

4 Case Studies in Notary Liability

A White Paper from the National Notary Association

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ABOUT THE NATIONAL NOTARY ASSOCIATION

Established in 1957, the National Notary Association® (NNA) is the leading professional authority on the American Notary office and is dedicated to educating, serving and advocating for the nation’s 4.8 million Notaries. The NNA imparts comprehensive notarial knowledge and understanding, promotes a positive public perception of the Notary office, and bolsters consumer protection by promoting best practices. The Association’s accredited professional programs, services and model legislation help Notaries advance their careers and serve the American public with the highest level of professionalism and ethics. To learn more, visit us at NationalNotary.org.

ABSTRACT

As an employer, your organization is accountable for the services your Notaries perform. Accordingly, if a customer files a claim against one of your Notary-employees, your company could be dragged into court.

While a well-trained and well-managed Notary workforce helps to mitigate risk, no Notary is immune to liability. To illustrate this point, Merchants Bonding Company shared four court cases that highlight financial liability resulting from notarizations.

Although the details are different in each court case, the lesson learned is resounding: The best protection for Notaries and their employers is to adhere strictly to statutory and professional practices and to carry Notary errors and omissions insurance.

INTRODUCTION

Every notarization carries risk. For organizations that employ a team of Notaries, risk management is a necessary component of managing the business. After all, being named in a lawsuit is a nightmare.

While Notary insurance claims are infrequent, they happen more often than you might think. What's worse, a single case can easily drain your company's resources and bring unwanted public attention that could damage your reputation.

As the carrier for NNA bonds and insurance policies, Merchants Bonding Company knows first-hand the impact a lawsuit can make. They shared the following four court cases with the National Notary Association to make a point: A group errors and omissions policy is essential for protecting your workforce and your business.

1

The Case of the Stubborn Plaintiff

A Notary was asked to visit a hospital and notarize a power of attorney document. The document granted the signer's friend the right to handle his medical and legal affairs during his hospitalization.

Later, the signer filed a lawsuit against the Notary, claiming he was not aware of what he was signing. During the case, the plaintiff was declared a "vexatious litigant" by the court after learning he had a history of filing frivolous lawsuits. The Notary's attorney claimed the grounds for the suit were legally insufficient, and the court upheld this claim.

But, the plaintiff didn't stop. He filed a second suit against the Notary and several other defendants a year later. Eventually, this second case was settled, but not until the Notary had incurred additional attorney fees to respond to the new allegations. It took a substantial amount of the Notary's E&O policy to cover legal defense in both actions.

Lesson: Litigation can get messy, and sometimes litigants don't give up. As a result, you can incur significant costs in legal fees—even against frivolous claims. Without an E&O policy with sufficient coverage to absorb all the costs, any remaining expenses would come out of your pocket.

2

The Case of the Notary Caught in the Crossfire

This Notary was among several individuals sued for more than \$200,000 over a real estate transaction. The litigant claimed the Notary had failed to properly check a signer's identity during the transaction.

Later investigation acquitted the Notary of all wrongdoing. However, the lawsuit proved extremely difficult—and costly—to resolve because of the multiple complaints and cross-complaints involving the numerous defendants. Fortunately, the Notary's E&O policy covered the legal expenses.

Lesson: Financial risk has nothing to do with being right. Your Notary can do everything correctly and still get dragged into a lawsuit. Never assume that, as long as your Notaries don't make egregious mistakes, you don't need to carry an E&O policy.

3

The Case of the Costly Thumbprint

During a notarization involving real property, the Notary was distracted and failed to take the signer's thumbprint for her journal entry as required by state law.

This oversight got the Notary into serious legal trouble. It turned out that the signer was an impostor, and the Notary was sued for \$250,000.

After lengthy negotiations, the case was eventually settled, but the Notary's full E&O policy was exhausted.

Lesson: It happens—people make mistakes. Even good Notaries make mistakes. E&O insurance will cover claims up to their policy limit when Notaries are clearly negligent, as in this case where the Notary forgot to obtain the signer's thumbprint for the journal entry.

4 The Case of Multiple Mistakes

A Notary was asked to notarize the signatures of two individuals who signed a deed of trust in buying a property. The signers had no ID, so the Notary identified them using a single credible witness—the agent representing the signers.

State law required the Notary to personally know the witness, but the Notary hardly knew the agent. In addition, the Notary failed to obtain the thumbprints of the signers in her journal, leaving the transaction vulnerable to potential fraud.

In testimony, a handwriting expert indicated that it was “highly probable” the signatures notarized on the deed of trust were forged. The resulting settlement and legal fees were substantial.

Lesson: As long as the violations aren’t intentional, E&O policies will cover multiple mistakes in the same claim. As bad as it is for a Notary to be sued after following proper procedure, the situation can be even worse if a Notary ignores state rules.

CONCLUSION

Making sure your Notaries follow your state’s laws and best practices will go far in protecting your company from legal action. But it won’t take you all the way.

- **Litigation can get messy.** As a result, you can incur significant costs in legal fees—even against frivolous claims.
- **Being right doesn’t eliminate risk.** Your Notaries can do everything correctly but your company can still end up in court.
- **Even good Notaries make mistakes.** E&O insurance will cover claims up to their policy limit when Notaries are clearly negligent.
- **Many mistakes can happen at once.** As long as the violations aren’t intentional, an E&O policy can cover multiple errors in a single claim.

The good news is that, for all of these reasons, there’s group Notary E&O insurance. For organizations with two or more Notaries, group E&O is the best way to protect your company against situations out of your control.

For Additional Information

To receive more information on the NNA's Trusted Notary program, the NotaryTracker™ service, and sample policies and procedures for Notaries, contact:



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