

THE STATE OF THE NOTARY PUBLIC OFFICE

**National Notary Association
32nd Annual Conference**

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I am honored again to present my annual address on “The State of the Notary Public Office.” I am pleased to be here in the great state of Illinois – which Abraham Lincoln, Ulysses Grant, Ronald Reagan, and now Barack Obama had, at one time or another, called home. And for a few days now, the National Notary Association has been doing the same in hosting you at our 32nd annual Conference, our first ever in Chicago.

All Americans appreciate what Illinois has given this country throughout its history.

Indeed, two recent major developments here signal a new role and importance for the U.S. Notary Public that goes well beyond the traditional screening of signers for notarial acts.

The first involves a four-year pilot anti-fraud program. It requires every Notary in specific real estate transactions in Cook County to create a special record with exacting information, including a grantor’s thumbprint and property identification number.

This record, which must be filed with the County Recorder or the Notary’s employer, allows the nation’s highest fee yet — \$25 — for a notarial act. With this pilot program, the Illinois General Assembly has taken a bold step against the nation’s real property fraud epidemic. And the program is particularly significant because it imposes new record-keeping duties on Notary employers ... responsibilities that are compounded by a historic second development in Illinois.

This second development, which grabbed the nation’s attention in an Appellate Court ruling in 2008, is so important that it inspired the theme of this Conference – “The New Standard of Care.” The Illinois ruling is the *Vancura v. Katris* case, which we believe could become one of the most important in American Notary history.

The Court ruling was unprecedented: First, it acknowledged that the Notary and his employer had operated within the boundaries of the statutory Notary code ... but then, it also claimed that it was not enough for the Notary to follow state statute – the Notary and the employer had to follow industry standards and best practices as well.



The Court was influenced by critical questions of conduct by the Notary. The Notary admitted, for example, that his practice of identifying strangers was simply to compare signatures on the person’s ID with ones on the document. And he

saw nothing wrong with relinquishing his Notary seal to a supervisor for safekeeping when it was not in use.

For his misconduct, the Notary ended up paying a judgment of \$30,000. The Court found that Illinois statute ... improbably ... did not – at the time of the earlier circuit court trial– prohibit, or even discourage, these actions – but the NNA’s Model Notary Act did, and that’s why the Court relied on it as the “Notary industry standard” in its majority opinion.

Clearly, the Notary in *Vancura* was not properly trained on best practices, and for that, the Court held the employer accountable.

Though the *Vancura* ruling came from an Illinois court, it has national implications, and already has influenced a decision in another Appellate Court. The *Vancura* case has been appealed to the Illinois Supreme Court. But precedent is established, and with the *Vancura* ruling, critical new ground has been broken in completely new territory.

Merely following state law will not be good enough to help you avoid a lawsuit if that law is inadequate, as is the case today in many states. And significantly, according to *Vancura*, your employer will be subject to the same responsibilities and, in fact, can be held accountable for your Notary training.

For most Notaries, whose professional notarial role is, more often than not, subordinated to other duties and responsibilities assigned by an employer or other superior, expect long overdue changes. As long as states, industries and the legal system demand compliance from their Notaries, even if they are viewed only as “part-time,” employers are realizing their need to manage their potential risks by training them to avoid liability.

Even as the two significant events in this state have set the tone for our Conference this year, much else is going on in the world of Notaries. And, at the NNA, we look to trends to help guide us in serving our members.

There are many ways to measure trends, and the current New York Times Business Bestseller List can give us a good sense of what’s to come for the nation and Notaries.

There is little surprise that half of the top ten business books are about real estate, banking and the financial industry. What does surprise, however, is that the other half is about luck, opportunity, transformative change in our lives, achieving business success, and what really motivates people.

In a parallel way, this dichotomy reflects the two sides of the Notary office – our strong and almost unbreakable bonds to real estate, banking and finance – and,

our individual autonomy and independence to determine our future and good fortune.

At no time in the 53-year history of the National Notary Association has the state of our office been so conflicted – offering untold opportunities on the one hand and somber challenges on the other.

I report to you today that the Notary office has never been more respected, more appreciated and more professional. I must also temper that declaration by acknowledging that America's Notaries, high flying as Notary Signing Agents were only a few years ago, find themselves economically distressed because of their heavy reliance on the real estate and mortgage industries.

But as we survey the troubled waters of our Notary community, we are discovering bridges of encouragement for a future that is positive, fertile and rewarding. We see a Notary office more relevant and crucial in this time of elevated dependence on proper identification in virtually every area of society. We see significant trends emerging for an America that we know will see better days again, and a Notary population whose influence and importance will continue to escalate.

Three Notary-relevant trends are rapidly developing:

The first involves identification and identity verification, critical keys to social and business relationships in the future.

The second involves advanced communications technologies and a growing service sector, which both require a capable workforce to deliver reliable and secure services.

And the third trend involves education and retraining programs for those electing second careers, and to contribute to society and to supplement their income. In each of these areas, the Notary, as a commissioned and trained impartial witness, will play a vital role in serving the American public. And the NNA is expanding its efforts to provide the essential services and guidance to leverage every emerging opportunity for our members and other Notaries.

For years, the matter of defining what constitutes positive identification languished in the backwaters of legislative committees and federal task forces.

The debates generally centered on the possible introduction of a national identification document, or on how state-issued drivers' licenses might be standardized to aid law enforcement and tighten loopholes in an evidentiary system.

In earlier days, a simple two- or three-line description of acceptable ID may have been all that was needed in statute, and the concept of personal knowledge was considered satisfactory.

Today, with identity theft often cited as the number one crime in the United States, more attention is being paid to the Notary's primary objective of demanding personal appearance. Suddenly, simple technological solutions to replace the notarization process are not so simple.

Society is seeking security in all its transactions and personal agreements, not just high-value ones. Consumers are eager for protections against theft of their identity. And a wary public is distrustful of computer-only transactions that produce frauds and other problems from data manipulations.

Even in the legislative arena, threats to the basic notarial principle of personal appearance and identification continue. Only recently, the NNA was successful in defeating an attempt in Virginia to allow electronic notarization without the signer appearing in person before the Notary. Equally dangerous, the proposal would have permitted a person to perform eNotarizations without first being a commissioned Notary!

Such legislation is popular among state legislators and organizations, which are too easily convinced that sound business practices must be sacrificed for expedience.

The NNA also discouraged a California proposal that would have permitted notarizations by video conference, with the Notary in one location and the document signer in another. Without personal appearance, you can imagine the potential for fraud in such an arrangement. Just envision yourself trying to assure identity, volition and awareness of the signer — on a computer screen!

Participation of the Notary in any transaction that requires positive identification of the signer should never be compromised, even for electronic notarizations. This conviction at the NNA was instrumental when we assisted the Florida Department of State in drafting the eNotarization rules it issued earlier this year.

But even as we worked successfully in one branch of Florida's state government, we were facing challenges in another, failing to get legislation passed for an inclusive journal requirement in a state that leads the nation in mortgage fraud. Despite our efforts, we could not overcome powerful interests, especially attorneys and certain real estate practitioners, to accept the need for proper notarial recordkeeping.

Our argument that the public would be protected in a transaction when the Notary is able to provide significant proof of a signer's presence at the time of notarization, unfortunately, fell on deaf ears.

One constant battle for the NNA that has been especially difficult this year, in the wake of our economic difficulties, is getting Notaries to be recognized financially for their work. We continue striving to increase Notary fees in all states to something reasonably accounting for the time, training and responsibility that you require to perform a notarization.

Advanced communications technologies are changing how we work, particularly in an economy that is becoming more service intensive, including home and hospital care, education, hospitality, and small business, to name only a few. We are very optimistic about the opportunities for Notaries.

And supporting this optimism is the rising number of telecommuters in the United – an estimated 25 million. This is a virtual community that strongly suggests meaningful identification standards and processes be established for our online business and social interactions.

But rapidly changing technologies and varying state regulations and industry practices have precluded the emergence of a universal solution for eNotarization, particularly with electronic signatures.

So the NNA made a significant move this year to retool our eNotarization efforts to leverage our strengths in education and advocacy and to shift away from the auxiliary role we had assumed as a technology vendor. After nearly a decade of advocating for secure eNotarization and partnering with high tech firms, we have achieved broad acceptance that the Notary's electronic signature must reliably ensure the informational integrity of the signed document.

We are confident that there is no shortage of vendors today to provide the technological tools to service the states' diverse needs. Of course, the NNA will remain very active in the eNotarization arena – but we will do so as an advocate and educator of Notary best practices.

Among our most signal accomplishments this year is the introduction of the Model Notary Act of twenty-ten.

Like its predecessor of eight years ago, this Act is the product of a twenty-six member drafting committee consisting of state officials, law professors, attorneys, international authorities and, importantly, digital technology experts.

Article Three of the Act titled, "Electronic Notary," preserves the two cornerstone rules of eNotarization. The first is that the Notary may use any technology to create an official electronic signature, as long as it conforms to certain performance standards. One of these standards is for the signature to be independently verifiable, and another is the capability of rendering a notarized electronic document as tamper-evident.

The other cornerstone rule is that the signer of any electronic document must appear in person before the Electronic Notary to be qualified in the same way as with a paper document.

Moreover, the eNotarization provisions of the new MNA are tailored to marketplace realities. For example, the eNotary may register with the state more than one accepted approach for creating electronic signatures and seals to accommodate different electronic networks.

The MNA also lays the groundwork to expand the Notary office with a new notarial act called a verification of fact. The drafting panel held that trained Notaries could research and confirm basic, but important, information such as a date of birth or marriage, full names and family relationships. With the increasing demand for international adoptions, the need for such verifications has never been greater. And we expect that there will be many other areas of need for this new service.

In another example where more services can be offered to the public, and give Notaries more opportunities, the MNA expands the utilization of copy certifications to accommodate most any set of circumstances, including electronic documents.

The early impact of the MNA is also helping State Notary Public Administrators and their commissioning offices. Many states are responding positively about what they are seeing in the MNA of twenty-ten.

We also continue to work closely with the National Conference of Commissioners on Uniform State Laws on a revised Uniform Law on Notarial Acts, even though we are constantly challenged by differences with the attorney-dominated group. The NNA is continuing to take the lead in ensuring that eNotarization render any notarized electronic document as tamper-evident, and on this issue, I am pleased to report, there is accord by our respective organizations.

Understanding relevant technologies is just a small part of the knowledge that will be required of a competent Notary who is familiar and comfortable in both the paper-based and electronic environments.

Education is the lifeblood of the American Notary, and no one is more aware of that fact than your NNA.

Continuing education is vital to help Notaries make sense of constantly developing issues. The legitimacy of documents presented to Notaries by mortgage rescue firms... or by the so-called sovereign-citizen movements... or by questionable online transactions all provide special challenges.

The job losses we are facing today will not be filled by those using their old skills. We are facing a future that will require continuous retraining and lifelong learning. For Notaries, the situation touches another level. As public officials, we are required to intimately understand systems and processes to comply with state regulations, official directives and court rulings.

And, if all of this isn't enough, we are, more and more, being held responsible, accountable and liable for our unintentional as well as intentional acts in an ever-increasing litigious society. Our obligations and liabilities multiply with each day we remain uninformed and lack the Notary training we need.

That adhering to state statutes may not be enough to satisfy the law is an alarming message that the *Vancura* case delivered to us.

As a result, the NNA is quickly upgrading all our member programs. We're expanding our online, Webinar, onsite and home study curricula for members, section members and Notary Signing Agents... redesigning our magazine and Bulletin... and revising our legislative priorities to provide even more support for Notaries.

We are underscoring the urgent need for serious Notaries to avail themselves to the indispensability of member status in the NNA, where our long-held positions on important standards and principles are declared in our Membership Core Values:

- Notary Compliance ... with state laws, rules and requirements,
- Notary Liability Protection ... to safeguard their signers, their employers and themselves,
- Notary Risk Management ... to prevent fraud and identity crimes,
- Notary Professionalism ... to perform at the highest ethical standards, and
- Notary Opportunities ... for new revenue and career advantages from elevated levels of training and qualification.

Membership in the NNA has become the most important asset you can have as a commissioned Notary when you assume the responsibilities to perform the official acts of notarization.

In our troubled economy, we're paying particular attention to the Member Core Value of Opportunities to provide you with new revenue and career possibilities. More and more members are now appreciating the career leverage given by earning designations offered by the NNA's various certification programs.

The newest of these programs, the Trusted Enrollment Agent, or TEA, has not yet matched the overnight career rise of the Notary Signing Agent, but that is changing. With growing momentum, the idea of an identity verification expert is being embraced by industries and government.

And we are responding with training, background screening and certification for member Notaries to perform in-person identity proofing of individuals seeking electronic or digital identity credentials.

Currently deployed primarily in the defense, healthcare and pharmaceutical industries, NNA Trusted Enrollment Agents are already at work, albeit at limited numbers now, for such industry giants as Exostar, Northrop Grumman, Lockheed, Bell Helicopter, Rolls Royce, Pfizer, the SAFE Bio-Pharma Association and others.

In an important and exciting development, we've reached agreement with LegalZoom, one of the nation's largest online legal document services, to start a pilot program providing assignments for TEAs. Through the NNA, LegalZoom will offer mobile Notary services as an option with its vast online document packages.

We are also working with the American Bar Association to show how TEAs can be effectively employed as an identity proofer in state and federal government programs.

You will be proud to know that it was an NNA TEA that did the identity proofing of Federal Magistrate Judge John Facciola last year in Washington, leading to issuance of a digital certificate for the first-ever electronically signed judicial order.

TEAs offer valuable and needed capabilities in the marketplace because they satisfy corporate certificate authorities, who require digital credential applicants qualified by entities like the NNA.

We continue to be positive, but, at the same time, remain sensitive to the slower than anticipated pace of the program — and industries' overly deliberate response to the federal government's directives. We still believe, nonetheless, that a vibrant future awaits as society continues to demand more reliable identification processes in an electronic network.

Ever since the *Vancura* ruling established, in essence, a "New Standard of Care," the NNA has focused on promoting and teaching the guidelines of the court-recommended Model Notary Act and The Notary Public Code of Professional Responsibility.

More employers are seeking our help. Such well-known large national employers as Wells Fargo, Citigroup, and JP Morgan Chase are turning to the NNA to ensure that their Notaries are properly trained.

Besides Trusted Enrollment Agent, two other important NNA programs are available.

The first is Trusted Notary training, which serves as the common denominator for all certifications. Notaries qualify through stringent course instruction and an exam before advancing to other certification specialties.

The most established of the NNA's certifications is for Notary Signing Agents — the curriculum that has been traumatized more than any other by the real estate, mortgage and banking crisis.

Despite the slowdown, the NSA certification program at the NNA — now in its eighth year — has become another industry standard, this one for qualifying Notaries to handle loan document signings in the mortgage services sector. Though the real estate market has experienced uncertainty in the past several months, NSAs have proved their reliability and competence with lenders and title firms and should be ready for increased activity when the turn-around comes.

An important note is necessary here about fees for Notary Signing Agent services, and we have received many questions from you about “what may I charge?” As independent practitioners serving a broad cross section of constituents in varying fields and different service offerings, you must be the decider ... you must serve as the arbiter for the value of your work. And in this particular area regarding fees, the NNA will serve you in compliance with federal regulations that prohibit us from giving counsel, advice or suggestions. We appreciate your professionalism and understanding in this matter.

Of course, we expect that you will continue to rely on your Association for dependable and proper training and instruction. As the only national organization that offers accredited Notary training, the NNA and the support we can offer are unequaled.

All our programs meet the strict U.S. Department of Education standards for post-secondary educational institutions as accredited by the ACCET, the Accrediting Council for Continuing Education and Training. The NNA is the only Notary institution entitled to utilize the top level education domain designation — dot EDU, which is expanding our ability to deliver more classroom and online training programs.

The redesign of our Web site, scheduled for fall, will also give you more quickly the latest news, law updates and other information that you need. Specialization is a growing trend in professions and occupations in the United States and elsewhere. The information age and globalization are the reasons for individuals to possess specific skills for specific business requirements.

The principles and practices advocated by the NNA are respected by organizations and governments throughout the world.

And we are proud to be hosting international colleagues who represent the International Union of Latin Notaries, and a newly formed organization of Notaries from Common Law nations.

We are pleased that this new group – the World Organization of Notaries, or WON – has invited the participation of the National Notary Association and our professionally trained members.

The NNA, like most organizations, has not been spared from the effects of the painful economy. Our membership declined dramatically from well over 300,000 to approximately 225,000. And the size of this year's Conference is reflective of that pattern.

The downturn has mandated stronger stewardship of our programs as we work to strengthen those that offer increased value. We are more committed than ever to servicing you and creating a status and reputation that will truly represent the importance of your work.

We are now launching an extraordinary project that begins with a notarial act and ends as a tribute to integrity, honesty and public service – all attributes that represent you.

In 1923, upon the sudden death of President Warren Harding, Vice President Calvin Coolidge was sworn into office by a Notary Public. Coolidge's own father, a Vermont Notary, administered the presidential oath of office to his son in the early morning hours of August 3 while Coolidge was visiting the family farm in Plymouth Notch.

With this beginning, Coolidge went on to serve with a reputation for a high standard of conduct and for an exceptional regard for the public's trust. Many leaders and others revered the 30th president, and Ronald Reagan even designated a special place in the White House for Coolidge's portrait to remind him of how a President should act.

So venerated has Coolidge become that we discovered one of the few subjects of agreement among the angry, partisan voices on the political left and right – the outstanding quality of his Presidency.

And the key to Coolidge's record was his non-partisanship – his willingness as a Republican President not only to meet regularly with Democrats and other political opponents – but to use their ideas and to appoint them to positions of power.

This unique historical anomaly emboldened us to publish “Why Coolidge Matters: How Civility in Politics Can Bring a Nation Together.” The book is a compilation of essays written by thought leaders ... prominent Americans: columnists, historians, scholars and commentators of every political stripe.

Their assigned subject was simply, “about Calvin Coolidge,” and their contributions show how politics can and should operate in a democracy. The resulting book of 21 essays—from the moving personal writing of former Massachusetts Governor and presidential candidate Michael Dukakis, to the historically insightful essay by best-selling author Amity Shlaes – is a commentary on how a leader of impeccable integrity... our bountiful democracy... and Notaries Public are all woven into a fabric we call America. We believe that this book will be the Notary Public’s contribution to the possibility of bringing civility back to American political life.

The beautifully illustrated publication will become available August 3, the anniversary of that simple, iconic event when a calming, humble public servant from Vermont became President of the United States.

Your Association is proudly working with the Calvin Coolidge Memorial Foundation as it celebrates its 50th anniversary this year to honor and remember a dear and gifted president.

Calvin Coolidge’s qualities of unwavering integrity, even-handedness, competence and selflessness set an example for the proper conduct of all Notaries and every other public servant.

There is no other office that may seem as simple as that of the Notary, but is as complex and bound by regulation, custom, ethics and responsibility. You are instrumental in every important documentary transaction executed, from the most personal – proving identity ... to the most wide-ranging – ensuring security in global networks.

You are required to possess distinctive – and some may say, even instinctive – skills of detection as you obligate yourself to make sense of a world that has gone topsy-turvy on you; in a world that now says, it is not enough to obtain proper ID, understand electronic technology, and even follow state statutes.

You are the identity gate-keepers; those passionate and compassionate professionals who maintain the public’s trust... who can be involved with solutions to the Arizona problem ... who can be more helpful perhaps in deterring future 9-11s ... who can help others from being victimized in health care and mortgage scams ... and who would provide more assistance to seniors often easily duped by con artists.

If not you, as Notaries ... if not you as the first-line of defense against fraud ... if not you as the guardians of integrity and accountability, then whom?

The office of Notary Public is secure today because of what you do and how you serve. Its potential is even greater. No one else provides the face-to-face duty you are entrusted with. No one else can impart to the public the confidence, reliability and honesty that are invested in the title you hold ... Notary Public.