also follows SOC 2 compliance standards for emergency backups, redundant systems and other protections for remote online notarization journal data, Triola said.

DocVerify's platform uses encryption to protect stored data from RON recordings as well as other data associated with the notarization, and in most cases the platform exceeds the requirements of state RON laws, said Chief Technology Officer Darcy Mayer.

## Remote Online Notarization And Loan Document Signings

Can remote online notarizations be used for loan document signings? Absolutely, said Triola. His company has completed many successful remote loan closings during the past 6 years.

Initially, only Virginia Notaries could only perform remote notarizations. Many experts believed that Virginia Notaries would be able to handle the majority of remote notarizations throughout the country. It turned out, however, that consumers wanted to use remote Notaries from their own states.

Major title underwriters also were reluctant to use out-of-state RON Notaries in those early days, Triola said. As more states start commissioning RON Notaries, that reluctance is dwindling.

Today many lenders are adopting the process because of the convenience to their customers. NotaryCam requires Signing Agents they work with to be NNA certified and background screened, and Triola estimates that approximately 87 percent of U.S. recording offices can accept remotely notarized documents for recording.

## Looking To The Future

RON is continuing to gain momentum. Nine new states have passed remote notarization laws that take effect in 2020. That has some Notaries worrying that remote notarization will replace traditional notarizations.

Triola doesn't see that happening any time soon. "Remote online notarization is not trying to take traditional Notaries out of the equation. It simply gives Notaries a new market for their services where there wasn't one before," he said.

Eldridge believes that as more Notaries learn about remote online notarization and understand it better, they will be more confident about using it.

"Lack of knowledge puts fear in us," she said. "I think when other Notaries truly use it, they will see that it's even more secure than a traditional notarization." ■






## Steps For A Remote Online Notarization

(The following is a general description of a remote online notarization. Please note that RON procedures may vary depending on state laws, and not all states permit Notaries to perform remote online notarizations.)

1. The signer contacts the Notary or a RON service provider to request a remote online notarization.
2. The signer's document is sent to the Notary so it can be signed and notarized. Typically, the document is uploaded in an electronic format such as PDF to the online technology platform used to perform the notarization.
3. The signer's identity is screened according to the requirements of the Notary's commissioning state. This may include answering questions based on the signer's personal and credit history (KBA), verifying the signer's identification documents online (credential analysis), the Notary remotely viewing the signer's ID during the notarization, or other methods set by statute.
4. During the remote online notarization, the Notary and the signer communicate online using audiovisual technology — for example, via webcam. The Notary and signer do not meet face to face.
5. Once the signer's identity has been verified and all other requirements for the notarization have been completed, both the signer and the Notary must sign the document and the Notary's seal attached. For electronic documents, this requires electronic signatures and an electronic version of the Notary's seal.
6. The Notary records any required information for the Notary's journal records. The Notary must typically also retain an audio and video recording of the notarization session.
7. The remotely notarized document is returned to the signer. ■

# Traditional Notarization, IPEN and Remote Online Notarization: How They Work

The use of technology in notarizations has caused confusion for many people, including Notaries. There is remote online notarization (RON), which is different from in-person electronic notarization (IPEN). And both are different from traditional, pen-and-paper notarization. Here’s a step-by-step look at the differences between these notarization methods. Please note that this is a general description, and requirements in some states may vary. ■

	 <b>Traditional Notarization</b>	 <b>IPEN</b>	 <b>Remote Online Notarization</b>
<b>1. DOCUMENT FORMAT</b>	Requires a physical paper document with an original written signature.	The document must be in an electronic format such as a PDF or Word file. A paper document would need to be converted to a suitable electronic format prior to the notarization. The document is presented on a computer, laptop or mobile device.	The document usually must be in an electronic format as with IPEN, although some states allow paper documents to be signed and notarized using RON.
<b>2. MEETING WITH THE NOTARY</b>	The signer and Notary meet face-to-face in person.	The signer and Notary meet face-to-face in person.	The signer and Notary “meet” online and communicate using audiovisual technology such as a webcam.
<b>3. IDENTIFYING THE SIGNER</b>	The signer must personally know or present satisfactory proof of identity to the Notary, typically an identification document such as a driver’s license or one or more credible witnesses who know the signer personally and can vouch for the signer’s identity.	The same identification methods as a traditional notarization.	Signers generally are identified through a combination of two or all of the following: knowledge-based authentication (KBA); credential analysis; remote presentation.
<b>4. SIGNATURES AND SEALS</b>	The signer signs the paper document in pen and ink. The Notary completes the notarial certificate wording, signs the certificate with pen and ink and affixes an image of their physical official seal.	The customer signs the electronic document with an electronic signature — such as a mouse click or written signature on a signature pad or another electronic process. The Notary signs the notarial certificate with an electronic signature and affixes their electronic seal.	In most cases, the customer signs the electronic document with an electronic signature. The Notary signs the notarial certificate with an electronic signature and affixes their electronic seal.
<b>5. RECORDING THE NOTARY’S JOURNAL ENTRY</b>	The Notary writes a record of the notarization in a bound, paper journal or in some states, an electronic journal.	The Notary records information about the notarization in a bound, paper journal or, if permitted by state law, in an electronic journal stored on a computer or other device.	The RON platform creates an electronic journal entry for the notarization. The notarization is recorded using audiovisual technology. The Notary must securely store the recording, along with any other journal information required by state law.

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# HOW TO IMPRESS JUDGES AND JURIES IN A NOTARY CASE



By Michael Closen

After serving many years as an expert consultant and witness for lawsuits involving alleged Notary mistakes and misconduct, I have seen what steps convince judges and juries that the Notary acted properly. Following these steps is highly valuable if you are ever called into court over a notarization, and will also impress commissioning officials and hearing officers should you ever have to defend yourself in a discipline investigation.

Judges and juries like to see Notaries have gone above and beyond the lowest standards of notarial performance. The real Notary standouts who successfully get lawsuits dismissed against them are Notaries who do more than the bare minimum required by state law.

## **Steps That Exceed Minimum Requirements**

Obviously, no Notary wants to be accused of negligence or defend themselves in a lawsuit or disciplinary hearing. But the fact is that such suits and discipline charges happen. If

it does, here are basic steps every Notary can take. These steps will not only help you stay out of trouble in the first place, they clearly demonstrate your ethical and professional conduct to any judges, commissioning officials, hearing officers, and juries if you become involved in a legal proceeding.

What are those important basic steps? Here are the five best things a Notary can do to impress officials and juries in a legal proceeding:

1. Voluntarily seek out Notary training and continuing Notary education.
2. Learn and follow Notary best practices.
3. Create a detailed journal entry for each notarization.
4. Secure and preserve your Notary journal for future use.
5. Proofread your journal entries and certificates before completing each notarization.

## Basic And Continuing Notary Education

Only a few jurisdictions require applicants to take training classes as a prerequisite for becoming a Notary, and very few jurisdictions require any form of continuing education even when renewing a Notary commission. Hence, judges, commissioning officials, hearing officers, and juries will be impressed if they learn that a Notary has made the effort to take classes voluntarily and refreshes their knowledge regularly with continuing Notary education.

There are numerous opportunities for Notaries to seek out basic and continuing education. Such education programs are widely available in both live and online formats at affordable costs. Of course, it should also be emphasized that Notary education is the very best way to avoid the errors, omissions, and wrongdoing that lead to Notaries appearing in lawsuits and disciplinary hearings in the first place.

## Abiding By Notary Best Practices

Notary statutes never cover every possible situation. They leave a lot unsaid about what Notaries are supposed to do in certain scenarios. This is where Notary best practices come into play.

Best practices are those methods which are generally considered to be correct and reasonable, which have proven themselves to be effective over long periods of time, and which are followed by thoughtful and experienced practitioners. Savvy Notaries will become familiar with best practices and utilize those practices whenever they perform notarizations. Best practices can be found in Notary education materials and in publications such as my 2018 book *“Professor Closen’s Notary Best Practices”* (published by the National Notary Association).

Judges and juries are impressed when they are shown Notaries made the effort to learn what best practices should be followed, and followed those best practices to even when there are gaps in Notary statutes.

## Highly Detailed Journal Entries

Most jurisdictions do not require their Notaries to maintain journals, and few require journal entries to be highly detailed. Yet the more detailed the journal entry, the more impressed judges and juries will be with the meticulous Notary who prepared it.

I suggest that Notaries complete every space or column for each journal entry. In addition to the usual elements about the notarization required to be entered in the journal such as the date and time of the notarization, the Notary should also record the place where the notarization was conducted, the starting time and time the notarization was completed, the names and contact information for all persons other

than the signer present at the notarization, the telephone number and/or email address of the signer, anything out of the ordinary about the notarization (if something of that kind occurs), any concerns about the signer or the notarization (if something of that sort is observed), or any other information the Notary wants to be sure to remember.

Every one of the details above has been important in one or more of the cases I have been consulted about over the years. You never know what tidbit may become valuable information later on — so err on the side of recording more information than you need. It will impress judges and others deciding the Notary’s fate if the Notary shows a pattern of diligence and prudence by recording extra relevant data about the notarization and the signer.

## Use Your Entire Notary Journal To Show Good Habits

If a Notary must appear in a lawsuit or disciplinary hearing to defend against a claim of negligence, all of the Notary’s journals and journal entries will be reviewed by the judge or other officials deciding the case. It is not just the entry for the notarization being challenged that will be entered into evidence.

This is so important that it needs to be repeated. All of the Notary’s journals, and all of the entries in those journals, will be reviewed by the people deciding the Notary’s fate.

I once testified as an expert witness in a trial in which the Notary had been accused of negligence and fraud. Over several years, she had filled five journals with entries for more than 1,200 notarizations. She had filled every space for each entry and had even obtained thumbprints for every signer. It was

remarkable. I was asked to testify about what I had observed regarding her performance and thoroughness in doing so, and I concluded she had acted reasonably and had not committed fraud. She won the case. I did not win it for her; she won it by setting the stage for me to be able to draw the favorable conclusions that I expressed.

Notaries should think of the journal as their opportunity to build a written collection of evidence of diligent and thorough notarizations. It is one thing for a Notary to orally claim to be diligent and thorough, but it is a much stronger and more persuasive statement for a Notary to have a long-term, consistent, objective written history of such diligence and prudence.

## Benefits Of Proofreading

Savvy Notaries get two chances to perform a notarization correctly — the first time when the Notary creates a journal entry and completes a notarial certificate, and the second time when the Notary proofreads the journal

Judges are impressed when they see that you made the effort to learn and follow Notary best practices.

entry and certificate and makes any needed corrections before the notarization is completed.

No Notary laws anywhere require Notaries to proofread their journal entries and certificates. However, judges, commissioning officials, hearing officers, and juries will be quite impressed if Notaries are prudent enough to do so. It's an extra, common-sense step to take that shows Notaries care about their official duties.

### Final Thoughts About The Standard Of Reasonable Care

The good news for Notaries is the five steps suggested above virtually assure that Notaries can prove they performed their duties with reasonable care and can demonstrate it with the detailed information in their Notary journals. Under the law, if Notaries have exercised reasonable

care, they will not be held liable even if they have made errors or omissions in notarizations which have caused financial injuries to other parties. In other words, Notaries are not required to perform perfectly, but rather prudently and reasonably.

Guess who decides whether Notaries have acted with reasonable care? The very same judges, commissioning officials, hearing officers, and juries who are impressed that Notaries that go above and beyond the lowest common denominator of performance — that is, the Notaries who take the five extra steps described above. ■

*Michael Closen is Professor Emeritus at the John Marshall Law School in Chicago, Illinois. A respected consultant on model Notary statutes and legislation, Closen served on the drafting committees for The Notary Public Code of Professional Responsibility and various editions of the Model Notary Act, and recently authored the book, Professor Closen's Notary Best Practices.*



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# THE HAWAII FRAME-UP CASE

## HOW A FAKE NOTARY TOOK DOWN A PROSECUTOR

By Kelly Rush

**A** S A FORMER DEPUTY PROSECUTOR WITH THE CITY AND COUNTY OF Honolulu, Katherine Kealoha's job was to uphold the law, protect the innocent and enforce justice. Instead, authorities say she abused her power and connections to frame an innocent man for a crime and protect herself. The case involves

extraordinary greed, broken trust, a convoluted plot to steal money — and a fake Notary named Alison Lee Wong who became an accomplice in a web of deceptions going back more than a decade, according to court documents.

The Notary signature and stamp are intended to prevent fraud and corruption, but in Kealoha's hands, they were powerful tools that helped her “deceive her way through” several different financial schemes, documents show. The trusted public servant who had portrayed herself as a pillar of the community went to extraordinary lengths to protect her reputation and keep the truth from coming out — even to the extent of inventing a Notary, according to documents introducing evidence for Kealoha's motive for the crimes.

Kealoha and her husband, Louis Kealoha, former Honolulu police chief, were convicted in June of conspiracy and obstruction for framing her uncle, Gerard Puana, in the

theft of a mailbox in a “desperate” move to discredit his claim that she stole money from him and his mother. Both now face lengthy prison sentences and hefty fines.

Evidence was submitted during the trial of prior financial fraud and distress, which showed Kealoha had been using Wong as an alias for everything from bogus recommendation letters to notarizations on a variety of documents.

“The Kealohas' extraordinary greed inspired astonishing corruption,” said Robert Brewer, U.S. Attorney for the Southern District of California. “These two were supposed to be the good guys. They were supposed to enforce the law — not break it. Instead, they broke the community's faith in a monumental way.”

### Birth Of A Notary

The case began back in 2009 when Kealoha inserted herself into some family business in a ploy to enrich

herself, authorities said. Her grandmother, Florence Puana, wanted to help her son, Gerard, buy a condominium, but he lacked credit. Kealoha rigged up a convoluted five-step solution: Florence would obtain a reverse mortgage; Katherine would use the proceeds to buy the condo outright; Katherine and her husband would use the remaining funds to consolidate their debts and improve their credit; the Kealohas would obtain a mortgage on the condo and Gerard would make payments to them; and the Kealohas would repay the reverse mortgage, according to prosecutors.

Kealoha also created a trust in Gerard's name without his knowledge and made herself trustee. The condo was transferred to this trust at the close of escrow. "There is great reason to mistrust this document: the alleged Notary was Alison Lee Wong," court records noted.

Wong had been an alias of Kealoha's for years, and showed up, via email and never in person, at various times to corroborate Kealoha's stories and notarize documents, records show. At the trial, a forensic document examiner testified that he was certain Gerard Puana didn't sign the trust document and said the Notary's signature was similar to Kealoha's own handwriting, according to media reports.

Kealoha has always maintained that Wong is real, though there's no evidence such a person exists in the state as a Notary.

Wong, prosecutors said, was another example of Kealoha using various means to cover her tracks, but eventually, the situation caught up with her because she didn't make good on her promises to her family: She spent all the proceeds of the reverse mortgage within six months; she never obtained the mortgage on the condo although she collected mortgage payments from Gerard; and she did not repay the reverse mortgage. Florence and Gerard eventually discovered the loan wasn't being paid and confronted Katherine.

### A Family Battle And Tarnished Reputation

Florence and Gerard filed a civil lawsuit against Kealoha, but Kealoha was incensed.

"I have never, will never or would never borrow, take or even request to borrow any money from Florence Puana!" she wrote the pair in a letter, according to court records. "I WILL seek the highest form of legal retribution against ANYONE and EVERYONE who has written or verbally uttered these LIES about me! They will rue the day that they decided to state these TWISTED LIES!"

Kealoha, who once worked in a division of the prosecutor's

office that sought justice for victims of sex crimes, initiated a solution authorities nicknamed "Silence the Truth-Teller." Along with her husband and two police officers from Honolulu's elite Criminal Intelligence Unit, she hatched a plot to steal her own mailbox and frame Gerard in a bid to discredit him, records show.

The theft case ultimately resulted in a mistrial, and that mistrial led to an FBI investigation into whether Gerard's civil rights were violated. The Kealohas and the police officers conspired to obstruct the FBI and grand jury

investigations, which led to their indictment, according to a statement from the U.S. Attorney's office.

One of the main concerns driving Kealoha was a need to protect her reputation. She had invested a lot into her public image. She and her husband were the subjects of a magazine cover story published by the Office of Hawaiian Affairs (OHA).

The 2010 article dubbed the Kealohas "native Hawaiians at the top of their game" who were the recipients of an

OHA loan that allowed them to pursue their dreams.

"The loan allowed her (Katherine) to get into a private law practice, which then gave me the freedom to pursue my higher education. That's what set us on our present path. There's no doubt that if she didn't get that loan, neither of us would be where we are today," Louis Kealoha was quoted as saying.

Louis was referring to the OHA loan, but just the year prior in 2009, the couple had concocted the reverse mortgage scheme, a loan that put them on a much different path than they likely expected.

A decade later, the couple face a second trial, scheduled to start in October, on charges of bank fraud, aggravated identity theft and obstruction in connection with the alleged theft of an inheritance. Katherine Kealoha faces additional charges on allegations she and her brother trafficked in opioids and she used her position as a deputy prosecutor to hide it.

There was a time when Katherine said she longed for a slower pace and to return to her origins as a "country girl."

"Maybe one day when we retire," she said in the OHA article. "Then I can have that paddleboard right there in the front yard, on the sand, and I can just paddle off."

It may be a while before she can make that dream come true. ■

"These two were supposed to be the good guys. Instead, they broke the community's faith."

— U.S. Attorney Robert Brewer

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United States Postal Service Statement of Ownership, Management and Circulation 1. Publication Title: **THE NATIONAL NOTARY** 2. Publication Number: **0894 – 7872** 3. Filing Date: **September 16, 2019** 4. Issue Frequency: **Bimonthly** 5. Number of Issues Published Annually: **Six** 6. Annual Subscription Price: **\$6.00** 7. Complete Mailing Address of Known Office of Publication (Not printer): **National Notary Association, 9350 De Soto Ave., Chatsworth, CA 91311** 8. Complete Mailing Address of Headquarters or General Business Offices of the Publisher: **National Notary Association, 9350 De Soto Ave., Chatsworth, CA 91311** 9. Full Names and Complete Mailing Addresses of Publisher, Editor and Managing Editor: **Publisher, Thomas A. Heymann, 9350 De Soto Ave., Chatsworth, CA 91311; Editor-At-Large, Phillip Browne, 9350 De Soto Ave., Chatsworth, CA 91311; Managing Editor, Michael Lewis, 9350 De Soto Ave., Chatsworth, CA 91311** 10. Owner, Full Name **National Notary Association**, 9350 De Soto Ave., Chatsworth, CA 91311 11. Known Bondholders, Mortgagees and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages or Other Securities:  **None** Full Name: **None** 12. Tax Status:  **Has Not Changed During Preceding 12 Months** 13. Publication Title: **THE NATIONAL NOTARY** 14. Issue Date for Circulation Data Below: **July 2019** 15. Extent and Nature of Circulation A. Total Number of Copies (Avg. No. Copies Each Issue During Preceding 12 Months): **82,574** (No. Copies of Single Issue Published Nearest to Filing Date): **82,244** B. Paid Circulation (By Mail and Outside the Mail) (1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies) (Avg. No. Copies Each Issue During Preceding 12 Months): **81,419** (No. Copies of Single Issue Published Nearest to Filing Date): **81,096** (2) Mailed In-County Paid Subscriptions Stated on PS Form 3541. (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies) (Avg. No. Copies Each Issue During Preceding 12 Months): **0** (No. Copies of Single Issue Published Nearest to Filing Date): **0** (3) Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales and Other Paid Distribution Outside USPS® (Avg. No. Copies Each Issue During Preceding 12 Months): **0** (No. Copies of Single Issue Published Nearest to Filing Date): **0** (B4) Paid Distribution by Other Classes of Mail Through the USPS (e.g. First-Class Mail®) (Avg. No. Copies Each Issue During Preceding 12 Months): **0** (No. Copies of Single Issue Published Nearest to Filing Date): **0** C. Total Paid Distribution (Sum of 15b, (1), (2), (3) and (4) (Avg. No. Copies Each Issue During Preceding 12 Months): **81,419** (No. Copies of Single Issue Published Nearest to Filing Date): **81,096** D. Free or Nominal Rate Distribution (By Mail and Outside the Mail) (1) Free or Nominal Outside-County Copies included on PS Form 3541 (Avg. No. Copies Each Issue During Preceding 12 Months): **310** (No. Copies of Single Issue Published Nearest to Filing Date): **303** (2) Free or Nominal Rate In-County Copies Included on PS Form 3541 (Avg. No. Copies Each Issue During Preceding 12 Months): **0** (No. Copies of Single Issue Published Nearest to Filing Date): **0** (3) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g. First-Class Mail) (Avg. No. Copies Each Issue During Preceding 12 Months): **0** (No. Copies of Single Issue Published Nearest to Filing Date): **0** (D4) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means) (Avg. 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No. Copies Each Issue During Preceding 12 Months): **99.6%** (No. Copies of Single Issue Published Nearest to Filing Date): **99.6%** 16. Total circulation includes electronic copies **N/A** 17. Publication of Statement of Ownership:  **If the publication is a general publication, publication of this statement is required. Will be printed in the November 2019 issue of this publication.** 18. Signature and Title of Editor, Publisher, Business Manager or Owner: I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).  
**Michael Lewis, Managing Editor, September 17, 2019**

A handwritten signature in black ink, appearing to read "Michael Lewis".

# Gray Areas That Often Confound Notaries



Notaries sometimes encounter situations or gray areas such as having to question a signer's mental state or refuse a seemingly suspicious request. When your state laws don't fully address such situations, take these precautions.

### If You Suspect Fraud

State laws and guidelines don't always provide specific guidance or procedures to evaluate whether a notarization is suspicious or not. There may be potential fraud or perhaps the signer is less than willing, maybe even incompetent or has been declared incapacitated by a court.

But there are a few things to keep in mind to help you determine if something's amiss:

*1. If a signer's mental state or demeanor raises concerns, engage the signer in a casual conversation.*

If the signer cannot coherently respond, you may decline to continue with the notarization. If state laws do not specify otherwise, this should be sufficient to decide whether you can continue the notarization.

*2. If you suspect a signer is being forced or coerced by a third party, ask the third party to wait outside the room while you speak to the signer alone.*

If the signer is still willing and appears to clearly understand the document's purpose, you may proceed.

If the signer is unwilling or seems confused or unclear about the purpose of the document being signed, stop the notarization immediately.

### Employer Requests

Another tough situation: employer requests that conflict with what your state allows. Some employers mistakenly assume that if they pay for your commission and tools, they may direct you to ignore your state's requirements (see the September 2019 of *The National Notary*). If your employer makes a request of you as a Notary, ask yourself the following questions:

*1. Is the request legal in my state?*

If an employer asks you to do something clearly prohibited by state law

— such as ignoring ID requirements or falsifying a journal record — you must refuse.

But there are other situations that aren't addressed in every state's statutes. For example, what if you are told to only notarize documents for customers but not noncustomers during business hours?

California allows all employers who pay for a Notary's commission and supplies to limit the Notary's transactions to work-related notarizations during business hours — but only if the Notary agrees to do so.

Iowa prohibits a Notary's employer from restricting Notary services based on whether the signer is a customer or noncustomer of the employer. If state Notary law doesn't specify Notary-employee services, an employer does have a right to direct a Notary-employee during business hours.

In Texas, Florida and Oklahoma, employers have the right to limit the notarizations their Notary-

employees perform at work. However, Arizona, Hawaii, Massachusetts and New Mexico do not allow employers to restrict employees from notarizing for noncustomers (except for Hawaii Notaries in government service).

*2. Does the employer's request come during business hours?*

Some employers have tried to prohibit Notaries from performing notarizations outside of business hours.

While in most states an employer may dictate when a Notary-employee may perform notarizations while on the job, outside of business hours, a Notary may perform any lawful, reasonable notarization requested by a member of the public.





## Notarizing For Your Boss, Missing Signature Line, Embosser Requirements

**NOTARIES NATIONWIDE** rely on the NNA's Notary Hotline to answer their most challenging questions. The following are among the thousands our Information Services Team receives each month.

**Q** Can I notarize a document for the company I work for? My boss is signing the document.

*C.B., Florida*

**A** Yes, notarizing your employer's signature is permitted. Your employment does not result in your having a financial interest in the document nor make you a party to the transaction as long as you do not receive a benefit beyond your salary and the fee for services as a Notary Public authorized by law. See F.S. 117.107(12).

**Q** The certificate wording on a document is fine, but there is no line within the certificate for me to sign on. Can I still notarize the document?

*D.S., Minnesota*

**A** Yes, you can notarize the document. A required element of the notarization is your signature; however, the law does not indicate that a designated signature

line is required. You can simply sign at the bottom of the certificate wording near your Notary seal.

**Q** I received my Notary stamp, but I did not receive a seal embosser. Is a seal embosser required?

*J.S. Alabama*

**A** No, an embosser is not required in Alabama. You may use either an embosser or an inking stamp as an official seal. (COA 36-20-72.)

**Q** A customer has asked for documents to be notarized and said he needs to obtain an apostille. Are there any special requirements for notarizing a document that requires an apostille?

*M.K., Wyoming*

**A** No, there are no special requirements. You simply follow the regular procedures to notarize the person's signature properly. The signer will then need to make arrangements to obtain an apostille from the Wyoming Secretary of State.

**Q** As a Notary Public, can I act as a process server?

*E.S., California*

**A** If you are asking whether a Notary com-

mission authorizes you to be a process server, the answer is no. If you want to know if you can be a Notary and a process server at the same time, the answer is yes, provided you complete the process server registration in your county. See the county clerk/recorder's office in your county for more information.

**Q** If a document is being notarized in Texas but will be filed in California, can the Texas Notary use their acknowledgment form, or do they have to use the California acknowledgment form?

*S.A., California*

**A** Texas Notaries do not need to use a California acknowledgment but can use a Texas acknowledgment form. California Civil Code 1189(b) provides that any document acknowledged in another state will be accepted in the state of California if it is notarized according to the laws of the state the notarization is performed. This includes using a state-specific acknowledgment form.

**Q** I recently moved from California to South Carolina. Should we ask for a

signer's thumbprint in our journal when performing a Notary service?

*M.R., South Carolina*

**A** Obtaining a thumbprint is not required or prohibited. However, if your signer refuses to provide a thumbprint, you may not use that as cause to decline the notarization.

**Q** Am I allowed to notarize a copy of a passport?

*J.S., New York*

**A** When someone asks you to "notarize a copy of a passport" they are usually asking you to certify a copy of that passport asking you to certify a copy of that passport. New York Notaries are not authorized to certify copies of any documents. The signer's citizenship status has no impact on this. If, however, you are being asked to notarize an individual's signature on a statement asserting that the attached copy of the individual's passport is a true copy, you may do so.

**Q** My boss sent me an email with a letter attached that includes his electronic signature. Can I print a hard copy of that letter and (wet) notarize the hard copy?

*J.F., Delaware*



**A** Technically under Delaware law an electronic signature is as legal as a signature made with pen and ink provided it demonstrates your boss's intent to be bound by what's in the letter (see Delaware Code 12A-102[9] and 12A-107). Before you notarize that signature on the paper printout, we recommend consulting with your employer's attorney about any broader legal implications that could present a challenge to the document. And, of course, your boss must personally appear in your presence to acknowledge having signed the

letter with his electronic signature.

**Q** I am performing my first notarization today. I've been asked to notarize my boss's signature on a document. Do I just sign, stamp and date on the document, or do I need to fill out an acknowledgment as well? Or do I notarize each page, stamp and sign?  
*D. A., California*

**A** Congratulations on your first notarization. No, California Notary law prohibits you from simply stamping and signing a document. You must only sign your name and affix your seal

to the Notary wording on the document or a certificate form that you staple to the document. If there is no Notary wording on the document, your boss would have to tell you which type of Notary act to perform — a jurat or acknowledgment. Then you would complete and staple the appropriate certificate to the document.

**Q** Am I permitted to notarize my husband's car purchase?  
*D.W., Pennsylvania*

**A** No. Effective as of October 26, 2017, Notaries may not notarize the signature of their spouse

on any document in which the Notary or spouse has a direct or pecuniary interest (see 57 Pa.C.S.A. 304).

**Q** I have two signers on one document, and they both have to sign it and take an oath. Can I put both names in the jurat certificate or do I have to attach another certificate form?  
*B.T., Nevada*

**A** If both signers appear before you at the same time, you may include both names in the certificate.

**Q** Can eNotarizations be performed in Alabama?  
*S.J., Alabama*

**A** Yes, Alabama has enacted the Uniform Electronic Transactions Act (UETA) which establishes the legality of electronic signatures and notarization. The UETA, however, does not allow electronic signatures and notarization of an electronic last will, codicil to a will, or testamentary trust. There are electronic notarization solution providers in the market that offer the tools you need to perform eNotarizations. In Alabama, there are no courses or certifications required to perform eNotarizations.





# 5 Things To Remember When Preparing For Your First Notarization

You've finished your training and testing, you've received your brand-new Notary commission, and now you've scheduled your first notarization. You're ready. But do you still feel a bit nervous? If so, you're not alone. Many new Notaries feel a lot of pressure prior to their first assignment.

Aside from making sure you perform the notarization properly, you also want to make sure you're prepared for any issue. Our NNA Hotline team receives calls like this every day from nervous first-time Notaries. Here are 5 tips that our expert counselors give them:

### 1. Keep your Notary reference books and materials handy

Having your state Notary handbook or NNA Notary Law Primer with you can mean the difference between a smooth, first notarization and having to reschedule or stop altogether. With information on your state laws and official procedures at your fingertips, you'll have easy access to the answers to

any questions that might come up while notarizing. And if you're unsure about following proper procedure, your reference books can help guide you, so you don't accidentally forget anything important.

If you're an NNA member, you can also enter the NNA Hotline number in your phone contacts so you can call one of our counselors for help if any questions come up during the notarization.

### 2. Don't forget your seal and journal

These are vital tools of your trade. Before your first assignment, be sure you have them with you. If you have an ink seal, be sure that it has enough ink to make a clear seal impression.

Because your Notary seal is a critical tool, you may consider getting an additional Notary seal if allowed in your state. This additional seal can act as a backup just in case your primary seal fails for any reason.

While we do recommend completing the journal

entry prior to completing the notarial certificate, you should refrain from completing the journal entry prior to your appointment. You should always complete the entire journal entry at the time of notarization.

### 3. Bring blank copies of the correct notarial certificate wording for different acts

If the signer's document doesn't have preprinted certificate wording, or it has notarial wording that you aren't authorized to use, you will need to complete and attach a separate certificate with the correct wording to the document to complete the notarization. Having copies of the correct wording for your state's notarial acts can save both you and the signer valuable time and avoid the need

to postpone or reschedule the notarization.

### 4. Don't forget a stapler

Having preprinted notarial wording won't do you any good if you can't attach it to the document. In addition to your notarial certificates, be sure to have a portable stapler. Before the appointment, make sure that it has staples.

### 5. Carry extra pens

You can't finish the notarization if nobody has a pen, or your pen runs out of ink during the notarization. You should have a selection of both blue and black ink pens. Some documents may contain instructions that require that it be completed in either blue or black ink. Always be sure to carry plenty of extra pens in the event a spare is needed. Good luck.

Learn more about best practices and procedures in the NNA's Notary Essentials course:

**[NationalNotary.org/Notary-Essentials](https://NationalNotary.org/Notary-Essentials)**



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