

## **Notary Public Issues**

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*by Fran Fish*

As a government commissioned official, the notary public ensures the integrity of a document's execution. A notary who diligently insists on proper identification from and appearance by signers and witnesses, and who follows correct procedures will generally not have any cause to worry about lawsuits. However, notaries could face liability for untruthful or inaccurate statements made in the notarial certificates they complete.

The best safeguards for notaries are accurate record keeping and meticulous adherence to state notarial guidelines. Generally, the notary's responsibility begins and ends with the statements made in the notarial certificate. Exceptions are when notaries know a document they notarize contains false statements or they instigate the execution of documents they know are false.

### **Recent Changes to Notary Law**

The Utah State Legislature made a few changes to the notary code, found in Utah Code Title 46, during its 2008 general session. Specifically, in Senate Bill 114, the Legislature clarified the law to allow a notary public who is also an attorney to notarize a document if the document names the attorney only as representing a signer or another person named in the document. Under prior law, a notary could not notarize any document that named the notary within its text.

House Bill 26, expanded the definition of "satisfactory evidence of identity" to include a passport or other identification issued by the United States government, any state within the United States, or a foreign government. However, the amendment reminds notaries that a driving privilege card is not satisfactory evidence of identity.

Thanks also to House Bill 26, notaries need only notify the lieutenant governor of address changes. Under prior law, notaries bought a new seal whenever they changed addresses. After July 1, 2008, notary seals will include the notary's commission number rather than the notary's address. However, notaries commissioned before July 1, 2008, may continue to use their current seals until their commission expires or an address or name change necessitates purchasing a new seal.

### **Common Notary Problems**

Even the most careful notary faces difficult requests and is often unaware of how to

proceed in order to avoid fraud. Notaries familiar with the situations described in this section will be prepared when asked to perform an improper notarization.

**Omissions.** Many people feel that the notary's signature and seal are sufficient to notarize a document. However, the law requires a notarial certificate that includes specific information for each of the permitted types of notarizations: jurat, acknowledgment, copy certification, and credible witness acknowledgment. Without the certificate, the document becomes unclear raising questions such as: Did the notary witness the signature? When and where did the notarization occur? And, if the document includes multiple signatures, which of the signatures was notarized?

**Deceptive certificates.** Sometimes, when a document signer's personal appearance before the notary seems too inconvenient, another person will try to add his or her own statement and signature to a document and try to convince the notary that it is OK just to witness the second signature. While the notary has no way to know the authenticity of the original signature, this practice may lead others to incorrectly believe that the document is properly notarized.

**Excessive certification.** Employers sometimes ask notaries to certify the information contained in documents. However, notaries certify only the signatures affixed to documents not the content.

### **Cautions for Notaries**

Finally, notaries may find this "do and don't" list helpful in performing their tasks well:

- Don't perform a notarization if the document signer does not appear in person before you at the time of signing. You should not base identification merely upon your familiarity with a signer's signature.
- Don't notarize a document when you are also a signer of the document.
- Don't notarize a document when your name appears in the document unless you are also an attorney and named only as representing a signer or another person named in the document.
- Don't notarize documents or transactions in which you have a disqualifying interest. If you are a beneficiary of or have some financial or other interest in the transaction, ask someone else to provide the notarial service.
- Do feel confident notarizing documents when acting in a professional capacity such as a professional advisor, counselor, agent, or attorney.
- Don't execute a notarial certificate containing false or deceptive statements.
- Do remain an impartial witness to any transaction you notarize.
- Do serve anyone who makes a lawful and reasonable request for notarization.
- Do remember that a notarization does not prove the truthfulness of a document, validate a document, or render it legal.

- Do remember that a notarization provides verification of a document signer's willingness to sign, and that the signer is the person identified by the signature.
- Don't notarize a document if you have any doubt about the signer's identity.
- Do strike and correct and initial any errors you may encounter when completing a notarial certificate on a document.

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