A NIGHTMARE ON NOTARY STREET

Real life examples of what not to do,
and the underlying laws that WILL PROTECT YOU
AGENDA

- Policies & Procedures
  - A Hidden Agenda
  - The “Social” Butterfly Nightmare

- Training
  - Zombified Notaries
  - The Public Pantsing of a Texas Notary

- Tools
  - The Case of the Scheming Husband
A HIDDEN AGENDA

What would you do?

- What do we notarize?
  - What notarizations do
  - What notarizations do not do

- Notary is responsible for what the document is
  - Not what it says
  - Is it ok to ask your signer questions?

- Four main facts of notarizations
  - Detrimental reliance
Employer liability

- Respondeat Superior
  - Policies & Procedures
    - Handbook
    - Guidelines
    - State law \textit{minimum}
  - Training
    - Live is best, but other options
- Tools
  - Compliant
THE “SOCIAL” BUTTERFLY NIGHTMARE

2014 Indiana signing agent → SSN’s

- $20 each to an identity theft gang
- Party time! - $160k in fraudulent charges
- Paying $85k in restitution
- Still a notary

- Florida (among about 40 states) – no background check
  - Consumer Financial Protection Bureau (CFPB)
    - Financial institutions responsible
    - Respondeat Superior
What would you do?

- What policies could you set in place as an administrator?
- What can you do as a signing agent?
  - Background check
  - Affiliated with reputable signing agent certification
  - Social media
    - Career Builder – 70% screen potential employee’s by social media
    - 43% check on current employees on social media
  - Keep your nose clean!
    - Develop policies so you don’t step in hot gooey trouble!
TRAINING
ZOMBIFIED NOTARIES!

What would you do?

- Who is responsible?

- What could have been done to protect against these types of gross negligence and intentional misconduct?
  - Training
  - Supplies and journals
  - Policies and procedures
ZOMBIFIED NOTARIES!

- What are the FOUR main facts a notarization certifies?
- Statute of limitations
- Limit of liability
I WISH I HAD MET YOU 5 YEARS AGO...

- Employee Notaries can face much greater risks than they ever realize...
  - Personal liability
THAT IS WHEN I HEARD THE SIRENS...

- What made you come here today?
- What made you start asking questions?
- Where did your “Notary” journey start?
- What would you do differently if you could go back?
- What scares you most about being a Notary?
DON’T OVERDO IT...

- Sometimes Notaries do things that get them in trouble by trying to do more than they need to...
What would you do?

- What is the notarial certificate?
  - Notaries responsibility
  - Clear, accurate, and complete
  - Certifies the steps taken

- Other certificate issues
  - No room
  - Inaccurate information
  - Another language?
THE PUBLIC PANTSING OF A TEXAS NOTARY

DOUBLE FACEPALM
When the Fail is so strong, one Facepalm is not enough.
THE PUBLIC PANTSING OF A TEXAS NOTARY

- False material statement = misconduct

“A false material statement knowingly made by the notary in the certificate constitutes a crime, usually called official misconduct.”

Closen, (81) Notaries Best Practices

- Not pre-filled out
- Not be altered after the making
- Required components more important than verbatim
THE PUBLIC PANTSING OF A TEXAS NOTARY
TOOLS
THE CASE OF THE SCHEMING HUSBAND

What would you do?

- What is the notary’s responsibility to the signer?
  - To the state?

- Signers competency vs willingness
  - Capacity is “…ability to understand the nature and effects of ones acts…”
  - Willingness = intent

- Journal keeping
  - It’s your only line of defense!
  - Prima Facie evidence

HERMAN’S JOURNAL

- Always use a Notary Journal
  - Even if state law doesn’t require it – Why?
- Equally important that the journal is compliant
- Power of and protection from the journal
COMPLIANT TOOLS MATTER - JOURNAL

- Purchase and USE a compliant Notary journal (Even if your commission authority does not require that you do)
- Clearly understand how to completely fill out a notarization journal entry and fully complete each journal entry
- Purchase your journal from a reputable Notary supply organization that can provide you with a journal that is compliant with applicable journal laws and statutes
- Consistently and appropriately use your Notary journal
- Safeguard your journal at all times
- KEEP your completed journals
PRO – TIP:

- Professor Closen in his excellent book “Notary Best Practices” reminds us to “Prepare the journal entry completely BEFORE completing the notarial certificate”. This is important as completing the journal entry can help us remember all the critical steps and ensures that we have determined we have all the information necessary in order to perform the notarization properly.

- Additionally BEFORE you sign and stamp the document – be sure to go back and review your journal entry and what you have written and that you have fully competed ALL necessary steps of the notarization to verify everything is complete and documented accurately. CATCH THE ERRORS BEFORE THEY CATCH UP WITH YOU!
STAMP IT. STAMP IT GOOD. STAMP IT REAL GOOD

- It may seem odd to many of us – but there are new Notaries out there that truly have never seen or even understand what a Notary “Seal” is…

- And many more Notaries actively using seals that aren’t compliant…
## Seal Requirements Are Very Specific

<table>
<thead>
<tr>
<th>State</th>
<th>Seal Requirement</th>
<th>Seal Content Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Embossed or inked stamp (as of 2019)</td>
<td>REQUIRED: Notary’s name, “Notary Public” or “State of Alabama”, NOT REQUIRED: commission expiration date</td>
</tr>
<tr>
<td>Alaska</td>
<td>Inked stamp or adhesive label (Not: embossed cannot be used by mail)</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Alaska”, and commission expiration date and commission number</td>
</tr>
<tr>
<td>American Samoa</td>
<td>Inked stamp or adhesive label (Not: embossed cannot be used by mail)</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of American Samoa”, and commission expiration date and commission number</td>
</tr>
<tr>
<td>Arizona</td>
<td>Inked stamp (Not: embossed cannot be used by mail)</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Arizona”, and commission expiration date</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Blue or black inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Arkansas”, and commission expiration date</td>
</tr>
<tr>
<td>California</td>
<td>Inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of California”, and commission expiration date and commission number</td>
</tr>
<tr>
<td>Colorado</td>
<td>Inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Colorado”, and commission expiration date</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Inked stamp or adhesive label</td>
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<tr>
<td>Delaware</td>
<td>Black inked stamp or adhesive label</td>
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</tr>
<tr>
<td>District of Columbia</td>
<td>Embossed stamp</td>
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<tr>
<td>Florida</td>
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</tr>
<tr>
<td>Georgia</td>
<td>Inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Georgia”, and commission expiration date</td>
</tr>
<tr>
<td>Guam</td>
<td>TWO SEALS REQUIRED: Black ink stamp and red stamp</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Guam”, and commission expiration date</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Hawaii”, and commission expiration date</td>
</tr>
<tr>
<td>Illinois</td>
<td>Black inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Illinois”, and commission expiration date</td>
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<tr>
<td>Indiana</td>
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<td>Iowa</td>
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<td>Kansas</td>
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<td>Louisiana</td>
<td>Inked stamp or adhesive label</td>
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<td>Maine</td>
<td>Inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Maine”, and commission expiration date</td>
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<td>Maryland</td>
<td>Inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Maryland”, and commission expiration date</td>
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<tr>
<td>Massachusetts</td>
<td>Inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Massachusetts”, and commission expiration date</td>
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<tr>
<td>Michigan</td>
<td>Black inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Michigan”, and commission expiration date</td>
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<tr>
<td>Minnesota</td>
<td>Black inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Minnesota”, and commission expiration date</td>
</tr>
<tr>
<td>Missouri</td>
<td>Black inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Missouri”, and commission expiration date</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Black inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Mississippi”, and commission expiration date</td>
</tr>
<tr>
<td>Montana</td>
<td>Black inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Montana”, and commission expiration date</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Black inked stamp or adhesive label</td>
<td>REQUIRED: Notary’s name, “Notary Public”, “State of Nebraska”, and commission expiration date</td>
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</table>

**Picture for demonstration purposes only – it is not a complete or comprehensive list of all requirements.**
COMPLIANT TOOLS MATTER - SEAL

- Purchase and USE a compliant Notary seal (Even if your commission authority does not require that you do)
- Know the seal requirements of your commission authority and verify that any seal you purchase will meet those requirements
- Purchase your seal from a reputable Notary supply organization that is cognizant of the seal requirements of your commission authority and can provide you with a seal that is fully compliant with them
- Consistently and appropriately use your Notary seal
- Safeguard your seal at all times
**TAKEAWAY’S**

- Policies & procedures that protect:
  - You!!
  - Your company
  - Your clients

- Training should be specific and regular
  - Specific
  - Regular
  - Relevant

- Tools
  - Compliant
  - Kept by the notary
Questions?
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