

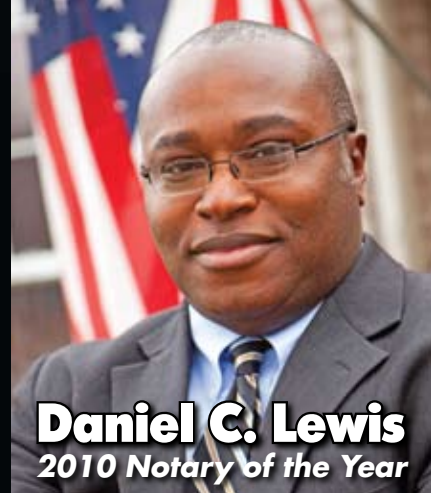
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The National NOTARY®

March 2010



THE MAGAZINE FOR PROFESSIONAL NOTARIES



Daniel C. Lewis
2010 Notary of the Year

CAUTION!

**Notary Risks On The Rise, Even
With Lawful Requests**

**Loan Modifications, 'Mortgage Rescue'
Firms Adding To Problems**

**More And More Are Asking:
'What's A Legitimate Notary Act?'**



The 32nd Annual
National Notary Association
Conference



C H I C A G O 2 0 1 0

**How do you stack up to
*The New Standard of Care?***

experienceChicago

at The Notary Event of the Year, June 14–17, 2010,
and learn about *The New Standard of Care!*

What you'll learn

The NNA 2010 Conference has developed a full program of workshops for new and experienced Notaries alike. Choose from three suggested workshop themes, each advocating *The New Standard of Care*: Fundamentals, Best Practices or Professional Workshops, or create your own customized Conference schedule by selecting from those topics that interest you most. Complete nine workshops over the course of the Conference and receive a *Certificate of Continuing Education*. And of course, the NNA will present outstanding pre-Conference workshops on Monday, for the true Notary expert. If you're looking to learn the latest, from the brightest and surrounded by the best — you can't miss out on The Notary Event of the Year.



Why you'll love it

In the spirit of advancing *The New Standard of Care* at the 2010 Conference, the NNA has assembled the finest group of Notary professionals and experts from around the world to participate. Traditional signature events, some with a new spin, will provide after-hours fun and inspiration. Additionally, the Conference will feature four General Sessions over three days. Topics and Keynotes to be offered will include a Notary of the Year Panel Discussion, the annual State of the Notary Public Office address, and — welcoming all employers — a full analysis of the *Vancura v. Katris* Appellate Court ruling.



Where you'll go

The NNA has selected Chicago as the host city for the 2010 Conference for one reason — it's packed with energy, excitement and entertainment. Be sure to take advantage of the discounted rate of \$99 per night at the beautiful Hyatt Regency McCormick Place. And with customized excursions that will introduce you to "Obama's Chicago" or a breathtaking dinner cruise along Lake Michigan, you'll want to make the most of your Conference stay. And why not add a day or two before or after the Conference to take in the best of the Windy City, home of the hemisphere's tallest building, Willis Tower (formerly the Sears Tower) and the undisputed leader of daytime television, "The Oprah Winfrey Show." Chicago has it all.





the new Standard of Care

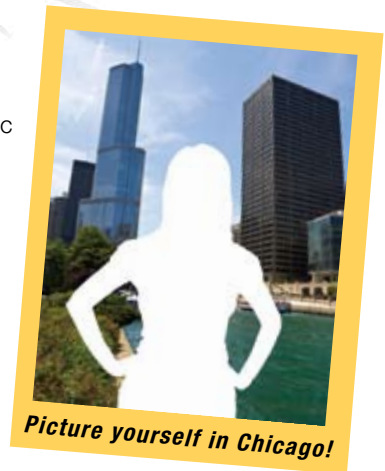
Calling All Notaries this year you can't afford not to attend!

For the 32nd consecutive year, the National Notary Association will welcome Notaries Public from around the country, and around the globe, for the purpose of learning, sharing and committing to becoming a better servant of the public trust.

As we gather in Chicago June 14 through 17, the NNA will recommit the Notary Public Office to an enhanced level of service — a *New Standard of Care*. Never before has the need to gather, educate, and commit to a *New Standard of Care* been more important. And never before has the NNA prepared an event that you will get so much out of attending.

As the nation emerges from an historic economic downturn, Notaries Public in every state will see an increased level of attention and emphasis on the role they play. And, in light of recent court rulings, the role of the Notary is not defined simply by state law — but by an adherence to the standards that ensure accuracy, compliance and privacy.

This year's Conference will reaffirm our dedication to the New Standards and invigorate Notaries and their employers to embrace the guidelines and codes that have been at the cornerstone of NNA service since 1957.



Picture yourself in Chicago!

REGISTRATION IS EASY...

To guarantee your place at The Notary Event of the Year, just visit NNAConference.com where you can complete your registration online, or download a registration form. You can also call us direct at 1-800-US NOTARY (1-800-876-6827).

Register by May 13, and receive the "Lake Shore Drives-You-Wild" Bonus Package, presented by the National Notary Foundation, full of savings and discounts worth hundreds of dollars.



See you in Chicago!

June 14 –17, 2010

Hyatt Regency McCormick Place

\$99 NNA Rate — 1-888-421-1442

Full Conference Registration — \$498
(\$598 for non-NNA members)

Single Day Pass — \$175
(\$250 for non-NNA Members)

Pre-Conference Programs — \$99 each

Full Guest Pass — \$198

Gala Banquet Guest Pass — \$125

Monday, June 14th

Pre-Conference Programs

Expo Opens

NNA Tours: Obama's Chicago
& Chicago City Tour

Welcome Reception

Tuesday, June 15th

Expo Continues

General Session: Opening Keynote

General Session: Notary of the

Year Panel Discussion

Workshops

NNA Tours: Dinner Cruise on
Lake Michigan

Wednesday, June 16th

Expo Continues

General Session: "The State of
the Notary Public" Office

Address

Workshops

Gala Banquet

Thursday, June 17th

Expo Continues

General Session:

Vancura v. Katris

Workshops

Farewell Event

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NNA Conference offerings, schedule and events could change without notice.

The National NOTARY

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PUBLICATION POLICY

The objectives of THE NATIONAL NOTARY are to: (1) publish only quality articles on Notaries, notarization and related subjects; (2) inform our readers of important developments in the field of notarization; and (3) focus on Notary issues and related subjects that are helpful, educational and informative to Notaries and others interested in the field.

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From The Senior Managing Editor



Your Reactions To Recent Ruling

In the wake of the precedent-setting *Vancura v. Katris* court ruling, we have focused heavily on liability and risk-management issues. We've given this case prominence because it's our duty to provide you with information and training to keep you compliant with state laws, direction when your state laws fall short, and the guidance you need to steer clear of liability issues.

What we did not know until recently, however, is how you and other Notaries across the nation reacted to the influential court ruling, and the actions you were taking to keep yourself out of the crosshairs of liability.

In a recent nationwide poll conducted through the NOTARY BULLETIN, almost half the respondents listed "liability" as their current top concern. The Notary in the *Vancura* case personally shelled out \$30,000 to settle serious allegations that he failed to follow best practices, and to avoid even higher penalties that might have been sanctioned by a jury. Many Notaries noted that this fact sent them a wake-up call to better protect the public and themselves.

Other Notaries reported discussing the case with their employers to help raise notarial standards in the workplace, sharing best practice knowledge with their colleagues, increasing their errors and omissions coverage and double-checking their own work — from better vetting IDs to making sure their notarial records were sound.

Some even sent requests for NNA guidance in more specific situations, like how to steer clear of criminals who use innocent Notaries to facilitate fraudulent transactions (page 20), elder care issues, powers of attorney, odd or unusual state laws (page 34), and one of the most problematic areas that still plagues Notaries today, handling requests from those who don't understand the importance of personal appearance (page 26).

Even our honored 2010 Notary of the Year Daniel C. Lewis of Indiana (page 14) weighed in on the issue in his interview with THE NATIONAL NOTARY.

The economy, your employers, the mortgage and banking industries and, most importantly, the public rely upon you to keep them safe from fraudulent transactions. And the NNA will continue to focus on this important issue to provide you with the guidance you need to keep you out of the courtroom.

Almost half the
respondents
listed "liability" as
their current
top concern.

COVER STORY

20 • Notary Risks On The Rise, Even With Lawful Requests

In good times and bad, there are people with a proclivity for taking financial advantage of others. And as the economic downturn persists, particularly in real estate, the stakes increase dramatically for Notaries, who increasingly are being drawn into activities that, while legitimate, may result in unintended consequences. With all the scam possibilities that besiege the current or would-be homeowner, Notaries, too, may become casualties of clever exploiters even when they operate with the best of intentions.

CAUTION!



FEATURES

14 • Notary Of The Year: Daniel C. Lewis



Not content to simply do the job right, the 2010 Notary of the Year became a mentor and teacher to other Notaries and an adviser on Notary guidelines to his Secretary of State's office. Daniel Lewis epitomizes the very best in Notary professionalism, leadership, integrity and public service.

25 • Can You Spot the Warning Signs?

What is the difference between a legitimate assignment and one with a high potential for fraud? Compare hypothetical situations relating to loan modifications and test your skills.



26 • Personal Appearance



Personal appearance by a signer is a fundamental part of notarizing, and it is vital to keeping a Notary safe from liability. Unfortunately, too many Notaries have bypassed personal appearance in the past, thinking no harm will come from it — and that's exactly how they land in serious trouble.

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ON THE WEB

Model Notary Act Takes On New Significance With 2010 Update

NationalNotary.org/Bulletin





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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 only the highest ethical standards of conduct and sound notarial practice.

OUR READERS' RIGHT

Educating The Public

The public must also be educated on what a Notary Public is and what they can do. Many people think that a Notary's seal makes any document a legal document. Many feel it is just the signature we need to be concerned about as Notaries, and think we can leave out identification and will- ingness of the signer. It is important to get the message out concerning who we are and what we are about.

Tom Franklin, Youngstown, Ohio

Perception Problems

The public perception of Notaries is crucial because the public believes Notaries to be completely unimportant. The education standards in Florida are so lax that virtually anybody can become a Notary within three weeks. The online three-hour education system requires no test, and consequently Notaries are coming out of these courses not knowing a thing about Notary law. The requirements should be stricter in order to increase the public's perception that the office of Notary Public is one of great importance.

Robert Koehler, Tampa, Florida

Subscribing Witness Concerns

Although I have never done a proof of execution by subscribing witness, I feel that with documents like deeds and powers of attorney, I would want to see the original signer, check their ID and watch them sign the docu- ment. By not having the original signer in front of me, this removes the "checks and balances" from the notarial pro- cess. I like things done "the old fashioned" way with the original signer present. It's the safest and the best.

Ellen Michaels, Canoga Park, California

Notaries should accept proofs of execution only if the original signer has an extreme reason for not appearing, such as hospitalization or being out of the country. California law prohibits the use of proofs of execution for mortgages, deeds of trust, security agreements, quitclaim deeds and grant deeds, but allows proofs to be used with trustees' deeds resulting from foreclosure or deeds of reconveyance. (Gov- ernment Code, Section 27287 and Civil Code, Section 1195)

— The Editors

Letters To THE NATIONAL NOTARY

We welcome letters, comments and questions from you and reserve the right to edit for space and clarity.

Contact us at publications@nationalnotary.org or by fax at (818) 700-1942. Mail can also be sent to National Notary Association, Editorial Department, 9350 De Soto Ave., P.O. Box 2402, Chatsworth, CA 91313-2402.



Trust Your Instincts, But Rely On Your Training

Since the country's financial meltdown, it seems that almost every daily paper or Web home page cites another mortgage fraud scheme that bilked homeowners out of

millions, or stories about mortgage lenders trying to recover billions in bad loans.

As a Notary, I read these and hope that one of our own isn't cited in any kind of a scam. I like to imagine that, like many an unsuspecting homeowner or lender, the Notary is just another unknowing victim.

On the other hand, we're supposed to be preventing fraud and helping to ensure the integrity of sensitive transactions. Mighty lofty goals in a time of deceit and deception. What tools are available to us that can thwart the determination of a sophisticated crook or impostor?

Here I like to use the analogy of a terrorist on a plane and consider the most recent example — that of the Christmas Day bomber. After his apprehension, the federal government began to reevaluate its passenger screening process and revisited the highly successful process used by the Israeli national airline, El Al. That airline relies almost solely on the most basic of human interactions — talking to passengers, asking questions and assessing the character of their responses: Is the passenger acting nervous? Is he or she uneasy or fidgeting? Does the individual appear distressed?

Granted, the daily passenger count on El Al Flights is dwarfed by the number of notarizations performed each day by American Notaries, but the effectiveness of the screening done by the Israeli airline does point out the often overlooked value of personal interaction. El Al screeners are trained in human psychology and taught to insightfully observe the passengers they question, to engage their instincts and to rely on their

basic intuitive nature to detect a lie.

The same is asked of us when we are obliged to observe our document signers for awareness and willingness. We are trusting our instincts while relying on our Notary training.

But, as media reports point out, fraud may take months or years to uncover. Our human judgments may be fallible, and we want to believe the best of everyone. Is a signer's nervousness due to a general anxiety about making a big purchase or a clue to something more sinister?

Is the cool, calm, collected signer an accomplished con man perpetrating a fraud or simply an honest and confident individual more comfortable with the signing process?

Much like the El Al screener, a Notary may discourage someone from attempting something sinister just by being there. The requirement that a transaction be notarized can be the very barrier that keeps a dishonest individual from committing a fraud or deception.

Because such misdeeds may not appear immediately and discovery can be so complicated, we may never know for certain how successful we are at combatting or thwarting such crimes.

We are, however, the very human face at the end of an often long process in a documentary transaction. If we perform our duties conscientiously and ask the questions that need to be asked, our very presence can be enough of a deterrent to keep many perils at bay.

Deborah M. Thaw can be reached at donthaw@nationalnotary.org

Rising Deed Fraud Places Notaries On The Front Line



Mortgage fraud may be the hot topic among law enforcement officials, but another type of real estate-related fraud — deed fraud — is on the rise. And when it occurs, it is much more likely that Notaries will be able to help prevent it.

Deed fraud happens when someone illegally files the necessary documents with a local property records office to transfer ownership of a property without the rightful owner's knowledge. Deed transfers require notarization, which is why it is critical to apply the highest standard of care when notarizing deeds. That includes making sure the signer is present and properly identified,

and keeping a record of all the relevant information about the notarization. *The Notary Public Code of Professional Responsibility* also recommends that Notaries obtain a thumbprint from all signers as a fraud deterrent.

Recording officials nationwide are noting a rise in the number of incidents, highlighted by a sensational publicity stunt in which members of the media "stole" the Empire State Building to show how easy it is to do.

Officials in Tarrant County, Texas, are investigating a scam that could involve the illegal transfer of hundreds of properties in order to sell off their mineral rights.

Dubai Becomes First eNotarized State In Arab World

Dubai has become the first nation in the Arab world to embrace eNotarization, helping to increase the quality and efficiency of the Notary Public Department's work, which serves between 300,000 and 350,000 clients per year.

The Persian Gulf emirate joins a growing number of countries, such as Estonia, Great Britain and the United States, to begin developing

electronic notarization systems.

For Dubai, with a population of 2.2 million people, the move came as a result of an order by the head of the emirate's courts that requires all notarizations for the courts system to be completed electronically.



By The NUMBERS

5.8 million The number of borrowers who reworked or modified their mortgages between July 2007 and October 2009.

Projected growth of paralegal and legal assistant employment through 2016. **22%**

2,600 The number of mortgage fraud cases the FBI was investigating in late 2009.

The maximum fee Rhode Island Notaries may charge for taking an acknowledgment. **\$1**

167,900 The number of employers participating in the federal government's E-Verify program.



Government Officials Giving Thumbs Up To Thumbprints

Only two states require Notaries to record signers' thumbprints, but other states may soon follow suit.

Officials in Indiana have become the latest to call on state legislators to enact a law requiring Notaries to keep a record of signers' thumb-



prints for real estate-related notarizations. The move comes after a local journalist used fake documents and a bogus Notary stamp to "steal" a Fort Wayne landmark in a publicity stunt.

And general reliance on

thumbprints may be getting a boost nationally as Congressional leaders push to add their use to the Federal government's

E-Verify system. E-Verify is a voluntary, online system that allows businesses to verify the employment eligibility of job applicants. It is seen as a key

element in combating illegal immigration.

This call to make thumbprints and fingerprints an integral part of sound identity-vetting systems will encourage their wider acceptance for notarizations.

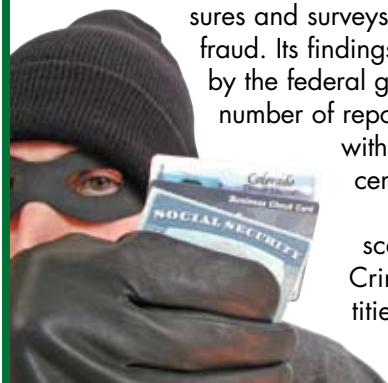
Identity Fraud Surging In Mortgage Transactions

Notaries traditionally have been society's guardians against fraud, and that role in the mortgage industry has never been more important. That's because the likelihood of encountering identity fraud in mortgage transactions jumped 12.6 percent in the third quarter of 2009 from the previous quarter, according to a recent report.

The findings by industry research company Interthinx Inc. point to the need for Notaries to remain vigilant amid an epidemic of mortgage and identity fraud that continues to plague the nation.

The Interthinx Mortgage Fraud Risk Index uses a variety of measures and surveys to calculate the risk or likelihood of fraud. Its findings are supported by figures released by the federal government last year that showed the number of reports of identity theft in conjunction with mortgage fraud increased 96 percent in 2008.

Bogus identities crop up in fraud scams for any number of reasons. Criminals often want to hide their identities, use another person's credit, or steal someone's property.



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**Notaries Making
Splash In Local Politics**

Across America, Notaries are taking an active role in community affairs by running for — and often winning — local elected office. These candidates often are using the credibility of their Notary commissions as a selling point on the campaign trail.

That was demonstrated recently in Berks County, Pennsylvania, where Notary Kim L. Bagenstose, 44, a longtime Notary and paralegal, was swept into office as district judge in Hamburg Township after winning the nomination of both major political parties. Her experience as a Notary and paralegal played prominently in her campaign.



Kim L. Bagenstose



Gabriel Soliz takes oath.

In Victoria, Texas, Notary Gabriel Soliz won a tight race for a spot on the city council. "Being a Notary has helped me better understand the rights and responsibilities of citizenship," the first-time candidate said.

In Chemung, New York, Notary Mary Ellen Stermer defeated incumbent Town Clerk Debra McKeown despite officially withdrawing from the race and endorsing her opponent. One of Stermer's post-election promises is to start offering Notary services.

eMortgage Use Surging Up

The recent announcement by Stewart Title of Albuquerque that all its offices in New Mexico can now electronically notarize loan documents is one of the latest signs that the move toward paperless mortgage transactions is growing.

Speakers at the Mortgage Bankers Association Annual Convention & Expo last fall told delegates that almost half of lenders are taking at least a quarter of their mortgage applications online. That is a 40 percent jump in

eMortgage activity from the previous year. The goal is to have loan documents drafted, signed, notarized and recorded electronically.

Among its many advantages, electronic mortgages save lenders an average of \$250 per loan, speed up the funding of loans, and allow for the instant delivery of loan documents. As more financial institutions adopt eMortgage systems, the demand for electronic notarizations is likely to increase.



Pioneering The Path From Nurse To Notary Entrepreneur

Sheila Frazier of Marysville, Washington, spent more than two decades serving her community as a geriatric nurse. But always in the back of her mind was the desire to be her own boss.

She is fulfilling that dream after launching Eaglesnest Secretarial Service in 2005. One of the first things she did was obtain her Notary commission. She describes her business as a virtual office, offering a full range of services for clients. She handles bookkeeping and word processing, has a conference room for clients to use for meetings, and performs notarizations.

What inspired you to become a Notary?

Part of my vision in opening this business was to offer Notary services to my customers.

How has being a Notary helped your business?

I use that as a way to bring people in. It doesn't bring in a lot

of revenue, but people come in for a notarization and learn about my other services. I make sure to be available for requests that banks and other businesses cannot do. I stay open until 6 p.m. I do go out to do notarizations after hours.

Describe the transition from geriatric nurse to Notary?

After I started the business, I continued to work as a nurse until last year. I became too busy so I resigned my position as a nurse. My goal is to hire more employees and have more than one Notary.

What do you do to market your business?

I am a member of four chambers of commerce. I network as much as I can, and hand out business cards. I do everything I can to get my name out there. I host a networking group and meetings of community organizations. I enjoy the public. I'm here to help them every way I can.



Pay Attention To The Details

With society demanding greater accountability from Notaries, even the smallest, most innocuous detail can make all the difference in the world — and that's especially true for the election process.

Just ask the backers of a South Dakota ballot measure that was temporarily booted off the voting slate because 29 different Notaries included the wrong commission expiration dates when they notarized petition signature sheets.

These mistakes led state election officials to reject 2,000 signatures on petitions to repeal a ban on smoking in bars and gambling establishments. The measure was restored to the ballot after a court hearing, during which nearly a dozen Notaries testified about their mistakes.

In Maine, a tax reform ballot measure is facing a challenge in part because two Notaries who notarized petition signature sheets neglected to notify the Secretary of State's office that they had changed their names after getting married, leaving their legal names different from the names on their commissions.

Refugee Requests Up Following Haiti Quake



Since the devastating earthquake in Haiti, immigration organizations have been flooded with requests from refugees seeking temporary status in the United States, and these organizations are seeking Notaries to help.

Some immigration forms require notarization — such as affidavits of support — and Notaries are always eager to provide their services to those in need of comfort and safety.

But these refugees also can be prime targets for con artists who charge thousands of dollars in exchange for empty promises of assistance with immigration paperwork. If you are solicited by one of these organizations, you can check with the U.S. Department of Citizenship and Immigration Services (www.uscis.gov), or the Board of Immigration Appeals (www.justice.gov) to see if the organization is accredited, or if it has been identified as one to avoid.

Conference 2010 Offers Training For Notary Employers



Because of the pressing need for business guidance in the wake of precedent-setting legal cases involving Notaries, and with liability and compliance issues becoming a major concern nationwide, the NNA has opened a key session of its annual Conference to employers of Notaries.

This information is so important that the NNA's General Session featuring the *Vancura v. Katris* case is being offered at no charge. The session, scheduled Thursday, June 17 at 9 a.m., will feature a discussion with Michael Closen, an attorney and expert in notarial best practices who testified as an expert witness before the Illinois Appellate Court. It focuses on sound methods to properly train and supervise staff Notaries.

The Court ruled that employers of Notaries can be liable under common law for the acts of their Notary employees who lack proper training and supervision.

The session will detail employers' responsibility to train and supervise staff Notaries and focus on creating notarial standards of care to protect their companies and their Notaries from liability.

Conference 2010 takes place June 14-17 at the Hyatt Regency McCormick Place in Chicago, Illinois. Visit NNAConference.com to register.



NNA Attends Inaugural Meeting Of Global Notary Organization

National Notary Association Vice President Charles N. Faerber was among representatives from around the world attending the inaugural meeting of the World Organization of Notaries (WON) October 16 in Henley-on-Thames, England.

WON is a newly forming global organization intended to strengthen relations between common law Notaries in English-speaking countries around the world. The meeting featured discussions of notarial issues and as well as operational and membership guidelines.



State-Specific NNA Web Sites Provide Vital Guidance

In the past year, four states — Colorado, Illinois, Montana and Rhode Island — have implemented major overhauls to their Notary laws and procedures. To help members in these states keep up with these extensive changes, the NNA has launched special sections on NationalNotary.org that provide detailed summaries of each state's new rules.

Each section provides the reader with an easy-to-understand summary of important changes in the state. For example, Rhode Island's section includes the full text of the recent Executive Order affecting Notaries, new guidelines for seal use and identifying signers, and a list of prohibited acts.

The special sections can be accessed here:

Colorado: NationalNotary.org/co/lawchanges

Illinois: NationalNotary.org/il/lawchanges

Montana: NationalNotary.org/mt/lawchanges

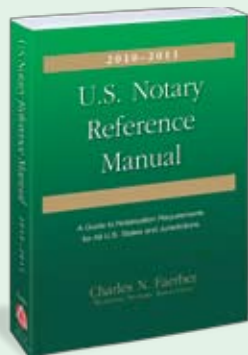
Rhode Island: NationalNotary.org/ri/welcome



2010 U.S. Notary Reference Manual Now Available

Keeping track of the various laws and procedures for notarizing across the United States is a challenging task. To help Notaries stay current with the rules and best practices, the National Notary Association has published the 2010-2011 edition of the *U.S. Notary Reference Manual*.

Authored by NNA Vice President Charles N. Faerber, the nation's top expert on Notary procedures, the *Reference Manual* is a comprehensive source of Notary information throughout the United States. The *Manual* describes Notary laws, seal requirements, notarization procedures and certificate wording for every state and U.S. territory and offers state-specific information on eNotarization and Notary Signing Agent rules. The *Manual* also has contact information for state and territorial Notary-regulating agencies.



Leading The Push For Secure eNotarization Into The Future

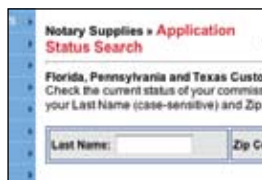
The NNA has published an important white paper that underscores its longstanding leadership role in the expanding realm of electronic notarization. Continuing to advocate for widespread adoption of secure systems for electronic notarization, the NNA's paper — *The National Notary Association And Electronic Notarization* — details the Association's efforts and plans for the future.

The NNA's continued leadership in electronic notarization bolsters the nationwide pursuit for best Notary practices and universal standards in electronic transactions. For more information, please download the white paper at NationalNotary.org.

Your Benefits: Get Your Commission Application Status Online

For NNA members in certain states that allow online access to Notary information, the NNA provides a one-stop Web service to check the status of your commission application.

NNA members in these states can look up their status at NationalNotary.org by clicking on "Support" in the menu on the left side of the page and then selecting "Application Status." Commission status can be found by entering the Notary's last name and ZIP code — no other information is required.



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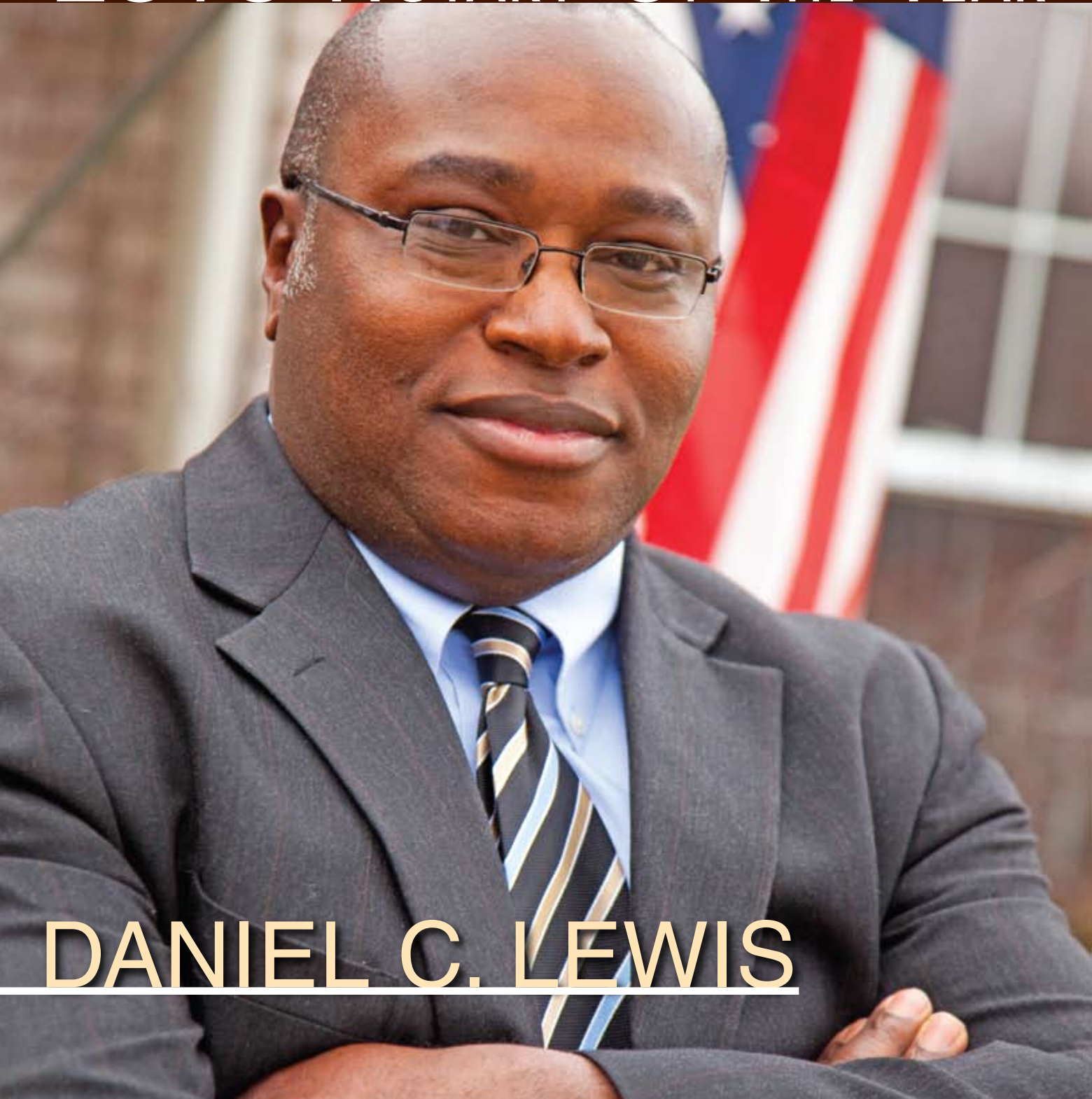
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Member benefits and other offerings could change without notice.

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2010 NOTARY OF THE YEAR



DANIEL C. LEWIS



DOING THINGS RIGHT
ONE DETAIL AT A TIME



Daniel C. Lewis is a stickler for details. That trait has served him well his entire life and is a central reason he became a Notary.

After working as a loan officer and independent mortgage broker for years, the Carmel, Indiana, resident noticed a wide disparity in the quality of service provided by Signing Agents and he wanted to do something about it. So he started a new career as a Notary Signing Agent in 2003.

But Lewis was not content to flawlessly cross every 't' and dot every 'i' for each assignment. He quickly established himself as a leader in his new profession. He became a mentor and teacher to other NSAs, an adviser on Notary guidelines to the Indiana Secretary of State's office, an advocate for Notary best practices and, in his spare time, founded a neighborhood volunteer group that provides a wide range of services.

Lewis epitomizes the very best in Notary professionalism, leadership, integrity and public service. That is why he has been named the National Notary Association's 2010 Notary of the Year.



'Compliance, Compliance, Compliance'

Lewis has long had a passion for doing things right. One of the most formative experiences the Orangeburg, South Carolina, native had as a young adult was his stint in the U.S. Navy. Lewis served on the aircraft carrier USS Enterprise, where his job was to arm the planes with missiles and bombs — a dangerous assignment where attention to detail was critical to his own survival.

"If the plane exhaust turns the wrong way, it could blow you off the deck or suck you into the intake, so you always had to watch what you were doing," he said. It was the kind of job that required rigorous training and a dedicated adherence to safety procedures and regulations.

The lesson stuck. Lewis describes his notarial philosophy as "compliance, compliance, compliance." With every transaction coming under close scrutiny, Lewis believes it is vitally important to set and maintain a new standard of excellence that goes above and beyond the minimum requirements of state law.

"We live in an age of investigative reporting. Journalists



Daniel C. Lewis with his extended family, including children, stepchildren and grandchildren; Lewis describes it as a modern-day "Brady Bunch."



Lewis with his 3-year-old granddaughter, Rihanna Cheesebourgh.

are going through the trash and finding discarded customer files," Lewis said. "Notaries need to conduct every assignment as though there is a hidden camera in the room. They have to take care, make sure they do everything right, and ask themselves, 'Am I going to end up on the five o'clock news for doing something dumb?'"

For Lewis, that means adhering to the highest standards of best practices as well as presenting himself in the most professional manner. He still chuckles over a recollection from his days as a loan officer when a Notary drove to a loan closing in a "Scooby-Doo" van with a marijuana leaf painted on the side — hardly the most professional image.

When Lewis decided to become a Notary, he didn't just satisfy the requirements of state law, he committed himself to being the best Notary possible. He became an NNA Certified Notary Signing Agent® and attended every NNA Conference he could. "Some of the best minds in the Notary world gather at Conference, and the workshops have helped me tremendously," he said.

"Continuing education is one of the most critical parts of being a good Notary."

Lewis has been actively encouraging the Secretary of State to establish mandatory education requirements for Notaries. Ironically, several years ago, the Indiana Department of Insurance decided to require Signing Agents to become licensed title producers. In order to obtain and keep a title insurer's license, Notaries must go through continuing education.

After obtaining his title producer's license, Lewis went a step farther. He developed the curriculum for several continuing education courses and got the Department of Insurance to approve the classes. He now teaches three courses, including one on notarial ethics. "These classes are geared toward NSAs to help them be more professional," Lewis said.

Lewis mentors a number of Notaries, and he also set up the Indiana Notary Yahoo! group for Notaries across the state to exchange information.

Lewis acknowledged that the cause of education and best practices often is an



Lewis and his wife, Hilary Jenkins Lewis, who teaches at a local elementary school.



Lewis teaching a "Loan Closing Basics" class for the Indiana Department of Insurance.



uphill battle. One of his students, for example, recently told him that she won't keep a record of notarial acts until the state requires it. His response? Title companies continue to hire him because he keeps a journal. It's an indication of how meticulous and professional he is, and gives clients confidence that he will do everything right because he records the details of every transaction.

But he still encounters Notaries who are willing to bend the rules because they're afraid they won't get hired anymore. "I tell them they don't want to do it because companies like that will be out of business in six months."

Family Values And Community Service

One of the biggest inspirations behind Lewis' drive to succeed as a Notary entrepreneur is his family. Lewis, who describes himself as a late bloomer, remembers what it was like to grow up without a strong father figure. He is determined not to repeat the pattern with his family.

"This work allows me to spend time with my family and build my business," Lewis said. "My children see me working and they see it paying off. It's good for my sons to see me achieve something."

Working from home, however, has its challenges. He juggles the demands of his clients

with those of his large family. Lewis' household resembles "The Brady Bunch." He and his wife, Hilary, each brought three sons from previous marriages to the family. And Lewis' grown step-daughter, Tanesha, also lives with them — and helps with his business.

Lewis chuckles over the story of how he met his wife. He was living in Colorado at the time and going through a divorce. "I visited a chat room on the Internet. I had my three boys. She was going through a divorce and had her three boys." They fell in love online and Hilary convinced him to move to Indiana. He never looked back.

For Lewis, being a good role model for his family also means being a good neighbor — and giving back in a very personal, hands-on way.

When he first moved to Indiana, one of his neighbors was in a bad car accident and spent several years recovering. Lewis started mowing his lawn at no charge and made a good friend in the process. An elderly neighbor had trouble cleaning her gutters, so Lewis took on the chore for her.

Eventually, he transformed those simple acts of human kindness into a neighborhood assistance program he called "Caring And Sharing," which encourages neighbors to help each other out. "If somebody in your community needs help, you give it," he said. Lewis later

Continued on page 19

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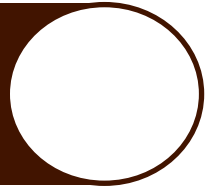


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“Continuing education is one of the most critical parts of being a good Notary.”



expanded the program into his “Notaries Give Back” project, which encourages Notaries to help their neighbors and offer notarizations at no charge to people in need.

As always, Lewis leads by example. He routinely performs notarizations at pro bono at schools, nursing homes and the local veterans’ hospital. “Part of being a Notary and a good person is giving back.”

Business Savvy


Lewis understands that the path for any independent Notary entrepreneur must constantly evolve. While he started his career as a Signing Agent, he quickly came to understand that he needed to add a wider range of business activities to his repertoire.

With the downturn in the mortgage market,

Lewis turned to business inspections. Among other things, he inspects businesses for insurance companies to verify the assets they are insuring. Combined with the training classes and mortgage work, Lewis has kept his business thriving, even in the hard times.

The key, he said, is flexibility. The business and regulatory environment constantly is changing, and a good entrepreneur has to change with it and find new opportunities and improve customer service. Currently, he plans to make his continuing education courses more convenient by offering them online.

Notaries such as Lewis increasingly are asserting their professionalism and expertise: “A lot of times, we used to be victims. The boss would come in and say, ‘Notarize this,’ even if it went against what we were supposed to do. Now bosses are crying because we won’t do it.”

Lewis takes the commitment to the highest standard of professionalism very seriously: “If one Notary does something unethical, it reflects on us all.” 



Lewis presenting the workshop “Growing Your Business in Today’s Economy” at Conference 2009.

CAUTION!

Notary Risks On The Rise, Even With Lawful Requests • Loan Modifications, 'Mortgage Rescue' Firms Adding To Problems • More And More Are Asking: 'What's A Legitimate Notary Act?'

In good times and bad, there are people with a proclivity for taking financial advantage of others. And as the economic downturn persists, particularly in real estate, the stakes increase dramatically for Notaries, who increasingly are being drawn into activities that, while legitimate, may result in unintended consequences.

With all the scam possibilities that besiege the current or would-be homeowner, Notaries, too, may become casualties of clever exploiters even when they operate with the best of intentions. Yet, more and more, they are being recruited to perform non-notarial tasks that can expose them to legal risks. In these financially perilous times, caution and vigilance must become the bywords for all Notaries. To be sure, professional training and personal observation skills are important in determining whether a transaction is proper or not. But as Notaries are increasingly called upon to become involved in transactions and services that do not require notarial acts, the challenge is for them to *know what they don't really know*.

Having been qualified through an application process, with exams and fingerprinting in some states, Notaries as official commissioned representatives of their state carry a reputation for being trustworthy, honest and reliable. So, when they are called upon to perform a function in order to lend a patina of seeming legitimacy to a particular transaction or service, whether or not notarization is required, these solicited Notaries may find themselves in an extremely delicate situation.



More and more, banks, mortgage companies and other lenders, title companies, law firms, sole-practitioner attorneys, small signing firms and others — whether of legitimate or dubious respectability — are recruiting Notaries to perform such non-notarial tasks as delivering documents, following up on (non-notarial) signings of important papers, collecting or delivering checks, and performing other administrative or logistical duties. Cash-strapped Notaries, particularly those unemployed in their primary profession, are finding such income prospects appealing.

The Emerging Dilemma

As public servants, Notaries are generally recognized for the trust that their office conveys, and here is the dilemma that can confound them: How to identify what is or is not a proper private employment of a public official such as a Notary? Certainly, there is nothing wrong in asking a Notary to perform a non-notarial task on the presumption that the Notary is more likely to be honest and reliable than a non-Notary. However, there is a great deal wrong in using a Notary in an attempt to legitimize an unlawful, exploitive or unethical enterprise.

In any notarization, Notaries always must understand exactly what they are doing. But during this time of financial challenge for many, the stakes for Notaries climb dramatically when they are presented with unusual new opportunities to earn extra income for which there seem to be no guiding rules.

The latest example is in so-called “loan modification” or “mortgage rescue” enterprises. While some of these services require notarization, there are many other requests being made of Notaries that, while perhaps legitimate, may not actually be a statutorily defined duty of a state-commissioned Notary. In such situations, what is the Notary’s liability if something goes bad, particularly if the activity is a non-notarial one? If the Notary makes a costly mistake, will the bond or errors and omissions insurance come into play? This is a gray area, where the answers are not always clear-cut.

There have been more than enough reported instances in which unscrupulous companies, organizations or individuals have taken advantage of the misfortune of a homeowner in financial distress. Earnest Notaries need to act professionally, with a degree of both skepticism and prudence, when asked to provide unfamiliar non-notarial services, especially with loan modification transactions.

Loan Modifications Explained

According to the U.S. Department of Housing and Urban Development (HUD), a “loan modification” is a permanent change in one or more of the terms of a mortgagor’s loan, which allows the loan to be reinstated and results in a payment the mortgagor can afford. Homeowners across the nation have sought this benefit to keep them out of foreclosure and bankruptcy, keep them in their homes and reduce their payments.

There are plenty of trustworthy firms — primarily major lenders — providing sound, honest services to desperate

Your NNA Membership: Guidance And Support

If you need help or guidance on assessing the legitimacy of a Notary assignment, you may want to take advantage of the important information your membership provides on compliance, liability protection and risk management issues. Visit NationalNotary.org or call the NNA Toll Free Hotline at 888-876-6827.

homeowners. But some companies and law firms promoting “loan rescue” services have drawn nationwide scrutiny for charging clients significant up-front fees without actually reducing their mortgage payments. Some have even been sued by state attorneys general for making false claims, forging documents in order to take ownership of customers’ properties, and engaging in other questionable activities.

Notaries who accept work from suspect loan rescue companies that charge advance fees run the risk of

associating themselves with prosecutable actions. This is a fact that some conscientious Notaries have begun to understand.

In a recent NNA webinar, titled “How The Final RESPA Rules And Loan Modifications Impact You,” 15 per cent of the Notaries in attendance reported they have refused loan modification assignments from dubious companies. In the same poll, 10 per cent said they had unknowingly accepted an assignment from a suspicious firm. It remains vitally important for you to be able to find the legitimate assignments in a tough fiscal environment in which some companies seek to take advantage of Notaries and distressed homeowners.

Steering Clear Of Fraud

With nearly a decade of experience notarizing loan-related documents, Notary Fred Kanakry of West Warwick, Rhode Island, has been offered a variety of loan modification-related jobs — some legitimate, some questionable.

Most of his legitimate assignments have come directly from major lenders such as Wells Fargo, JPMorgan Chase or Bank of America, but typically they don’t involve notarization. Instead, these companies have asked him to meet with the homeowner and bring a checklist of steps they must complete in order to request a change in the mortgage — such as providing the lender with a signed letter of hardship and other documents. The homeowner reviews the checklist with the Notary to be sure it is complete.

Kanakry then places the completed checklist in an envelope provided by the lender, takes a photo of the property and mails the package back to the lender — a service for

Continued on page 23





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Is Your Assignment Legitimate?

The following is a list of ways that can help you verify the reputation and legitimacy of a company offering work:

- 1. Government and licensing agencies:** Many businesses that employ Notaries are licensed or regulated by state agencies. State attorneys general offices normally have a consumer affairs division that investigates complaints. Help with finding legitimate government foreclosure assistance can also be found at the U.S. Department of Housing and Urban Development Web site at www.hud.gov.
- 2. Local law enforcement:** Check with local law enforcement to see if any complaints or legal actions have been filed against the business.

- 3. The Better Business Bureau (www.bbb.org):**

The BBB keeps detailed histories of complaints filed against businesses throughout the country, and what steps, if any, were taken to resolve these issues.

- 4. The Federal Trade Commission (www.ftc.gov):**

The Federal Trade Commission has information on its Web site about questionable loan modification companies.

- 5. Other Notaries:** Ask other Notaries in your area if they have performed any assignments for the company in question, and whether the company has had any problems with questionable services, failure to pay for assignments, or improper requests of Notaries.

which he collects \$25 to \$35 per assignment.

"It's not really notarizing, but these lenders use Notaries because of their reputation for honesty, integrity and trustworthiness," he said.

Kanakry said the clearest sign of loan modification fraud is when a company requests that he collect "advance fees" from the homeowner.

"The key is picking up money," he said. "If the offer includes retrieving any checks, I refuse the job. None of the legitimate companies I've worked for have requested money up front because the homeowner mails a check directly to the lender."

Another problem is companies that offer assignments repeatedly, under different identities.

In one case, Kanakry and his wife Doris — also a Notary — received multiple calls over several months from a company using different names. "I called the NNA, the Better Business Bureau and the state Attorney General's office, discovered it was one company using different names, and found out there were a tremendous list of complaints against them. I refused the job — I don't want to be in the middle of a lawsuit!"

Recognize The Warning Signs

With so many companies out there offering assignments, how do you find legitimate ones and avoid getting ensnared in a legal mess?

Much like screening a signer for willingness and awareness, Notaries must ask questions when a company calls offering an assignment. Warning signs include requests for you to notarize powers of attorney for clients, or to make sure that clients do not retain copies of the documents. Other warning signs involve company officials being evasive about providing you with information. If they refuse to discuss how their loan modification process works, or don't immediately give you an assignment location, or decline to answer specific questions about what they want you to do, there is reason for concern.

One of the surest ways to check a company's reputation is through the Better Business Bureau (BBB), which maintains a nationwide database of reports on customer issues and complaints against businesses, and what steps the company took to resolve these problems, if any. Using a BBB reliability report, a Notary can review what problems the public has encountered

with a firm, said BBB spokesperson Alison Southwick.

"If a company has a bad grade, you can see why," Southwick said. "Perhaps they are not properly licensed, or are not responding to complaints. Any of those might be a red flag to companies doing business with them."

Southwick recommends that Notaries check whether a company offering assignments is licensed to do business in their state. For example, if the company is a law firm, Notaries can check with the state bar to learn if the firm is authorized to practice or if there are any complaints against it.

A business offering mortgage-related services can be checked out through a state agency that regulates real estate.


In addition to doing the necessary homework on a company, Southwick urged Notaries to trust their training and experience. "Use your good sense," she said. "If it doesn't feel right, walk away." If a Notary has cause to believe that a business is breaking the law or defrauding customers, she recommends filing a complaint with the state attorney general. You must also rely on your professional membership organization.

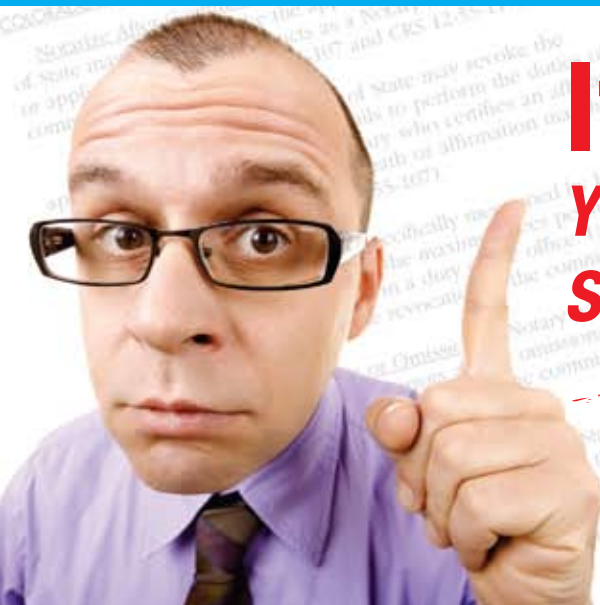
It's also a good idea to see if a company offering work makes contact information available via the Internet. A company that has no Web site or presence could be a "fly-by-night" outfit or a front for fraudulent activity.

Notaries should also pay attention to whether colleagues or customers have problems with a business. Notary Melissa Krezner of Grove City, Pennsylvania, became suspicious of one loan modification service when they asked her to collect checks in advance from customers. "I wondered why they were being asked to send money when they weren't being assured the company is paying their mortgage," she said.

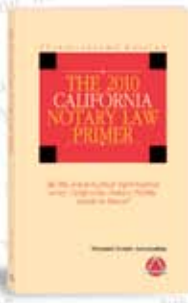
Her suspicions were confirmed when a customer contacted her and said the company hadn't provided him with any assistance. Krezner warned other potential clients and Notaries.

With the loan default and foreclosure rate still high across the nation, the opportunity for loan modification fraud continues to shadow the desperate homeowner. Notaries must be just as cautious as the consumer in avoiding being victimized by participating in these unethical or fraudulent programs.

Vigilance, knowledge and an understanding of proper notarial processes and common mortgage practices can help you and your signers avoid helping these unscrupulous companies perpetuate their exploitive scams. 



If You Knew It All, You Wouldn't Need a State Notary Law Primer



The complexities of notarization demand absolute command of each procedure, and the consequences of slip-ups can be severe. Keep your state's *Notary Law Primer* on your desk or bookshelf and enjoy instant access to crucial information. It's the easy way to know it all, including:

- Requirements for every notarial act
- Certificate wording for every notarization
- Wording for oaths and affirmations
- How to renew your commission
- All laws that regulate Notaries in your state, including text from the official state handbook

Arizona	Item #5130
California	Item #5120
Colorado	Item #5143
Florida	Item #5121
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Hawaii	Item #5132
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Minnesota	Item #5149
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New Hampshire	Item #5151
New Jersey	Item #5131
New Mexico	Item #5145
New York	Item #5125
North Carolina	Item #5129
Ohio	Item #5141
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Can You Spot The Warning Signs?

What is the difference between a legitimate assignment and one with a high potential for fraud? We've described two hypothetical situations relating to loan modifications below. Review the scenarios below and decide how you would respond to each situation. You can check to see if your choices match the NNA's suggested course of action.


SITUATION: You receive a call from a company that describes itself as a "Lawyer-based Mortgage Rescue Service" from out of state. The company representative says he is acting on behalf of a major lender and will pay you \$100 to travel to a customer near your home, pick up a check he calls an "advance deposit" for services, and deliver several documents for the customer to sign. "One thing though," he says. "Our policy is to leave no copies of signed documents with the customer, so be sure to take everything with you. If he asks for copies of the loan modification agreement, tell him to call us." When you ask what lender they represent, the representative says, "I can't tell you, for confidentiality reasons." How do you react?

WARNING SIGNS: *There are several warning signs that this company may be dishonest. The company is asking you to collect an advance fee, which many states prohibit except for attorneys or licensed real estate professionals — and in California, this practice is banned. Note that the representative said his business is "lawyer-based" not a "law firm" — which may be a sign the company is engaging in misleading advertising. The company claims to be acting on behalf of a major lender — but won't say who it is. The request not to leave any documents with the signer makes this assignment questionable.*

SUGGESTED RESPONSE: Ask the caller what "lawyer-based" means and request the name of a licensed attorney on staff. Request proof of authorization to charge advance fees under state law. If the company cannot provide any or all of the above information, tell them you cannot accept the assignment without additional proof they are a legitimate business. Finally, don't forget to check with your state attorney general's office or local law enforcement to find out if there are any complaints on file against this company. Finally, be aware that at least one state — North Carolina — may challenge a Notary who charges anything beyond the fees specified in statute for notarial acts — even when the Notary is performing a non-notarial service.

SITUATION: You are contacted by a mortgage servicing company. You don't recognize the name, but the company says it is working with one of its customers to modify a home mortgage the customer has taken out with the firm. The firm would like to hire you to deliver a checklist of documents for the signer to review and confirm he has provided all the information the lender needs for the modification. Once that's done, you will be asked to return the checklist to the mortgage firm. The firm emphasizes that you will not need to notarize any documents or collect any money — simply deliver the checklist and return it to the lender when the customer completes it.

WARNING SIGNS: *This assignment has fewer signs of risk than the one described previously. However, you should still exercise caution, particularly since the lender is not asking you to act as a Notary Public. In this case, the mortgage servicer is working directly with one of its customers to modify the home loan. Officials in some states and the FTC have stated that legitimate loan modifications usually take place directly between the lender and the borrower (as in this case). The company is not asking for advance fees to be collected, simply for a checklist to be delivered, reviewed and confirmed by the borrower and returned to the lender.*

SUGGESTED RESPONSE: It would still be prudent to research the lender online (through an impartial source of information such as the Better Business Bureau) to confirm the company is legitimate and does not have any reports of problems or dishonest dealings with customers. Clarify with the caller that no notarial acts are required, and that you are performing the service only as a trusted individual, and not as an official of the state. Also be sure to check whether the lender has done business under other names — some companies that have been sued for dishonest practices have changed their names to put customers and Notaries off their guard. The state attorney general's office is a good place to check for this information. 



Personal Appearance

*It's Not An Option,
It's A Requirement*

By David S. Thun
dthun@nationalnotary.org



While Notary laws across the country are inconsistent when it comes to aspects like seal requirements, recordkeeping and mandatory education, there is one key area in which they are united: the requirement that a document signer — and any witness identifying the signer — be present before a Notary at the time of the notarization.

However, too many Notaries continue to skirt this requirement, either from laziness, pressure from bosses or simply not understanding its importance and legal requirement. Failure to require personal appearance is a violation of law and it exposes the public's transactions to fraud.

All Notaries must realize that a faulty notarization is dangerous to the public and, increasingly, Notaries are finding that even one notarization where they do not require personal appearance — no matter how innocent it may seem — can

land them and their employers on the wrong side of a lawsuit, or even lead to criminal charges.

"There is no basic rule whose violation is more likely to get Notaries in big trouble than the rule that a document signer must always appear in person before the Notary at the time of notarization," said NNA Vice President of Notary Affairs Charles N. Faerber. "That's why personal appearance — as noted in *The Notary Public Code of Professional Responsibility* — is one of the most vital principles in a Notary's standard of care."

Why It's So Important

A signer's physical presence allows a Notary to perform several transaction security measures, like verifying the signer's identity with satisfactory evidence, screening for willingness and awareness and facilitating direct communication with the signer. In cases where credible identifying

witnesses or subscribing witnesses are used, it allows the Notary to properly identify them and administer an oath, if necessary.

Without these security measures, trust and faith in notarized documents would not exist, and all of our most important transactions — from medical authorizations to home purchases — would be vulnerable to fraud.

But despite its importance, the personal appearance requirement is also arguably the most violated Notary best practice, putting countless transactions at serious risk. In Colorado, for example, the state's focus has been on educating Notaries to help them protect the public and avoid costly mistakes — and for good reason. In 2009, 44 percent of reported violations of the state's Notary Public Act involved Notaries who failed to require personal appearance of the signer — a dramatic increase from 33 percent in 2008.

Avoiding Signer Deception

You should always decline whenever asked to waive personal appearance. But Notaries are human and deceptive signers will try every trick in the book to fool you into proceeding. They will play on your sympathy, they will try threats and intimidation tactics and, in the case of bosses, they will sometimes threaten your job. Here are some recent, real-life examples:

The "Help Someone Out"

Approach — In New York, a businessman approached a Notary and requested notarizations of mortgage documents. The businessman said the signers were "stuck in traffic" and urged

the Notary to proceed because the transactions were critical and a deadline had to be met. The Notary relented and went ahead with the transaction. Turns out the signers were not "stuck in traffic." They simply did not exist, and the businessman used the documents to initiate a phony sale of a \$6 million property before being nabbed by the FBI.

The Lesson: Helping a desperate person is not an option. It may seem innocent, but many times these people are wolves in sheep's clothing attempting to facilitate fraud, and by moving forward you unwittingly help them.

The "Take A Relative's Word For It"

Approach

— A man recently entered a bank and asked an employee to notarize loan documents, which featured his and his wife's

Personal appearance by a signer is a fundamental part of notarizing, and it is vital to keeping a Notary safe from liability.

signatures. When the employee asked where the wife was, he made up a sob story about why she couldn't be present. Seeing no harm, the Notary employee proceeded.

Only later was it discovered that the absent signer was not his wife, but his ex-wife. Her signature was forged and she is now suing the bank employee for punitive damages of more than \$5,000.

The Lesson: A large number of fraudulent transactions are perpetrated by family members, so don't buy excuses or sob stories. No matter what their relationship to a signer, relatives who ask Notaries to ignore personal appearance shouldn't be trusted.

Continued on page 29

Missing Person

Rose Harrison

Last seen "stuck in traffic"



If found, please call
XYZ Notary at 555-1212

Missing Person

Marilyn Smart

Last seen "without husband"



If found, please call
XYZ Notary at 555-1212

Missing Person

Greg Bartlett

Last seen "Not at bank"



If found, please call
XYZ Notary at 555-1212

Proofs Of Execution And Attorneys In Fact

On rare occasions, a person is physically unable to sign a document, or is prevented from doing so by extreme circumstances. In these exceptional scenarios, there are two alternatives to personal appearance: attorneys in fact and proofs of execution by a subscribing witness.

It is important that Notaries be aware that these exceptions should not be used lightly. A proof of execution by subscribing witness is intended to be used only if the signer is kept from appearing before the Notary by highly unusual conditions such as hospitalization or being out of the country. In a proof of execution, a third party (the "subscribing witness") who either witnessed the document signing or had the original signer acknowledge signing it appears before the Notary. The subscribing witness then

swears or affirms before the Notary that the original signer signed or acknowledged signing the document. However, some states strictly limit the use of proofs of execution to certain types of documents only. Always check your state's laws regarding proofs before proceeding.

An attorney in fact is appointed to sign documents on behalf of another individual. Even if not required by state law, the NNA recommends asking an attorney in fact to show proof that the person has been given power of attorney by the principal named in the document.

The attorney in fact must personally appear and be identified by the Notary, and then signs on behalf of the principal. The Notary should write in the journal entry that the signer was acting as attorney-in-fact for someone else, and name that individual.

How to Avoid Awkward Moments



Be prepared for signers' and employers' improper Notary requests

NNA *Sorry, No Can Do* books are your answer to requests to perform improper notarizations. This clever collection explains to signers and employers what you cannot do and why. Improper notarization requests are quickly addressed using simple language that is easily understood.



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The “Blame The Notary, Not Me”

Approach — Employers need to know that they can’t simply escape liability by claiming that negligence is solely the fault of the Notary. In a recent case, an Illinois branch of Bank of America was sued by a man claiming his signature was forged on real estate documents, which were notarized by a bank employee without his knowledge. An appellate court ruled that the plaintiff could sue Bank of America as well as the Notary.

The Lesson: We all want to serve our clients and make them happy, but ignoring personal appearance requirements should never be a method to achieve customer satisfaction. It could get you and your employer sued and left on the hook for thousands of dollars in damages.

When In Doubt, Just Say ‘No’

In each situation where personal appearance is ignored, major legal problems could be right around the corner for the Notary and the Notary’s employer. By requiring a signer’s personal appearance, a Notary is adhering to professional standards of care, and it becomes significantly harder to commit fraud.

While there are special circumstances in which a third person can appear on the actual signer’s behalf (see “Proofs of Execution and Attorneys In Fact,” page 28) it should be understood that these are only used in rare circumstances, usually when a signer is incapacitated or cannot appear because of illness or emergency — and even then, the signer’s authorized representative is still obligated to appear before the Notary.



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When Tools Break

A CARPENTER NEEDS A HAMMER, A DOCTOR NEEDS A STETHOSCOPE AND NOTARIES NEED THEIR SEALS AND JOURNALS. BUT IF YOUR SEAL BREAKS OR YOUR JOURNAL COMES APART, YOU NEED TO ENSURE THAT THESE TOOLS ARE DISPOSED OF PROPERLY.

Because different states have different laws regarding the disposition of old or damaged notarial equipment, always be sure to check and follow your own state's rules before disposing of obsolete or damaged Notary tools.

THE NOTARY SEAL

A Notary's seal and embosser are the tools of our trade. And when a Notary has a damaged or obsolete seal it cannot simply be thrown away, because someone could find it and fraudulently apply it to documents. If state law does not require an expired or unusable seal to be surrendered to a government agency, the Notary must make sure that the seal cannot be reused by someone else before disposing of it.

Here are the steps you should take if your Notary seal can no longer be used:

1. *Check your state's laws.* Find out if your state requires you to turn in the damaged seal to a state or local official, such as a county clerk. If so, then follow your state's guidelines in doing so. If not, go to Step 2.

2. *Make sure the seal can't be reused after disposal.* If you aren't required to turn in the damaged seal, then you need to deface or damage the printing surface so it can't be used by someone after being thrown out. With an ink seal, this is fairly simple. Cut parts of the rubber seal printing face so that it will no longer make a legible impression. The rubber stamp can be destroyed by simply using scissors or a knife to destroy the printing face. Once the seal is rendered unusable, it can be disposed of safely.

For a metal embosser, the die plates holding the seal impression may need to be

removed from the embosser. Once this is done, the seal may be defaced with a hammer and chisel.

3. *Always Be Safe.* Be sure to take appropriate safety precautions, such as wearing eye protection and gloves, when using any tools to render a seal unusable in order to avoid accidental injury.

DAMAGED JOURNALS

While it's rare for a journal to be damaged to the extent it's unusable, if the situation comes up the Notary must be sure to follow state rules before disposing of it or starting a new record book.

As with seals, the Notary should first check official state guidelines and follow any relevant instructions for disposal of the journal. For example, if the journal can no longer be used, and the state requires Notaries to store their records until their commission ends, then the damaged journal should be kept in a secure place by the Notary and a new record book should be started.

If entries are lost or misplaced from a journal due to damage (for example, if pages are rendered illegible or torn out of a journal) the Notary may need to notify the state Notary-regulatory agency — and even local police if a criminal act is suspected — and make a notation in their journal of the lost entries and the dates covered.

Your journal and seal contain valuable information and should never be casually thrown away.

Follow proper procedure when disposing of damaged or obsolete tools, and ensure that neither the tools nor the information they hold is compromised.

NNA Notary Certificates Come with Goof-Proof Instructions

Preprinted Notary wording that meets your state's requirements

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A large space makes it easy to affix any size or shape Notary seal

Important optional data helps protect you and your signers from fraudulent misuse:

- Type of document
- Document date and number of pages
- Other signers
- Space for signer's thumbprint

Select from the following certificates to meet the requirements of your state:

NNA Notary Certificates

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- ✓ Signers with multiple representative capacities
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All States: except AR, CA, FL, HI, MA, MO, NV, NY, OH, TX & WA, see state lists; (8½" x 11", unless noted)

- Individual Acknowledgment — #5936
- Corporate Acknowledgment — #5937
- Partnership Acknowledgment — #5938
- Attorney in Fact Acknowledgment — #5939
- Credible Witness Acknowledgment — #5943
- Signature-by-Mark Acknowledgment — #5945
- Proof of Execution by Subscribing Witness — #5944*
- Copy Certification by Document Custodian — #5946
- Copy Certification by Notary — #5922**
- Jurat with Affiant Statement — #15924

Arkansas: (8½" x 11")

- Individual Acknowledgment — #5947
- Proof of Execution by Subscribing Witness — #5948
- Copy Certification by Notary — #5949
- Jurat with Affiant Statement — #5950

California: (8½" x 11")

REVISED! • All-Purpose Acknowledgment — #5907

• Proof of Execution by Subscribing Witness — #5908

REVISED! • Copy Certification by Document Custodian — #5911

- Copy Certification of Power of Attorney — #5242
- REVISED!** • Jurat with Affiant Statement — #5910

Florida: (8½" x 7")

- Individual Acknowledgment — #5181
- Corporate Acknowledgment — #5182
- Official/Trustee Acknowledgment — #5185
- Partnership Acknowledgment — #5183
- Attorney in Fact Acknowledgment — #5184
- Signature-by-Mark Acknowledgment — #5931
- Disabled Person's Acknowledgment — #5933
- Certification of Photocopy — #5187
- Jurat — #5186
- Signature-by-Mark Jurat — #5930
- Disabled Person's Jurat — #5932

Hawaii: (8½" x 7", unless noted)

REVISED! • All-Purpose Acknowledgment — #5921

REVISED! • Jurat with Affiant Statement (8½" x 11") — #5935

Massachusetts: (8½" x 11")

- All-Purpose Acknowledgment — #5951
- Signature Witnessing — #5953
- Jurat — #5952
- Copy Certification by Notary — #5922

Missouri: (8½" x 11")

- Acknowledgment by Individual — #5936
- Acknowledgment by Corporation — #5937
- Acknowledgment by Partner — #5938
- Acknowledgment by Attorney in Fact — #5939
- Acknowledgment by Individual Who Cannot Write Name — #5940
- Acknowledgment Through Affidavit of Executing Witness — #5941
- Certification of Facsimile — #5942
- Jurat with Affiant Statement — #5924

Nevada: (8½" x 7", unless noted)

- Individual Acknowledgment — #5915
- Attorney in Fact Acknowledgment — #5927
- Representative Acknowledgment — #5917
- Credible Witness Acknowledgment — #5918
- Proof of Execution by Subscribing Witness — #5919
- Copy Certification by Document Custodian — #5946
- Copy Certification by Notary — #5920
- Jurat with Affiant Statement (8½" x 11") — #15924

New York: (8½" x 7", unless noted)

- All-Purpose Acknowledgment — #5925
- Proof of Execution by Subscribing Witness — #5926
- Copy Certification by Document Custodian — #5946
- Jurat with Affiant Statement (8½" x 11") — #15924

Ohio: (8½" x 11")

NEW! • Jurat with Affiant Statement — #15924

NEW! • Individual Acknowledgment — #15936

NEW! • Corporate Acknowledgment — #15937

NEW! • Partnership Acknowledgment — #15938

NEW! • Attorney in Fact Acknowledgment — #15939

NEW! • Credible-Witness Acknowledgment — #15943

Ohio (continued): (8½" x 11")

- NEW!** • Proof of Execution by Subscribing Witness — #15944
- NEW!** • Signature-by-Mark Acknowledgment — #15945
- NEW!** • Copy Certification by Document Custodian — #15946

Texas: (8½" x 7", unless noted)

- Ordinary (Individual) Acknowledgment — #5243
- Credible Witness Acknowledgment — #5943
- Signature-by-Mark Acknowledgment — #5945
- Proof of Execution by Subscribing Witness — #5944
- Copy Certification by Document Custodian — #5946
- Copy Certification by Notary — #5922
- Jurat with Affiant Statement (8½" x 11") — #5924

Washington: (8½" x 11")

- Individual Short-Form Acknowledgment — #5906
- Representative Short-Form Acknowledgment — #5905
- Disabled Person's Acknowledgment — #5904
- Copy Certification by Document Custodian — #5923
- Copy Certification by Notary — #5922
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Sticking To The Fundamentals Is Your Best Protection

By Betty Pringle
NNA Hotline Counselor
bpringle@nationalnotary.org



While the circumstances of a challenging notarization often seem complicated, the reality almost always boils down to the same solution — rely on the best practice fundamentals

you gained in your Notary training, and fully understand what notarial acts your state allows you to perform. That's what **J.H.** from **Venice, Florida**, found out when he asked: **What is required to identify a signer who has had a legal name change and, because of that, the ID and document names don't match?**

If the name on the document and the name on the ID do not match, then a Notary may use a credible identifying witness to identify the signer (FS 117.05 [5]). Under Florida law, every credible witness must personally know the document signer. If there is only one credible identifying witness, he or she must also be personally known to the Notary. If there are two credible witnesses, they don't need to be personally known to the Notary, but must be identified through an acceptable identification document (FS 117.05 [5] [b]).

Although the state of Texas operates public schools, the IDs the schools issue do not appear to be acceptable for notarizations. Why is this? And what about a temporary driver's license? This card is issued by the state. Can I accept it?

P.S., Houston, Texas

While schools in Texas might be state-operated, a school ID is issued by the individual school, not the state. In regards to the temporary card, it does not contain a photograph of the bearer. According to Texas Civil Practices and Remedies Code,

Sec. 121.005, the only documents you can use to identify a signer are "a current identification card or other document issued by the federal government or any state government that contains [a] photograph and signature..." Neither of these forms of ID meets these criteria.

Do affiants have to sign the journal when taking an oath without also presenting documents for notarization?

M.N., Fairfield, California

Yes. Even though the Notary is not presented documents to notarize, a verbal oath is an authorized notarial act (Government Code, Section 8205), and California Notaries are required to keep a record of all of their official acts (Government Code, Section 8206). You will need to have your oath-taker sign your journal and record all pertinent information.

I work in a nursing home, and have been asked to notarize a power of attorney that a resident has already signed. Do I have to refuse this request or can the resident re-sign the document while she's in my presence?

L.P., Allentown, Pennsylvania

It depends on the notarial wording. If it's an acknowledgment, the document does not have to be signed in your presence, as long as the signer appears before you with the signed document. If it has jurat wording, it must be re-signed in your presence.

You can reach Betty and all our experienced Notary Hotline counselors at

1-888-876-0827

5 a.m. to 5 p.m. PST Monday through Friday.

Hotline answers are based on laws in the state where the question originated and may not reflect the laws of other states. If in doubt, always refer to your own state statutes.
— The Editors



State Notary Laws All Over The Map

Almost four decades ago, the first version of the *Model Notary Act* was drafted with the goal of bringing consistency to the patchwork of state laws

Editor's Note: In this issue, we introduce a new column, Beyond The Basics. Its purpose is to give Notaries a look into some of the less common aspects of notarization and explain how to handle situations they might not come across on a daily basis. This feature will help you approach unusual (yet legal) requests with confidence and professionalism.

that govern how Notaries perform their duties. Occasionally, we come across stark examples of how much work remains.

Antiquated, misguided or odd notarial laws remain on the books in many states, leaving us all scratching our heads. Still, they serve to remind us of the importance of sensibility and uniformity in Notary regulations. The following are a few examples:

'I SWEAR I AM ME'

Identification is the heart of the notarial process, but a few states have strange notions about the proper way to handle it. Ohio leaves the method of identification in the Notary's hands, since it has no specific statutory ID standards. Indiana allows signers without IDs to take an oath swearing that they are who they say they are, while Arkansas allows a notarization to be based on the Notary's familiarity with a signature.

Maryland's laws aren't specific about ID requirements, but its Notary handbook offers advice: "(A) good rule for a Notary Public to follow would be to require such proof of identification as he or she would require to cash a very large check for that person."

Without more stringent, well-defined identification standards, some states make it easier for impostors to convince Notaries to accept fraudulent documents

SEAL, EMBOSSEY OR NOTHING AT ALL

For some states, the everyday tools of the Notary trade — the seal and embosser — open the door to confusion. Kentucky, Michigan, New Jersey and New York don't require that their Notaries possess a seal at all.

Others — Arizona and Hawaii, for example — only allow a Notary to have a single one.

South Carolina plays it both ways, requiring Notaries to possess a seal but not requiring them to use it in most cases. Iowa has the most expansive list of seal possibilities — embosser, inked seal or adhesive labels.

The NNA recommends that all Notaries obtain and use seals, even if their state law does not require it.

WHAT MUST YOU RECORD?

It is essential for Notaries to keep records of their official acts, even if their state doesn't require it. But some states' practices differ.

Arizona, for example, allows Notaries to keep one Notary record book for public records and another for confidential ones — which can cause chronological confusion when there is a need to refer back to a notarization record. Arizona does go the extra step and requires Notaries to record ID serial numbers, making it a valuable investigative tool.

Massachusetts also requires ID serial numbers be recorded, but prohibits recording Social Security numbers. Texas takes it a step further, making it illegal to record an ID serial number in a journal.

But probably the biggest issue is the fact that most states do not require that Notaries record thumbprints. A thumbprint is the best way for law enforcement to verify who appeared before the Notary, should a transaction ever come into question. Notaries should always request a thumbprint from their document signers — even when it's not required by law — unless their state prohibits it.

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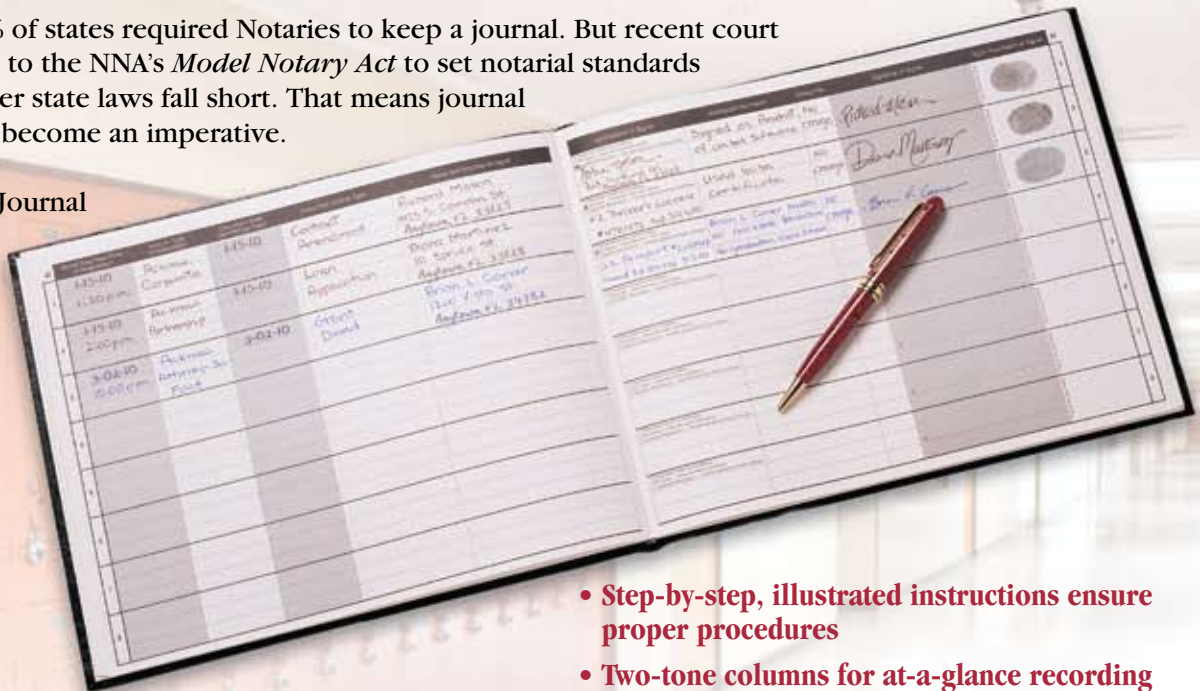
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