

A White Paper from the National Notary Association

As an employer of Notaries, your organization is accountable for the services they provide to customers. In today's legal and regulatory environment, it is critical that you understand your responsibilities, that you are aware of the important role that Notaries play within your organization, and that you establish a program that manages and trains your Notary-employees. Demonstrating a high standard of care and control in managing your Notaries helps maximize your organization's efficiencies while mitigating its risk.

As public servants, Notaries are appointed by and answerable to their states, and they serve the public as official, impartial witnesses to business transactions. As employees, however, Notaries are accountable to you — their employer — to serve a variety of business goals of the organization.

This white paper explores your role and responsibilities as an employer of Notaries, what Notaries can and cannot do, why you should be concerned about managing your Notary-employees, and how you can do so effectively.

Notaries Provide Frontline Fraud Protection

The basic role of the Notary is to prevent fraud; this is crucial to your organization's success. Employing Notaries puts you on the frontline in the battle against identity theft, forgeries and other scams and deceptions.

The most significant reason you should be concerned about properly supervising Notaries is to *manage your organization's risk*. Especially today, with notarization practices brought under particular scrutiny by regulators and lawmakers, as well as by aggressive lawyers exploiting legal vulnerabilities, Notaries who follow the law and sound professional practices can keep you, as their employer, out of the public eye and out of court.

Your organization's reputation and profitability can be jeopardized by Notaries who take shortcuts or fail to follow proper procedures. An untrained, unsupervised Notary can expose your company to costly legal, customer and relationship risks. Well-trained and well-managed Notaries, on the other hand, can help your organization avoid liability and prevent fraud.

You should have a well-conceived Notary management and oversight plan in place to address the responsibilities and risks presented by your Notary-employees. Anything short of this places your organization squarely at risk.

Establishing a program to manage and train Notary-employees helps maximize your organization's efficiencies while mitigating risk.

What Can An Employer Do?

1. You should understand what exactly your Notaries can — and cannot — do.
2. You should require your Notaries to be professionally trained.
3. You should establish and enforce widely acknowledged, sound policies and procedures for your Notaries to follow, which clearly dictate the way they should perform their notarizations.
4. You need to understand and properly document which of your employees provides Notary services, as well as the branch locations where they work.
5. You should conduct a periodic assessment of the performance of each of your Notaries to ensure they are up to the task.

Learn the Responsibilities of Notaries

What Notaries do is important. Therefore, your managers and supervisors need a working knowledge of the specialized requirements and practices of Notaries, as well as how to guide Notaries away from costly pitfalls, to effectively manage them.

Appointed by their states, Notaries are public officials who serve as impartial witnesses to certify certain facts about the signing of documents. The official process they perform renders documents worthy of the public's trust. This offers assurance that a document is authentic, its signature is genuine, and its signer acted willingly and intended the terms of the document to be in full force and effect. If the notarization is flawed, there can be serious consequences.

Notaries are obliged to follow state laws and regulations, as well as professional standards of practice. They must require in-person presence of the signer, establish the signer's identity, review the document for completeness, make an official journal record, and certify by signature and official seal the facts to which the Notary has attested.

While requirements for Notaries established by statutes and regulations can vary widely from state to state, there are common standards of practice. The following is an overview of some basic requirements for notarization:

1. Signers must appear in-person to have their signatures notarized. Telephone, videoconference or remote Internet notarizations are not permissible (an exception is Virginia, which allows videoconference notarizations in certain circumstances).
2. The Notary must be able to communicate directly with the signer, not through an interpreter or a representative (one exception: Arizona allows interpreters).
3. The complete document, with all pages and no empty blanks, must be presented for notarization.
4. Documents must be signed willingly without undue influence from others.
5. Notaries must not allow others to use their official seal.
6. The Notary's official seal and journal must be secure and not accessible to others.
7. Notaries must not pre-sign and pre-seal certificates for future use.
8. While documents may be signed and dated before the notarization (in the case of acknowledgments), Notaries must never pre- or post-date their official certificates.

Notaries are obliged to follow state laws and regulations, and they need to adhere to professional standards of practice.

9. Notaries must not give advice or help signers understand or complete documents, unless the Notary has professional credentials to do so, such as a license to practice law or provide insurance.
10. Notaries must never notarize their own signatures or act when there is a conflict of interest and they stand to gain by their notarization.

All notarizations are not the same. There are three common notarial acts: acknowledgments, jurats and copy certifications.

Acknowledgments require the Notary to certify that he or she has positively identified the signer and that the signer, in the Notary's physical presence, has acknowledged signing the document and did so willingly. The document may have been signed previously or in front of the Notary.

Jurats (also known as verifications on oath or affirmation) call for the Notary to take the oath or affirmation of the party, who swears or affirms to facts stated in the document, and the Notary witnesses the signing of the document in person.

Copy certifications are allowed only in a limited number of states, and the Notary makes a copy of an original document and certifies the copy as true and accurate. The original must not itself be a copy and it must not be a vital record such as a birth certificate or certificate of marriage.

Other notarial acts include oaths and affirmations, signature witnessings, proofs of execution, verifications of fact, and protests. Each has its own specific requirements, but all follow basic common practices.

Require Professional Training

Despite the fact that imperfect notarizations can lead to significant adverse consequences and potential liability issues, a majority of states still do not require education or testing to become a Notary. If your business resides in one of these states, you assume the burden and risk of ensuring that your Notary-employees learn and comprehend the laws, rules and professional standards they are obliged to follow.

If your business is in a state that does require education or testing, it is important to note that state training is limited mostly to state laws that regulate Notary practice, so it generally omits the basic how-to's for safely performing notarizations. Supplementary training on best practices and professional standards is advised.

Businesses need to take responsibility for all activities performed on the company's premises, whether the activity is the private function of conducting business or the public one of performing notarial acts, since both are often intertwined.

As an employer, you should require Notary-employees to complete a qualified course on the rules, requirements and professional standards for performing notarial acts. If you are unable to allocate the resources, or if you lack the capability to develop such training, look outside of your organization for a professional Notary program such as the National Notary Association's Notary Essentials curriculum.

You assume the burden of ensuring that your Notary-employees learn and comprehend the laws, rules and professional standards they are obligated to follow.

Establish Organizational Policies and Procedures

Because your Notaries are also employees, it is important to clarify — for them, for you and for other employees — your organization’s policies for Notaries and Notary services. It is vital to clearly document your policies and procedures and to follow them.

Your first policy should be to require your Notaries to give precedence to complying with the laws, regulations and professional standards of practice for Notaries. Along this line, we urge that every organization require Notaries to keep a journal of official acts and to use an official seal of office. Though not required by law in all states, these safe professional practices can prevent fraud and protect your customers, your Notaries, and your organization.

Journals, in particular, provide valuable liability protection in the event of lawsuits, as they contain documented proof that your Notary acted properly. They also yield the additional benefit of providing a record for the employer’s use in monitoring a Notary’s performance.

As with all employee policies, a written acknowledgment signed by the affected employee is an important management tool. We suggest you include a Notary-employee agreement document summarizing the responsibilities of both the employer and the Notary-employee.

Other issues to consider when drafting policies and procedures include the availability of services to the public, the charging of Notary fees, the safekeeping of Notary tools, and the consequences of the unauthorized use of a Notary seal, to name just a few.

To help employers develop their own guidelines, the National Notary Association has created Corporate Best Practices, a model set of Notary policies and procedures including a sample Notary-employee agreement. A copy may be obtained by request.

The National Notary Association’s Corporate Best Practices provides a model set of Notary policies. (Available upon request.)

Get to Know Your Notaries

Managing your Notaries requires that you first know who they are and where they work. While this seems obvious, a great many organizations keep no such records. This can result in employees performing risk-associated functions without oversight or control.

Develop and maintain a list of all your Notary-employees and include the branch location, training completed, jurisdiction of commissioning, and appointment expiration date for each. This last item is of particular importance, as it will enable you to supervise their commission renewal and ensure there is no lapse.

The National Notary Association’s NotaryTracker™ service, available through www.trustednotary.com/service, is an easy-to-use online application that gives you centralized control of your Notary-employees, letting you know who and where they are, and helping you ensure their training is complete and their commissions are current.

Review Notary Performance

As you know, employee evaluations are an essential tool for providing feedback geared at improving worker performance. And yet, many organizations mistakenly treat Notary functions as something outside the employee's reviewable performance. It's often viewed as a public function — like jury duty — outside the scope of a private company's activities. One common excuse is that supervisors do not understand what Notaries do, so they cannot evaluate their performance. Yet, as addressed earlier, it's critical that supervisors understand exactly what their Notary-employees do.

Your performance evaluations for Notary-employees should include criteria specific to their duties as a Notary. This is your opportunity to observe, appraise, and coach their work behavior and minimize errors and risk.

Your Notary managers should evaluate whether Notary-employees are performing their services properly, whether they adhere to sound Notary practices and whether they follow established policies and procedures.

Regular, documented performance evaluations are an important way you can assure that your Notaries are providing excellent customer service, operating efficiently, and not posing a liability risk to your organization.

Practice Sound Risk Management

All components of your Notary management and oversight plan must work together to position your organization in control of the unique responsibilities that come with employing Notaries.

By understanding Notaries' specialized duty to both their state and to you as their employer, by ensuring your Notaries are appropriately and professionally trained, by establishing organizational policies and procedures for Notaries, by knowing who your Notaries are and where they work, and by regularly reviewing the performance of your Notary-employees, you've set up a well-conceived Notary management and oversight program that will help maximize your efficiencies while mitigating risk.

With these policies in place, if by chance you have a Notary who performs negligently and your organization becomes embroiled in litigation or investigation, you can document your proactive and conscientious steps to prevent foreseeable harm. Such a program demonstrates organizational control and a high standard of care — a sound strategy to manage your risks as a Notary employer.

For Additional Information

To receive more information on the NNA's Trusted Notary Training, the NotaryTracker™ service, NNA corporate best practices, and sample policies and procedures for Notaries, **contact Chris Sturdivant, Vice President of Business Development at 818-739-4086, csturdivant@nationalnotary.org.**

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.

Notary managers should evaluate whether Notary-employees are performing their services properly.