NOTARY PUBLIC HANDBOOK
PRINCIPLES, PRACTICES & CASES,
NATIONAL EDITION

ABOUT THE AUTHOR

Recognized as the leading national expert and "Dean" of American notaries, independent scholar Alfred E. Piombino has conducted in just the past ten years, almost three thousand seminars for governments, universities, trade associations and corporations throughout North America.

Mr. Piombino is used as a resource and often quoted by *USA Today, The New York Times* and *The Wall Street Journal* when notarial-legal issues arise. And on the lecture circuit, his expertise and dynamic style have found him addressing such prestigious groups as the National Association of Secretaries of State and the International Association of Clerks, Recorders, Election Officials and Treasurers.

He is the published author of nine legal books, including *Notary Public Handbook: A Guide for New York,* Fourth Edition; *Notary Public Handbook: A Guide for Florida, Notary Public Handbook: A Guide for Maine, Notary Public Handbook: A Guide For Vermont Notaries, Commissioners and Justices of the Peace; Notary Public Handbook: A Guide For New Jersey; Notary Public Register & Record-keeping Protocols; Notary Public Handbook: A Guide For California Notaries & Commissioners; Dedimus Justice, Bail Commissioner and Justice of the Peace Handbook: A Guide for Maine Magistrates,* and now *Notary Public Handbook: Principles, Practices and Cases.* Besides his books and articles, Mr. Piombino serves as a litigation consultant providing expert witness testimony.

He is a member of the American Bar Association Information Security Committee, Electronic Data Interchange (EDI) and Information Technology Division, Section of Science and Technology. The committee is developing Model Digital Signature Guidelines concerning electronic signatures and encryption, including electronic documents.

Mr. Piombino has received a gubernatorial appointment as a Dedimus Justice of the State of Maine, with a rare lifetime term. He has received an appointment as a Commissioner of Deeds for the State of Florida.

He has received an appointment by the Governor of Kentucky as a Kentucky Colonel. The highest honor awarded by the Commonwealth of Kentucky is the position of Kentucky Colonel. He is also the recipient of an appointment by the Governor of Arkansas as an Arkansas Traveler. This honor is awarded by the State of Arkansas as special recognition for distinguished accomplishments.

He holds active memberships in numerous professional and public organizations, including the National Speakers Association, the National Judges Association, the North East Academy of Legal Studies in Business, and is past State University of New York (SUNY) college business law faculty. He is the founder and chairman of the Maine Magistrates Council.

Mr. Piombino is listed in *Who's Who in American Law, Who's Who in the East* and *Who's Who in the South and Southwest.*

Mr. Piombino recieved his Bachelor of Science Degree, and a Master of Public Administration Degree from Marist College.

He was born in the Hudson River Valley Region of New York, near Hyde Park, New York.

This book is dedicated to
Colonel John Coolidge

Dedication Note

Colonel John Coolidge, a Vermont Notary Public, administered the Presidential oath of office to his son, Vice President Calvin Coolidge on August 3, 1923 at 2:47 a.m. at the Coolidge Homestead in Plymouth, Vermont.

The Constitution of the United States, Article II, Section I, states "Before he [the President] enter on the Execution of his Office, he shall take the following Oath or Affirmation:- "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the preserve, protect and defend the Constitution of the United States."

Vice President Coolidge had been vacationing at Plymouth Notch when word came of the death of President Harding. In later years, an inquisitive visitor asked Colonel Coolidge, "How did you know you could administer the Presidential Oath to your own son?" The laconic Vermonter replied, "I didn't know that I couldn't."

In 1956 the President's son, John Coolidge and his wife, Florence, gave the Vermont Board of Historic Sites this house, complete with all the furnishings that were there on the night of the swearing in. Passageways throughout the first floor have been arranged so that the public may now look into every room and see the historic settings of the drama that took place there in 1923.

The Plymouth Notch Historic District is the birthplace and boyhood home of Calvin Coolidge, the thirtieth President of the United States. In 1970 the entire community and the hilltops surrounding the village were recognized as being significant in our national heritage by inclusion on the National Register of Historic Places. Plymouth Notch is a prime Vermont example of a late 19th and early 20th Century rural New England village, in a perfect stage of preservation. It includes the birthplace of President Coolidge and his ancestors and neighbors. Nearby, in the town cemetery, is the grave of President Coolidge.

Plymouth is 6 miles south of U.S. Route 4 on Vermont 100A about midway across the state. Nearby is the Coolidge State Forest and Park.

"One with the law is a majority."
Calvin Coolidge

ACKNOWLEDGMENTS

The project of writing a book demands thousands of hours of research, drafting and editing. Throughout each of these phases, I was fortunate to receive the generous assistance and cooperation of numerous individuals, agencies and institutions.

I wish to gratefully acknowledge the contributions of Stewart Reifler, Esq. and Francis J. Serbaroli, Esq. for their counsel.

I am eternally indebted to my dedicated and supportive *consigliere,* Kathleen K. Makris. Through her patient and meticulous review of each draft, the manuscript was refined into a polished book. While we certainly have our share of battles over many revisions, Kathy never ceases to amaze me with her never-ending spring of motivation required to finish a writing project.

I am grateful for assistance from:

Hon. Jim Bennett, Alabama Secretary of State; Jane "Dougie" Alford, Alabama Notary Registrar; Hon. Fran Ulmer, Alaska Lt. Governor; Shannon Hasty, Alaska Notary Office; Hon. Jane Dee Hull, Arizona Secretary of State; Hon. Anne L. Lynch, Arizona Assistant Secretary of State; Mimi Griffiths, Arizona Notary Unit; Hon. Sharon Priest, Arkansas Secretary of State; Hon. Jean Fulwider, Arkansas Chief Deputy Secretary of State; Claudia Counts and Stephanie Sikora, Arkansas Notary Division; Hon. Bill Jones, California Secretary of State; David P. Pitman, California Notary Public Division; Hon. Vicki Buckley, Colorado Secretary of State; Johanna Billmyer, Colorado Notary Public Division; Hon. Miles Rapoport, Connecticut Secretary of the State; Peter J. Bartucca, Connecticut Notary Public Unit; Hon. Edward J. Freel, Delaware Secretary of State; Veronica Lawhorn; Delaware Notary Division; Hon. Marion Barry, District of Columbia Mayor; Hon. Kathleen Arnold, District of Columbia Secretary of the District; Rosslyn P. Brown, District of Columbia Notary Office; Hon. Lawton

Chiles; Florida Governor; Linda Adams, Florida Notary Division; Hon. Sandy B. Mortham, Florida Secretary of State; Cathy White, Florida Notary Public Bureau; Hon. Lewis Massey, Georgia Secretary of State; Donald C. Jackson, Georgia Secretary of State Administration Director; Warren Rary, Georgia Notary Public Division; Hon. Mazie Hirono, Hawaii Lt. Governor; Hon. Margery S. Bronster, Hawaii Attorney General; Glen Montalbo, Hawaii Notary Public Division; Hon. Pete T. Cenarrusa, Idaho Secretary of State; Debbie Farnsworth, Idaho Notary Public Division; Hon. George H. Ryan, Sr., Illinois Secretary of State; Diane Dever, Illinois Notary Division; Hon. Sue Anne Gilroy, Indiana Secretary of State; Hon. Frank O'Bannon, Indiana Governor; Pam Neff, Indiana Notary Department; Hon. Paul Danny Pate, Iowa Secretary of State; Monty R. Bertelli, Iowa Notary Bureau; Hon. Ron Thornburgh, Kansas Secretary of State; Lisa Warren, Kansas Notary Bureau; Hon. John Y. Brown, Kentucky Secretary of State; Kim Bagwell, Kentucky Notary Public Bureau; Hon. W. Fox McKeithen, Louisiana Secretary of State; Deborah Thompson, Louisiana Notary Department; Hon. Bill Diamond, Maine Secretary of State; Donald Wismer and Timothy Poulin, Maine Notary Public Unit; Hon. John T. Willis, Maryland Secretary of State; Hon. Parris N. Glendening, Maryland Governor; Hon. William F. Weld, Massachusetts Governor; Hon. William Galvin, Massachusetts Secretary of State; Susan Sclafani, Massachusetts Commissions Office; Hon. John Engler, Michigan Governor; Hon. Candice Miller, Michigan Secretary of State; Helen Kruger, Michigan Notary Bureau; Hon. Arne H. Carlson, Minnesota Governor; Hon. Joan Growe, Minnesota Secretary of State; Dennis Poppenhagen, Notary Public Unit; Hon. Kirk Fordice, Mississippi Governor; Hon. Eric Clark, Mississippi Secretary of State; Patsy East, Mississippi Notary Department; Hon. Rebecca (Bekki) Cook, Missouri Secretary of State; Hon. Lin Appling, Missouri Executive Deputy Secretary of State; Patricia Taggart, Missouri Notary Commission Division; Hon. Mike Cooney, Montana Secretary of State; Brenda Paulsen, Montana Notary Office; Hon. Benjamin E. Nelson, Nebraska Governor; Hon. Scott Moore; Nebraska Secretary of State; Deena Kumke, Nebraska Notary

Division; Hon. Dean Heller, Nevada Secretary of State; Laura "Bru" Ethridge, Nevada Notary Division; Hon. Jeanne Shaheen, New Hampshire Governor; Hon. William Gardner, New Hampshire Secretary of State; Jinx Gollam, New Hampshire Notary Office; Hon. Lonna R. Hooks, New Jersey Secretary of State; James J. Fruscione and Marva Stevens, New Jersey Notary Public Office; Hon. Gary E. Johnson, New Mexico Governor; Hon. Stephanie Gonzales, New Mexico Secretary of State; Peter C. Garcia, New Mexico Notary Public Unit; Hon. Alexander F. Treadwell, New York Secretary of State; Renato Donato, Jr., New York Deputy Secretary of State; Hon. Elaine Marshall, North Carolina Secretary of State; Elaine P. Perkinson, North Carolina Notary Public Division; Hon. Alvin (Al) A. Jaeger, North Dakota Secretary of State; Mary Feist, North Dakota Notary Public Division; Hon. George V. Voinovich, Ohio Governor; Hon. Bob Taft, Ohio Secretary of State; Betty Bunyon, Ohio Notary Unit; Hon. Tom Cole, Oklahoma Secretary of State; Mary Anne Watts, Oklahoma Notary Division; Hon. Phil Keisling, Oregon Secretary of State; Jan Sullivan, Notary Public Division; Hon. Yvette Kane, Secretary of the Commonwealth; Pennsylvania Judith L. Holjes, Notary Public Division; Hon. Lincoln C. Almond, Rhode Island Governor; Hon. James Langevin, Rhode Island Secretary of State; Justine Santoro-Almeida, Rhode Island Notary Public Division; Hon. David M. Beasley, South Carolina Governor; Hon. Jim Miles, South Carolina Secretary of State; J. Spencer Hewitt, South Carolina Notary Public Division; Hon. Joyce Hazeltine, South Dakota Secretary of State; Kea Warne, South Dakota Notary Public Division; Hon. Don Sundquist, Tennessee Governor; Hon. Riley Darnell, Tennessee Secretary of State; Darlene Lawrence, Tennessee Notary Division; Hon. Tony Garza, Texas Secretary of State; Shirley A. Irby, Texas Notary Public Unit; Hon. Michael O. Leavitt, Utah Governor; Hon. Olene Walker, Utah Lt. Governor; Korla T. Woods, Utah Notary Public Office; Hon. James Milne, Vermont Secretary of State; Kathren B. White, Vermont Notary Public Office; Hon. George F. Allen, Virginia Governor; Hon. Betsy Davis Beamer, Virginia Secretary of the Commonwealth; Michelle L. Ford, Virginia Notary Public Division; Kathy Baros Friedt, Washing-

ton Licensing Department Director; Jimmy W. Hood, Washington Notary Public Section; Hon. Ralph Monroe, Washington Secretary of State; Hon. Cecil Underwood, West Virginia Governor; Hon. Ken Hechler, West Virginia Secretary of State; Catherine Frerotte, West Virginia Notary Public Office; Hon. Tommy G. Thompson, Wisconsin Governor; Hon. Douglas La Follette, Wisconsin Secretary of State; Hon. Ann Bloczynski, Wisconsin Notary Public Office; Hon. Diana Ohman, Wyoming Secretary of State; Lisa Gonzales, Wyoming Notary Public Office; Hon. Kenneth Mapp, U.S. Virgin Islands Lt. Governor; Carmen Potter, U.S. Virgin Islands Office of the Lt. Governor; Hon. T. P. Sunia, American Samoa Governor; Hon. Madeleine Bordallo, Guam Lt. Governor; Hon. Calvin E. Holloway, Sr., Guam Attorney General; Hon. Jose A. Andreu Garcia, Puerto Rico Chief Justice; Hon. Norma Burgos Andugar, Puerto Rico Secretary of State; Lic. Carmen H. Carlos de Davila, Puerto Rico Office of Inspection of Deeds; Hon. Richard Weil, Northern Mariana Islands Attorney General; Celeste E. Andersen, Northern Mariana Islands Assistant Attorney General for Notary Affairs.

TABLE OF CONTENTS

PREFACE

After teaching thousands of notary public orientation and refresher seminars, it was quite surprising to discover how little is known about notarial powers and duties, particularly among commissioned notaries public. It was fascinating to learn that virtually all of the participants thought that the only function of a notary public was to "verify" signatures—nothing else! At one seminar, a notary public commissioned for 12 years, candidly remarked in front of the group that "I wanted to learn what I should have been doing for the past 12 years!" It is important to observe that these notaries public *wanted* to know more about their duties and responsibilities. These responses can only make one question how many currently commissioned notaries public are performing their duties as required by law. This information is only one symptom of a much greater ailment.

In 1989 the New York State Association of Notaries Public, Inc., (NYSANP), designed and conducted a comprehensive, state-wide study of notary public performance. The sample con-

sisted of 220 randomly selected notaries in 22 cities, utilizing a common affidavit, which was presented to the notary public for "notarization". The final results were shocking. Some of the more negligent actions included: 91.7% failed to administer an oath of any form; 82.5% failed to adequately identify the affiant; 97.7% failed to indicate the correct venue on the affidavit; and 46.5% of the notary instruments used were not in legal conformity. It was reported that the overwhelming majority of the acts were performed in a cavalier manner, and in many cases, the entire process was merely the notary applying his stamp impression and official signature to the affidavit.

The special investigation was the first formal audit of this nature on notarial activity in United States history. Although other notaries were not included in this probe, it is reasonable to conclude that similar results would be obtained.

These and other results of the study are evidence of the advanced stage of decay and neglect that the office of notary public has suffered. As an integral component of the state's legal/judicial system, these implications hold grave consequences. For example, the courts depend heavily upon the affidavits and depositions presented as evidence, and rely upon the notary public to administer an oath or affirmation to the affiant/deponent. The introduction of unsworn affidavits and depositions could potentially jeopardize the integrity of the entire justice system.

The national attention that has resulted from the release of this landmark investigation has caused many states to launch their own probes of the competence and integrity of their notaries public.

One of the major factors contributing to the demise of the reliability of notarial services is that previously, the guidelines and regulations for notaries public were not found in one source. Instead, they were scattered among numerous separate volumes of state law. The Common Law and the decisions of many court cases also have a direct impact upon the powers, duties and procedures of notaries public. Many pertinent cases are handed down from courts on a continual basis, further changing the environment in which notaries public must constantly be aware of and adjust their protocols accordingly.

The only resource typically available from many states for notaries public or those preparing to apply for a commission, is a collection of a laws from a single statute brimming with paragraph-long sentences of "legalese". This information is a far cry from a clearly written, easy-to-use reference guide. Rather than simulating enthusiasm and a desire to learn more about the office, this booklet fails to impart a clear understanding of notarial duties and responsibilities. It simply does not contain all of the information a notary public needs to correctly perform his duties, nor does it explain *why* certain legal procedures must be performed properly.

Because of the lack of knowledge conveyed during the seminars and the shocking results of the study, I was determined to write this book, providing the single, most comprehensive collection of information concerning the office of notary public. This encyclopedic book is filled with helpful suggestions gained from actual situations experienced by notaries public working in a variety of fields. Confusing laws, concepts and procedures are clarified in plain English. Many examples and sample documents are provided to illustrate situations that the notary public is likely to encounter. An emphasis is placed upon realistically and practically guiding the reader through the procedures.

While the results of the New York study bear serious consequences, the potential for restoring the esteem and trust of the office of notary public appears attainable, through a cohesive effort of notary public educational programs, and the use of this reference guide.

The duties and responsibilities of the office of notary public should never be taken casually. After taking the oath of office, a citizen has "crossed the threshold" and assumed the duties and responsibilities as a public officer. When performing duties, notaries public should insist that their clients seeking official services show due respect for the position. Notaries public should proudly and honorably perform their duties, never compromising the standards of the office. Keeping these ideals in mind, serving the public will be a rewarding and interesting experience for many years to come.

READER NOTICE

The text covers the applicable basic common-law principles throughout the United States of America. Since it would have been impracticable to include statutory material for all states and jurisdictions, the coverage has been limited to the majority of U.S. jurisdictions.

To make the book adaptable for use in each state, the statute law of any state, keyed to the basic text, can be kept with the book.

Please consult the appropriate jurisdiction government resource (located in Appendix A) for the appropriate section of statute law relative to a particular state. The listed government resource will normally provide a complimentary copy of the statute law particular to that state at no cost to the requester.

N.B.: This book will prove very useful to notaries within the jurisdictions of Louisiana and Puerto Rico. However, the practice powers of notaries in these two jurisdictions are significantly greater than the rest of the United States. Accordingly, this book does not attempt to completely cover practice in these unique jurisdictions.

Although the author and publisher have exhaustively researched all sources to ensure the accuracy and completeness of the information contained in this book, no responsibility for errors, inaccuracies omissions or any inconsistencies is assumed. Since laws frequently change and vary from jurisdiction to jurisdiction, it is critical to check the timeliness and applicability of the laws contained in this book.

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CHAPTER 1

INTRODUCTION

With its origins in the judiciary, the office of notary public is a respected position in our society with an interesting history. It is not a right, but a privilege to receive an appointment as a notary public. A person admitted into the honorable class of officers has the right to be proud of this achievement.

The notary public holds a trusted role in our legal and commercial systems. As a government officer, the notary is typically involved in the initial stages of many critical as well as routine situations. Integrity and good judgment are vital qualities of an effective notary public.

The contemporary movement to improve and restore the office of notary public started about 1980 and has continued to the present day.

NATURE OF THE OFFICE

The notary public is a sworn public officer with the power to perform a number of official legal acts. In most states, a no-

tary public is a state officer. The office of notary public is technically classified as a ministerial office, meaning it does not involve significant legal judgment or judicial-style discretion of the acts being performed. However, other important positions such as county and court clerks are also classified as ministerial. While the notary public is technically a state officer, the quasi-governmental official is not an executive, judicial or legislative position.

Although the office has been categorized as ministerial, in many instances the prudent judgment of the notary public is reasonable and essential. For example, the law often requires a notary public to refuse to officiate unless the parties are personally known or their identity has been satisfactorily proven. While the law does attempt to define how to identify individuals, the final decision is left to the careful judgment of the notary public.

In 1996 the United States had approximately 4,500,000 notaries public.

ORIGIN AND HISTORY OF NOTARIES PUBLIC

The origin of public officers now called notaries public can be traced to the ancient Roman Republic, although their functions are now different. At the time of the Republic, *scribae* and *librarii* or public secretaries were found. The private secretaries (frequently slaves) were called *exceptores,* and *notarii* if they were shorthand writers. The paid public secretaries assisted authorities in their duties of office, similar to our contemporary secretaries.

The public secretaries increased both in number and importance. They worked in the cabinet of the Emperor in distinct departments under the supervision of a *magister scriniorum.* Other persons called *tabelliones* can be compared to our present notaries public. In the public marketplace or forum, scribes offered their services to persons who wanted to have their letters written or documents drawn. This class of persons was *tabelliones forenses* or *persona publicae.* They provided the services of drafting legal documents or *libelli,* which would be presented to the courts of law or other authorities of state. Fee schedules were established for them by the authorities.

THE CIVIL LAW NOTARY

The historical origins of the civil law notary and the common law notary public are the same, but the twooccupations have developed along very different lines. Our notary public is a person of very slight importance. The civil law notary is a person of considerable importance. The notary in the typical civil law country services three principal functions. First, he drafts important legal instruments, such as wills, corporate charters, conveyances, and contracts. Although advocates [akin to a common lawyer] sometimes get involved in drafting instruments, the notary continues to do most of this work in civil law nations. (In spite of the notary's established position in this field, however, there is some tension between advocates and notaries over jurisdictional matters.) Second, the notary authenticates instruments. An authenticated instrument (called everywhere in the civil law world a "public act") has special evidentiary effects; it conclusively establishes that the instrument itself is genuine, and what it recites accurately represents what the parties said and what the notary saw and heard. Evidence that contradicts the statements in a public act is not admissible in an ordinary judicial proceeding. One who wishes to attack the authenticity of a public act must institute a special action for that purpose, and such an action is rarely brought. Third, the notary acts as a kind of public record office. He is required to retain a copy of every instrument he prepares and furnish authenticated copies on request. An authenticated copy usually has the same evidentiary value as an original.

Civil law notaries are usually given quasi-monopolies. A typical civil law nation will be divided into notarial districts, and in each district a limited number of notaries will have exclusive competence. Unlike advocates, who are free to refuse to serve a client, the notary must serve all comers. This, added to his functions as record office and his monopoly position, tends to make him a public as well as private functionary. Access to the profession of notary is difficult because the number of notarial offices is quite limited. Candidates for notarial positions must ordinarily be graduates of university law schools, and must serve an apprenticeship in a notary's office. Typically, aspirants for such positions will take a national examination, and if successful, will be appointed to a vacancy when it occurs. Ordinarily there will be a national notaries organization that will serve the same sort of functions for notaries as the national bar association serves for advocates and other organizations for judges, prosecutors, and government lawyers.

The civil law tradition is dominant in Western Europe, all of Latin America, and many parts of Asia, Africa, and the Middle East. It is also dominant in Quebec, Canada, as well as Louisiana and Puerto Rico in the United States.

Source: *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* by John Henry Merryman, Stanford University Press, Stanford, California, 1969.

The number of *tabelliones* grew rapidly. They formed into a guild or corporation called *schola,* under a presiding officer called *primicerius.* The state authorities began to watch over them, determining whether a person should be admitted into (or an unworthy person removed from) the guild. These persons prepared legal documents, but they still carried on their business in the public market place. Specific requirements were outlined which qualified a document as legal evidence.

Witnesses attested the papers drawn by these public scribes or *tabelliones.* It was later required by law that three witnesses should attest a document in cases where the principals could write; five witnesses if the parties could not write. It was further required that the notary public or *tabellio* be physically present at the drawing of the document and sign and date the execution.

Emperors and princes, needing documents drawn and countersigned, appointed and employed *notarii.* Additional notaries were appointed by popes, bishops and cloisters.

During the Middle Ages, a candidate had to undergo an examination. The study became formalized with rules and notarial schools were established.

Gradually, royal notaries were no longer recognized. Only notaries public appointed by the general government were given authority as public officers and recognized to perform notarial duties.

In England, the functions and powers of a notary public include drawing and preparing deeds relating to real and personal property, noting and protesting bills of exchange, preparing acts of honor and authenticating and certifying examined copies of documents. They prepare and attest documents going abroad, receive the affidavits or declarations of mariners and masters of ships and draft their protests, and perform all other notarial acts, including administer oaths, affirmations and affidavits.

AUTHORIZED NOTARIAL PRACTICE

A notary public is a public officer whose functions include:

1. administer oaths and affirmations;

2. attest and certify, by his signature and official seal, certain documents in order to make them legally acceptable in other states and nations;
3. take and certify acknowledgments of documents;
4. take and certify affidavits;
5. take and certify depositions;
6. perform certain official acts relating to commercial matters, such as the protesting of notes, bills and drafts;
7. serve as an official state witness in connection with the forced opening of bank safe deposit boxes; and
8. perform civil marriage ceremonies; and
9. issue subpoenas.

Note: Powers vary by local jurisdiction and may not be applicable to a particular state.

UNAUTHORIZED NOTARIAL PRACTICE

Unless a lawyer, a notary public cannot engage directly or indirectly in the practice of law. Violation could lead to removal from office possible imprisonment, fines, or all three penalties. The following list represents forbidden activities involving the practice of law:

A notary public:

1. may not give advice on the law. He may not draw any legal papers, such as wills, deeds, bills of sale, mortgages, contracts, chattel mortgages, leases, offers, options, incorporation papers, releases, mechanic liens, powers of attorney, complaints, all legal pleadings, papers in summary proceedings to evict a tenant or in bankruptcy, or any paper which the courts have said are legal documents or papers;
2. may not ask for and/or receive legal business to send to a lawyer or lawyers with whom he has any business connection or from whom he receives any money or other consideration for sending the business;
3. may not divide or agree to divide his fees with a lawyer or accept any part of a lawyer's fee on any legal business; and
4. may not advertise, circulate or state that he has any powers or rights not given to a notary public.

NOTARIES PUBLIC EX-OFFICIO

A variety of officials, in addition to notaries public, may administer oaths and affirmations, take affidavits, depositions, and acknowledgments. The jurisdiction limitation depends on the office. An ex-officio notary is sometimes referred to as a notarial officer.

Any person who is in the U.S. Armed Forces, and executes a general or special power of attorney, deed, lease, contract or any instrument that is required to be recorded, may acknowledge the document before any Army, Marine Corps or Air Force lieutenant or senior grade officer, or Navy or Coast Guard ensign or senior grade officer.

Acknowledgments taken by these military officers possess equal legal effect as acknowledgments made before a notary public.

In the event that an instrument (which requires a seal embossing) is executed by a member of the armed forces, it is legally acceptable for recording (by a register or clerk) even though the document is lacking the required seal embossing.

SECRETARY OF STATE

The secretary of state is the general recording officer. He is the custodian of the Great Seal and of documents issued under it. Next to the governor and lieutenant governor, the office of secretary of state is one of the oldest in the administration of state government.

The secretary of state is responsible for the department of state. Responsibilities include being the depository of the original state laws and records.

COMMISSIONER OF DEEDS

A commissioner of deeds possesses powers similar to a notary. This appointed public office has been created by statute in states in an effort to supplement the number of notaries public. The eligibility requirements for appointment are frequently

less stringent than those for notaries public. The scope of authority of a domestic commissioner, however, is generally limited to taking oaths and affirmations, acknowledgments and proofs of execution. Unlike the notary public, a domestic commissioner has no powers or functions by virtue of the common law. A domestic commissioner is typically appointed by a local government (e.g. city council or city clerk) and is limited in his authority to exercise his official powers to the boundaries of the jurisdiction for which he is appointed.

Commissioners of deeds for states in other territories may be appointed to assist residents in other states and countries. These commissioners, frequently referred to as foreign commissioners of deeds, reside in another state or country. Commissioners may take acknowledgments of deeds and proofs of execution for instruments to be filed and recorded; administer oaths and affirmations to persons; and take and certify depositions to be entered as evidence in courts.

Commissioners are entitled to collect fees for services similar to notaries public. Commissioners are subject to disciplinary action and removal from office for misconduct.

CHAPTER 1 QUESTIONS

1. What is a notary public?
2. What is the nature of the office of notary public?
3. Briefly explain the origin and history of the office of notary public.
4. Who appoints and commissions a notary public?
5. How is a commission different than a license?
6. Explain the term "ministerial".
7. What is authorized notarial practice?
8. What is unauthorized notarial practice?
9. Explain the difference between the civil law and common law notary. Which is the basis for the notary public in the United States? Which two U.S. jurisdictions are exceptions to this rule?
10. What are the three principal functions of a civil law notary public?
11. Who are ex-officio notaries public?

12. What is a commissioner of deeds?
13. What are the duties of commissioners of deeds? Explain the origin of this role.
14. Explain the difference between a notary public and a commissioner of deeds?
15. Explain the difference between a domestic and foreign commissioner of deeds?

CHAPTER 2

HOW TO BE APPOINTED

ELIGIBILITY AND QUALIFICATIONS

To be eligible for appointment to the office of notary public, the customary requirements are a minimum age of 18 years at the time of application and state residency. Most states require applicants to be residents of the appointing state. Some states will grant commissions to non-resident applicants who have employment or an office located in the appointing state. A few states also have minimum residency requirements.

United States citizenship is not required for appointment. A U.S. Supreme Court decision in 1984 overturned a Texas requirement of U.S. citizenship, therefore clarifying that an appointment cannot be denied strictly on the basis that an applicant is an alien. A permanent resident alien may apply and be appointed, and is required to file a recorded Declaration of Domicile with the application.

An applicant who is partially blind, and therefore unable

to read, has been held to be eligible for appointment as a notary public.

The appointing official may require separate verification that the applicant is of good moral character and "worthy of the public trust."

ATTORNEYS

A person admitted to practice as an attorney and counsellor is not automatically granted notarial powers. An attorney may be required to apply for an appointment as a notary public as any other person. Although it might seem unusual, it is interesting to note that, in fact, most U.S. law school curricula lack appreciable treatment of notarial practice.

DUAL OFFICE HOLDING

Generally speaking, most states forbid a person to hold two public offices simultaneously. Unless otherwise contradicted, a person commissioned as a notary public may lawfully hold an elective county office or municipal office.

INELIGIBILITY

An essential element of the office of notary public is integrity. Notaries public and applicants should be aware that any demonstration—criminal or otherwise—of dishonesty may lead to their disqualification. Further, the notary public may be suspended from office for due cause at any time during his term of office. Moral turpitude is the phrase which refers to anything done contrary to justice, honesty, modesty or morality. It includes corrupted and perverted offenses concerning the duties which a person owes to another or to society, contrary to the accepted and customary rules between members of society. It implies something immoral in itself, regardless of whether it is punishable by law. Therefore, it excludes unintentional wrong or an improper act done without lawful intent. It is usually restricted to the most serious offenses,

consisting of felonies and crimes which are *malum in se* (a wrong in itself).

The Supreme Court of California has defined moral turpitude as the "readiness to do evil." In 1990 the California Secretary of State revoked the commission of a notary public who possessed cocaine with the intention of selling it. The secretary of state determined that a person who illegally possessed controlled substances would likely act in an illegal manner while performing his duties as a notary public.

An applicant may not be appointed a notary public if he has been convicted of a felony. It is possible for a felon to be appointed if the civil rights of the felon have been restored. This appointment decision is the discretion of the appointing authority.

NOTARY PUBLIC EDUCATIONAL WORKSHOPS/ SEMINARS

Prior to seeking an appointment as notary public, it is highly desirable and strongly recommended that every prospective notary public attend a notary public workshop or seminar in order to become fully aware of the office authority, duties and responsibilities. These educational programs are conducted at accredited colleges and universities throughout the United States. A common misconception is that merely receiving an appointment adequately prepares a candidate to competently execute all of the official duties. It does not. These seminars provide a comprehensive view of information concerning the office. They are filled with helpful suggestions gained from actual situations experienced by notaries public working in a variety of fields. Confusing laws, concepts and procedures are clarified in plain English. Examples are provided to illuminate situations that the officer is likely to encounter, such as avoiding conflict of interest, maintaining professional ethics, charging proper fees, handling of special situations (e.g. foreign language documents), minimizing legal liability, and much more.

APPLICATION FOR APPOINTMENT

In order to receive consideration for appointment, the applicant must complete and submit the latest official state application for appointment as notary public. The form is available from the appointing official.

When completing the application, the applicant should be honest and straight forward in answering the questions. The entire application may be completed in the applicant's handwriting or typewritten. Responses which are willfully incorrect will cause the rejection of an application, in addition to a criminal charge of perjury. If later revealed that there was a misstatement of a material fact on the application, the notary public may be removed from office, and subsequently barred from receiving a future appointment. Perjury has been committed if, while under oath or by affirmation or verification, the applicant knowingly and willfully made a materially false statement or offered materially false testimony on any matter.

The appointing authority may require any other information he deems necessary for determining whether an applicant is eligible for a notary public commission.

NOTARY'S NAME

The applicant should carefully consider personal name preferences before submitting the application for appointment. The name that the applicant indicates on the application for appointment is the name the commission will be issued under. Accordingly, if an applicant applies as Alfred E. Piombino, the official signature form must exactly follow the commissioned name. After appointment, it would be inappropriate for the officer to sign a document in connection with official notarial duties as A. Piombino, A.E. Piombino, Alfred Ernest Piombino, Alfred Piombino, Al Piombino or any other variation. Exclusive use of initials with a surname (last name) is prohibited.

A member of a religious order may be appointed and officiate as a notary public under the name by which he is known in the religious community.

An applicant may not apply for a commission in any other name other than his "real" name. It is mandatory that the "true" legal name be placed upon the application for appointment. Some states allow the inclusion of a nickname.

A woman commissioned as a notary public in her maiden name who, after the subsequent expiration of the commission and marriage, may be issued another commission solely in her maiden name. A woman may also be commissioned under her given name and the surname of her husband. For example, John Smith marries Grace Brown; permissible name uses include either Grace Smith, Grace Brown Smith, or Grace B. Smith; Mrs. John Smith, or Mrs. J. A. Smith are not acceptable.

OATH OF OFFICE

Most states require that an individual take the required oath(s) prior to being commissioned. Such formal ceremony, however brief, is essential to impart the grave seriousness and honor of this and any other appointment.

The applicant must take the constitutional oath of office orally before a notary public or other officer authorized to administer oaths. Upon being sworn in, the notary public will sign the oath of office document. The notary public or other officer who administered the oath should endorse the oath of office at this time. The signatures and related records of the notary public commission application have now become the master references to which all future notarizations can be compared and verified, if necessary. These materials will be retained by the government for the duration of the commission period.

Any person who executes any of the functions and duties of a notary public without having taken and duly filed the required oath of office is guilty of a crime.

Each notary public is responsible to take the verbal oath of office, and faithfully and honestly discharge the duties of office.

Upon taking the necessary oath of office, the applicant will now execute the oath of office document in the presence of the notary public or other officer authorized to administer oaths.

Applicants are permitted to choose between swearing or affirming the oath of office.

NOTARY BOND

Thirty-two states require the notary public to secure a bond before assuming the duties of the office. The bond must be approved and executed by a surety company for hire duly authorized to transact business.

The applicant pays a bonding company an annual premium in exchange for the company issuing a bond on his behalf. He then submits it to the government (i.e. state). It is distinctly different from an insurance policy. If the public officer does not properly or faithfully perform his duties, a bond serves as protection or assurance to the public by providing some security to innocent victims. A citizen must sue the notary, and upon the award of the judgment, may recover at least the amount of the bond.

Various state bond requirements range from $500–$10,000. In the event that a citizen obtained a judgment or court award against the notary public in the amount of $10,000 from the bond company, for example, the citizen may pursue the bond company, or surety, for the amount up to the limits of the bond. The bond company then would proceed to demand payment from the notary public, and, if necessary, sue the bond holder (notary public) to recover the $10,000 paid to the victim. The average premium for a $10,000 bond for a term of four years would be approximately $75.

The notary public assumes full responsibility for all of his actions. Accordingly, the notary public may be held both civilly and criminally liable for misconduct in performing his duties.

The issue of whether or not the bond requirement for notaries public is necessary remains a hotly debated subject. Proponents contend that the bond requirement protects the public by providing a guaranteed source for monetary protection. In such cases, the injured consumer would have to exercise other options, including pursuit of the notary directly, thereby increasing legal fees and costs. The Surety Association

of America reports that the aggregate amount of notary bond claims increased 1,450% in a six-year period. However, no base figures were reported with this statistic. Furthermore, the proponents argue that the cost of bonding is minimal, for each notary public, and the majority of notaries have their bond purchased by a third party, notably their employers.

Consumer advocates contend that the bond is not necessary, and cite industry statistics as evidence. Because of the potential significant amounts of money that many notarized documents involve, the relatively paltry bond amount will not be adequate to fairly compensate the injured party, thereby requiring a court action anyway. Moreover, the insistence that the bond is absolutely essential could be interpreted to mean that the majority of notaries are shiftless persons with no assets whatsoever, or who lack continuous, gainful employment. Finally, it is a contention in many legal circles that the notary is often an incidental party to a transaction, and an injured party will aggressively pursue the most substantial party in the transaction in an attempt to successfully prevail against the "deepest pockets."

Two states, Minnesota in 1987 and Colorado in 1992, repealed their notary public bonding requirements after studying industry statistics and consumer complaints against notaries. Both states concluded that the infrequency and minimal incident dollar amount requiring surety payout on bonds did not justify the cost to the individual state taxpayers (e.g. notaries and/or their employers) and society at large.

The results of the Minnesota government study have revealed that one surety company collected almost a million dollars in bond premiums during a five-year period, but paid out only $750 in claims, and sustained a final loss of $277.50. Another company collected nearly $200,000 and dispersed $2,000 in claims.

Notary public surety bonds may be purchased from licensed insurance brokers throughout the United States. Telephone directories under insurance or surety bonds listings are good initial sources for seeking price quotes. Applicants are encouraged to solicit price quotations from at least three or more brokers. After receiving the initial commission, a notary

public will receive regular solicitations from bond brokers by direct mail. It is customary for most insurance brokers who sell notary public bonds to assist a notary public in filing the required application for appointment paperwork with the secretary of state.

To illustrate a brief picture of the bond industry experience with notary public bonding, the following figures are provided:

USA	DIRECT PREMIUMS WRITTEN	DIRECT PREMIUMS EARNED	DIRECT LOSSES INCURRED	LOSS RATIO
1988	18,866,215	16,585,207	(508,706)	3.1%
1989	18,136,683	17,567,636	926,976	5.3%
1990	15,760,611	17,825,344	288,071	1.6%

Notes: The "earned premiums" figures represent only the premiums properly allocated to each year. For example: If a four-year bond was sold in a particular year, only one-fourth of the premium is shown for that year. The figures shown are prior to deduction for sales commissions. The "losses" figures represent the payments during the year less any recovered amounts from notaries public. The credit amount in 1988 represents a subrogated amount of a previous disbursement.

FEES

The completed application for appointment should be sent to the appointing official with the statutory application fee. A state commission or agency is often permitted to bear the expense incident to the commissioning of state employees as notaries public, provided that the employee will utilize the notary public commission to further the goals of the commission or agency.

NAME CHANGES

When a woman notary public marries during the term for which she was appointed, she should contact the government to request a change of name form, which must be completed and returned to the government. No name change will

be officially recognized by the government until a fully completed and signed notice of change form is received. The notary must return the notice of change form, the original notary public commission certificate, and a copy of the evidence of lawful change of name (e.g. marriage certificate, divorce decree, or court change of name order). There is often a fee for a change of name transaction.

CHAPTER 2 QUESTIONS

1. What are the qualifications of a notary public?
2. Are attorneys-at-law automatically appointed as notaries public? Explain your answer.
3. What is dual-office holding?
4. Define "moral turpitude"?
5. Is a felon ever eligible to receive a notary commission?
6. Are there any special legal procedures which will permit a felon or other convict to be eligible for appointment?
7. Define "surety".
8. What is a surety bond?
9. Why are notaries required to be bonded?
10. How do bonds differ from insurance?
11. Explain why bonds can prove troublesome to a notary public?

CHAPTER 3

RULES AND REGULATIONS

TERM OF OFFICE

As is customary with public officers, the appointment of a notary public is for a specific term of years. Commission dates are often staggered to allow the issuing authority to process renewals more efficiently.

VACANCY IN OFFICE

Circumstances in which a person "vacates" the office of notary public include: the officer resides in state and moves out of the state; resignation; removal from office; conviction of a felony; court order; and death.

CHANGE OF RESIDENCE/ADDRESS/ PERSONAL DATA

A notary public should give written notice to the issuing authority of any change of business address, home address, or

criminal record. The notification must be made in a timely fashion after the change. Failure to notify the issuing authority may cause the notary public to be disciplined. The notary should contact the government for a change form, which must be completed and returned. No change will be officially recognized until a fully completed and signed change form is received.

RESIGNATION

In the event a notary public wishes to resign his appointment, a written resignation is required. If no effective date is specified in the letter, it will begin upon delivery. If a date is specified, it will take place on the date specified. However, the date may not be more than 30 days after the date of its delivery or filing. If the resignation specifies an effective date that is greater than 30 days, the resignation will be 30 days from the date of its delivery or filing. A delivered or filed resignation, whether effective immediately or at a future date, may not be withdrawn, cancelled or changed, except with the approval of the government.

Once a notary public resigns, is removed from office, or his term of appointment expires, he may not change any documents executed during his term of office. Only during his term is he allowed to correct a certificate to conform with the facts of the matter.

Upon resignation or death, the notary or his estate may be compelled to deposit his records with an archive. By doing so, these records may assist in a civil or criminal matter by providing crucial documentary evidence, or to corroborate evidence or testimony. As protection to both the people of the state and the individual notary public, all instruments of the former notary should be destroyed.

COMPLAINTS

In the event that a notary public encounters another notary public who is performing official duties in an unscrupulous or inefficient manner, he has an obligation to report the inci-

dent. Frequently, persons encountering these notaries public are unclear about the process to report the notary public. Reports should be directed to the issuing authority, not a court clerk or other official. Should a person wish to discuss an incident prior to actually filing a complaint, he may contact the authority for clarification and direction in reporting the problem. Examples of situations which require investigation include: improper performance of duties; failure to administer oaths/affirmations to affiants or deponents; failure to take acknowledgments; failure to properly complete notarial certificates, etc. It is vital that an incompetent or criminal notary public be exposed and, if warranted, punished in accordance with the law.

If there has been a violation of the law in a criminal manner, the notary public is further subject to the prosecution by the state or federal attorney general in accordance with the criminal law of the state or the United States.

SUSPENSION AND REMOVAL

Legal actions against a notary public may take place in any of three manners: administrative, civil, and criminal.

Administrative law action may take place in the form of suspension and/or removal of the notary public by the government. It is administrative law because the notary public is adminstered through the executive branch of state government. Accordingly, the government has "jurisdiction" over the notary public in an administrative manner. Every administrative law case arises out of a controversy between a private party and some administrative agency. There are also administrative rules and regulations, as well as administrative judicial decisions, which are not black-letter statutes, but nonetheless are still law. A parallel example is a case in which a driver has his driver's license suspended for being a parking ticket scoflaw. This case is an example of administrative law discipline; it is not a civil law or criminal law matter.

Once a decision has been handed down in an administrative matter, it may be appealed to a higher court. However, all administrative remedies must be exhausted.

Civil law action may take place in the form of a civil lawsuit brought about by a party who has been injured by the actions, or inactions, of the notary public. In a civil case, this is a matter where there is a legal action against a private citizen by another private citizen. Government may be a party to a civil law action, however.

Criminal law action may take place in the form of an indictment and criminal trial brought about by the complaint of an individual, or the state attorney, because the notary public has allegedly violated the state criminal law. In addition, depending upon the nature of the crime, it is possible for the U.S. attorney to prosecute a notary public for violations of the federal law. In a criminal case, this is a matter involving a legal action against all of the citizens or society in general, by a particular citizen.

In fact, it is possible for a notary public to have all three forms of legal action taken against him because of a single act of misconduct in connection with his notarial duties.

Grounds constituting malfeasance, misfeasance, or neglect of duty for notaries public may include, but are not limited to, the following:

(a) a material false statement on the application;
(b) a complaint found to have merit;
(c) failure to cooperate or respond to an investigation regarding a complaint;
(d) official misconduct;
(e) false or misleading advertising relating to notary public services;
(f) unauthorized practice of law;
(g) failure to report a change in business or home address within the specified time period;
(h) commission of fraud or misrepresentation;
(i) charging fees in excess of lawful limits; and
(j) failure to maintain the legally required bond.

No removal will be made unless the officer has been provided a copy of the charges against him and has had the opportunity of being heard.

If a notary public receives a notice that his office has been

declared vacant, he shall immediately mail or deliver his notary public commission to the issuing authority.

DELEGATION OF AUTHORITY

Previously, many states in the U.S. permitted notaries public to appoint deputies and clerks to assist the officer in performing their official duties. Modern law does not authorize a notary public to delegate these responsibilities and privileges to another person.

No other person, other than the individual notary public, may utilize the instruments of a notary public, or may execute the signature on behalf of a notary public in his absence. It is not legally possible for a notary public to authorize or delegate another individual to legally act in his absence.

Although the actual, official notarial duties and ceremonies cannot be carried out by another person, certain clerical tasks may be performed by another person. Acting in this fashion as a "para-notary", another person might complete a notarial certificate for the notary's signature. Such certificate will then be signed by the notary after the official ceremony/s are performed.

Generally speaking, most U.S. states do not require the official marking instruments (embossing seal, rubber stamp, etc.) to be personally operated by the notary. Some states also do not even require official marking instruments.

An excellent example of this concept is a typical court house setting. While a judge performs many official functions and ceremonies, he will rarely type the forms for his signature or mark the papers with the official court rubber stamps and seals. In summary, although some clerical tasks are being performed by another, such tasks are to be performed only under the supervision and control of the notary performing the official ceremony. The notary will be held responsible for any errors or omissions as the result of a para-notary's carelessness.

REAPPOINTMENT

No person may be automatically reappointed as a notary public. The application process must be completed regardless of

whether an applicant is requesting his first commission, a renewal of a commission, or any subsequent commission.

The number of terms that a notary public may be reappointed is unlimited.

The issuing authority normally will not send a notice for reappointment (renewal) to the notary public before the conclusion of the existing term of office. It is the responsibility of the notary public to allow enough processing time to receive a new commission, prior to the expiration of the present commission.

A notary public is encouraged to submit an application for appointment at least one month, but preferably two months prior to the expiration of his commission.

CHAPTER 3 QUESTIONS

1. What is meant by term of office?
2. Discuss how a vacancy might occur in the office of notary public.
3. Is it necessary that a notary public resign? When and how?
4. Explain the difference between an administrative action and a civil or criminal proceeding.
5. What are some circumstances that might cause a notary public to be suspended or removed from office?
6. Is a notary public commission automatically renewed?
7. Is it possible for a person to be appointed a notary public if he or she doesn't reside in the appointing jurisdiction? Explain your answer.
8. Is a notary public required to notify the government of a change of name, address, telephone number, or criminal record? Explain your answer.
9. Can a notary public delegate his authority or appoint deputies?
10. Define "para-notary". Explain what activities could be performed by a para-notary, and specifically what acts must be performed only by the notary public.

CHAPTER 4

PRACTICE

LEGAL LIABILITY

A subject of great concern to many notaries public revolves around the issue of legal liability in connection with performing notarial acts. As previously stated, the notary public assumes full personal legal responsibility for all of his actions. However, the best method of limiting his liability is a complete understanding of his duties and responsibilities.

Frankly speaking, if a notary public performs his duties correctly and carefully, he can be reasonably assured that he will not expose himself to significant legal liability. Virtually every civil suit and criminal charge involving a notarial act is the direct result of the notary public acting in a consciously careless or negligent manner. Notary public errors and omission insurance coverage is available. However, in the event that the notary public acted dishonestly, fraudulently, criminally, or maliciously, the insurance coverage would likely not protect him. Before purchasing any insurance policy, a no-

tary public should request a sample policy from the broker or underwriter to review with his attorney.

As an officer authorized to take the acknowledgment or proof of execution of conveyances/instruments or certify acknowledgments or proofs, the notary public is personally liable for damages to persons injured as the result of any wrongdoing on his part.

Paralegals, secretaries, administrative assistants, and court reporters assigned to federal government legal offices who sometimes serve as notaries as part of their official government duties are considered protected from personal liability under United States Law. The federal protection would not extend, however, to notarial services provided by federal employees to civilians and government personnel not in connection with their official duties.

The employer of a notary public is liable to the persons involved for all damages proximately caused by the notary's official misconduct, if the notary public was acting within the scope of his employment at the time he engaged in the official misconduct. However, this does not absolve the notary public from his personal liability as well. It simply means that there will be joint liability between the employer and employee.

A notary public commits malfeasance if he performs an act which he has no legal right or authority to do so. All activities which are positively unlawful such as giving legal advice, drawing legal papers for another person, forgery, etc., are examples of malfeasance.

Misfeasance is committed when a notary public improperly performs a legally authorized act. Examples include issuing a false certificate, post or pre-dating an official certificate, taking an affidavit known to be false, etc.

Nonfeasance is committed when a notary public has omitted an act which he has a duty to perform. It can represent a total neglect of duty. Examples include a notary public not requiring an affiant to sign an affidavit or deposition before him, or the act of a notary public merely attaching his official signature and authority rubber stamp and/or seal to a paper presented to him, without performing any of his legally required duties.

Negligence is committed if a notary public fails to use the necessary standard or degree of care required in a situation. A key element in the determination of negligence is the question of whether or not another notary public, acting reasonably and prudently, would perform similarly in an identical situation. An example of negligence would be a notary's failure to identify a constituent, who is not personally known to him, prior to taking an acknowledgment for a power of attorney.

REFRESHER SEMINARS

In order for a notary public to efficiently and properly execute the duties associated with his commission, he needs to keep current with notarial developments. Attending a refresher seminar is especially critical for experienced notaries public who have never had the opportunity to participate in an orientation program. It is reasonable to assume that after performing notarial duties over a period of time, a notary public would have had questions on areas he was unsure of or encountered difficult or unusual situations. Notary public refresher seminars clarify these problems and inform the notary public on current and updated information. It also allows for exchange of information with fellow colleagues, sharing tips and suggestions based upon their actual experiences. It is an excellent, inexpensive method of minimizing exposure to legal liability.

FEES

The customs associated with paying fees to notaries in the U.S. have been in effect for over a century. These fees are specifically governed by state law. Therefore, a notary public is entitled to collect a fee in accordance with the legal limit, as he deems appropriate. The collection of a fee is not legally required, but encouraged. As a professional providing legitimate services, the notary public is morally, ethically and legally entitled to receive fair compensation. Furthermore, the notary public is permitted to charge less than the ceiling amount, but care should be exercised to construct a uniform, systematic ap-

proach of levying fees. Notaries might find it helpful to prospective clients if a typed price list was prepared and duplicated for client perusal prior to rendering the services.

The limit applies to any one notarial act. Therefore, if a notary public takes three acknowledgments or swears three deponents, the total fee due is three times the state regulated fee. Each acknowledgment or swearing is a single notarial act. A single document with multiple acknowledgers or deponents does not contain one notarial act. Each acknowledgment or swearing should be recorded individually in the notary public register. If a client presents himself to a notary public with four identical powers of attorney for acknowledgment, there will be one actual acknowledgment ceremony performed (which includes one certification), and then three additional certifications of the primary acknowledgment. This represents four separate notarial acts which merit the appropriate compensation based upon the standard fee.

Although in some states it is legally required or customary for notaries to publicly post a fee schedule in their office, it is not required in most states to post such a fee schedule. Because of the mobility of the notary public and the diversity of settings in which the services are performed, such a requirement would be highly impractical and create an unfair burden.

The fee for any travel in connection with the performance of a notarial matter should be considered as a separate compensation. Further, any additional services or related expenses, such as photocopies, postage, telephone tolls, stenographic service, translation service, government fees, or similar items should be itemized along with the notarial fee. It is suggested that all fees collected for notarial and related services be receipted in writing, preferably in duplicate. The notary public should retain a receipt copy for income tax purposes.

Notary public fees and related compensation are subject to federal and state income tax, but not self-employment tax. A qualified tax adviser should be consulted. Any notary public who charges fees greater than those lawfully permitted, is subject to suspension. An offending notary public may not claim the defense that he is merely acting as an agent of an-

other (i.e. employer, a bank). The notary public bears personal legal responsibility, possibly jointly with the employer.

A government agency, board or department is permitted to pay the cost of securing notary public commissions for employees of that governmental entity to assist with the functions of the office. However, the notarial fees collected by such notaries in connection with these services for the governmental entity are to be deposited in the government general fund.[4]

However, this prohibition relates strictly to governmental, and not private employers. If fact, any agreement which obligates a notary public to perform functions of his office, during the scope of his private employment, and permits the employer to retain his notary-related fees, has been ruled by a New Jersey court to be "contrary to public policy", and therefore void.

United States Law provides that a notary public who is an officer, clerk or employee of any executive department of the United States, will not charge any U.S. employee any fee for administering oaths of office which are required to be taken on appointment or promotion.

The contemporary office of notary public in the U.S. is not structured so that the typical notary can establish an independent, full-time practice. A notary public will typically serve the public in connection with another profession. The range of the professions include business, legal, law enforcement, medical, social service and virtually any other job position. Many students, retirees and others serve as notaries public.

Notary public commissions are not reciprocal between states, unlike license reciprocity. An example of a similar situation is that when a state judge is appointed to preside in the state courts of a state, he may not preside in a court outside of that state.

BUSINESS RECORDS

In addition to the customary notary public register, notaries public who expect to regularly engage in the practice of pro-

viding notarial services for fees, should seriously consider establishing a basic "business set-up." A fundamental cornerstone of such a business set-up would include the opening of a separate checking account. This account can even be a personal-type checking account, but maintained to separate personal funds and notarial-based income. A suggested check printed heading could be "John Doe, Notary Public, Business Account." The advantages of this arrangement are many, and include ease of maintaining income and expense records for taxation and deduction purposes. Many banks offer personal accounts which are free of any fees. Having these basic, but essential business records will greatly bolster the legitimacy of the notary public in the event of a possible tax return audit by taxation authorities.

According to the *Wall Street Journal,* good business practices, such as setting up a separate telephone line and opening a second bank account, are instrumental factors in helping to convince the IRS that a home-based office is a legitimate operation.

Many excellent business books have been written on the subject of home-based and small businesses. Readers are urged to visit local bookstores and libraries for such books, and to consult their tax advisers and accountants for further advice and counsel on appropriate strategies.

ADVERTISING

There are a number of states that prohibit certain forms of advertising by notaries public: Florida, California, Illinois, Texas and Oregon. Consumer protection legislation can also be applicable. Certain issues must be discussed regarding advertising. It is an acceptable practice for the notary public to choose to inform the public of the available notarial services.

Advertisements in various media (i.e. a telephone directory) inform the public of a valuable service and promote the public image of the business firm and/or notary public. The advertising copy must not contain any wording that might mislead or misrepresent the services that are legally available. For example, to advertise as a "notary public and counsellor"

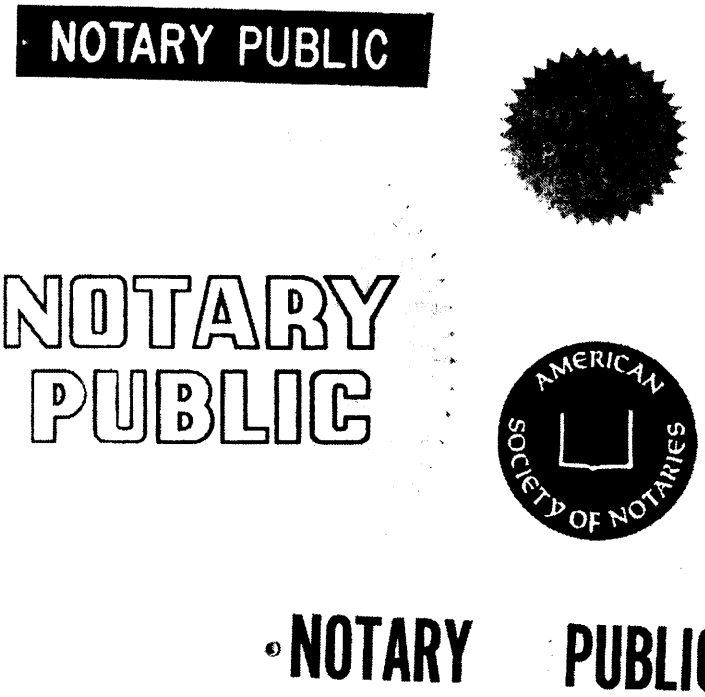


Figure 1 Suggested Advertising Methods

is illegal. The ad copy should state simply "notary public" or "notarial services."

In an effort to bolster the public image of notaries public, careful selection of the manner of advertisement placement and method of placement should be considered. Rather than posting crudely worded or inferior, hand painted signage, notaries are encouraged to obtain low cost, mass produced window decals and signs which are commercially available. Professional signs and symbols certainly help to enhance the prestige and professional image of the notary public.

A notary public who is not an attorney who advertises the services of a notary public in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, might post or otherwise include with the advertisement a notice in English and in the language used for the advertisement. The notice must be of a conspicuous size, if in writing, and must state: I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF FLORIDA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If the advertisement is by

radio or television, the statement may be modified, but must include substantially the same message.

Literal translation of the phrase "Notary Public" into a language other than English is often prohibited in any advertisement for notarial services.

All advertisement wording should be entirely in English to prevent confusion among non-English speaking parties. Notario publico, notario, and similarly worded or appearing phrases may cause confusion in the minds of non-English-speaking immigrants and residents. The position of a notary public in many foreign countries is usually held by an attorney or similar highly trained legal professional. Some notaries public take advantage of these persons and freely demand/accept the high notary public fees typically paid by a citizen in those countries.

The Immigration Reform and Control Act of 1986 caused many apprehensive immigrants to seek legal assistance in order to appropriately follow the new legal requirements. Unsuspecting immigrants asked for the advice and assistance of notaries public in connection with the completion of the intimidating Immigration and Naturalization Service (INS) documents. Numerous instances of misuse of notarial authority have been reported in connection with the new requirements for filing documents. Typically these parties are economically disadvantaged, and by dealing with a corrupt notary public, it could possibly deny the person his only opportunity to follow the requirements.

State and federal law enforcement agencies, including bar associations, are increasing prosecution of notaries who commit these acts of fraud. The authorities will prosecute abuses of public trust which violate the integrity of the office of notary public. Notaries public are advised to avoid any advertising in connection with immigration and naturalization services.

FOREIGN LANGUAGE DOCUMENTS

It is possible that a notary public could be presented with a document that is written in a foreign language. Unless the no-

tary public is fluent in the language contained in the document, he should refer the person to a certified translator or an attorney fluent in the language. If the person is a foreign national, the nearest, appropriate foreign consulate may be of assistance. In the event that a person appearing before the notary public cannot speak English (and the notary public is not fluent in the foreign language), the notary public should decline performing an oath/affirmation, acknowledgment, or other notarial act. The person should be referred to a foreign consulate office or a notary public fluent in the foreign language.

Regarding foreign consulates, the general rule of protocol is that a consular officer will usually assist only his government's citizens residing in his jurisdiction. Accordingly, if an American citizen approaches a foreign consulate for assistance, it is unlikely that the consular officer would intervene.

A notary public cannot take the acknowledgment of a person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does understand.

There is no statutory prohibition against a person signing a document in a foreign language or symbols, provided the document itself is composed entirely in the English language.

REGISTERS

While some state laws do not mandate a notary public to maintain records of all performed official duties, prudent practicing notaries public should keep a brief record of each service. There are a number of suitable registers available. It is a highly recommended practice to record each entry in a special notary public register.

Each notarization should be documented in a permanent log book. A detailed record of each act provides essential evidence and protection. Record information including the date/time, kind/type of act, document date, kind/type of document, constituent's signature, home (residence/actual

street) address, identification data and any additional relevant information, including notarial fees.

A permanently bound register is recommended, such as those used in accounting. Each page should be consecutively numbered. Pages should never be removed, even if spoiled. If an error is made, draw a single line through it. Never erase or completely cross out or use any type of correction fluid, such as white, opaque correction liquid. Entries should be written in permanent, dark, black-colored ink. Keep the log book in a secure location indefinitely.

The notary is responsible to safeguard and retain exclusive custody of these records. The notary should not surrender the records to another notary or an employer. The notary public may receive a request by a citizen to inspect his record book. Records should be made available for inspection (in the notary's presence) by an individual whose identity is personally known to the notary, or is proven on satisfactory evidence, and who specifies the notarial act record to be examined. To maintain the privacy of other clients' data recorded in the book, the notary public could fashion a makeshift "veil" to shield other entries in the book, while allowing an interested person to inspect the required record. Convenient, self-adhesive note-sized pieces of paper will facilitate register privacy.

In the event that a notary public is subpoenaed to testify (*subpoena ad testificandum*) at a trial or hearing involving a notarial act, having basic documentation will be vital in assisting the notary public to provide accurate testimony.

An accurate record could be critically important, especially if a number of years had passed since the notarial act was performed. A carefully maintained register will serve as a means of protection to the notary public in the event of potential claims against him. For example, if a person claims to have appeared before the notary public and, did in fact appear, but no record appears in the notary public register, the claim of the alledged appearance becomes substantially weakened. The alternative case is where a person claims not to have appeared before the notary public, but, in-fact, there is the basic data record and the signature of the person in the register.

Keeping a record would also be advantageous if the notary public was served with a subpoena to produce documents, papers or records (*subpoena duces tecum*) at a trial or hearing. This information could prove critical to the dispensing of justice.

INKED RUBBER STAMP

Thirty-two states in the U.S. require the use of an inked stamp, some in addition to the seal/embosser. The information contained in the stamp is sometimes referred to as the "statement of authority" which identifies the public officer performing the notarial act.

Sometimes the law requires an inked stamp, occasionally referred to as a "seal", which makes the actual performance of the documentation process of the official act much easier. The required notary public identification data will be legible, consistent and reproduce clearly when photocopied or microfilmed. Using a stamp makes sure that no essential information will be left out, due to haste or carelessness. Although it is not recommended, some notaries do not put the year portion of their commission expiration on their stamps. If omitted, this could result in the rejection of the document by a court clerk, register of deeds or recorder, causing possible delays in finalizing an important business, legal or real estate transaction. While including the date in the copy of the stamp would mean replacing the stamp every few years, the cost of a few dollars is minor in comparison to the cost of delaying or complicating a legal or business act. Such omission could be determined to be an act of negligence.

The instrument may be obtained from any stationer who produces custom rubber stamps, notary equipment supply house, or even many bonding brokers. There is no requirement or specification for the style or size, other than the instrument copy as discussed earlier. The type style selected should be simple and free of intricate or fancy letter design to make it easier to read and reproduce. A business-like, professional image should be the rule of selection.

Size is an important factor. Avoid selecting a type size so

small that the ink from each letter runs into one another when placed on the paper. Likewise, avoid billboard, oversized bulky letters which many legal forms may not have the space to accommodate. A recommended typeface is Gothic, Goudy or Century in nine or eight point-size type; avoid letters smaller than eight point. The average cost of this type of basic rubber stamp is approximately $10 to $12.

For those who prefer a self-inking style rubber stamp, or "seal", the cost can range from $25 to $30. Portable, self- contained, self-inking stamp "seals" are available which fold into a plastic carry-case/handle.

The "traditional" notary public stamp "seal", a metal- encased miniature rubber stamp with matching-sized inked pad, retails for about $15 from a full-service stationer. Some notaries public dislike this style, due to the "mess". The ink pad frequently stains purses, briefcases, clothing and papers. Production and delivery time ranges from two to four weeks.

In the event that a physically handicapped notary public is unable to manually affix his official signature to a document, he may utilize a rubber signature stamp instead.[7]

EMBOSSING SEAL

Thirty-five states in the U.S. require and/or recommend notaries public use an embossing-type seal (producing a raised impression of letters on the paper document) in connection with their official notarial duties.

The United States Code instructs the notary public to attach an impression of his official seal to all oaths, affidavits, acknowledgments and proofs of execution. A document should be sealed when it is notarized and intended to be entered into the record of a United States court or according to a federal statute.

Most states legally require that a document which is to be recorded in that state's register of deeds, recorder or county clerk's office, meet that state's document preparation and filing requirements, regardless of the rules of the jurisdiction in which the document is actually executed and/or notarized. For example, if a state requires that all deeds be

Specimen instruments courtesy of Bradley Specialties, Inc., Ft. Lauderdale, FL 33304 (305/763-4859). Photograph by Dave Makris.

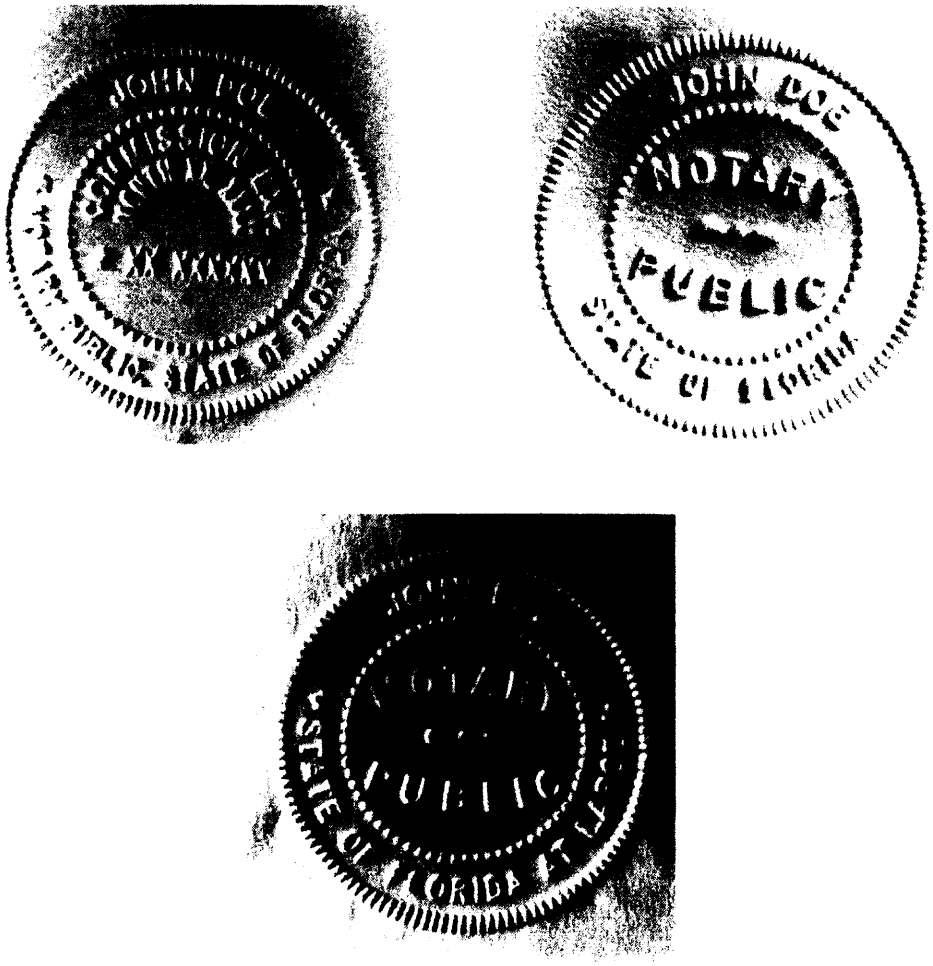


Figure 2 Notary Public Official Seal Impressions

sealed with a raised seal and it is executed and notarized in a state not mandating a seal (but not sealed), the register, recorder or clerk from that state will likely reject it.

Sealing documents greatly reduces the possibility of fraud. For example, in addition to the notarial certificate, the seal should be placed onto each page of the entire document. This makes it obvious to the document recorder and/or the recipient if any pages have been replaced. The replaced pages will not have the seal impression, alerting the party to a potentially fraudulent document. Furthermore, applying the notarial seal to documents reinforces the fact that the act being performed is an official governmental function. Since the use of embossing seals is generally restricted to official ac-

Photograph by Dave Makris.

Figure 3 Official Seal Impression on Foil Notarial Leaf

tions, using the seal has a positive impact upon the constituent. It is clearly evident that the notarial service is not an act to be taken lightly. The official seal of the notary public is classified as a public seal, since the notary public is a public officer. By law, it is clearly distinguished from a private seal, which represents a private person or corporation (an "artificial" person).

Most states do not regulate the sale of notary public seals, so there are no rules or regulations controlling seal purchases. Any individual may purchase a seal through a local stationery supplier or mail-order firm, without producing the evidence of authorization to rightfully possess one.

California, Georgia and Oklahoma passed legislation to prohibit sales of notary public seals unless the purchaser presents proof of current notary public appointment status; violations are misdemeanors.

In 1996 the average market cost for a notary public official seal (complete with case) ranged from $15 to $35, depending on the supplier. Production and delivery time varies from one to four weeks. Because the seal does not contain information which will change (except a name change), the purchase of the seal is generally a one-time expense.

When affixing the official seal, the notary public should apply a little more force than he thinks necessary. This will

Photograph by Dave Makris.

Figure 4 Notary Public's Instruments

ensure that the seal impression is clearly legible. The desired effect is to make a "braile-like" appearance. If the first impression is inadequate, it is legally acceptable for another seal impression to be applied.

The embosser seal should be impressed in the area designated with the initials "L.S.," the abbreviation of the Latin words *locus sigilli* (pronounced "lowkus SEE-jill-EE") meaning "place of the seal." If the L.S. is not indicated, the notary public may place his seal impression on any unprinted area of the document near his official signature. The seal should not, if at all possible, be placed over any document text (except specifically over the L.S. notations, including signatures, dates and other important elements).

Any notary public who loses or misplaces his notary public seal(s) of office should immediately notify the issuing authority. Notification may be accomplished by U.S. mail, express delivery service, or personal messenger. A police report

Photograph by Dave Makris.

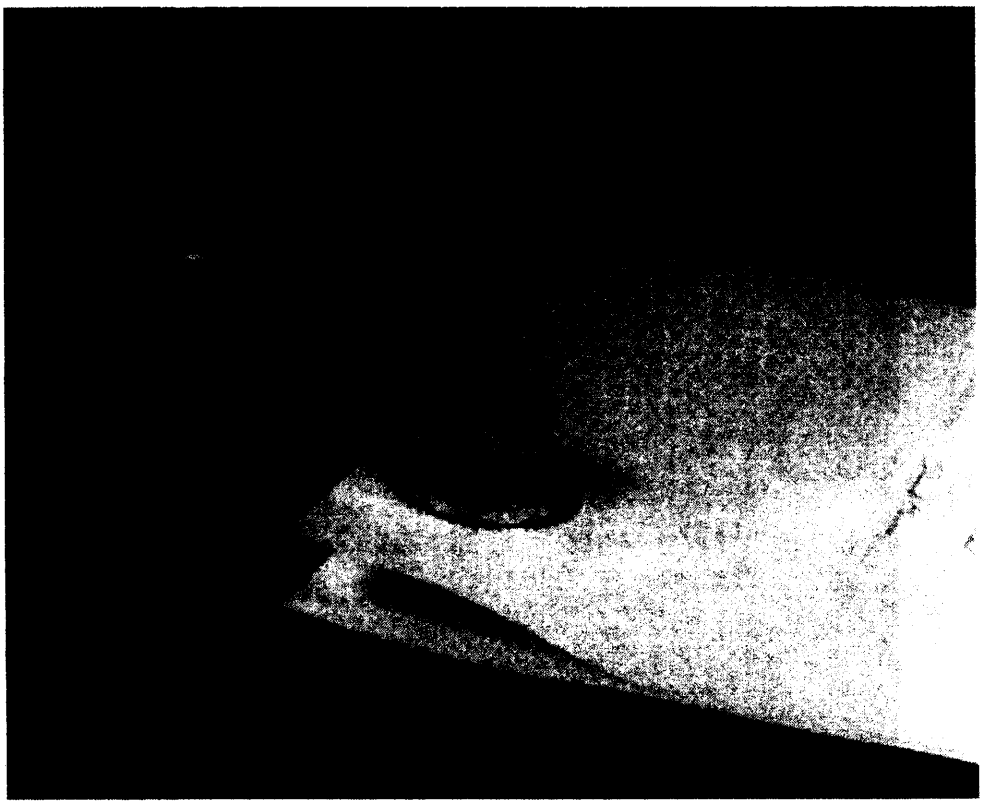


Figure 5 Affixing the Official Seal

should also be made in the locale where the theft or loss occurred. To assist the state and police in such an event, sample impressions of the instruments should be placed in the notary public record book for possible forensic purposes, if necessary.

ADDITIONAL SUPPLIES

Some additional items may be useful to notaries public in performing their official duties. An "ink smudger" device applied to the raised seal impression on a document is common practice when it is filed in a public recording office. This now permits the seal impression to be easily visible allowing photographic reproduction (microfilm, photocopy, etc.). If the seal was affixed over a signature, date or other critical element, it could post a problem at a later time.

An inexpensive and quick method of producing an in-

stantly darkened, raised seal impression on a document is to place a single leaf of carbon paper between the surface of the seal and the document. When the seal is applied, the resulting pressure will cause the carbon paper to make an easily visible impression of the seal. However, this practice is not recommended when utilizing a foil notarial seal.

Gummed or self-adhesive, foil notarial seals may be used when imprinting official seals to notarial certificates. The foil notarial seal is positioned on a blank portion of the document, near the signature of the notary public. The notary public seal impression is placed over it, creating an impressive appearing result. Originally an actual gold leaf, the modern foil notarial seal is available through a stationer. The traditional color is gold; other colors are available. A package of 40 gummed style seals cost approximately $4.00; 96 self adhesive seals cost about $8.00. A two inch foil seal is recommended. The seal impression should be entirely contained within the borders of the foil seal. Short (three inch) strips of blue, satin ribbon (half-inch) can be positioned under the foil leaf to create an impressive-looking result.

Various blank legal forms which the notary public may desire to have to more effectively perform his official duties include loose notarial certificates (i.e. acknowledgment certificates) and blank affidavits. A stationer which stocks blank legal forms will have these available. Check in the local telephone directory under the Yellow Pages listing for legal supplies. Retail cost of these forms is approximately a dollar for each form.

AMERICAN SOCIETY OF NOTARIES

The American Society of Notaries (ASN) is a non-profit, tax-exempt, membership organization which was formed in 1965. ASN is dedicated to the improvement of the office of notary public throughout the United States. It is the oldest, national non-profit organization for notaries in the country.

The benefits of membership include the following: a subscription to *The American Notary,* a bi-monthly magazine with ASN news, notarial developments, proposed and pend-

ing laws, court decisions and duties; group insurance protection (i.e., life); low interest Mastercard/Visa; signature loan programs; low cost errors and omissions (liability) insurance for notaries public; car rental discounts; a distinguished membership certificate for framing; wallet card; and insignia.

Further information is available by contacting: American Society of Notaries, P.O. Box 5707, Tallahassee, Florida 32314; (800) 522-3392.

CHAPTER 4 QUESTIONS

1. Discuss personal legal liability and the notary public.
2. How might a notary public minimize his or her legal liability?
3. What is "E & O" insurance and why would a notary public consider purchasing such an insurance policy?
4. Define "negligence".
5. Is an employer liable for the negligent acts of an employee/notary public for "on the job" incidents? If so, how does this affect the employee/notary public liability?
6. Explain the difference between malfeasance, misfeasance and non-feasance?
7. Describe some examples where negligence is committed by a notary public?
8. Discuss legal liability for U.S. government employees in connection with official duties for federal business.
9. Are the fees for official services legally regulated? What fees may be charged and collected for official services? Explain your answer.
10. What are some supplemental services which a notary public might officer to clients? Is the charge for these supplemental services legally regulated?
11. Is a travel expense charge permitted? Does the law regulate this charge, and if so, what are the rules?
12. Is notary public service fee income subject to income taxes? Explain the Internal Revenue Service rules concerning self-employment tax and how it relates to notary public service fee income.
13. How may a notary public advertise? What are some general rules for advertisement.

14. Why are American notaries public discouraged from advertising in non-English languages?
15. What assistance will a foreign embassy or consulate provide, and who will they typically assist?
16. Explain what special precautions should be taken with a document in a language other than English?
17. Is there a prohibition against a person signing a document is a foreign language or non-English symbols or characters? Explain your answer.
18. Define "signature".
19. Is it legally permissible for a person to sign a document with a rubber stamp, instead of drawing a pen against a document? How about a fingerprint? Explain your answer.
20. Is a register required to be kept by a notary public?
21. What is a danger in not recording every notarial act in the notary public register?
22. What physical characteristics should a register possess? What are some unacceptable characteristics?
23. List the basic data to be recorded for acts performed by a notary public.
24. Name two reasons explaining the importance of client signatures in the notary public register?
25. Does an employer or the employee/notary public retain legal control and ownership of the register? Explain your answer.
26. Under what specific legal circumstances should a notary public release his or her register?
21. Explain the proper process for a notary public to issue a certified copy of a entry recorded in his register.
28. Discuss the use and value of a fingerprint taken by a notary public and recorded in a notary public register.
29. Is a notary public permitted to destroy his register after a certain period of time passes? Explain your answer.
30. What is the proper legal process for the custody of notary public register(s) and official seal(s) upon the resignation, retirement, removal or death of a notary public?
31. Is a notary public legally required to possess an official seal or rubber stamp? Explain your answer.
32. What is the physical difference between an official embossing seal and a rubber stamp?

33. Describe what information should be inscribed in an official embossing seal. Sketch a rough outline of the impression layout.
34. Name and explain at least five reasons that a notary public should possess and faithfully impress an embossed seal on every legal certificate.
35. What legally traditional treatments may be combined with the embossing seal impression to create an impressive finished appearance?
36. Is there ever a case in which the use of an embossing seal would be inappropriate?
37. Are the sales of notary public seals regulated by law? Explain your answer.
38. What does the Latin abbreviation "LS" signify? What does it mean to the notary public and what should be performed in the vicinity of this marking?
39. Explain why a notary public should never affix his embossing seal over signatures.
40. What steps should a notary public take if his official seal or other marking instruments are lost or stolen?
41. What are some of the important characteristics of a notary public trade group?
42. Since many U.S. notary associations are actually private, commercial companies (including non-profit), how can a notary public protect himself? What questions would a legitimate non-profit, tax-exempt, membership-type association freely provide to an inquirer?

CHAPTER 5

PERFORMANCE OF DUTIES

JURISDICTION OF OFFICE

Some notaries public are limited to performing official duties within the geographical boundaries of the county in which they reside. However, most notaries are granted state-wide authority and may be referred to as "notaries-at-large". A few states permit a notary to act on matters outside of the commissioning state, provided the document or legal matter pertains to the original state. However, this is highly unusual. It is customary that a notary may act only within the confines of the territorial limits of the jurisdiction issuing the commission, including land, sea and air space.

AUTHENTICATION

It is a generally accepted principle throughout the United States that the signed certificate of a notary public is prima-facia evidence. In other words, the written certification by the notary is

sufficient evidence to establish the fact that the legal ceremony documented by the notary actually took place, unless disproved by other evidence. Therefore, no further authentication is typically required if the document signed by the notary is to remain in the jurisdiction where the notary is commissioned.

Authentication may be required in cases where the document signed by a notary is to be entered into evidence in a court, recorded in a public recorder's or clerk's office, or utilized in some other fashion outside of the state where the notary is commissioned. This may also occur when the document concerns matters of significant legal, business or financial nature. It is the responsibility of the party executing the document to determine the necessity for obtaining a certificate of authentication. Some states do not require authentication of documents signed by a notary from another state if the notary impressed his embossing-style seal onto the document. Documents not possessing the seal embossment will require customary authentication by the appropriate official(s) from the original state (see appendix).

LOCAL AND STATE AUTHENTICATION

If a document may leave the state or country, or if the client wishes to simply verify the legitimacy of a notary public, authentication is available from either a local court clerk, county clerk, secretary of state, lt. governor or similar government official. The official will confirm that a commission has been issued, and an oath of office with specimen signature is on file. The official will verify that the notary was properly authorized to perform the notarial act at the time of officiating and the notary signature appears genuine. The certificate of authentication signed by the official and sealed with his official seal is now attached to the document by means of a secure attachment thereby reducing the likelihood of a person tampering with the certification. Some certifications may be directly impressed onto the document by means of a rubber stamp or similar marking instrument, usually with an official seal embossment. A document signed by a notary with a state authentication certificate is permitted to be entered as evidence in any court or hearing, or be

Courtesy of Vermont Department of State

APOSTILLE

(Convention de La Haye du 5 Octobre 1961)

1. Country: United States of America

This public document

2. has been signed by _____

3. acting in the capacity of _____

4. bears the seal/stamp of _____

Certified

5. at

6. the _____

7. by

8. No. _____

9. Seal/Stamp: 10. Signature:

_____
Secretary of State

Figure 1 Apostille Certificate

recorded in any state in the United States. There is a nominal fee to obtain an authentication certificate. Payment of the charge is the responsibility of the client or document holder, not the notary.

Please note that some states, Alabama for example, have a two-part authentication process. First, the document must be presented for certification to the probate judge who commissioned the notary. Then, the county certified document is delivered to the secretary of state for the state certification. The document would now be ready for inter-state use anywhere in the United States.

APOSTILLE

An apostille is a special certification issued by a secretary of state, lt. governor or other government official. An apostille

(pronounced "ah-po-steel") verifies certain document certifications and may be required if a document is to be presented or filed outside of the United States (see appendix). While it may not be frequently required, an alert and conscientious notary would recommend obtaining such certification in the possible event it was necessary.

If a document is intended to be delivered to a foreign nation, there are two options for accomplishing the process called "Legalisation for Foreign Documents". In the past, every document intended to be delivered to a foreign nation required a multi-step "legalisation". This process, sometimes called "chain certification", is still necessary for nations not party to the "Hague Convention on Abolishing the Requirements of Legalisation for Foreign Documents". However, in 1981, the United States signed this treaty called the "Hague Convention" and the authentication process has been streamlined. Kindly refer to the table of nations who have signed this treaty and will therefore accept the special apostille certification. If the destination nation is not found in the table, please refer to the particular foreign embassy to determine if that nation has since signed the treaty.

HAGUE CONVENTION ON ABOLISHING THE REQUIREMENT OF LEGALISATION FOR FOREIGN DOCUMENTS*

NATIONS PARTY TO THE TREATY

Antigua and Barbuda
Argentina
Austria
The Bahamas
Belgium
Botswana
Commonwealth of the Independent States, including:
  Belarus
  Russia
Cyprus
El Salvador

Fiji
Finland
France, including:
  Affars and the Issas
  French Guiana
  Guadeloupe
  Martinique
  New Caledonia
  Reunion
  St. Pierre and Miquelon
  Wallis and Futuna
Germany
Greece
Hungary
Israel
Italy
Japan
Latvia
Lesotho
Liechtenstein
Luxembourg
Malawi
Malta
Marshall Islands
Mauritius
Mexico
Netherlands, including:
  Netherlands
  Antilles
Norway
Panama
Portugal
Seychelles
Slovinia
South Africa
Spain
Suriname
Swaziland
Switzerland

Tonga
Turkey
United Kingdom of Great Britain and Northern Ireland, including:
- Anguilla
- Bailiwick of Guernsey
- Barbados
- Bermuda
- British Antarctic Territory
- British Guiana
- British Solomon Islands Protectorate
- Cayman Islands
- Falkland Islands
- Gibralter
- Gilbert & Ellice Islands
- Hong Kong
- The Isle of Man Jersey
- Montserrat
- New Hebrides
- St. Helena
- St. Christopher and Nevis
- Southern Rhodesia
- Turks and Caicos Islands
- British Virgin Islands

United States of America
Yugoslavia

*Effective January, 1997

The following example will illustrate the authentication process.

A client signs a power of attorney in Buffalo, New York before a New York notary (who has qualified in Erie County). The notary takes and certifies the acknowledgment of the principal signing the power of attorney. The client delivers the executed legal document to the Erie County Clerk for county clerk authentication. The oath of office and signature record of a New York notary is recorded at the county clerk's office in the county in which the notary resides. This is re-

ferred to as the county in which the notary has qualified for the office of notary. Therefore, the county clerk verifies the validity of the notary's authority on the date the acknowledgment was taken, and also verifies the signature on file with that on the document. The county clerk authenticated document is now delivered to the New York Department of State for either the state authentication or apostille certification.

If the destination nation is a Hague Treaty party, the New York Department of State will attach an apostille certificate signed by the New York Secretary of State. This step certifies that the prior certification by the county clerk was legitimate. The power of attorney is now properly "legalised" and prepared to be received at the Hague Treaty destination country with full legal recognition.

If the destination nation is not a Hague Treaty party, the New York Department of State will attach a state authentication certificate signed by the New York Secretary of State. This step certifies that the prior certification by the county clerk was legitimate. The state certified document now is delivered to the U.S. Department of State. The U.S. Department of State will attach a federal authentication certificate signed by the U.S. Secretary of State. This step certifies that the prior certification by the New York Secretary of State was legitimate. A final step may be required. Certification by a consular officer at a foreign consulate or the embassy of the foreign nation may be necessary. This step certifies that the prior certification by the U.S. Secretary of State was legitimate. The power of attorney is now properly "legalised" and prepared to be received at the non-Hague Treaty destination country with full legal recognition.

It is also possible that the destination country may also require a final certification of the consul certification upon the arrival of the document in the foreign nation.

FEDERAL AUTHENTICATION

Documents destined for use in nations that are not part of the Hague Treaty will require an authentication from the U.S. Department of State. Federal authentications are only available from Washington, D.C. and may be obtained either by mail or in-person.

Federal authentications may be requested from the U.S. Department of State, Authentication Office, 518 23rd Street, N.W., Washington, D.C. 20520. The direct telephone number is 202/647-5002. The main switchboard telephone number is 202/647-4000. Information may also be obtained from the Federal Information Telephone Center at 800/688-9889. Call ahead to verify the office address.

Walk-in, counter service is provided at the Washington, D.C. office on a while-you-wait basis, Monday through Friday, except federal holidays. Call ahead to verify hours of operation. The limit is 15 documents per person, per day. Pre-payment is required by cash, business or personal check, or money order. Checks or money orders are to be made payable to the U.S. Department of State.

The fee for a federal authentication is $4 each document, not per page. Payment of the charge is the responsibility of the client or document holder, not the notary public.

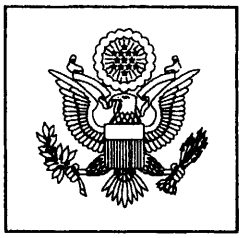
For mail service, the approximate turn-around time is about three weeks. The name, address and telephone number of the requesting party is required. The Department of State will forward the authenticated document to the appropriate foreign embassy only if the requesting party includes a pre-addressed, postage-paid envelope to accommodate the request.

A request for authentication services should include the reasons for authentication and the name of the country where those documents will be used. For all documents being authenticated the following must be complied with:

1. All seals and signatures must be originals;
2. All certifications must contain a jurat or statement as to what is being certified to;
3. Rubber stamp seals are not acceptable on state certificates;
4. State certificates using mechanically subscribed signature must have one original signature subscribed by a deputy;
5. All dates must follow in consecutive order on notary, clerk of court and secretary of state certification;
6. All documents in foreign language must be accompanied with a certified, notarized English translation;
7. If a copy of the document is used, it must include the statement that this is a true and accurate copy;

No.

United States of America



DEPARTMENT OF STATE

To all to whom these presents shall come, Greeting:

I Certify That the document hereunto annexed is under the Seal of the State

In testimony whereof, I, ( ), Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this ( ) day of ( ), 19XX.

_____
Secretary of State

By _____
Authentication Officer,
Department of State

Issued pursuant to RS 161, 5 USC 22, RS 203, 5 USC 158; Sec. 1 of Act of June 25, 1948, 62 St. 946, 28 USC 1733; Sec. 4 of Act of May 26, 1949, 63 St. 111, 5 USC 151c; and Secs. 104 and 332 of Act of June 27, 1952 66 St. 174 and 253, 8 USC 1104, 1443, and 5 USC 140.

* FOR THE CONTENTS OF THE ANNEXED DOCUMENT, THE DEPARTMENT ASSUMES NO RESPONSIBILITY

This certificate is not valid if it is removed or altered in any way whatsoever

Figure 2 Certificate of Authentication—Federal

8. A self-addressed, stamped envelope should be enclosed with your document. All express mail received by the Department of State is processed through the internal mail system. Therefore, it may not reach the office until several days after it arrives in the building. The state department is unable to return the documents by U.S. Postal Service express mail. However, private express return delivery is possible, by providing the following: a private express delivery account number; a check payable to the private express delivery service; or a funded, completed invoice.

SUNDAY

Generally speaking, a notary public may administer an oath or affirmation, take an affidavit or deposition, take an acklowledgment, or perform any other act authorized by law on any day of the week, including Sunday.

However, in some states, certain acts may be prohibited. For example, in New York, a civil deposition may not be taken on Sunday. A notary may take and certify a civil deposition on any other day of the week. Often such laws reflect the traditional Christian Sabbath Day or Sunday laws still in force in some states throughout the United States. If a notary were to take and certify a civil deposition on Sunday, and it were detected and challenged in a court or hearing, it would likely be declared void.

DISQUALIFICATION/CONFLICT OF INTEREST

Most state statutes are generally clear in providing the fundamental evaluation criteria to assist a notary public in making the decision whether or not to disqualify himself from performing an official act. It is vital that the notary public maintain the highest degree of ethics and morals.

In order for the notary public to ethically perform the duties of office, it is essential that the notary public be an impartial party or "disinterested" in the act or transaction. Therefore, he may not take his own acknowledgment or administer an oath or affirmation to himself. He should neither gain nor lose as a result of the transaction.

If a notary public is a party to a transaction, or has a financial interest (directly or indirectly) to a transaction, he must decline to officiate. For example, a notary public who is a grantee or mortgagee in a deed or mortgage is disqualified to take the acknowledgment of the grantor or mortgagor. If he is a trustee in a deed of trust, the officer who is the grantor could not take his own acknowledgment. If a notary public is a subscribing witness to a will, it would be improper for him to be the notary public to swear the subscribing witnesses for the subscribing witness affidavit. It would be inappropriate for a notary to take the acknowledgement of the bill of sale of personal property (i.e. a car, boat) for his spouse.

A notary public is prohibited from performing any notarial act for his spouse. It is highly recommended to avoid performing any notarial services for any relative, by blood or marriage, in order to avoid any potential, unforeseen conflicts of interest. Simply because the law does not prohibit an action does not mean that this lawful, but possibly ethically questionable transaction, couldn't be set aside later by a court. Not that this would necessarily mean a liability exposure for the notary public, but it would potentially jeopardize the particular case at a trial or pre-trial level.

The courts have held that an acknowledgment is void, when taken by a notary public who is financially or beneficially interested in and/or a party to an instrument or deed. The acknowledgment of a grantee cannot be taken by a grantor or other interested party.

The acknowledgment of the assignment of a mortgage before one of the assignees (who is the notary public) is invalid. An acknowledgment by one of the incorporators (who is a notary public) of another incorporator who signs a certificate is of no legal value.

Even though most courts have established that the previously discussed situations would disqualify a notary public, a notary public may officiate in certain circumstances which might otherwise appear to be improper. However, this does not mean that a questionable situation could not be successfully challenged and overturned in a court of law.

Although a notary public may not officiate with a document if he has a financial interest in, or is a party to the under-

lying transaction, he may officiate for his employer, provided his employment is not a financial interest in the transaction, and he is not a party to the transaction. This exemption applies unless the notary public receives a benefit, other than his salary and any lawful fee for his notarial services.

One major problem exists in employment in which there is a profit-sharing plan. In these cases, which are prevalent in many modern commercial entities today, including hundreds of financial institutions, a strong argument can be raised that every employee in the company receiving profit-sharing clearly has a conflict of interest. It can be reasonably interpreted from the law that the profit-sharing is a benefit other than his salary and any fee for his services authorized by law.

Another strong argument can be raised that any stockholder or director of a corporation will equally be in a position of conflict of interest in light of the language of many laws. This equally applies to an employee who holds ten or ten thousand or more shares of corporation stock. Thousands of employees who are employed in critical positions in financial organizations, including commercial banks, thrifts and even credit unions may be impacted by this law.

One major implication raised by this monumental legal faux pax revolves around the issue of the acknowledgment act. Thousands and thousands of mortgages for real property are acknowledged before notaries public each month, primarily as a requirement of law which allows the mortgages to be recorded at the clerk's office. The customer/mortgagor will normally execute a ream of documents at the closing table, commonly situated at the financial institution, and the notary public can typically be an institution officer who is assigned to the closing. The normal scenario involves the mortgage (which has been "duly" executed and acknowledged) being filed and recorded at the clerk's office. Proper recording is a critical factor in the legal process necessary to secure the loan with the real estate. The fatal defect, silently lying in wait, remains dormant until the defect is illuminated by an aggressive debtor. The risk is that a mortgagor could effectively challenge the lien attached to the real property, based upon

the premise that the mortgage contained a defective acknowledgement, and therefore is not suitable for recording.

The potential for millions of dollars worth of real property mortgages being successfully challenged is staggering, and could weaken the bank industry into a never-expected state of weakness.

A corporation's officer, agent or employee, not a stockholder, has been held competent to take the acknowledgment or witness the execution of a mortgage naming the corporation as mortgagee.

An attorney who holds a notary public commission (or is a notary ex-officio) is not advised to perform a notarial service, including administering an oath, or taking an acknowledgment from a client in any claim, action or proceeding. To prevent a questionable situation and possible legal challenge, lawyers should have another attorney, legal assistant or other administrative support staff member (who is a notary public) perform the act, even though the law may not specifically prohibit the attorney/notary to perform such acts.

IDENTIFICATION DOCUMENTS

First and foremost, in order for the oath or acknowledgment acts to be legal ceremonies, it is mandatory that the person be in the physical presence of the notary public. Even if the notary is well acquainted with the person and his handwriting, it is not legally possible to administer an oath or take an acknowledgment without the presence of the client before the notary.

Once the person is in the presence of the notary, there are generally two acceptable means of identification of a person requesting a notarial service. The first method is on the basis of personal knowledge, and the second method is on the basis of satisfactory evidence.

"Personal knowledge" is defined as having an acquaintance, derived from association with the individual which establishes the individual's identity with at least a reasonable certainty. "Satisfactory evidence" is defined as the absence of any information, evidence or other circumstances which

would lead a reasonable person to believe that the person making the acknowledgment, taking the oath, making the deposition, etc., is not the person he claims to be, and at least one (any one) of the following identification credentials:

1. Passport issued by any nation;
2. Driver's license issued by a U.S. state or territory;
3. Non-driver identification card issued by a U.S. state or territory; or
4. U.S. military identification.

Some state statutory laws legally declare which identification documents are acceptable for personal identification before a notary. The aforementioned identification cards are included in those statutes. Moreover, these four forms reflect the generally accepted standard in the United States to prove identity and age for the purchase of alcoholic beverages. If a notary were ever challenged about his selection from these reliable identification forms, this sound rationale would capture considerable admiration in the eyes of most courts.

It is prudent to decline to accept any identification document that has expired. An expired identification is legally void. Furthermore, never accept an identification document that is printed in a non-English language unless fluent in that language. A notary should be modest about foreign linguistic skills and assist the person to locate another notary who is fluent in the appropriate language.

Some states have laws which permit a notary to identify a person who does not possess identification by a means of a "credible" witness. The logic behind such a policy is that the credible witness may be put under oath by the notary and then make a sworn statement regarding the truth of the identity of the person without suitable means of identification. If the statutory law outlines this type of procedure, a notary is lawfully permitted to proceed—with extreme caution. This highly unusual form of identification is very risky and not recommended. Such a procedure may be an invitation to possible fraud and is rarely, if ever, necessary.

The notary should carefully examine the identification form(s) presented to him. When examining the identification,

the notary should be discreet and professional. It should be remembered that the primary purpose of the identification review is to compare the physical description and photograph on the card with the person present before the notary.

Although the signature on the document may be casually compared with the signature on the presented identification, a notary may refuse to proceed with the service if the signatures do not match one another.

If the presented identification is valid and appears tamper-free, physical descriptions appear reasonably accurate, and the person spells his name correctly when he signs, the notary is likely under a legal duty to proceed with the requested and necessary service.

It should be remembered that the notary is utilizing the identification to identify the person before him, not verify the signature on the document. By virtue of being appointed a notary, a person is not provided with the experience, training or special expertise to be classified as a signature "expert". Forensic document examiners are highly trained in matters such as determining authentic and forged signatures. If a notary holds himself out to the public as a signature "expert", he will expose himself to the increased legal liability of an expert. Accordingly, if a person is injured by that notary's negligence, the notary may likely expose himself to potential personal liability.

When a notary signs the jurat or acknowledgment certificate, he is not "guaranteeing" the signature on the document as genuine. Rather, he is a public officer performing a legal ceremony and documenting that the legal ceremony took place.

An identification document should contain a photograph, physical description, signature and be plastic laminated. Types of identification documents include passports, licenses and other identification cards.

The photograph should show the head, full face and shoulders; color is preferred over black and white, but a quality black and white photo is perfectly acceptable. The eyes of the subject should be visible in both the photo and in person. Dark or sun glasses should be removed so that the eyes may

be seen. With the popularity of tinted contact lenses, eye color authenticity and reliability is questionable.

In order to determine true identity, several key items should be carefully considered. The physical description should be compared from subject to identification document. A number of characteristics including eye color, hair color, race/skin color, sex and other data should be compared. The full, legible signature of the person should match the name listed on the identification documents and compared with another identification credential. Plastic lamination helps to deter modification or forgery. Examine the plastic for evidence of tampering.

The United States Passport is considered by many authorities to be among the most reliable and trusted forms of identification in the United States. Issued by the United States Department of State, it is given to a citizen after the approval of a detailed application. In terms of appearance, the United States Passport contains the citizen's full name, date of birth, home and foreign address (if any) and next of kin. Similar in size and style to a bank account passbook, the cover is dark blue and has gold-foil lettering stamped on the front, outside cover. The I.D. data is printed in multi-colored, fabric-type ribbon. The paper is safety, currency-type, multi-colored stock. Since 1984 newer passports have been issued with letter-quality computer printout style lettering. The entire page is plastic laminated over the data. The photo is sealed with the seal of the U.S. Department of State, located on the first page. The citizen's signature is on the front cover (inside) page.

Armed forces (military) or United States government identification cards are generally reliable. While sometimes not as comprehensive as the passport, they adequately satisfy the requirements for a dependable I.D. form. Due to the comprehensive "checks and balances" system for issuing these credentials, the ability to prevent forgery is increased.

Driver's or motor vehicle operator (MVO) licenses issued by the state department of motor vehicles are good sources of identification. Virtually every U.S. state issues a color photograph on the driver's license. Data listing the full name, home address, birth date, eye color and height are indicated. The holder's signature is clearly displayed. The card is usually sealed in plastic.

Non-drivers may obtain a card similar in information and appearance to a driver's license. Applications are available from any motor vehicle office.

Additional forms of identification might be solicited to verify identity. These additional forms are only to supplement the previously discussed legally acceptable forms of satisfactory identification.

State, county and local government employee I.D. cards are useful. A state-issued license with photograph may be used for identity verification purposes. Examples include professional licenses for barbers and cosmetologists, and firearm permits to possess a pistol. Locally issued identification documents such as a taxi-cab driver ("hack") license may be considered.

Some additional documents which may be presented for identity include: Alien Identity card (Form I-551 or the previously "green" card, now blue); Department of Justice Immigration card; Displaced Person identification card; Medicare/Medicaid card; military discharge papers; proof of change of name; Selective Service card; or driver's license, learner's permit or non-driver I.D. card issued by another state or country. These documents should be presented together with the legally acceptable forms.

Be cautious in examining foreign identification documents, particularly passports from foreign countries, especially those which you have never heard of. The *Wall Street Journal* has reported about a U.S. company that issues passports in the former name of foreign countries which have changed names. The service is intended for those United States travelers going abroad who are concerned about terrorism aimed against United States citizens.

Employer-issued identification cards are commonly presented to notaries public as identification. The data contained on these cards varies widely and may be of questionable value. Some company-issued cards will contain only a name and picture sealed in plastic, while others may be comprehensive and informative. Caution is urged in using only this form of identification.

College and school identification cards may be acceptable, but are very likely to contain misinformation. This is be-

cause of the traditionally poor security surrounding their issuance. Typically issued in the library, bookstore or student activities office, a security system is usually non-existent, especially if the cards are issued by a fellow student. As an example, during a college registration, neighboring private high school students "infiltrated" the identification card process by merely walking up to the line and patiently waiting for their card. After being orally questioned for their name, date of birth, and social security number, their instant color photo was taken and they were immediately presented with their new identification card. These forms of identification are acceptable only if they are presented with another suitable form of I.D. that verifies them.

There are three significantly unreliable and generally unacceptable forms of identification: social security cards, credit cards and birth certificates.

Social security cards are not suitable because they contain only a name, social security number and signature. Unfortunately, some persons do not sign their cards. If the person was issued the card at age 13, there is usually a striking difference in signatures at age 44. Accordingly, it is not an acceptable form of identification.

Credit cards, bank teller machine cards, charge plates, check cashing courtesy cards and similar documents contain only a name, account number data and an expiration date. The cards lack necessary personal data. They do provide a space for a signature, but often the white signature strip is badly worn, grimy and illegible. Credit card crime and fraud has decreased dramatically since the "hologram" design was introduced, but these cards are still not adequate identification.

Birth certificates merely contain a name, date of birth and place of birth. Furthermore, it is reasonably easy to obtain the birth certificate of another person from a public bureau of vital records, health department or city chamberlain. Forged birth certificates are plentiful.

A good "rule of thumb" is to request at least two forms of identification documents, preferably a valid driver's license and another acceptable photo identification document. An indicator of possibly fraudulent documents is when all of the identification documents are sealed in new-appearing plastic

lamination. Check the date of issuance to help determine authenticity.

Never officiate if the person is unable to produce acceptable forms of identification or is not personally known to you. Do not let an emotion-filled story, detailing the heart-wrenching consequences of not obtaining the notarization, prevent your thorough and positive identification of the individual.

The following are three actual instances revealing the importance of determining if the act should be declined.

1. A woman needed to acknowledge a social service department document. She claimed she did not have any identification, but offered her telephone bill as the only proof of identity. Until she was able to produce an acceptable form of personal identification, the performance of the official notarial act was politely declined. She was referred to a notary public who knew her personally.
2. A college student missed his scheduled court appearance for an alleged traffic violation. He typed up a crudely worded and messy-appearing paragraph statement detailing his reason for not showing. The paper was presented for "notarization." The affiant (the person swearing to the facts in the affidavit) did not bring any identification whatsoever. Further, the paper did not contain many essential elements including the venue and jurat. The venue is the particular county or city where the notarial act is being performed. The jurat is the statement of the officer before whom a statement was sworn ("Sworn to before me on this 27th day of January, 1918."). Growing impatient and agitated, the person indicated that he "never needed any I.D. before" for a notary public. After diplomatically informing the person of the requirements of law and penalties for failure to obey them, a second meeting was arranged where he could properly identify himself and an affidavit which met the requirements of law could be prepared.
3. A woman purchased an auto that had an Illinois title and tags. To transfer the legal ownership and title of an auto in Illinois, the owner must acknowledge his signature.

In this case, the seller simply signed (without the benefit of a notary public present) the title "over" to the buyer, not following the legal requirement. Unaware of this flaw, the buyer paid the seller. The seller moved out of the state the day after the sale and the buyer did not know where she had moved. The matter was further aggravated by the fact that the buyer sold her own car already. The woman insisted that the notarization be performed. Further questioning revealed that she attempted to have the acknowledgment performed by several other notaries public who also declined! Obviously, she was simply going to numerous notaries public until she found an officer who was willing to fulfill her need. Certainly she had a legitimate dilemma, but it was a combination of indifference on the part of the seller ("let her worry about it") and inexperience/naiveté on the part of the buyer.

DECLINING SERVICE

The law generally requires a public officer (i.e. notary public) to perform the official duties when requested by a client. By the court order of a judge, he may be compelled to perform his duties, or if he has done some act illegally, he may be ordered to correct it. This was established to prevent notaries public and other public officers from abusing their powers. Refusal to perform his duty may be interpreted as neglect of duty. When notaries public hear this, many become needlessly worried. An imagined scenario is a constituent making a request at three o'clock in the morning or while at the grocery store. If unavailable at a particular time due to a legitimate previous commitment, tactfully explain this to the client. Make an arrangement for a meeting at a mutually convenient time or suggest a few other notaries public who may be available.

The rule of being reasonable and prudent applies. Possible sanctions include suspension and/or removal. A civil suit and award of damages is possible. Each notary public should put himself in the position of his constituents. Acceptable conditions under which the notary may decline

include: presentation unacceptable or inadequate identification, failure of the acknowledger or affiant to appear before the notary public, request to back-date or post-date the acknowledgment certificate or jurat, etc.

PHYSICALLY DISABLED PERSONS

If a notary public is asked to perform a notarial act by a physically disabled person unable to sign his name or make a mark, he may not have the explicit authority to assume the responsibility of signing for the individual. Even though the disabled person may be mentally competent to execute and understand a document, he is not able to have it notarized. Most state statutory laws give no clear legal direction for individuals in such a situation. One remedy is to have the court appoint a limited guardian for the purpose of executing a document, but this can be both costly and time consuming.

A proposed bill in New York would have permitted a physically handicapped person to orally direct a notary public to sign on his behalf. The proposed law would have held the notary public responsible for ascertaining the competence of the disabled individual. However, the bill died in committee. Until such a law is passed, notaries who are approached by such persons unable to sign should advise them to consult an attorney.

A physically handicapped notary public may use a rubber stamp signature, in lieu of a manual signature, for executing affidavits, depositions, certificates of acknowledgments, and other official certificates. The criterion which is essential for this special allowance is that the handicap must affect his handwriting.

CHAPTER 5 QUESTIONS

1. What is the jurisdiction of a notary public?
2. In what states is a notary public permitted to perform official services outside of his jurisdiction?
3. Under what circumstances is this notary public (in this state) permitted to perform these services?

4. Define an "authentication".
5. Name the three major sources of authentications.
6. Describe the authentication process, including fees.
7. What is the Hague Convention and how does it relate to the authentication process?
8. Define an "apostille".
8. Are there any limitations placed upon providing official services on Sunday?
9. What is the rationale behind these limits?
10. Is there ever a situation in which a notary public should decline to provide services?
11. Describe some situations involving family members in which a notary public should decline to provide official services.
12. Explain why a corporation, bank or attorney might be legally allowed to perform official services for clients.
13. Is a notary public legally permitted to perform official services for people without identification? Explain your answer.
14. What are the four best forms of identification for positively determining personal identity of a person?
15. Compare the difference between "personally known" and "satisfactory evidence" in determining personal identity.
16. Define a "credible witness".
17. Detail the potential pitfalls in determining identity on the basis of sworn testimony of a credible witness.
18. Is an expired identification card ever acceptable for the purpose of determining personal identity? Why?
19. Explain what possible circumstances might allow the use of an expired identification to be suitable for assisting in the determination of personal identity.
19. Name at least six forms of common identification documents which are unacceptable for the purpose of determining personal identity. Explain why.
20. Explain why the use of the right thumbprint might prove helpful in the identification of a person.
20. Is it acceptable to decline service to a requester? Under what circumstances is it permissible to decline? What is the legal rationale behind this requirement?
21. What special considerations are involved in serving a physically disabled person?

CHAPTER 6

OATHS AND AFFIRMATIONS

OATH

An oath is any form of attestation (swearing) by which a person signifies that he is bound to perform an act faithfully and truthfully. It may be considered a sacred request to God in the act of swearing a statement. The oath is coupled with a call to a Supreme Being, such as God, to witness the words of the party and punish him if they are false. An oath must be administered in the form required by law. The person taking the oath must declare acceptance of the oath by saying the words "I do" or "yes" after the notary public has read the oath statement out loud. To further impress upon the person the seriousness of taking the oath, the notary public might incorporate two subtle (and optional), but powerful symbolic gestures. First, ask the person to rise and raise his right hand when taking the oath. Second, ask the person to place his left hand on a Bible or other religious book compatible with the religious beliefs of the person. It is vital that the notary pub-

lic act serious and professional during this solemn event. The casual and careless administration of oaths is unacceptable.

AFFIRMATION

An affirmation is similar to an oath in that they are both equally binding under the law. The difference is that an affirmation is a solemn and formal declaration, made under the pain and penalty of perjury, by a person who refuses to take an oath. The affirmation is free of any direct religious connotation. It is based upon the person's ethical or religious beliefs. For example, there are some religions which do not allow their followers to swear to God (or anything).

Therefore: the affirmation does not contain any words which require "swearing"; the person "declares and affirms." Generally speaking, state statutes are silent about prescribing an exact form and language of an oath or affirmation. While an oath is an unequivocal act, it requires no particular ritual. This is not to be confused with certain matters, such as election filings, where a specific form is required. Unless otherwise required by law, a notary public may use the following forms of oaths and affirmations.

FORMS OF OATHS

The following are the forms of oaths for an affidavit and deposition:

(AFFIDAVIT)	"Do you solemnly swear that the contents of this affidavit (or other document) are known to you and the information is true and correct? So help you God?"
(DEPOSITION)	"Do you solemnly swear that you will testify the truth, the whole truth, and nothing but the truth in the deposition you are about to give in the case now pending in the . . . court, between . . . , Plaintiff,

and . . . , Defendant? So help you God?"

The simplest form in which an oath may be lawfully administered is: "Do you solemnly swear that the contents of this (document) signed by you are true and correct?"

FORMS OF AFFIRMATIONS

The following are the forms of affirmation for an affidavit and deposition:

(AFFIDAVIT) "I, . . . , do solemnly, sincerely and truly declare and affirm that the contents of this affidavit are known to me and that the said facts are true under the pains and penalties of perjury?"

(DEPOSITION) "Do you solemnly, sincerely and truly, declare and affirm that the evidence you shall give relating to this matter in difference between . . . , Plaintiff, and . . . , Defendant, shall be the truth, the whole truth and nothing but the truth, under the pains and penalties of perjury?"

REQUIREMENTS

For an oath or affirmation to be valid, it is required that the person:

1. swearing or affirming personally be in the presence of the notary public (not over the telephone);
2. unequivocally (clearly) swears or affirms that what is stated is true;
3. swears or affirms as of that time; and
4. conscientiously takes upon himself the obligation of an oath.

The criteria for determining who may take an oath are intelligence, competency and morals. The notary public should have a reasonable belief that the constituent is capable of understanding the seriousness of the act. For example, if a child has the ability to understand what an oath is and the consequences of not being truthful, then it may be concluded that he is "capable."

COMPETENCY

The issue of competency is an important factor to consider. Take the instance of a patient who is taking medication or "medicated." It is both reasonable and prudent for the notary public to courteously (and tactfully) determine the patient's ability to understand the situation. Through a short professional conversation, the notary public may assess a person's ability to make a rational, informed decision. Objective questions to ask the person include:

1. his name and home address;
2. his whereabouts (i.e. facility name) and the circumstances surrounding his admittance (i.e. surgery, accident, etc); and,
3. the nature of the act to be performed (i.e. the seriousness of executing a power of attorney).

If the patient is having continued difficulty in producing reasonable responses, decline to officiate. The notary public is not rendering a final judgment about the competency of the patient or other individual. He is simply making a reasonable person's assessment of the individual to comprehend the nature of the matter brought before him. For example, in court, the finding of incompetence to stand trial is not the equivalent to adjudication of mental incompetence. It is possible for this incapacity to be temporary.

A notary public may not take the acknowledgment of, or administer an oath to a person whom the notary public actually knows to have been adjudged mentally incapacitated by a court of competent jurisdiction, where the acknowledgment or oath necessitates the exercise of a right

that has been removed pursuant to statutes and where the person has not been restored to capacity as a matter of record.

A notary public before whom a will and testament is acknowledged and sworn to, or self-proved (discussed in chapter 10), cannot also serve as a witness to the will, because he is without authority to administer an oath to himself. Under no condition is a notary public authorized to act as his own notary public.

A corporation or a partnership cannot take an oath. An oath can only be taken by a "natural" person. A business firm such as a corporation is an artificial person. An individual representing the organization must take the oath. His relationship to the business or organization should be stated in the document.

Perjury has been committed if, upon testimony on a material matter, under oath or affirmation, the person has stated the testimony to be true, yet knowingly and willfully made the statement or testimony false.

Key factors in successful perjury prosecutions include the following: evidence that the alleged perjurer knew his statements were false when made; false swearing made in an instrument which was specifically required or authorized by law; and that the false statements were material to the relevant issue or matter involved in the case.

There are the major classifications of documents requiring the administration of an oath or affirmation. Affidavits and depositions, discussed in detail in the next two chapters, are formal classes of documents requiring swearing or affirming which conform to a prescribed pattern of construction. However, an infinite number of documents require a relatively simple procedure called verification. Verification is the confirmation of the truth of facts in a document, attested by swearing or affirming. Virtually every paper submitted to a court needs verification. Countless numbers of documents in courts, commerce and governmental administration require verification. The terms "verified", "sworn" and "affirmed" are sometimes referred to interchangeably.

The jurat is the clause on the bottom of a document which is evidence that an oath or affirmation was administered. It is the written evidence indicated on a document that an oath or affirmation ceremony has occurred. The most common forms of jurats are "Subscribed and sworn to before me on (date)" or "Sworn to before me on (date)".

Stome statutes specifically prescribe that the jurat conform "substantially" to the following form:

Sworn to and subscribed†
before me this . . . day of . . . , 19 . . .
Personally Known . . . OR Produced Identification† . . .
Type of Identification Produced _____

†Not required in every state

However, numerous jurats on hundreds of legal, business and government forms (and the rest of the nation) are not fashioned in this new form. For example, an affidavit prepared in New York (and according to New York Law), might not require any further information than the basic "Sworn to before me on (date)" jurat form. Even many government forms in circulation are in need of the updated legal information. However, it is perfectly acceptable for a notary public to make the addition of the new language for the jurat, the notary public is responsible to amend the document to properly conform to the law. If required by statute, the notary public can be held responsible for not making the appropriate changes in the jurat form.

Although it is not specifically mandated by law, the venue of the notarial act should be placed immediately above the jurat on the document. The venue is the jurisdiction (state, county and sometimes municipality) in which the notarial act transpired:

STATE OF ARKANSAS . . . . .] ss.:
COUNTY OF . . . . .]

This is especially critical if the document is presented to a notary public for swearing, and transmitted to another state or country. Failure to include this precious information might subject the document to rejection by a legal authority elsewhere. It is an excellent practice to habitually note the venue above each jurat signed by a notary public. Rubber stamps with the venue language can be purchased from legal and notary supply sources to expedite the handling of these routine matters.

The jurat is not, in and of itself, a specific notarial procedure. Rather, it is the certification by a notary public that an oath or affirmation was administered in connection with a particular document.

OATHS OF OFFICE

There are many different types of oaths. Notaries will normally encounter two common oaths. The first type is an oath or affirmation that is generally associated with an affidavit, deposition or verification. It requires a written certificate to be completed by the notarial officer administering it. The second type of oath is connected with the oath of a public officer which involves written documentation of the oath being administered.

One of the most famous persons in American history sworn into office by a notary public was Vice President Calvin Coolidge on the occasion of his succession to the presidency. President Coolidge had his federal oath of office administered by his father, John Coolidge, who was a Vermont notary public. Of recent history, upon the death of President Kennedy, serious discussions were circulating in the news media regarding the possibility of a Texas notary public administering the presidential oath of office to Vice President Johnson, who was ultimately sworn in by a federal judge.

The oath of office that the notary public is required to take is usually the same form required by state law for all other public officers. Notaries may sometimes administer both types of oaths. Not all public officers who are empowered to administer the oath or affirmation are equally authorized to

administer an oath of office to a public officer. Further, some notaries public (e.g. Maine), are not empowered to administer any oaths of office, while other notaries public (e.g. New Jersey) can administer oaths of office only to specific officials.

The deciding factor which determines whether a specific public servant requires an oath of office to be administered is based on law. Not all public employees are classified legally as public officers.

An oath or affirmation, including an oath of office, to any state or local officer, may be made by a commissioned officer of the United States armed forces (in active service). In addition to any other legal requirements, the certificate of this officer administering the oath of office will state (a) the rank of the officer administering the oath, and (b) that the person taking the oath was at the time, enlisted, inducted, ordered, or commissioned in or serving with, attached to or accompanying the U.S. armed forces. Further, the fact that the officer administering the oath was (at the time) duly commissioned and in active armed forces service, must be certified by the United States Secretary of the Army, Navy or Air Force (or his designee). The place where the oath of office was administered is not required.

CHAPTER 6 QUESTIONS

1. Define an "oath".
2. What is the standard oath ceremony script for an affidavit? For a deposition?
3. Describe the supplemental features which should be incorporated into any oath ceremony to increase awareness of this important act.
4. Define an "affirmation".
5. List the four legal requirements of an oath and/or affirmation.
6. What steps should be taken by a notary public to determine competency of a person?
7. Define "perjury".
8. What are the key factors in a successful perjury prosecution?

9. Define "jurat".
10. Describe three forms of jurat certificates.
11. If an affirmation is administered instead of an oath, is a special jurat certificate required?
12. What are some terms interchanged with sworn?
13. Is it always necessary to have an oath taker sign in the presence of a notary public?. Explain your answer.
12. Describe the special notarial powers granted under law to U.S. military and consulate personnel. Who may administer oaths? How would the jurat certificate differ from a civilian-type certificate? Where may the oaths be administered?
14. Describe the two types of oaths.
15. What President of the United States was sworn into office by a notary public? Who was the notary public and what was his connection to the President?
16. Name at least six public office holders who, if appropriate, may be sworn into office by a notary public.
17. Upon completing the verbal oath of office ceremony, what documentation must be completed by the presiding notary public?
18. Describe some supplemental features which could be incorporated into a "swearing-in" ceremony to increase enjoyment and pride at this memorable event.

CHAPTER 7

AFFIDAVITS

AFFIDAVIT

An affidavit is a written or printed statement or declaration of facts, made voluntarily and confirmed by the oath or affirmation of the party making it. The party is sworn before a notary public or other authorized officer. The affidavit must be made voluntarily by one party or ex-parte. The party making the statement is the affiant. The affidavit merely recites a series of statements under oath. An affidavit is a "statement" of given facts, or a "statement" given on information and belief. The range of circumstances in which an individual would use an affidavit is limitless. Examples are documentation of employment, verification of facts, documentation of a promise to perform a service, certification of eligibility for a benefit, etc. In the courts, affidavits are commonly employed in connection with scores of activities, such as complaints, disclosures, answers, motions, etc.

Supporting and opposing affidavits for court must be

made on personal knowledge, and state facts which are admissible as evidence in court, and demonstrate that the affiant is competent to testify to the matters in the affidavit. Sworn or certified copies of all papers (or parts of them) referred to in the affidavit should be attached to it.

The willful making of a false affidavit is perjury. A notary public will be removed from office for preparing or taking the oath of an affiant making a statement that the notary public knows to be false.

Authentication of the notarial certificate for an affidavit is identical to the procedure for an oath, acknowledgment or proof of execution.

COMPONENTS

The general parts of the affidavit are as follows:

1. caption;
2. venue;
3. body;
4. affiant's signature; and
5. jurat.

The caption is commonly referred to as the title and designates the title of the case or proceeding (if submitted in the course of litigation). If unknown or not applicable, omit.

Venue refers to the geographical place where the affidavit was taken, consisting of the state, county and city/town/village—the municipality is optional, unless specifically required by law. An affidavit containing no venue or a venue which does not designate the place where it was taken is insufficient.

Immediately following the venue, the abbreviation "ss." is printed. It designates an abbreviation for the Latin word *scilicet* (pronounced "sila set") which means "namely" or "in particular." The omission of the letters "ss." from the venue of an affidavit is immaterial.

The body consists of the collection of sworn statements

of the affiant. It is recommended that the body be introduced with one of the following statements:

1. "(name of affiant) being duly sworn (or affirmed) deposes and says:"; OR
2. "(name of affiant), of (municipality), County of . . . , and State of . . . , being duly sworn, deposes and says"; OR
3. "(name of affiant), personally appears before me, (name), notary public for the State of . . . , residing at (municipality), and now on the (date) day of (month), in the year (0000), at (time-am/pm) of said day, in my (home/office), (street address), in said (municipality), County of . . . , and State of . . . , being by me duly sworn on his/her oath, and says that he/she is a resident of the (municipality), County of . . . and State of . . . that:".

A failure to insert the deponent's name in the beginning of the affidavit is not "fatal" to the validity of the affidavit, but it is essential that the name of the affiant be included in the body. If the person signing the affidavit is not the same person named as having been sworn, the affidavit is void. The affidavit must be dated. The statements made in the body should be clear and factual. No erasures should be made. Opaque-type correction fluid is unacceptable. Have the affiant draw a single line through any error and instruct the affiant to initial the correction.

It is not the duty of the notary public to examine or investigate the statements of the affiant. However, it must be emphasized that a notary should not accept any affidavit if he knows it contains false statements. It is the duty of the affiant to truthfully detail the facts, under the penalty of perjury. Reading the affidavit back to the affiant, for example, is a method of making certain that the person is aware of the statements given.

The notary public should place the affiant under oath. Upon acceptance of the oath, the affiant should sign his name immediately after the last line of the body so that no additions may be made to the text. The affiant should sign the full name exactly as written at the beginning of the body. The use of fictitious or assumed names is not per-

Affidavit

State of .....)
) ss.:
County of .....)

..... personally appears before me, the undersigned officer duly authorized by the laws of ..... to administer oaths, and now on this ..... day of ..... , in the year 199.. , at ..... am/pm of said day, being by me first duly sworn on his/her oath/affirmation, deposes and says:

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.....
Signature of Affiant
.....
Printed Name of Affiant

Sworn/affirmed to and subscribed before me
on this ..... day of ....., 199 .. .
Personally known [] or Produced identification []
Type of identification produced .....

.....
Signature of officer administering oath
.....
Printed name of officer administering oath
.....
Title or rank of officer
.....
Serial or commission number

NOTARY PUBLIC STAMP/SEAL BELOW
(If applicable)

Figure 1 Blank Affidavit—Long Form

Corporation
Affidavit

State of .....)
) ss.:
County of .....)

..... personally appears before me, the undersigned officer duly authorized by the laws of ..... to administer oaths, and now on this ..... day of ..... , in the year 199.. , at ..... am/pm of said day, being by me first duly sworn on his/her oath/affirmation, deposes and says that he/she is the (President or other officer) of .... and that he/she makes this affidavit for and on behalf of said corporation and that:

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.....
Signature of Affiant
.....
Printed Name of Affiant

Sworn/affirmed to and subscribed before me
on this ..... day of ....., 199 .. .
Personally known [] or Produced identification []
Type of identification produced .....

.....
Signature of officer administering oath
.....
Printed name of officer administering oath
.....
Title or rank of officer
.....
Serial or commission number

(NOTARY OFFICIAL EMBOSSING SEAL IMPRESSION BELOW)

NOTARY PUBLIC STAMP/SEAL BELOW
(If applicable)

Figure 2 Blank Affidavit—Corporation

mitted. Social or professional titles, including Mr., Mrs., Ms., Dr., Prof., are not appropriate. A suffix is appropriate (e.g. M.D.), however. Underneath his signature, the name should be clearly printed. The signature is evidence that the affiant accepted the oath administered by the notary public.

The jurat consists of those words which are placed directly after the signature in the affidavit. It states that the facts stated were sworn to or affirmed before the notary public, together with his statement of authority and official signature. The failure of an affidavit to contain a jurat or the failure of the officer to sign the jurat causes the affidavit to become invalid. Further, the failure of the officer signing the jurat to add a statement of office or of the territory to which he holds office does not invalidate the affidavit; it is presumed that he is an authorized officer. Some statutes require that the notary public indicate if the affiant is personally known, or produced identification. If identification was produced, it must be noted in the jurat.

The notary public should sign his official signature in permanent, black ink. Beneath the official signature, the notary public should make an impression of the inked notary public stamp of the statement of authority.

The embosser seal should be impressed in the area designated with the initials "L.S.", the abbreviation of the Latin words *locus sigilli* (pronounced "lowkus SEE-jill-EE"), meaning "place of the seal." If the L.S. is not indicated, the notary public may put his impression on any unprinted area of the document, preferably near the jurat. Avoid putting the seal over any document text, except specifically over the L.S. notation.

MARITIME PROTEST

A protest is a sworn declaration made by the master of a vessel before a notary public, on arrival in a port, in the following situations: through bad weather, it has not been practical to adopt ordinary precautions in the matter of ventilation for perishable cargo; the condition of the cargo appears to have been damaged during voyage; or a vessel experiences bad weather while at sea, and the master believes that the cargo is damaged or part of the deck load was lost overboard. This is one of two forms of notary public protests. The other form of protest involves the subject of notaries public and financial institutions.

CHAPTER 7 QUESTIONS

1. Define an "affidavit" and "affiant".
2. What is the standard oath ceremony script for use with an affidavit?
3. Define the term "ex-parte" regarding affidavits.
4. Why are affidavits useful to the legal process, as well as many common business and consumer purposes?
5. Name some examples of affidavits and how these documents are specifically useful to the legal and commercial systems.
4. List the five components of an affidavit.
5. Define the term "venue" and explain its significance in a legal document, including affidavits.
6. Define the Latin abbreviation "ss"; why it is often incorporated in legal documents?
7. Why is it significant to have the affiant sign the document in the presence of the notary public? Is it always legally required? Explain your answer.
8. Define the term "jurat". Why is the inclusion of a juror necessary on a sworn document? What is the result of the omission of the "jurat"? Explain your answer?
9. Explain the difference between an oath and a "jurat".
10. What does the Latin abbreviation "L.S." signify? What does it mean to the notary public and what should be performed in the vicinity of this marking?
11. Explain the legal significance of an affidavit which has not been sworn to before a notary public with a proper, verbal oath. Explain your answer.
12. What is a notarial protest? Are there different forms of notarial protests? Describe them.

CHAPTER 8

DEPOSITIONS

DEPOSITION

A deposition is the written testimony of a witness taken out of court or other hearing proceeding, under oath or affirmation, before a notary public or other legally authorized person. It is intended to be used at the trial or hearing of a civil action or criminal prosecution. The examination is a collection of questions determined and provided by either an attorney or judge.

Depositions can be an integral component of the discovery phase of a civil or criminal trial, sometimes referred to as an examination before trial (EBT).

The deponent is the party who gives testimony under oath which is transcribed to a written statement. Depositions must be made on personal knowledge, and state facts which are admissible as evidence in court. Normally a deposition which contains hearsay testimony will be rejected by the court. Hearsay evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter asserted.

A deposition differs from an affidavit in that a deposition may be an involuntary procedure by a witness in a civil or criminal matter. It is extremely difficult for a person to refuse to comply with the request to make a deposition. If required, the person refusing to answer the questions at a depositional hearing may be compelled to do so. An affidavit is generally a voluntary act of making a sworn statement, not necessarily intended for use in a court or hearing proceeding. If a witness in a legal proceeding is unable to attend the hearing or trial to give sworn testimony, it is legally acceptable for the testimony to be put into writing. The written testimony or deposition must be signed by the witness and sworn to in the presence of the notary public.

The testifying witness is subject to cross-examination by the opposing party.

The principal categories of depositions include discovery depositions, *de bene esse* depositions and interrogatories. A discovery deposition is a sworn verbal examination of a witness taken to extract facts from those individuals involved in a dispute. It is intended to expose important facts and issues concerning the matter. Should the case proceed to an actual trial, this form of deposition will be vital to the attorneys in formulating trial strategies.

Frequently, the information gathered from these depositions will induce both parties to reach a settlement, thereby eliminating the trial process entirely.

A *de bene esse* deposition is a sworn verbal examination of a witness whose testimony is considered important to a matter, but might otherwise be lost. This form of deposition is utilized to avoid the loss of potentially valuable testimony in the event that the witness is unable to personally attend court or cannot be produced to testify.

Interrogatories are formal written questions used in the judicial examination of a person, who must provide written answers under oath. Although utilized as a discovery mechanism, there are generally no attorneys present. However, interrogatories possess the same force and effect as a deposition and can be admitted into evidence.

Interrogatories are less complex (and therefore more economical) to conduct than a deposition. They can be a

valuable discovery mechanism to investigate the merits of a case.

PROCEDURES

In some states, a civil deposition taken or certified on Sunday is void.

Although a deposition can be taken over the telephone, the final transcribed deposition must be personally sworn to by the deponent in front of a notary public, or other officer empowered to administer oaths. Telephonic oaths are not permitted under any circumstances. In fact, if it is proven in court that the deposition was not personally sworn to before a notary or other officer, the deposition is in danger of being declared fatally defective, and will likely be disallowed as admissible evidence. The difficulty arises from the requirement that the witness be placed under oath prior to testifying, especially if this deposition is occurring out-of-state. This is in addition to the deponent being sworn before a notary public with the final version of the transcribed deposition. Although it may be somewhat difficult and logistically challenging, arrangements must be made to have a notary public travel to the site of the deposition, and have him place the witness under oath. A certificate prepared by the supervising shorthand or court reporter in the matter needs to be transmitted to the remote notary public for his signature. This certificate then should be attached to the executed, sworn transcript.

The supervising officer will put the witness under oath. This individual must be a notary public or other officer authorized to administer oaths. The testimony will be transcribed by the officer, normally a certified shorthand reporter or someone acting under his direction.

The officer will note all objections made regarding the following:

1. the qualifications of the officer taking the deposition;
2. the person recording it;
3. the manner of taking it;
4. the testimony presented;
5. the conduct of any person and;
6. other objections to the proceedings.

He/she will proceed subject to the right of a person to apply for a protective court order.

The deposition will be taken continuously and without interruption, unless the court otherwise orders or the witness and parties present otherwise agree. Instead of participating in an oral examination, any party given notice of taking a deposition may provide questions to the officer, who will then ask them to the witness and record the answers.

Examination and cross-examination of deponents will continue as permitted in the trial of actions in open court. When the deposition of a party is taken at the instance of another party, the deponent may be cross-examined by his own attorney. Cross-examination need not be limited to the subject matter of the examination in chief.

If the witness to be examined does not understand the English language, the examining party must at his own expense provide a translation of all questions and answers. When the court settles matters, it may settle them in the foreign language and in English.

The deposition will be given to the witness for examination and read to or by him. He is entitled to have any changes he wants entered at the end of the deposition with a statement of reasons given by the witness for making them. The deposition is signed by the witness before any officer authorized to administer an oath (e.g. notary public). If the witness fails to sign the deposition, the officer should sign it and state on the record the fact of the witness' failure or refusal to sign, together with any reason given. The deposition may then be used as legally proper (as though signed). The officer who takes a deposition will certify on it that the witness was duly sworn by him and that it is a true record of the testimony given by the witness. All appearances by the parties and attorneys will be listed by the officer. If the deposition is taken on written questions, the officer will attach the copy of the notice and written questions received. The deposition will then be securely sealed in an envelope, marked with the title and index number of the action (if assigned) and "Deposition of (name of witness):" and promptly filed or sent by registered or certified mail to the clerk of the court where the case is to be tried.

The deposition will always be open to inspection by the

ALEXANDER GROSS 110

original document?

A. I think I told him that I misplaced it, that I will find it.

Q. Did he ask you for a copy on that day?

A. No.

Q. Did you ever review what's been marked as Hammond's Exhibit C with Mr. Victor Weiss?

A. No.

Q. But you did notarize it didn't you?

A. Yes.

Q. Did Mr. Isaac Gross sign it in front of you?

A. Yes.

Q. Mr. Isaac Gross signed what's been marked as Plaintiff's exhibit number 2 in front of you?

A. Yes.

Q. Where did he sign it in front of you?

A. In Brooklyn.

Q. And Mr. Hammond where did he sign it?

A. In Brooklyn.

Q. Are you a notary, sir?

A. Yes.

Q. And where did you notarize the two

Figure 1 Sample Page from Deposition

parties and they may choose to make copies of the document. If a copy of the deposition is given to each party or if the parties agree to waive filing, the officer need not file the original, but may deliver it to the party taking the deposition.

Documentary evidence exhibited before the officer or exhibits marked for identification during the examination of the witness will be attached to and returned with the deposition. However, if requested by the party producing documentary evidence or an exhibit, the officer will mark it for identification as an exhibit in the case, give each party an opportunity to copy or inspect it, and return it to the party offering it. It may then be used in the same manner as if added to and returned with the deposition.

Unless the court orders otherwise, the party taking (requesting) the deposition will bear the expenses of it. The costs incurred with the deposition are not the responsibility of the officer.

Errors of the officer or stenographer or other person transcribing the deposition are waived unless a "motion to quash" the deposition (or some part of it) is made within a reasonable time after the defect is, or with careful attention might have been, determined. If the notary public is an interested party to the legal proceeding or its outcome, it is inappropriate and improper for him to take the deposition. If the notary public is related to the deponent by blood or marriage, connected in any way by employment or business, including an attorney or employee of an attorney, or in any way interested in the outcome of the litigation, he should not participate in the administration of the deposition.

The topic of depositions is complex. The preceding discussion is provided strictly as a brief overview of the process. There are volumes of rules and procedures which specify the manner in which a deposition will be conducted. Commonly, trained individuals who are certified shorthand reporters will be employed to take or record the proceedings. The reporters may be notaries public. In some instances, a deposition may be taken and prepared by a shorthand reporter and brought to a notary public (by the

STATE OF MAINE) ss.:
)
COUNTY OF CUMBERLAND)

I, Alexander Gross, hereby certify that I have read the foregoing transcripts of my deposition taken July 7, 1920, at approximately 9:00 a.m. at Portland, Maine, pursuant to the applicable Maine Rules of Civil Procedure, and that the foregoing 39 pages of transcript are in conformity with my testimony given at that time (with the exception of any corrections made by me, in ink, and initialled by me).

_____
ALEXANDER GROSS

STATE OF MAINE) ss.:
)
COUNTY OF CUMBERLAND)

Subscribed and sworn to before me on this twenty-third day of July, in the year of our Lord, nineteen-hundred and twenty.

_____
EMERY G. WILSON
Notary Public of Maine

Figure 2 Deposition Certification Page

deponent) for administration of an oath or affirmation. However, every notary public should be familiar with the topic of depositions and the general process of taking/certifying these legal documents.

The training and education of court reporting is typically

contained in an intensive, two-year program. Individuals interested in exploring a career in court reporting should contact the National Court Reporters Association (NCRA) for the latest roster of educational institutions with (NCRA) approved programs.

For further information about court reporting, or certified shorthand reporting, the following organizations and publications will provide a wealth of information:

Publication : *The National Court Reporter (NCR)*
National Court Reporters Association
8224 Old Court House Road
Viena, VA 22182; (800) 272-6272.

Excellent resources for many issues involving the reporting profession, courtroom and deposition procedures, and the notary public are:

The Complete Court Reporter's Handbook, Second Edition by Mary H. Knapp Englewood Cliffs, NJ: Prentice-Hall, 1987, 378 pp.
ISBN: 0-13-159369-2

How to Survive a Deposition, by Stuart B. Shapiro, New York, NY: John Wiley & Sons, 1994, 170 pp.
ISBN: 0-471-00212-7

CHAPTER 8 QUESTIONS

1. Define a "deposition" and a "deponent".
2. What is the standard oath ceremony script for use at a deposition?
3. What is meant by an "EBT"? How are they utilized in a legal case.
4. What is "hearsay"?
5. Explain how a deposition differs from an affidavit.
6. Can a person refuse to make a deposition? Describe the legal remedy for a situation in which a person refuses to appear to make a deposition.
7. Compare a "de bene esse deposition" and "discovery deposition".

8. Define "interrogatories".
9. Explain the legal significance of a deposition which has not been sworn to before a notary public with a proper, verbal oath.
10. Are there any restrictions on taking depositions on Sunday? Explain your answer.
11. Discuss the subject of the telephone and a taking a deposition.
12. What unique feature of document construction makes a deposition easy to recognize?
13. Is it ever possible to take an oath for a deposition over the telephone? Explain your answer.
14. Can a person take an oath by proxy for a deposition?

CHAPTER 9

ACKNOWLEDGMENTS AND PROOFS OF EXECUTION

ACKNOWLEDGMENT

An acknowledgment is a formal declaration before an authorized public officer. It is made by a person executing an instrument who states that it was his free act and deed. For example, when a person completes and signs a power of attorney, the acknowledgment confirms the fact that the party actually signed the document for the purpose(s) detailed in it. Further, the person declares that he signed the document freely and willfully, without any undue influence (i.e. a threat of violence). Notaries do not acknowledge the execution or signing of documents; rather clients acknowledge the execution of documents. Notaries take the acknowledgment of clients who executed the documents.

The acknowledgment provides a degree of protection to the public by certifying that a document was properly executed. In order for a document to become a recordable in-

strument, an acknowledgment is a legal requirement. An acknowledgment of execution is required for a wide variety of documents such as contracts, bills of sale, real property conveyances (deeds), releases, trusts, leases, mortgages (including home equity loans), powers of attorney, cemetery plot deeds, lien releases, mortgage satisfactions, chattel mortgages, etc. An unacknowledged agreement concerning real property cannot be recorded in official records.

For example, a mortgage that is signed, sealed, delivered and recorded may be invalid unless it has been properly acknowledged. In federal bankruptcy court, it was held that even though a home improvement mortgage had been signed by the bankrupt borrower and recorded months earlier, it was voided because the notary public was not present at the time the borrower signed.

The person must appear before the notary public. Taking an acknowledgment over the telephone is illegal. Unless the person making the acknowledgment actually and personally appeared before the notary public on the day specified, the notary public's certification is false and fraudulent.

The notary public should make sure that the document is completely executed; there should be no blanks. If the notary public discovers blanks, the client should be asked to complete the document (fill in all blanks) or draw lines through the blanks. If the client refuses to do this for any reason, the notary public should decline to officiate. While it is not the responsibility of the notary public to completely read and comprehend the document, a rapid skimming examination is reasonable and prudent. Usually the blanks are purely the result of an honest oversight on the part of the constituent. Most persons will appreciate the discovery of these flaws.

It is the duty of the notary public to make certain that the client is fully aware of the name of the document, before taking his acknowledgment. It is especially critical in the instance of the young, elderly, infirm or otherwise potentially incompetent. The outcome of the execution of a document, such as a power of attorney, requires that a person fully understand its meaning and consequences. For example, a business person may tell an elderly customer that a document is

just a "legal formality" to start a home improvement job, when it really is a mortgage agreement.

A court has held that, although the terms of an instrument are enforceable without an acknowledgment, such an instrument (lacking a notarial acknowledgment) which is nevertheless recorded is not considered constructive notice and, therefore, not binding on a person who has no actual notice of the instrument. Constructive notice is that notice implied by law such as in the case of notice of documents which have been recorded in a clerk's or register's office.

Although a notary public taking an acknowledgment may serve as a subscribing witness in connection with the instrument, this is not a recommended practice. If a party to the matter challenges the suitability of the notary public on the basis of some impropriety, regardless of actual innocence, having had the notary public serve as the witness could prove a fatal blow to the defense of the proper execution of the instrument. For example, if an unscrupulous individual claims to have been pressured into signing a mortgage or other loan document, and later alleges that the transaction was accomplished under duress, or even that his signature was forged, the defense becomes seriously weakened because of the dual-role. The notary public should never serve as a witness for an instrument to which he is taking an acknowledgment.

If a notary knowingly makes a false certification that a deed or other written instrument was acknowledged, he is guilty of official misconduct and fraud. Damages are recoverable for issuing a false certificate. An award of damages was upheld by an appellate court when a notary public had certified that a mortgagor had appeared and acknowledged a mortgage when he did not appear. In such an instance, the notary public would be held personally liable for the damages awarded. While a notary public might be protected from criminal liability in the absence of criminal intent or guilty knowledge, a deed or other written document or instrument with a false certification is invalid because it is a forgery.

An acknowledgment may not be taken by a notary public if such notary public is an "interested" party to an instrument. A deed is void if the acknowledgment of the grantor is

taken by a grantee. A mortgage is defective if the acknowledgment of the mortgagor is taken by a mortgagee.

The distinction between the taking of an acknowledgment and an affidavit must be clearly understood. An acknowledgment verifies that the person before the notary public actually (and freely) signed a document for the purposes stated in it. However, no oath is administered. An affidavit verifies that the contents of the written statement are true. The statement is made under oath. There are some acknowledgments which are a combination of an acknowledgment and affidavit. A prudent notary public should carefully examine every document and determine the duties required.

REQUIREMENTS

There are three essential components of an acknowledgment:

1. the personal appearance before the notary public;
2. positive identification; and
3. the actual acknowledgment of signing to the notary public.

The person who is the signer of the document must personally appear before the notary public. The person executing the instrument does not have to sign his name in the physical presence of the notary public, unless specifically required. Therefore, the venue indicated in the acknowledgment certificate should state the exact jurisdiction where the acknowledgment is performed, not necessarily where the document was actually signed. Failure to designate the venue in an acknowledgment certificate is a fatal defect, one which cannot be remedied after the document has been released by the notary public.

It is not necessary to the validity of an acknowledgment that the acknowledged instrument be signed in the presence of the notary. It is only necessary that the person whose execution is acknowledged be known by the notary to be the person described in and who executed the instrument (or that the notary have satisfactory proof) that such person acknowledge to and before the notary the execution of the instrument. The mere existence of an acknowledgment on an instrument can therefore raise no presumption that the no-

tary was a witness to the execution of the document, nor is the mere existence of the acknowledgment certificate proof of the actual act.

The actual acknowledgment phase of the act must meet certain criteria. It is not essential that the date of the instrument bear the same date of acknowledgment before the notary public. The exact date of personal appearance should be recorded in the certificate. The notarial certificate must state that on the date specified, "(Name), personally appeared before me, and satisfied me that he/she/they is/are the person(s) named in and who signed this document. Thereupon, he/she/they acknowledged the signing, sealing and delivery of this document as his/her/their act and deed for the uses and purposes expressed in this document."

The signer should not only admit the signature as his own (if not made in preseence of notary), but also indicate that it was made freely and willingly. The oral declaration of the signer is required.

The notary public should ask the client one of the following questions:

DOCUMENT SIGNED IN PRESENCE OF NOTARY:

> "Do you acknowledge that you freely and willfully executed (or signed) this document [state type, if known] for the purposes contained in it?"

DOCUMENT NOT SIGNED IN PRESENCE OF NOTARY:

> "Do you acknowledge that this is your signature, and that you freely and willfully executed (or signed) this document [state type, if known] for the purposes contained in it?"

ACKNOWLEDGMENT CERTIFICATE

There are eight essential components on the general acknowledgment certificate:

1. venue (state and county);
2. date of acknowledgment;
3. name of individual making the acknowledgment;
4. the fact that the person named (personally) appeared before the notarial officer;

5. a statement that the identity of the person named is known (through personal knowledge or satisfactory evidence);
6. if not personally known, the type of identification utilized (according to credentials acceptable);
7. a statement that the person named acknowledged the execution of the instrument attached to the acknowledgment certificate; and
8. official signature of notarial officer and statement of authority (including expiration date of commission).

The notary public should affix his inked stamp (statement of authority) and seal beneath his official signature.

The following forms of acknowledgment certificates are provided for reference and use. Unless otherwise required by law, these forms will satisfy most requirements whenever an acknowledgement is required. Other forms may be utilized provided they possess the above captioned components.

Short Forms of Acknowledgment

INDIVIDUAL ACKNOWLEDGMENT

STATE OF ss.:

COUNTY OF

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged), who is personally known to me or who has produced (type of identification) as identification.

_____

Signature of Person Taking Acknowledgment

_____

Printed Name of Person Taking Acknowledgment

_____

Title or Rank

_____

Serial Number, if any

Short Forms of Acknowledgments

PARTNERSHIP ACKNOWLEDGMENT

STATE OF ss.

COUNTY OF

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership. He/she is personally known to me or has produced (type of identification) as identification.

_____

Signature of Person Taking Acknowledgment

_____

Printed Name of Person Taking Acknowledgment

_____

Title or Rank

_____

Serial Number, if any

Short Forms of Acknowledgments

ACKNOWLEDGMENT BY ATTORNEY-IN-FACT

STATE OF ss.:

COUNTY OF

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal), who is personally known to me or who has produced (type of identification) as identification.

_____

Signature of Person Taking Acknowledgment

_____

Printed Name of Person Taking Acknowledgment

_____

Title or Rank

_____

Serial Number, if any

Short Forms of Acknowledgments

CORPORATION ACKNOWLEDGMENT

STATE OF ss.:

COUNTY OF

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced (type of identification) as identification.

_____

Signature of Person Taking Acknowledgment

_____

Printed Name of Person Taking Acknowledgment

_____

Title or Rank

_____

Serial Number, if any

Short Forms of Acknowledgments

PUBLIC OFFICER, TRUSTEE OR PERSONAL REPRESENTATIVE ACKNOWLEDGMENT

STATE OF ss.:

COUNTY OF

The foregoing instrument was acknowledged before me this (date) by (name and title of position), who is personally known to me or who has produced (type of identification) as identification.

_____

Signature of Person Taking Acknowledgment

_____

Printed Name of Person Taking Acknowledgment

_____

Title or Rank

_____

Serial Number, if any

Short Forms of Acknowledgment

MILITARY ACKNOWLEDGMENT

On this (date) day of (month), (year), before me (name), the undersigned officer, personally appeared (name), known to me (or satisfactorily proven) to be serving in or with or whose duties require his presence with the U.S. Armed Forces, and to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained, and the undersigned does further certify that he is at the date of this certificate a commissioned officer of the rank stated below in the active service of the U.S. Armed Forces.

_____

Signature of Officer Taking Acknowledgment

_____

Printed Name of Officer Taking Acknowledgment

_____

Officer Rank

_____

Command or Branch of Service

An acknowledgment by the spouse of a member of the U.S. Armed Forces is acceptable if acknowledged with the military acknowledgment certificate form provided. It will have the same effect as acknowledgment by any other law.

Sometimes the state laws are a little "behind the times." State statutes frequently declare that the acknowledgment of any instrument or document, including conveyances of real property, "may be made by a married woman the same as if unmarried." There was a period of time when a married woman required the approval and signature of her husband to own or transfer real property.

An acknowledgment may be taken on Sunday, unless otherwise prohibited by state law.

The certificate of acknowledgment for a deed or other instrument before some foreign commissioners of deeds does not typically require the application of an official seal to the document. The official signature of the foreign commissioner of deeds is sufficient. The certificate of acknowledgment or proof of execution made before a notary public outside of many states does not require the expiration date of such notary public's commission.

Substantial compliance with the statutory laws will possibly allow an acknowledgment certificate to withstand a challenge based upon a minor defect.

An affidavit cannot be a substitute for an acknowledgment. The jurat contained in an affidavit does not contain the information required in a certificate of acknowledgment, nor are the legal ceremonies and procedures similar.

If the document signer is able to appear before the notary public, an acknowledgment is the appropriate notarial act. If the document signer is unable to appear before the notary public, and another person saw the party execute the document, and the witness knew the party described and that the party executed the document willfully, a proof of execution is required.

PROOF OF EXECUTION

A proof of execution is the formal declaration made by a subscribing witness to the execution of a document. When the execution of a document is proved by a subscribing witness, he must state that he knew the person described in and who signed the document. The proof must not be taken unless the notary public is personally acquainted with the witness, or has satisfactory evidence that he is the same person who was a subscribing witness to the document. It should be noted that not all states authorize a notary to take a proof of execution.

A proof of execution is a quasi-judicial act and requires strict adherence to the formal procedures. It is contrary to prudent practice to utilize the proof for routine matters. A proof is indicated in connection with the most extreme cases such as when a party is unavailable to appear before a notary due to coma, unable to locate, etc.

REQUIREMENTS

The following information is required for the certificate of proof:

1. venue (state and county);
2. date of proof;
3. name/title of notarial officer;
4. name of subscribing witness;
5. the statement that the witness took an oath or affirmation that he or she saw the document to which his name was signed as witness;
6. a statement that he signed his name as witness at that time;
7. the fact that the witness knew the person described in and who executed the instrument; and
8. the fact that he was an uninterested and competent subscribing witness to the instrument.

CERTIFICATE OF PROOF OF EXECUTION

The following is the form of the certificate of proof of execution by a subscribing witness known to the notary public:

STATE OF ss.:

COUNTY OF

On the (date) day of (month), (year), before me, (name/ title), personally appeared (name), the subscribing witness to the (above/within/attached) instrument, with whom I am personally acquainted, who, being duly sworn (or affirmed) did say and make proof to my satisfaction that he/she knew (name), the person (or one of the persons) described in and who executed the (above/within/attached) instrument; and that he/she saw (name) sign and deliver the (above/within/ attached) instrument as and for his/her voluntary act and deed, for the uses and purposes expressed therein, and the deponent at the same time subscribed his name as a witness thereto.

_____

Signature of Person Taking Acknowledgment

_____

Printed Name of Person Taking Acknowledgment

_____

Title or Rank

_____

Serial Number, if any

An officer authorized to take the acknowledgment or proof of execution of conveyances or other instruments, or certify acknowledgments or proofs (i.e. notary public), is per-

sonally liable for damages to persons injured as the result of any wrongdoing on the part of the officer.

CHAPTER 9 QUESTIONS

1. What is an "acknowledgment"?
2. Does the notary public have to make a certain inquiry of the acknowledger? Explain your answer.
3. What three words describe the chief function of an acknowledgment?
4. In what general group of documents are acknowledgments typically utilized?
5. Is personal appearance a mandatory step? Explain why.
6. Is it ever possible to take an acknowledgment over the telephone? Explain your answer.
7. Should a notary public serve as a subscribing witness in connection with a document? Explain your answer.
8. Explain the distinction between taking an acknowledgment and an affidavit.
9. What is the "venue"?
10. What is the recommended method of manually correcting an incorrect venue? Name three inappropriate methods of making a correction.
11. Explain the potential risk to a legal transaction in the event that the venue is incorrect.
12. Explain the risk and potential outcome to a secured mortgage transaction if the venue isn't accurate. What are the steps that a challenger would would take to invalidate the recording?
13. A notary public is presented with a power of attorney (POA) by the principal. The principal has already signed the POA document, but not in the presence of the notary. Further, the document is dated six months earlier. What steps should the notary public take in this situation. Do the dates need to match? Explain your answer.
14. What two key elements must be contained in the standard acknowledgment taken by the notary public?
15. What is the verbal "script" of the legal ceremony for an acknowledgment to be taken for a: (a) document signed in

the presence of the notary public; and (b) document not signed in the presence of the notary public.

16. Name the eight essential components of the standard acknowledgment.

17. Name at least six types or styles of acknowledgment certificates.

18. A person presents himself to a notary public with a document to be signed on behalf of another person. What is this person legally termed and what should the person present to the notary to substantiate his claim of this special status?

19. What special steps to reduce fraud should be taken by a notary public when presented with a power of attorney?

20. In a corporation acknowledgment, who may legally make an acknowledgment on behalf of a corporation?

21. What special situation must exist for a person other than a corporation officer to execute a document on behalf of the

CHAPTER 10

WILLS, HEALTH CARE DIRECTIVES AND CERTIFIED COPIES

WILLS AND TESTAMENTS

The subject of the last will and testament or testamentum is of great concern and confusion for many notaries public and the general public. A notary public should not become officially involved in the creation of a will. A notary public is cautioned not to take an acknowledgment of the execution of a will. This acknowledgment cannot be considered legally comparable to a testimonial clause concluding a will where the witnesses place their signatures below the signature of the testator.

A testator is a man who makes a will and a testatrix is a woman who makes a will. The witnesses who observe the testator or testatrix execute the will are sometimes referred to as subscribing witnesses or testes.

A judicial decision has concluded that the execution of wills under the supervision of a notary public acting in effect

as a lawyer, "cannot be too strongly condemned, not only for the reason that it means an invasion of the legal profession, but for the fact that testators thereby run the risk of frustrating their own solemnly declared intentions and rendering worthless maturely considered plans for the disposition of estates whose creation may have been the fruits of lives of industry and self-denial."

In other words, the court does not want a non-attorney notary public drafting the will of a client who might feel that the notary is as qualified as a lawyer to assist in handling the will preparation. While it may be lawful for a client to draw his own will, involvement of a notary public in drafting the will is illegal and discouraged. For example, a well-meaning client might create his own will at his dining room table and seek to execute the will in the presence of a notary public to "legalize" it. Not only would the notary public potentially be misrepresenting himself by intervening, but he might give the person a sense of false confidence regarding his estate plans.

If the notary public has definite knowledge that the client received the counsel of an attorney who prepared the will, it is appropriate for the notary public to act as a citizen and serve as a lay witness. In such cases, it is essential that the notary public clearly indicate (to the testator and all others present) that his act of being a witness is as a lay citizen and not in connection with any official duty. Therefore, the notary public should not affix his official instruments or any language which designates his official position on the will. Even innocent and well-intentioned acts, in fact, could cause the otherwise lawful will to become invalid. A notary public before whom a will is acknowledged and sworn to, or self-proved, cannot also serve as a witness to the will, because he is without authority to administer an oath to himself.

In the event a notary public is presented with a will which apparently has been prepared by an attorney (who provides an affidavit of execution or subscribing witness affidavit at the conclusion of the will), the notary public may proceed to place the testator and subscribing witnesses under oath.

The notary public is cautioned to carefully examine the will. Suggested evidence of an attorney-prepared will would

include a document prepared on legal paper stock with the law firm or lawyer's name, address and telephone number printed in the margin (or top of) each page. In the event that a notary public is presented with a will prepared on a formal, law blank form, the lawyer's name and related data should be typed, printed or stamped clearly on the document. If the will is not prepared by attorney, but appears complete with necessary affidavit, the notary public may proceed to swear the parties.

Caution and professional questioning should be the rule when a notary public is presented with a will. It is a reasonable rule of practice to suggest that the party consult an attorney, if it appears that the will is incomplete. If necessary, the notary public might contact the attorney who prepared the will to request further information or instruction.

While the law does not require that a will be brought before a notary public to be legally sufficient, the probate process can be greatly simplified by having the testator and witnesses "self-prove" the will before a notary.

Probate is the legal process of determining whether or not a deceased individual left a valid will, and the court's monitoring to assure that the estate is disposed of in accordance with the wishes of the deceased as outlined in the will. A will is filed for probate by having a petition for probate filed with the proper court. After the will has been admitted to probate, the court will supervise the administration of the estate.

In self-proving a will, the testator and witnesses will swear to and sign an affidavit before a notary public declaring that the document is truly the testator's will and that it was lawfully executed. The affidavit is proof that the testator had testamentary capacity, and is attached to the will, but is not a part of the actual will document.

The principal reason to "self-prove" a will is to minimize the likelihood that the witnesses to the will be required to appear in court after death of the testator. In the event that the witnesses are unable to appear in court, this affidavit can be quite valuable.

Although it is legally permissible for the witnesses to swear to and execute such an affidavit after the testator dies,

it is strongly advisable to accomplish this important act at the time the testator actually signs his will. In the event that either or both of the witnesses predecease the testator, or simply cannot be located, the probate process could become unnecessarily complicated without such an affidavit.

In the instance where a person appears before a notary public and requests that his will be "notarized", he probably is not aware of the correct terminology of the notarial act to be performed. If a client makes such a vague request, the notary public should politely request to examine the documents to better ascertain exactly what service the client requires from the notary public.

When handling an affidavit of execution or subscribing witness affidavit, the notary public should treat the affidavit in the same manner as any other affidavit. Caution should be exercised, however, to assure exact and full compliance with the legal ceremony requirements and language contained in the affidavit of execution. It is especially important to review the language of the affidavit with the testator and witnesses. Furthermore, it should be assured that the testator "signs, swears and acknowledges" and each witness "sign and swear and acknowledge" in the personal presence of the notary public. If all concerned parties cannot appear before the notary public at the same time, he should suggest that the execution of the affidavit be postponed until such time as all parties are able to report to a single notary public. Failure to comply with these requirements explicitly could prove fatal in the process to probate the will.

Although the notary public should never affix any signature, stamp or embossing official seal to the actual will and testament, it is acceptable and frequently necessary to affix these instruments to the affidavit of execution. If the affidavit of execution is physically printed on the reverse of a commercially printed blank form, it is permissible for the notary public to proceed to affix his official instruments to the affidavit, even though the instruments will appear to be affixed to the will document.

If required, the completed and sworn affidavit of execution should now be securely stapled to the will and testament.

In the case where the testator and subscribing witnesses have executed the will, but failed to subscribe and swear an affidavit of execution prior to the death of the testator, it will be necessary to have the subscribing witnesses personally appear before the particular court handling the probate matter.

If it is not convenient for the witnesses to appear in court for satisfactory reason (e.g. witness resides in another state), the attorney for the estate may petition the court to appoint a commissioner. A commissioner is an individual appointed as a temporary official to act on behalf of the probate court. Commonly a notary public and/or an attorney in the locale of the subscribing witness, this officer will summon the subscribing witness to testify before such officer and subscribe and swear to the facts surrounding the execution of the will. This procedure is sometimes referred to as a proof of execution. Although uncommon, but nonetheless authorized when appropriate, the court-appointed commissioner can issue a warrant which directs the local sheriff to place a recalcitrant witness in custody until the witness agrees to testify in response to the order of the probate court.

PERSONAL REPRESENTATIVE

The personal representative is the individual designated by the court to act for the estate. If the testator names his personal representative in the will, the person is called an executor if he is male, and an executrix if she is female. In the event that no individual was specifically named, but a valid will exists, the representative is known as the administrator with will annexed. If no valid will exists, the representative is referred to as the administrator. A female administrator is known as an administratrix.

After a brief period of time subsequent to death, the attorney handling the estate files the will and related papers with the proper probate court, and requests or petitions the court to issue a document called letters testamentary. This court order or decree provides the executor with written ev-

idence of the authority that he has been granted to handle estate matters. In the event the court appoints an administrator, the document is referred to as letters of administration.

If a person appears before a notary public wishing to execute documents on behalf of a deceased person, he should be requested to produce the letters testamentary or letters of administration.

LIVING WILLS/HEALTH CARE DIRECTIVES AND PROXIES

One of the newest legal documents to be brought before the notary public is the living will and health care directive or health care proxy. Because of the proliferation and variety of these instruments, a notary public can be placed in a dilemma when confronted with the request to "officiate" in these matters.

The living will, a signed, dated and witnessed document, allows a person to make his or her wishes about life-sustaining treatment known, so that they can guide the family and physician in case of incapacitation or inability to communicate.

Most United States' courts have recognized that people have "a constitutional or common law right to have treatment withheld or withdrawn." Further, the courts have decreed that "a living will can be the best evidence of a patient's intentions." Regarding the issue of health care proxies, the courts permit the appointment of an agent or surrogate to make such related decisions, and have approved decision making by family members (or other appropriate representatives if there is no family available), based on a general knowledge of the patient's feelings.

The United States Supreme Court has held that family members who assert a "right to die" may be barred from ending the lives of permanently comatose relatives who have not made their wishes known conclusively.

Ruling in its first such case, the court gave states broad power to keep such patients on life support systems. A majority of the court did suggest that there may be a constitu-

tional right to refuse medical treatment that can be exercised by competent persons, encouraging living will supporters.

Often within the living will is an optional durable power of attorney provision, which allows a person to name another person who will possess the power to make medical treatment decisions for the injured or ill person.

An ordinary power of attorney authorizes another person (an attorney-in-fact) to make decisions for the principal. This form of power of attorney, however, lapses if the principal becomes incompetent. A durable power of attorney remains effective (or, in some states, takes effect) if the principal becomes incompetent.

A method of designating an individual to make medical decisions on behalf of another is to appoint a health care proxy or designate a health care surrogate within the living will, or attached to it. A proxy's or surrogate's decision- making power under a living will statute is usually limited to a terminal condition.

A health care agent and a medical attorney-in-fact may have interchangeable roles. Appointed under a durable power of attorney, they can usually make a series of decisions for the principal, whether or not the condition is terminal. An advanced Alzheimer's patient, for example, may be quite incapable of making decisions, but may not be terminally ill. Similarly, accident victims who may be temporarily incapacitated but will eventually recover, must have medical decisions made during the period of their incapacity.

Under most circumstances, living wills, health care proxies and designation of health care surrogates do not require notary service. Instead, the typical requirement is for two or three uninterested witnesses to sign. In some instances, however, the form may prescribe either an individual acknowledgment or a form of a jurat.

Some states do not mandate a specific form for either a designation of health care surrogate or a living will. Rather, the law provides suggested forms which are provided in this chapter. Further, it is highly recommended that the principal executing his living will and designation of health care surrogate appear before a notary and have

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Name:_____
(Last) (First) (Middle Initial)

In the event that I have been determined to be incapacitated to provide informed consent for medical treatment and surgical and diagnostic procedures, I wish to designate as my surrogate for health care decisions:

Name:_____

Address:_____

_____Zip Code:_____

Phone:_____

If my surrogate is unwilling or unable to perform his duties, I wish to designate as my alternate surrogate:

Name:_____

Address:_____

_____Zip Code:_____

Phone:_____

I fully understand that this designation will permit my designee to make health care decisions and to provide, withhold, or withdraw consent on my behalf; to apply for public benefits to defray the cost of health care; and to authorize my admission to or transfer from a health care facility.

Additional instructions (optional):

I further affirm that this designation is not being made as a condition of treatment or admission to a health care facility. I will notify and send a copy of this document to the following persons other than my surrogate, so they may know who my surrogate is.

Name:_____

Address:_____

Name:_____

Address:_____

Signed:_____

Date:_____

Witnesses: 1._____

2._____

INDIVIDUAL ACKNOWLEDGMENT*

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged), who is personally known to me or who has produced (type of identification) as identification.

_____
Signature of Person Taking Acknowledgment

_____
Printed Name of Person Taking Acknowledgment

_____
Title or Rank

_____
Serial Number, if any

*not mandatory by statute

Figure 1 Designation of Health Care Surrogate

Forms may be obtained from Choice in Dying (formerly Concern for Dying/Society for the Right to Die), 200 Varick St., NYC 10014 (212/366-5540 or 800/989-WILL).

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Copies of this document have been given to the following:

Name _____ Name _____
Address _____ Address _____
_____ _____
Telephone _____ Telephone _____

Your state may have specific rules regarding this living will such as how long it will be effective, requirements for witnesses, etc. Consult your attorney before signing.

Optional Acknowledgement

STATE OF
COUNTY OF ss.:

On 19 before me personally came

to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

_____

Living Will of

Dated _____ 19__

Figure 2 Living Will—Example 2

Forms may be purchased from Julius Blumberg, Inc., NYC 10013 (800/327-9220) or any of its dealers. Reproduction prohibited.

Blumberg's Law Products

P 3202—Living will. 5-85

WARNING: This document may not be legally binding. Consult an attorney as to its legal effect.

Living Will

To: My Family, my Physician, my Lawyer, my Clergyman, any Medical Facility in whose care I happen to be and any individual who may become responsible for my Health, Welfare or Affairs:

If the time comes when I can no longer take part in decisions concerning my life, I wish and direct the following:

If a situation should arise in which there is no reasonable expectation for my recovery from extreme physical or mental disability, I direct that I be allowed to die, and not be kept alive by medications, artificial means, life support equipment or "heroic measures". I do, however, ask that medication be mercifully administered to me to alleviate suffering even though this may shorten my remaining life.

This statement is made after careful consideration and is in accordance with my convictions and beliefs. I urge those concerned to take whatever action necessary, including legal action, to fulfill my wishes and directions. To the extent that the provisions of this document are not legally enforceable, I hope that those to whom it is addressed will regard themselves as morally bound by it.

Elective Provisions
Check the box and write initials next to each election you desire.

☐ ..... 1. I wish to live out my last days at home rather than in a hospital if it does not jeopardize the chance of my recovery to a meaningful and conscious life and does not impose an undue burden on my family.

☐ ..... 2. If any of my tissues or organs are sound and would be of value as transplants to other people, I freely give my permission for such donations.

In Witness Whereof, I state that I have read this, my living will, know and understand its contents and sign my name below.

Dated..... 19.....

..... Signature

Witness* .....

.....

.....

.....

Witness* .....

.....

.....

.....

Print or type full name, address & tel. no. of person signing.

.....

.....

.....

.....

* After each witness signature print or type full name, address and tel. no.

Figure 2 (continued)

his acknowledgment taken. Even though most state laws do not legally compel parties to have the acknowledgments taken for these matters, it is strongly recommended for the following reasons.

First, use of the acknowledgment is excellent independent proof that the principal appeared before a notary public, was identified, and admitted that the execution of the document(s) were his free act and deed for the purposes contained within the document(s). Second, with respect to the use of conventional witnesses, it is not unusual for such witnesses to be impossible to locate, or pre-decease the principal. Even if the notary public is impossible to locate, or dies before the principal, the certificate of acknowledgment is considered prima facie evidence of the act that the notary recited in the written acknowledgment certificate. In the absence of fraud or duress, the certificate of a notary public is conclusive as to the facts stated.

When presented with a living will, the notary public should scan the instrument to ascertain exactly which procedure is required.

ATTESTED OR NOTARY-CERTIFIED COPIES

Notaries public may be requested to "certify" copies of documents. The authority permits the notary public to supervise the making of a photocopy of an original document, and then attest to the trueness of such copy.

Notaries public, however, are not authorized to issue attested copies of official or public records, unless the copy cannot be provided by another public official.

Most state laws define a certified copy as a copy of a public record signed and certified as a true copy by the public official having custody of the original. Examples would be: the clerk or register of deeds issuing a certified copy of a deed or mortgage which is recorded and filed in his office; the department of motor vehicles (DMV) issuing a certified copy of an accident report filed with their department; or the health department issuing a certified copy of a birth certificate.

Under no circumstances should a notary public issue an attested copy of any school diploma, college or university degree or certificate, school transcript or grade report, or similar document issued by an educational institution. Notaries public are often requested to assist students with these matters. Requesters should be referred to the registrar of the educational institution. If the institution is now closed, educational records of closed institutions (public or private) are turned over to the state education department, and the requester should contact those authorities.

While this form of certificate may not necessarily permit the copy of the paper to be read in evidence in some courts or at a hearing, it might be accepted by certain persons as sufficient proof of the correctness of the copy.

For example, medical records which are sent to the courts often are referred to as "certified." In a hospital, an employee who is a notary public in the medical records department, when necessary, will make a photocopy of a medical record chart. The notary public will often attach a certificate to the medical record copy attesting to the fact that the photocopy is a true, correct and complete copy of the original medical chart. This is sometimes referred to as a sworn copy.

A strongly recommended protocol for a notary public to issue an attested copy or copy certification of a document is as follows:

1. The purported original of the document is exhibited and (temporarily) surrendered to the notary public for inspection;
2. the requester of the attested copy completes, signs and swears to an "affidavit and request for an attested copy" which the notary public retains;
3. unless personally known to the notary public, the requester produces suitable identification;
4. the requester signs the notary public register;
5. the requester pays the lawful fee, if desired by the notary public;
6. the notary public proceeds to make a photocopy of the pur-

ported original document, then affixes, completes and signs the attested copy certificate to the now attested copy; and
7. the notary public returns the purported original, attested copy, and receipt for notarial services to the requester.

AFFIDAVIT AND REQUEST FOR AN ATTESTED COPY

STATE OF } ss.:
COUNTY OF }

I, (*name and address of requester*), being duly sworn depose and say:

1. I am the lawful custodian of the following document: (description of document);
2. the document is an original and consists of (number) pages, including cover page(s), if any;
3. a certified copy of the purported original cannot be obtained from the office of any clerk, recorder or register of public documents, or public records custodian in this or another state, or the federal government of the U.S. or another nation; and
4. the production of a facsimile, preparation of a copy, or certification of a copy of the document does not violate any state or federal law.
5. This request is dated on this (date) day of (month), 199().

Unless otherwise directed by law, the following certificate language meets most legal requirements for a notary to issue an attested copy or copy certification:

STATE OF } ss.: **COPY**
COUNTY OF } **CERTIFICATION**

On this (date) day of (month), (year), I, (name of notary public), a notary public, attest that the preceding or attached document consisting of (number) page(s) is a true, exact, complete and unaltered photocopy made by me of (description of document), presented to me by the document's custodian, (name of

custodian), and, to the best of my knowledge and belief, that the photocopied document is neither a public record nor a publicly recordable document, of which certified copies are available from an official source other than a notary public. EACH PAGE HAS BEEN EMBOSSED WITH MY OFFICIAL SEAL. THE INK COLOR OF THIS CERTIFICATION IS GREEN.

Signature of Notary Public

To facilitate service requests, it would be advisable to have an adequate supply of request forms and certificates of attested copy or copy certification. Notaries are strongly encouraged to have the certificate of attested copy form created as a rubber stamp which would allow the application of the certification text directly upon the facsimile copy; on multiple-page documents, the certification should be affixed to the top page. The ink color should not be black to discourage and hamper unauthorized reproduction of attested copies. If possible, green ink is ideal, and can be easily accomplished with a pre-inked or self-inking rubber stamp. Loose certificates which are typically awkward-sized slips of paper requiring attachment by staple are strongly discouraged. The application of the certificate of attested copy or copy certification by rubber stamp creates a permanent, indelible impression which is virtually tamper-proof without detection, lowers cost and greatly reduces the time required to perform the service.

CHAPTER 10 QUESTIONS

1. Is it legally necessary for a notary public to be involved in the execution of a last will and testament? Explain why.
2. Define "testator" and "testatrix".
3. What is a "subscribing witness"? What other legal terms are given to this person?
4. What is a "decedent"?
5. In what unusual situation might a notary public be called upon to take a last will and testament? What other legal term

is sometimes given to this type of last will? Is it legal for the notary public to do?

6. What is a "holographic will"? Are these documents legally acceptable, and under what circumstances?

7. Can a notary public ever serve as a witness to a last will and testament? Describe a possible scenario in which this might occur.

8. Define "probate" and "surrogate".

9. Explain what is meant by the term "self-prove" in a last will and testament. Why is it commonly employed?

10. Name two additional legal terms for the document evidencing the "self-proof" of a last will and testament.

11. What is a special commissioner? Explain how one might be employed in a probate case in which the subscribing witnesses cannot conveniently appear to testify before the court.

12. What legal terms are used to describe the person(s) selected by the decedent and named in his or her last will and testament to manage the estate?

13. In the event that the decedent fails to designate a person to handle the estate, or the designee is unable or unsuitable to handle the estate, what legal terms describe the person(s) selected by the court to manage the estate?

14. What is the legal document issued as identification to the person(s) approved by the court to execute documents on behalf of a decedent?

15. Define a "living will".

16. How does a health care proxy or a medical power of attorney compare to a living will?

17. Explain what is the difference between an ordinary power of attorney and a durable power of attorney.

18. What legal act does a notary public normally employ in connection with a living will? Explain why.

19. What is an attested copy or copy certification issued by a notary public?

20. Under what circumstances may a notary public issue an attested copy of copy certification?

21. Name at least six legal documents which only the government records custodian holding the original record may issue a certified copy.

22. Unless specifically prohibited by state law, why is it desirable for a notary public to issue an attested copy or copy certification of private documents and papers?
23. List the recommended procedure, step-by-step, taken by a notary public to issue an attested copy or copy certification.
24. Which two procedures taken by a notary public can act to lessen legal liability and document tampering when issuing an attested copy or copy certification?

CHAPTER 11

NOTARIES PUBLIC AND FINANCIAL INSTITUTIONS

PROTEST

In the event that a bill of exchange (i.e. draft), promissory note, bank check or similar negotiable instrument issued for the payment of money is refused for acceptance or payment by the drawee (i.e. bank), it is the responsibility of the holder to have the instrument "protested". A protest is a solemn declaration and statement in writing, drafted by a notary public at the request of the holder or a bill or note. It is declared that the bill or note described was on a certain day presented for payment (or acceptance) and was refused, stating the reasons given, if any. The notary public protests against all parties to such instrument and declares that they will be held responsible for all loss or damage arising from its dishonor. The purpose of the protest is to formally recognize the dishonor and set "into motion" the formal process required to start the civil legal proceeding to secure the payment of money.

The subject of protesting negotiable instruments is comprehensive. The following discussion is intended to provide a brief examination of a commonly performed protest. It is strictly intended as attempt to familiarize the notary public with the complex process of protests.

Generally speaking, only those notaries public associated with a financial institution such as a bank or credit union will encounter the need to perform a protest. It is the responsibility of all notaries public, however, to become familiar with this essential act.

The certificate of protest is the formal, written document of the protest. The original bill or note will be attached to the original certificate of protest. The copies of the certificate of protest will have a copy of the bill or note attached.

A common instance which may require the notary public to perform a protest is when a sight draft (i.e. bank check or share draft) is presented for payment to the financial institution on which it is drawn and it is returned for non-sufficient funds (NSF). In other words, the payee (or the payee's bank or credit union) presents the check to the issuing bank, and there is not enough money in the account to cover the full payment of the check.

Presentment is the production of a negotiable instrument to the drawee for acceptance. It is a demand for payment or acceptance made upon the maker, acceptor, drawee or other payor by or on behalf of the holder. For example, many negotiable instruments (such as checks) are informally presented by financial institutions to other financial institutions for payment through the Federal Reserve Bank Clearinghouse System.

Presentment of sight drafts (checks) for acceptance must be made within reasonable time after date or issue, whichever is later.

A "reasonable time" to present an uncertified check drawn and payable within the United States, and now drawn by a bank, is presumed to be (1) for liability of the drawer, 30 days after date or issue, whichever is later; or (2) for liability of an endorser, seven days after endorsement.

Presentment at a financial institution must be during normal business hours.

The refusal to accept or pay a draft or note when presented

for payment is termed dishonor. An instrument is dishonored when a necessary (or optional) presentment is properly made and the acceptance or payment is refused. Upon dishonor, notice of dishonor must be given to any endorser, drawer, maker or acceptor. Notice of dishonor is a formal notice of the non-acceptance or non-payment of the negotiable instrument.

Notice of dishonor must be sent within the following time limits: By bank, before its midnight deadline; By any

PROTEST NOTICE

To _____

Please Take Notice That a _____

made by _____

_____

in favor of _____ and by you

endorsed for _____ Dollars

dated _____ being this day

due, demanded and refused, it is delivered to me for protest

by _____

_____

The holder, and has been duly protested accordingly, and you

will be looked to for payment, of which you hereby have

notice

_____

Notary Public

Figure 1 Protest Notice

other person, before midnight of third business day after dishonor or receipt of dishonor.

Written notice is considered given when sent, even if it is not received by the endorser, drawer, maker or acceptor.

Notice of dishonor must be given in any reasonable manner: by sending the negotiable instrument bearing stamp, ticket or writing stating that acceptance or payment has been refused; by sending notice of debit with respect to instrument; or by sending either oral or written notice.

The notice must clearly identify the instrument and state that it has been dishonored. For example, a financial institution has given notice of dishonor by returning a "bounced" check with a debit receipt attached deducting the deposit amount as well as returned check costs.

Common reasons for refusal include: non-sufficient funds, account closed, no account, improper signature, etc.

Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument.

The following will illustrate the process: Sea World accepts a check in payment for a souvenir bought by a customer named Smith. Sea World deposits Smith's check into the corporation checking account. Sea World's bank sends the check to Smith's bank for payment, "presenting" the check for payment. At the time of the presentment, Smith does not have enough money in his account to honor the demand for payment. A bank will typically deposit the check a second time as a courtesy to Smith. If funds are still not available, Smith's bank dishonors the check and returns the check to Sea World's bank, indicating the reason for dishonor as non- sufficient funds (NSF). The check is now returned to Sea World. This phase is termed "noting the dishonor" or "noting for protest". It may be oral or in writing, as is the case in this example. Upon satisfactory evidence of such notice, the notary public may make a formal protest.

Smith is now contacted by Sea World to "make the check good". If Smith fails to meet the terms of a special arrangement to pay, Sea World now presents the check to Smith's bank (either directly or through their bank) for protest. The notary public now proceeds to complete a certificate of protest, uti-

lizing a blank, pre-printed form or creating an original document. The original of the certificate of protest is affixed to the actual dishonored instrument (i.e. check), and should be returned to Sea World. Another original certificate of protest should be sent to Smith, along with a copy of the dishonored instrument. In the event that a dishonored instrument has more than one maker, such as on a promissory note, each maker or signer would receive a notice of protest. The notices to the remaining makers and endorsers do not necessarily require a copy of the dishonored instrument.

CERTIFICATE OF PROTEST

STATE OF }
COUNTY OF } ss.:

Be it known, that on the (date) day of (month), in the year of our Lord (year), at the request of (holder of instrument), of (address), I, (name of notary public), a notary public in and for the State of (name), duly appointed, commissioned and sworn, residing in the City of (name), County of (name), and State aforesaid, presented the annexed (draft/check/note) of (drawer/maker) for $ (amount) at the (drawee), and demanded payment thereof which was refused for (reason). Whereupon, I, the said notary public at the request aforesaid, did protest, and by these presents do solemnly protest against the maker, endorser and all parties whom it may concern, or exchange, re-exchange, and all costs, damages, and interest already incurred, or hereafter incurred, by reason of the non-payment thereof. And I, the said notary do hereby certify, that on the same day and year above written, I deposited, postage-paid in the post office at (address), written notices of the dishonor of the said instrument, signed by me, addressed to the makers and endorsers thereof, directed to the parties to be charged, as follows:

Notice for (Name)	Directed to (Address)
Notice for . . .	Directed to . . .
Notice for . . .	Directed to . . .
Notice for . . .	Directed to . . .

Each of the above named places being the known place of residence of the persons to whom the said notice was directed respectively.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of office.

The certificate of protest should be prepared in sufficient number of originals for all makers and endorsers who should receive notice. Each certificate should be individually signed and affixed with the stamp impression of the notary public seal. A maker or drawer of a check is the payor or the party who signs the check (i.e. Smith). The endorser is the holder who signs the name on the back of the check to obtain cash or credit represented on the face as payee (i.e. Sea World).

In the previous fictitious example, Sea World would now prepare to pursue the matter by either of two legal approaches. In addition to the civil matter, an instance of passing a bad check can be a criminal matter.

Prior to the commencement of any civil or criminal action, the customer (Smith) should be sent a notice (certified mail, return-receipt requested) formally requesting payment in satisfaction of the amount of the bad check, in addition to related costs incurred as a result of the incident. This step will be necessary in order to bring the matter before a police agency or court (civil or criminal).

To activate the civil matter, Sea World would present the check and certificate of dishonor to the appropriate civil court in the jurisdiction where the defendant (Smith) lives or works, or has a place of business. Once a claim is filed with the court clerk, the civil court trial process will now proceed. Ordinarily, the claimant (Sea World) will be successful in having the court enter a judgment for the sum of money in question, plus costs to recover. Sea World now presents the judgment to an enforcement officer such as a sheriff. The enforcement officer will take a variety of legal measures to recover the money.

A person who issues or passes a check (or similar sight order) for the payment of money, knowing that it will not be honored by the drawee (bank), commits a criminal act.

To engage the criminal action, Sea World would present the protested check and certificate of protest to a police agency in the jurisdiction where the check was passed.

While many state laws do not require a protest in order to proceed with a civil lawsuit or a criminal prosecu-

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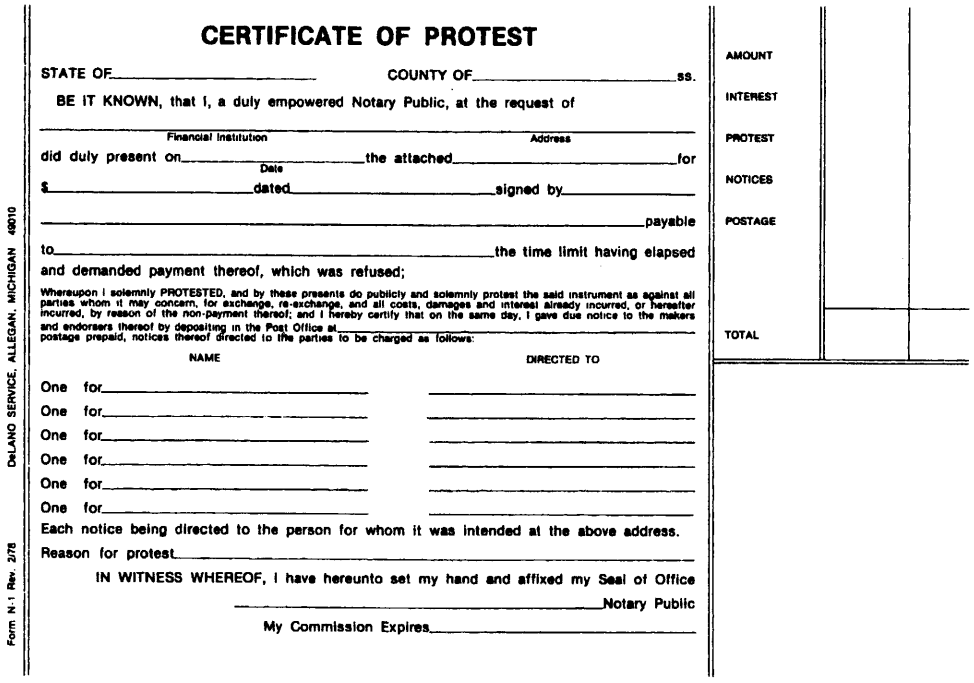


CERTIFICATE OF PROTEST

STATE OF_____ COUNTY OF_____ ss.

BE IT KNOWN, that I, a duly empowered Notary Public, at the request of

_____ (Financial Institution) _____ (Address)

did duly present on_____ (Date) the attached_____ for

$_____ dated_____ signed by_____

_____ payable

to_____ the time limit having elapsed

and demanded payment thereof, which was refused;

Whereupon I solemnly PROTESTED, and by these presents do publicly and solemnly protest the said instrument as against all parties whom it may concern, for exchange, re-exchange, and all costs, damages and interest already incurred, or hereafter incurred, by reason of the non-payment thereof; and I hereby certify that on the same day, I gave due notice to the makers and endorsers thereof by depositing in the Post Office at_____ postage prepaid, notices thereof directed to the parties to be charged as follows:

NAME	DIRECTED TO
One for_____	_____
One for_____	_____
One for_____	_____
One for_____	_____
One for_____	_____
One for_____	_____

Each notice being directed to the person for whom it was intended at the above address.

Reason for protest_____

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Seal of Office

_____ Notary Public

My Commission Expires_____

AMOUNT	
INTEREST	
PROTEST	
NOTICES	
POSTAGE	
TOTAL	

DeLANO SERVICE, ALLEGAN, MICHIGAN 49010

Form N-1 Rev. 2/78

Figure 2 Certificate of Protest—Blank

Forms may be purchased from DeLano Service, Allegan, MI 49010 (616/673-2171). Reproduction prohibited.

tion, it may be necessary for an out of state matter. For example, if a California resident or business passes a check (which is dishonored) to another person or business in New York, it will be necessary for the New York resident or business to request a notary public at the bank (where the check was dishonored) to protest the dishonored negotiable instrument or check. This step will be especially vital in the initiation of the criminal prosecution of the offending person or officer of the business. In New York, the mere presentation of the dishonored negotiable instrument to a police agency or court will not be considered acceptable proof of the bad check writing incident. The certificate of protest is a fundamental step in this case, and the California bank is the sole place where the protest can be performed.

Therefore, should a notary public be presented with

such a scenario, and he feels that he is unfamiliar with the legal requirements of performing a protest, he should contact the attorney of the financial institution for advice and counsel on correctly performing this procedure. Because of these difficulties in prosecuting bad check writers in other states, many establishments are not accepting checks from out of state customers. These difficulties present a major problem to mail-order companies.

In addition to the notice of protest and the dishonored negotiable instrument, the police agency should be presented with a copy of the notice letter, USPS certified mail receipt and (signed) return-receipt. The complainant (Sea World) should retain a photocopy of all documentation surrendered to police. An evidence receipt should be requested from the police official taking custody of these vital pieces of evidence.

After a sworn complaint is taken, the police will present the complaint or information to a judge who will issue a summons demanding the defendant appear in court. Should the defendant not comply with the request to appear, a judge may issue a warrant for the arrest of the defendant (Smith). Under most state laws, the crime of issuing a bad check can be designated a misdemeanor or even a felony. In the Sea World example, the defendant has also committed the crime of theft.

MARINE PROTEST

The notary public should be aware of another form of protest. In maritime law, a protest is a written statement sworn to by the master of a vessel before a notary public, verifying that damage suffered by the ship and/or cargo on her voyage was caused by storms or other dangers of the sea beyond his control (without negligence or misconduct). If, for example, an unscheduled port call has to be made to repair damage to the ship, the master of the vessel is required to prepare a sworn statement before a notary public which justifies the reasons.

Most coastal American states laws provide for such mar-

itime-related matters. When requested, a notary public must enter into his register, losses or damages sustained or apprehended by sea or land, and all averages and other mercantile matters which apply to his office, and grant warrants of survey on vessels. All facts, extracts from documents and circumstances noted and recorded shall be signed and sworn to by all the persons appearing to protest. The notary public shall note, extend and record the protest performed, and issue authenticated copies of the protest, under his signature and official seal, for a fee.

FINANCIAL INSTITUTIONS AND NOTARIES PUBLIC

Archive records of correspondence from the late nineteenth century (circa 1895) show that notaries public have a long-standing, deep-rooted association with the financial industry. Copies of correspondence issued from governors' offices prove the status and importance placed upon appointment as a notary public. At that time, each application was reviewed personally by the governor who made appointments based upon the approval of the state senate. A refusal was not uncommon, even for political reasons.

In some states, each financial institution was allowed a certain number of appointments which were closely monitored. If an officer left the financial institution, the president of the institution was required to nominate a successor pending gubernatorial and senate approval. The reason for such prestige is the fact that many of the notarial duties are essential to the financial industries, particularly with reference to negotiable instruments.

Since financial institutions were known to have notaries public, people became accustomed to bringing their sundry documents (in addition to financial) to these community institutions. Because the contemporary qualification criteria and appointment process of notaries public have been significantly relaxed, notaries are more widely available. Many people, however, still rely on local financial institutions for notarial service needs. Consequently, financial institutions and other firms are sometimes annoyed at non-customers "monopolizing" their employees' services. Many courts have

Photograph credit: Penobscot Marine Museum, Searsport, ME.

(Form No. 37.)

MARINE NOTE OF PROTEST.

Consulate of the United States of America,

Port of Hiogo, Japan

June 8th, 1885

On this 8th day of June, in the year of our Lord eighteen hundred and eighty-five, before me, T. M. F. Patton Consul of the United States of America for Osaka & Hiogo, Japan and the dependencies thereof, personally appeared Leroy Dow, Master of the ship or vessel called the "Clarissa B. Carver", of Searsport, of the burden of 1144.14 tons or thereabout, and declared that on the 2d day of June, 1885 last past he sailed in and with the said ship from the port of Yokohama, laden with Rags and General Cargo and ~~arrived in the ship at~~ was wrecked in collision ~~on~~ with the British ss. "Glamorganshire" June 7, 1885, near Hiogo and having experienced boisterous weather on the voyage and received damage to the said ship and cargo

hereby enters this Note of Protest accordingly, to serve and avail him hereafter if found necessary.

Leroy Dow

Master.

Attested: [signature]

U. S. *Consul.*

Here insert the day and hour.

Figure 3 Marine Protest

held, however, that the notary public is legally obligated to serve the general public.

Therefore, it is not appropriate for a notary public, employed by a financial institution or other private firm, to unreasonably refuse to perform official notarial service for a person lacking a business relationship. Generally speaking, the law does not differentiate "company" from "non-company" notaries public. A New York court has held that two bank-employed notaries had unreasonably withheld their notarial services to a non-patron. The judge suspended the commissions of the notaries public, but the two financial institutions involved suffered no penalty whatsoever.

Equally unacceptable is an employer, public or private, which attempts to manipulate an employee into compromising a trusted public office for private gain. Some have claimed that it is improper to charge non-patrons while waiving fees for patrons, although no state law prohibits such a practice.

It is illegal for a notary public to collect a fee for official services in excess of the lawfully permitted fee. An employee/notary public cannot claim the defense that this action was in response to a demand from an employer, or that he was acting as an agent of the employer. Even if he is acting as an agent of the employer, strictly for employer-related work, the notary public alone is subject to suspension and removal.

The law may hold the employer of a notary public liable to the persons involved for all damages proximately caused by the notary's official misconduct, if the notary public was acting within the scope of his employment at the time he engaged in the official misconduct. In one case, a court declared "the position of notary public, is, at best, one of a quasi-public nature with respect to doctrine that a private person or corporation is not responsible for breach of duty of a special public officer appointed by public authority, but employed and paid by private person or corporation, unless action undertaken is in furtherance of employer's business, notwithstanding that constitution and statutes designate notary public as a public officer." Further, the notary public bears personal legal responsibility jointly with the employer. This law is ap-

plicable only if damages result from official misconduct. If no money damages are involved, but the notary has still committed official misconduct, it is the individual notary public who will be held responsible and accountable to the people for any violation of trust. It is the notary public who personally faces imprisonment, fines, suspension, removal from office, or all of these penalties for official misconduct. The highest degree of ethical standards is crucial. However, there is usually no penalty whatsoever to the employer in this case.

Any contract or agreement stipulating that the notary public perform functions of his office which stipulates that his employer may retain such fees, has been ruled by a New Jersey court to be "contrary to public policy", and therefore void.

It is important that both the employer and notary public recognize and respect this distinction. The notary public is not a mere agent or servant of the employer, but a quasi-public officer sworn to discharge his duties properly. The notary public is compelled to conduct his official services according to the law. He has a fiduciary duty to the public and will be held accountable for any deviance from the law. Therefore, when the notary is acting in an official capacity, he is not acting as an employee of the firm and the employer cannot direct how the legal duties should be performed.

While the notary public is an employee and agent of the financial institution or other employer, the separation of duties is clear. When the notary public is engaged in the performance of an official legal act as notary public, the private service is suspended until the official legal act is completed. However, a few courts have ruled against employer-financial institutions in some cases where the employee-notary was negligent in conducting official notarial duties within the scope of employment by the financial institution.

The notary public commission is issued strictly to the individual. If the employer elects to pay costs, reimburse or otherwise underwrite the costs to the employee for the application fee, filing and bond fees, instrument and supply costs, as well as educational expenses, it should be clear that this does not obligate the notary public to act contrary to the

law for the employer. Certainly the financial institution or other employers may enjoy the privilege of utilizing the services of the "resident" notary public, but it also bears the accompanying responsibility for such an arrangement.

While it may appear that an unfair focus has been placed upon the financial industry, it should be recognized that all organizations may be practicing policies which do not comply with the law and/or ethical notarial practice. Because the financial industry has a significant impact upon our general economy and personal lives in so many ways, it is probably one of the most influential, essential and widely-used institutions in any community. Accordingly, each financial institution has a civic obligation to respond to the needs of the public, particularly those requiring the services of a notary public. Additionally, there is an equal responsibility to the shareholders of the financial institution to operate in a manner which minimizes risk to the assets and image of the institution.

SIGNATURE GUARANTEE

A signature guarantee is quite different from any of the legal acts performed by a notary public. The confusion is frequently compounded because many persons authorized to guarantee signatures are also notaries public. The primary function of a signature guarantee is to serve as a certification that a signature is truly legitimate. The certification is issued by an officer of a financial institution or bona fide stock brokerage house. The act is referred to as a "guarantee" because the person making the guarantee is creating an obligation, as an agent of the financial institution or brokerage house. In the event that the signature is not genuine and an innocent party is damaged by reliance upon the forgery, the financial institution or brokerage house can be held liable for damages to an innocent party who reasonably relied upon the signature guarantee. It is similar to the warranty of endorser or transferor in check transactions. A person who endorses a check generally gives an engagement to honor the instrument should it be dishonored and properly protested. The

signature guarantee is commonly invoked in the transfer of stock securities and sometimes for the execution of mortgages or other loan transactions.

The Uniform Commercial Code (UCC) is the authority source for these related commercial matters. According to the UCC, any person guaranteeing a signature (the guarantor) of an endorser of a certified security, warrants the following at the time of signing: The signature was genuine; the signer was an appropriate person to endorse; and the signer had legal capacity to sign. The UCC further declares that the warranties (or guarantees) are made to any person taking or dealing with the security in reliance on the guarantee, and the guarantor is liable to the person for any loss resulting from breach of the warranties.

Although a notary public takes reasonable and common sense approaches to identification of parties in an acknowledgment matter, the notary public is generally not held liable for a forgery or an impostor, provided there was no evidence of negligence. In a signature guarantee matter, even though a financial institution officer or broker may take the same (or increased) measures as the notary public, the financial institution or brokerage house will generally be held liable for a forgery or an impostor.

In 1989 a New York Law was proposed which would have allowed a certificate of acknowledgment furnished by a notary public to be considered sufficient guarantee of the signature, and no other assurance or requirement in place of, or in addition to, such acknowledgment be required. The premise behind the bill was to alleviate the cost or burden of a consumer (transferor) needing to going through a securities broker every time the transferor wished to transfer stock. A transferor is required to report to a financial institution officer or authorized broker at a brokerage house, even though the transferor does not have a business relationship with either institution. The rationale for amending the law included the economy of notary service (relative to a financial institution or brokerage house guarantee), and the availability and accessibility of notaries public. Although the law was well-intentioned, it would have placed an enormous responsibility

upon notaries public, and potentially created an enormous breach of the integrity of the securities industry.

SAFE DEPOSIT BOXES

Most state laws permit a financial institution (hereinafter referred to as the "lessor") to force open any vault, safe deposit box or receptacle if the customer (hereinafter referred to as the "lessee") does not pay the box rent for a period of time. The lessor will send a letter (by registered mail) informing the lessee that, if the past-due rent is not paid within a stipulated period of time after the date of the mailing of the notice, the box will be forced open and the contents removed and inventoried. For the required notice, certified mail, return-receipt requested is often considered "registered mail." While it is not a legal requirement, many lessors elect to send a final notice to the lessee upon the expiration of the 60 day period. This optional notice may be sent by certified mail, return-receipt requested.

After a stipulated period of time from written notification, the lessor may have a locksmith force open the box. A notary public must observe the box opening and inventory the contents in the presence of a designated officer of the lessor. In some states, the notary shall not be an officer, employee, director, or stockholder of the financial institution.

The notary public in attendance will complete and file a certificate with the lessor, indicating the date of the box opening, name and address of lessee and list of the deposit box contents (if any) and estimated value. The designated lessor officer who witnessed the box opening and contents inventory should sign the certificate.

The itemized contents of the safe deposit box are placed in a tamper-proof, storage package, sealed by the notary public. The notary public should mark the following information directly on the package exterior: (1) name and address of the lessee, and (2) estimated value of the contents. The notary public should attach a copy of the completed certificate of safe deposit inventory onto the package exterior and interior. If possible, to discourage tampering, the notary public is en-

couraged to affix his official embossing seal along the flap of the envelope. The sealed package is now held in another storage area of the vault. The lessor will hold the contents for a designated period of time.

Most state laws require that a copy of the inventory certificate to be sent to the lessee. This notice should be sent by certified mail, return-receipt requested. No further correspondence between the lessee and the lessor is normally required.

The lessor may claim a lien on the contents of the box for the amount due for the rental of the box up to the time of the removal of the contents, and for reasonable costs and expenses, if any, in its opening, repairing and restoration for use. The contents will be delivered to the lessee upon the payment of these costs.

If the contents remain unclaimed by the lessee for a designated period of time from the mailing of the inventory certificate, it shall be presumed to be abandoned and disposed of in accordance with the state unclaimed property law. The lessor may send a final notice to the last known address of the lessee requesting payment within a designated period of time; otherwise, the contents of the box will be sold at public auction at a specified time and place.

Any documents or writings of a personal nature, and have little or no apparent value, need not be offered for sale, but must be retained for the period stated for unclaimed contents unless claimed by owner prior to this time. After this time, these items may be destroyed.

CHAPTER 11 QUESTIONS

1. What is the legal definition of a notarial protest?
2. Describe a notarial protest in your own words. Use a fictitious example in your response.
3. In what two U.S. jurisdictions are notarial protests routinely performed and an integral component of the legal systems? Explain in what two legal situations they would be employed.
4. As a general rule, where will a notarial protest be performed and by whom? Explain why.

Independent Notary's Certificate of
Safe Deposit Box Inventory

State of) ss.:
County of)

KNOW ALL MEN BY THESE PRESENTS THAT:

1. I, ... , the undersigned notary public in and for the State/Commonwealth of .... duly appointed, commissioned and sworn, and not in the employ of .... ;

2. On the ..... day of ..... in the year A.D. 199.. , at approximately ..... a.m./p.m., in my presence, and in the presence of ....., as both witness and a ..... of ..... , said bank caused to be opened Safe Deposit Box No. ..... in the vault of said bank located at .... in the City/Town/Boro of ..... , County of ....., State of .... standing in the name/s of the lessee/s, namely ....

3.. The contents of said safe deposit box were thereupon removed and consisted of the following: ....

The estimated value thereof is approximately $ ..... .

4. The aforesaid contents of said safe deposit box were then placed by me in a package which I immediately sealed and upon which I endorsed the following:

(a) The name/s of the person/s or corporation in whose name said safe deposit box was registered and the number of said safe deposit box, and
(b) the estimated value of such contents, viz: $ ..... and the package so sealed and marked was in my presence then placed in one of the general safes in the vault of above captioned bank.

WITNESS my hand and seal of office this ..... day of ..... in the year A.D. 199..

.....	.....
Signature of Notary Public	Signature of Bank Witness
.....	.....
Printed Name of Notary Public	Printed Name of Bank Witness
Commission Expires	
NOTARY PUBLIC STAMP/SEAL BELOW (If applicable)	(NOTARY OFFICIAL EMBOSSING SEAL IMPRESSION BELOW)

Figure 4 Independent Notary's Certificate of Safe Deposit Box Inventory

5. Compare how a certificate of protest differs from a notice of dishonor. Explain why both are necessary.
6. What is an example of a dishonored negotiable instrument?
7. Define "dishonor".
8. Define "notice of dishonor".
9. Name four common reasons for dishonor.
10. What are two common terms for a "sight draft"?
11. Explain when a sight draft is payable and why.
12. Define "maker", "drawer" , "drawee", and "endorser".
13. Explain why it is critical for notaries in states where protests are not routinely performed to understand the basic process, and if requested, be able to issue notarial protests.
14. Define a "maritime protest." Explain some common incidents in which such protests are employed.
15. Explain why financial institutions and notaries public have been historically closely linked.
16. Discuss the legal issues associated with a corporate policy to refuse notarial services to non-financial institution patrons.
17. What legal liability does an employee-notary public risk as the result of inappropriately refusing to provide notarial services?
18. Explain the customary employee-employer legal relationship. How does this relationship shift when the employee/notary public provides notarial services to a person?
19. Discuss employee/employer contracts stipulating fee arrangements for notarial services.
20. What is a signature guarantee?
21. How does a signature guarantee differ from an act by a notary public? Are these acts legally interchangeable?
22. Why does the financial community consider the signature guarantee more reliable than an act by a notary public?
23. Who performs signature guarantees and at what fee?
24. How does a signature guarantor obtain the right to issue signature guarantees?
25. Why does confusion exist between signature guarantees and notarial acts, especially in financial institutions?
26. Explain the possible impact to the American Stock Mar-

ket in the event that signatures guarantees were legally equivalent to notarial acts.

27. Name three common financial-type transactions in which a signature guarantee might be required.

28. What body of law is the basis for signature guarantees?

29. Explain what role a notary public serves during the forced opening of an abandoned safe deposit box.

30. Describe the process, step-by-step, taken by a notary public in the supervision of the forced opening of an abandoned safe deposit box.

31. Outline the essential elements of the notary public report documenting the forced opening and inventory of an abandoned safe deposit box.

32. Is it legally permissible for a financial institution or safe deposit box company to utilize an employee/notary public to preside over an abandoned safe deposit box ceremony? Explain the advantages and disadvantages of this situation.

33. Why is it considered prudent risk management for a financial institution standard operating procedure to incorporate the use of a non-employee/notary public, even in jurisdictions where the law doesn't require such, in supervising the forced opening of an abandoned safe deposit box?

CHAPTER 12

CIVIL MARRIAGE CEREMONIES

MARRIAGE

Notaries public in four states can perform civil marriage ceremonies: Florida, South Carolina, Maine and West Feliciana Parish in Louisiana. Traditionally, in most states, this legal duty has been limited to the judiciary and municipal clerks.

The institution of marriage is the foundation of our republic. It establishes our homes and from them come our boys and girls today who are in control of our public affairs tomorrow. Pursuant to an agreement to marry is cohabitation, the founding of a home, affections, and companionship; unconsciously, we depend on each other during the changing vicissitudes of life. While it may have faults, it is commonly acknowledged to be the best plan created by the ingenuity of man.

A marriage is the legal union of one man and one woman as husband and wife. It is a civil contract by which a man and woman, capable of entering into such a contract, mutually

engage with each other to live their whole lives together in a state of union which ought to exist between a husband and wife.

Marriage is contractual in nature. While it is a contract, it differs from other contracts in that it is not revocable at the will of the parties, but requiring the permission of the court. It not only creates rights and duties, but further imparts a legally unique status. It has been said that the there are three parties in a marriage—the husband, wife and the general society, represented by the court.

Validity of marriage is determined by laws of the state where the contract of marriage takes place. The law generally presumes that a marriage is valid. It is presumed that an official performing a marriage service would not have performed the service if there was any known impediment to the marriage. However, this presumption is subject to challenge. It has been held that once a marriage is shown to have been ceremonially entered into, it is presumed to be legal and valid, subject to challenge.

There are many varieties of marriage, including ceremonial marriage, common-law marriage, and proxy marriage. The ceremonial marriage will be discussed in depth for the purposes of this chapter, since it is the specific form of marriage in which the notary public will act as the officiant.

CEREMONIAL MARRIAGE

Ceremonial marriage is a marriage contracted during or at a ceremony. It is effected pursuant to a marriage license and marriage ceremony, conducted by an authorized civil officer, in the presence of witnesses. To lend dignity and solemnity to the marriage venture, most state laws provide that it be inaugurated by a minister of the gospel, a judicial officer or a notary public. Despite the formalities required and the obvious importance of them, some states recognize a marriage without ceremony. In order for the ceremonial marriage to be valid, all formal requirements must be followed by the officiant.

REQUIREMENTS

In order for a marriage to be properly created and legally valid, there are five fundamental elements: age, mental capacity, physical capacity, consent, and formal requirements.

AGE

Generally speaking, no marriage license can be issued to a person under the age of 18, without the written permission of his parents, legal guardians, or persons to whom a court has given custody. The written parental permission usually must be acknowledged before a notary public. Parental permission is not required in the case where both parents are deceased, or when the minor has been married previously. In the absence of persons qualified to give consent, the court may authorize the issuance of a marriage license.

The parent of a minor child may revoke his consent to the marriage of that minor prior to the issuance of a marriage license. However, after the license has been issued, parental consent is not a precondition to solemnization of the marriage, and therefore, revocation of consent after the valid issuance of a license will not typically prevent solemnization.

MENTAL CAPACITY

In order for a marriage to be legally created, both parties must possess sufficient mental capacity at the time of the marriage ceremony. The key criteria is the capacity to comprehend the nature of the marriage contract and resulting duties and responsibilities.

A person who has been adjudicated as mentally incompetent or insane, or is impaired by mental retardation, to the extent that he lacks sufficient understanding or capacity to make, communicate, or implement responsible decisions concerning his person or property, is not capable of contracting marriage. Mental illness is a psychiatric or other disease which substantially impairs a person's mental health.

Mental retardation means a condition of significantly subaverage intellectual functioning, manifested during a person's developmental period, existing concurrently with demonstrated deficits in adaptive behavior.

A marriage in which one (or both) person's is under the influence of alcohol and/or drugs, to the extent of intoxication that they are sufficiently impaired and not able to comprehend the gravity of entering marriage, is voidable by a court. It should be noted that intoxication to a lesser degree is not sufficient cause for voiding the marriage.

The officer officiating the marriage is held to the standard of the reasonable man doctrine. While it is understood that the average officiant does not possess the advanced training and skills to make a professional medical determination of mental capacity, it is felt that he should make an assessment based upon common sense and good judgment. Therefore, if the judgment of the officiant is that he feels one or both of the participants are not able to enter into marriage at that time, he should discreetly offer to postpone the marriage ceremony until such time that he feels that both parties are competent to proceed with the marriage ceremony.

The mental capacity requisite to a valid marriage is the capacity to understand the nature of the contract and the duties and responsibilities it creates. One may be incapable of contracting marriage due to an excessive use of intoxicants, and thereby be unable to concentrate his mind, or to understand the obligations assumed. Provided there is no subsequent ratification of the marriage, such a marriage may be annulled.

While physical capacity is not, strictly speaking, a legal criterion in the voiding of a marriage, it may be held later that the marriage is voidable based upon a physical infirmity, typically when the infirmity is unknown to the other marriage partner. Common examples include pregnancy by a person other than the marriage partner, impotency, or sterility. The traditional blood test known as a marriage prerequisite has been discontinued in many states. The aim of the blood testing programs was to prevent the spread of contagious illnesses, notably venereal disease. Furthermore, in past

history, epileptics were limited or severely prohibited from marriage, as were habitual "drunkards" or drug abusers.

The law prohibits a marriage license to be issued to two persons of the same sex.

CONSENT

An essential element to the marriage contract is consent of both parties. Consent is the voluntary agreement by a person in the possession and exercise of sufficient mental capacity to make an intelligent choice to do something proposed by another person. It must be given freely and voluntarily, without fraud or duress.

Uncontradicted evidence showing that a female never consented to a marriage, and was not even aware of it until several hours after the ceremony had been performed, and that she never ratified or in any way consummated the marriage, but promptly disavowed it, entitled her to an annulment.

A marriage may be held invalid on the grounds that it was influenced by fraud. Misrepresentations which attack the very essence of the marriage, such as those which relate to the health or welfare of the marrying partners or offspring, would cause a marriage to be voidable. Such conditions do not include factors which, for example, put accomplishments, characteristics, or circumstances in an over-optimistic view.

A marriage contracted through duress is invalid. To constitute duress, the threat, force or restraint must be so overwhelming that it creates consent which would not have been given freely under normal circumstances. Examples include disclosure of "alleged" pregnancy as the result of pre-marital sexual relations, blackmail, or threat of violence.

A marriage which was entered into in a spirit of joke, jest, or mockery, with no intention to assume the duties, responsibilities and rights of marriage, would be held to be void. However, a case in which a marriage was surrounded with humor and levity was found to be valid due to the fact that there was no fraud involved, and therefore no grounds for annulment existed.

FORMAL REQUIREMENTS

In order for a marriage to be legally valid, it is imperative that the formal requirements be strictly adhered to by the parties entering into marriage and the officiant. Failure to adhere to the statutory requirements can result in the invalidation of the marriage.

BLOOD TEST/PHYSICAL EXAMINATION

The customary blood test in most states has been discontinued, and the physician's statement of fitness may no longer necessary to obtain a marriage license.

RELATIVES

Marriage is generally not permitted in most states between two people who are related by blood in direct lineage to one another. A male may not marry any woman to whom he is related by lineal consanguinity, nor his sister, aunt, or niece. A female may not marry any man to whom she is related by lineal consanguinity, nor her brother, uncle or nephew. Lineal consanguinity is that which exists between persons of whom one is descended in a direct line from the other, as between son, father, grandfather, and great grandfather. Collateral consanguinity is that which exists between persons who have the same ancestors, but who do not ascend or descend one from the other.

Sometimes the law permits the marriage of a natural child to a child of the opposite sex adopted by the same parents. Marriage may be permitted between two children of different sexes adopted by the same parents where the two children were not related at the time of their adoption.

WAITING PERIOD

No waiting period exists in many states between the time an application to marry is filed and a marriage license is issued. Some states have a waiting period in order to prevent ill-planned,

rash or otherwise reckless marriages. This tradition has been derived from the English tradition of publishing banns or giving notice that a marriage is being planned. The practice existed in some states where applications to marry were literally posted on the front wall of the court house for three days. However, this practice has now been abolished.

MARRIAGE LICENSE

Any marriage ceremony performed must be authorized by a marriage license. The marriage license may not be used outside the state. A license issued by another state or country is generally not valid in another state or country, and therefore does not authorize a marriage in another jurisdiction.

A marriage license is obtained from a court clerk in the majority of cases, but may also be issued by a judge in some jurisdictions. There is a license fee. The license is void if not used within a stipulated period of time from the day it is issued. Only one license is required.

Any person who contracts a marriage, or makes false representations to secure a marriage license, or violates the law with respect to the solemnization of a marriage, is subject to criminal penalties.

APPLICATION TO MARRY

The first step in obtaining a marriage license is the appearance of the interested persons at the appropriate clerk's office and completing an application to marry. The marriage record is a uniform state form issued by the state, which is utilized statewide. The marriage record contains an application to marry, a license to marry and a certificate of marriage.

The application form formally records the intentions of both parties, in which they each swear to the fact that no legal objection to the marriage exists, nor is there any legal objection to the issuance of a license to authorize the marriage according to any laws. Some clerks request interested persons to complete a locally produced worksheet to facilitate the completion of the permanent marriage record. Upon the

preparation of the application to marry, the worksheet is typically destroyed.

The full name of the applicant must be provided, including middle name or initial. If no middle initial exists, the abbreviation "NMI" will be typed in the blank. The name must be provided as it appears on the birth certificate of the applicant. The permanent residence address should be utilized; temporary residence addresses are not suitable.

The application may need to be sworn before the court clerk or a notary public. The intent is to have the applicant swear to the truth of the information in the application. The clerk or notary public will normally recite the following oath:

"Do you swear that you are the applicant stated in this certificate, that the information contained in this application is true and correct, that no legal objection to a marriage, nor to the issuance of a license to authorize a marriage is known to you, and that you hereby are applying for a license to marry, so help you God?" The applicant may be administered an affirmation without the religious references; a recommended substitute "tag line" for the affirmation is the phrase "Under the pains and penalties of perjury?". Upon acceptance of the oath or affirmation, the applicant should execute the application.

A marriage application (not signed and sealed by the local court judge or the clerk) often may be mailed to another state by a clerk or the other applicant for one of the parties to sign and swear to (in the other jurisdiction).

An application to marry and the related marriage record is open to inspection by the general public in the office of the clerk in which they are filed, unless special legal circumstances have rendered it confidential.

The issuing officer of the license (judge or clerk) cannot be compelled to issue the license to marry until the applicants, when called upon to do so, have established to the issuing officer's satisfaction that there appears to be no impediment to marriage. This showing must be made on the face of the application. It cannot be made by assurances orally given. It is the duty of the issuing officer, when the face

of the sworn application shows all requirements of the license have been met, to issue the license.

If a person travels from one state to another state in order to avoid the legal requirements of his residence state, the marriage is void.

If a party has been previously married, and is now divorced, the party must typically produce a certified copy of the (last) divorce decree to the clerk. An annulment decree is required if the last marriage was annulled. The civil decree is required; the religious annulment decree is not acceptable. If the (last) spouse of a party is deceased, it will be necessary to produce a certified copy of the death certificate of the deceased spouse.

If a marriage is contracted while either party has a living wife or husband, not duly divorced or annulled by a court, the marriage is void.

SOLEMNIZATION

Marriage ceremonies may be solemnized in the United States generally by the following officials: judicial officer (justice or judge) or certain clerks, mayors, any regularly ordained minister of the gospel, or elders in communion with some church, or other ordained clergy engaged in the service of the religious body to which the cleric belongs, or person licensed to preach by an association of ministers, religious seminary or ecclesiastical body; and persons who are entitled to conduct the rites and ceremonies of marriage within the Society of Friends of Quakers. Notaries in four states can perform civil marriage ceremonies: Maine, South Carolina, and Florida; and the West Feliciana Parish of Louisiana.

The officiant plays an important role in performing the marriage ceremony. The authority granted to the officiant is coupled with a corresponding amount of responsibility to properly perform the ceremony and related functions.

When contacted by parties desirous of having the officiant perform a marriage ceremony, it is prudent to refer the inquiring party to the local license issuer. Details to be discussed include the honorarium and other related matters in

order to allow the parties to properly plan and orchestrate the logistical arrangements for the marriage ceremony.

Any person solemnizing a marriage is required to be presented with a valid marriage license by the requesting parties.

If the parties appearing before the officiant do not have possession of the required license at the time of the officiation, the marriage cannot be performed, under any circumstances.

The marriage license should be carefully examined to ascertain that it complies with the law. If there are any irregularities, errors, omissions, erasures, corrections, or other modifications to the license, the officiant should decline to proceed with the solemnization. The license issuer is the sole official who should make any amendment or correction to the license. Any unauthorized amendments or alterations to the license render it void. The marriage license must be signed by both parties prior to the solemnization of the marriage, sometimes prior to the appearance before the officiant.

It should be clearly understood by all parties concerned with the marriage ceremony that there are severe penalties for violating the law which relate to vital records. Since a marriage license is a vital record, it would be advisable for the officiant to review this warning with the parties, if he deems it necessary.

The officiant must complete the "certificate of marriage" portion of each original copy of the marriage license. All information should be printed or typed, except for signatures. All signatures should be in blue or black ink, executed with a ball-point pen.

In one case, a notary public acting under the advice of a deputy court clerk, recorded a date on the marriage certificate different than the date of the actual ceremony. Although the court declared the marriage valid due to the fact that there was substantial compliance with the law, it further emphasized that the decision should not be taken as condoning such illegal actions in the documentation of a marriage.

The officiant is typically responsible for returning the marriage license to the license issuer within a particular number of calendar (not business) days following the date of the cere-

mony. Some clerks provide reply mail envelopes to expedite the return of the fully executed marriage certificate.

Some jurisdictions do not compel marriage officiants to keep written records of each marriage performed. It is strongly advised, however. There is no legally prescribed form of register. It is strongly urged that each officiant possess a permanent register. A basic record of each marriage which details fundamental legal information may be necessary at a later time as evidence in a court trial or hearing. Record information should include the following: date/time, name, address, and signature of each party, identification utilized to verify identity of parties, fee charged, and any additional relevant information. A valuable record is the right thumbprint of each party next to his and her signature. For further information on registers, refer to chapter four. The civil marriage certificate illustrated in this chapter contains a permanent record stub for each marriage certificate.

While some officiants merely make a photocopy of the marriage license to act as their sole record of the marriage, it is discouraged as the primary record. However, access to a photocopy machine may not always be convenient. This cursory data is insufficient because it does not allow for additional notations which could prove vital at a later time, such as during testimony at a court trial. In the event that the officiant is subpoenaed by the court to testify, having the marriage register would be invaluable in the collection of evidence and the dispensing of justice. Furthermore, it may help to minimize legal liability of the officiant in the case of a charge of negligence associated with the marriage ceremony, an alleged impostor, or a party forging the officiant's signature.

There is often no prohibition against an officiant performing a marriage ceremony for a relative. In Maine, for example, a notary public may be the officiant in a marriage ceremony involving the notary's parent, sibling, child, or spouse's parent, if the ceremony is witnessed by two civilians, in addition to another, non-related (by blood or marriage) notary public. The independent Maine notary public endorses the marriage license upon completion of the ceremony. If a

notary public wishes to avoid any appearance of impropriety or conflict of interest, however, he should elect not to perform the marriage ceremony for ethical reasons, and gracefully decline to officiate.

CEREMONY

Most states do not mandate any specific language, protocol or procedure for use in the performance of a marriage ceremony. If acceptable to both parties, including the officiant, the parties may request the officiant to utilize a custom written ceremony.

A marriage solemnized among Quakers or among members of the Baha`i faith, according to the form practiced in their meeting or the rules and principles of their faith, is valid in most jurisdictions.

There are often no minimum ages for the witnesses to the ceremony. The officiant is responsible to assess the suitability of young witnesses by briefly discussing with them the seriousness of this important legal event. If the officiant is not confident that the witnesses are suitable, he may request replacements. The officiant cannot be a witness in satisfaction of the two-witness requirement. It is recommended that each witness print his name below his signature in the marriage register of the officiant. In fact, there are often no state laws whatsoever which absolutely require a marriage ceremony to have witnesses, even though there are blanks which are designated for the signatures of the witnesses. However, it is strongly recommended that two witnesses be involved in all ceremony observances and execute the certificate of marriage in the event that the officiant does not return the marriage record to the license issuer, or the marriage record is lost, destroyed or mutilated.

CEREMONY PROTOCOL

The following three ceremony protocols are provided as a resource for officiants to choose from in performing the ceremony.

FORM A

Official: As an expression of your mutual desires and purposes of being joined in marriage, will you please join right hands? (Addressing the woman by name) Do you take this man to be your lawfully wedded husband, promising to love, honor and cherish him, and in all respects to be a faithful wife, so long as you shall live?

Response: I do.

Official: (Addressing the man by name) Do you take this woman to be your lawfully wedded wife, promising to love, honor and cherish her, and in all respects to be a faithful husband, so long as you both shall live?

Response: I do. (Rings may now be placed on the ring fingers)

Official: Since you have entered into this honorable estate of matrimony by mutual promises, by virtue of the authority vested in me under the laws of the State of . . ., I now pronounce you husband and wife.

Official: (Addressing the man by name) You may now kiss the bride.

FORM B

Official: Friends, we are gathered together here, in the presence of this company, to join this man and this woman in the bonds of matrimony, which is an honorable estate, and is not to be entered into unadvisedly or lightly, but reverently, discreetly and soberly. Into this estate, these two persons present come to be joined. If any person can show just cause, why they may not lawfully be joined together, let him now speak, or forever hold his peace.

Official: (Addressing the man by name) Will you have this woman as your lawfully wedded wife, to live together in the ordinances and estate of matri-

mony? Will you love her, comfort her, honor and keep her, in sickness and in health, and forsaking all others, keep you only unto her, for the rest of your life?

Response: I will.

Official: (Addressing the woman by name) Will you take this man as your lawfully wedded husband, to live together in the ordinances and estate of matrimony? Will you love him, comfort him, honor and keep him, in sickness and in health, and forsaking all others, keep you only unto her, for the rest of your life?

Response: I will.

Official: (Addressing the man by name) Place the ring on (woman's name) third finger on her left hand, and say after me, "with this ring I thee wed with all of my love."

Response: With this ring I thee wed with all of my love.

Official: (Addressing the woman by name) Place the ring on (man's name) third finger on his left hand, and say after me, "with this ring I thee wed with all of my love."

Response: With this ring I thee wed with all of my love.

Official: In as much as (woman's name) and (man's name) have consented together in wedlock, and witnessed the same before this company, and have pledged each to the other, and declared the same by the joining of hands, I, in accordance with the authority vested in me by the laws of the State of . . ., hereby pronounce that they are husband and wife.

Official: (Addressing the man by name) You may now kiss the bride.

FORM C

Official: (Addressing the man by name) Do you have this woman to be your lawful wedded wife to live together in the Holy Estate of Matrimony; to love, honor, comfort her and keep her in sickness and

in health, forsaking all others, keep you only unto her so long as you both shall live?

Response: I do.

Official: (Addressing the woman by name) Do you have this man to be your lawful wedded husband to live together in the Holy Estate of Matrimony; to love, honor, comfort him and keep him in sickness and in health, forsaking all others, keep you only unto him so long as you both shall live?

Response: I do. (Rings may now be placed on the ring fingers, and each party should repeat the following phrase after the official recites the words)

Official: With this ring, I thee wed, in love and truth, and with all my worldly good, I thee endow.

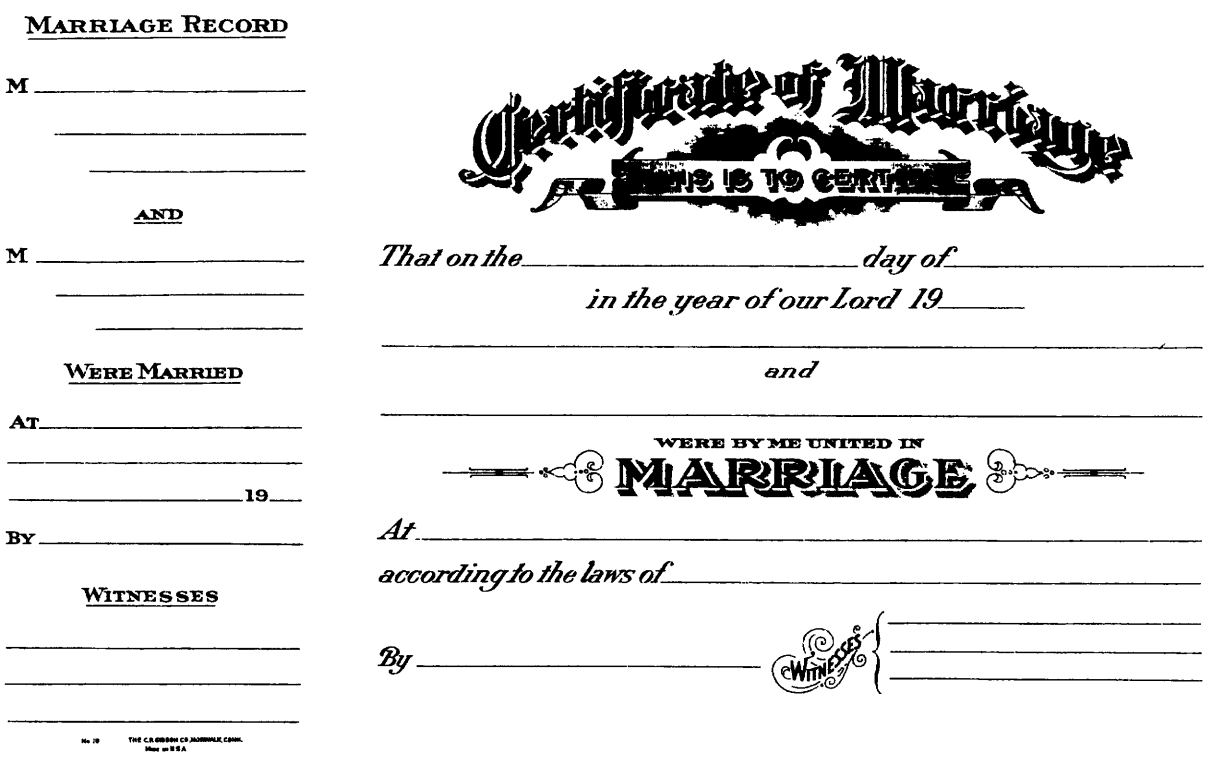
Official: Please join right hands.

Official: Inasmuch as (man's name) and (woman's name) have this day consented together in Holy Wedlock and have given and pledged their faithfulness each to the other in the presence of this company, by virtue of authority in me under the laws of the State of . . ., I now pronounce you Man and Wife.

Official: (Addressing the man by name) You may now kiss the bride.

A marriage will typically not be void or invalidated, in the event that the officiant does not possess the legal authority to perform a marriage ceremony, if the marriage is, in other respects, lawful and consummated with a full belief, on the part of either of the married parties, that they are lawfully married. This further applies to the cases in which the officiant does not possess the proper jurisdiction, or in which there is any omission or informality in entering the intention of marriage. These provisions have been instituted to prevent the needless invalidation of marriages, and the resultant myriad of legal difficulties and entanglements that could result from such an unfortunate incident. The law is intended to protect innocent, unsuspecting parties from being damaged by a negligent officiant or criminal impostor.

Where parties to a ceremonial marriage went through the ceremony for the sole purpose of preventing the child of



MARRIAGE RECORD

M _____

_____

_____

AND

M _____

_____

_____

WERE MARRIED

AT _____

_____

_____ 19___

BY _____

WITNESSES

_____

_____

_____

Certificate of Marriage

THIS IS TO CERTIFY

That on the _____ *day of* _____

*in the year of our Lord 19*____

_____

and

_____

WERE BY ME UNITED IN

MARRIAGE

At _____

according to the laws of _____

By _____ WITNESSES _____

_____

_____

Figure 1 Blank Civil Marriage Certificate with Record Stub

Forms may be purchased from C. R. Gibson Company, Norwalk, CT 06856 (800/344-2766) or any of its dealers. Reproduction prohibited.DeLano Service, Allegan, MI 49010 (616/673-2171). Reproduction prohibited.

the female, sired by the younger brother of the male, from being born out of wedlock, and there was no intention to consummate the marriage, and no consummation thereof by cohabitation, marriage was contrary to public policy and subject to annulment by either party.

MARRIAGE CERTIFICATE

If the officiant wishes to provide the couple with a marriage certificate immediately following the ceremony, printed blank marriage certificates are available from stationers. The blank civil marriage certificate, illustrated in figure 38, is available in a bound set of 50 forms (ISBN 0-837840-10-4) for about $10 from the C. R. Gibson Company in Norwalk, Connecticut (800-344-2766).

The newly married parties may obtain certified copies of the official marriage license(s) as soon as the license issuer receives the properly completed and executed marriage licenses from the officiant.

After approximately 30 days, certified copies of marriage licenses may also be obtained from the state.

CHAPTER 12 QUESTIONS

1. In what four U.S. jurisdictions is a notary public empowered to perform a civil marriage ceremony? Explain the rationale behind this authority.
2. What is a civil marriage ceremony?
3. What single part of the marriage contract makes it unique among all contracts and partnerships?
4. Name three types of marriage. Which type involves the notary public, among others, as a civil officiant?
5. What is the general requirement of a person to marry?
6. How should a notary public handle a request to conduct a marriage ceremony for two people of the same gender?
7. Describe the possible methods in which a minor is able to obtain the authority to marry another.
8. Discuss mental capacity and how it relates to marriage ceremonies.
9. Discuss the potential effects of the following situations and performing a marriage ceremony: (a) mental illness; (b)

and performing a marriage ceremony: (a) mental illness; (b) mental retardation; and (c) influence of alcohol or drugs.

10. Describe "consent" and how it relates to marriage ceremonies.

11. Is it possible for a person to marry a relative? Explain your answer, giving examples.

12. What is the purpose of the "waiting period" between application for and the issuance of the marriage license? Explain the origin and development of this feature.

13. Is it legally proper for two people desiring to get married in a jurisdiction where they are not residents? What is the exception to this requirement?

14. Who is responsible to obtain the marriage license?

15. After the marriage ceremony is completed, who is responsible to return it the issuing authority.

16. Explain by what means the completed and signed marriage certificate may be returned to the issuing authority.

17. How soon after the marriage ceremony must the license be returned?

18. Are marriage ceremony records required? Is it acceptable to simply make a photo-copy of the completed and signed marriage certificate? Explain your answer.

19. Is it proper for a notary public to perform a civil marriage ceremony for a relative? Explain your answer.

20. Is there a standard ceremony that must be used? May the couple write their own vows and ceremony?

21. Is it acceptable that the ceremony be in a language other than English? Explain what special precautions should be taken in a non-English language ceremony.

22. Is it lawful to perform a civil marriage ceremony in the air or on the water? Explain what precautions should be taken in both of these examples?

23. What additional services might a notary public offer, or assist the couple in making arrangements for?

24. What are several low cost, but value-added features, that a notary public might include in his or her civil marriage ceremony "ensemble"?

25. Is a notary public permitted to ask for and receive a gratuity or honorarium for performing the civil marriage ceremony? Explain your answer.

26. What are some of the ceremony particulars which a notary public should discuss with the prospective bride and groom during a "pre-ceremony conference"?

27. Discuss some possible methods a notary public might employ to inform the general public about availability to perform civil marriage ceremonies.

GLOSSARY

ABETTING: To help or urge.

ABSCOND: To hide or conceal with intent to escape the law.

ACCEDE: To consent or agree.

ACCOST: To approach and speak to.

ACCRUE: To increase.

ACKNOWLEDGE: To own or admit as true and accept responsibility.

ACKNOWLEDGMENT: Formal declaration before an authorized officer (e.g. notary public) by the person who executed an instrument, swearing that it was done freely.

ACT: A doing, a public act is one which has public authority, been made before a public officer and is authorized by a public seal.

ACTION: A lawsuit; a formal complaint within the jurisdiction of a court of law.

A.D.: The abbreviation for the Latin *Anno Domini* meaning "in the year of our Lord."

ADJUDGE: To decide or settle by law.

ADMINISTER: To discharge the duties of an office; to give.

ADMINISTRATOR: A person appointed by the court to manage the estate of a deceased person who did not leave a will.

ADMINISTRATRIX: A female administrator.

ADMISSIBLE: Appropriate to be considered in reaching a decision (i.e. admissible evidence is acceptable to the court or judge).

ADMONISH: To warn or advise.

ADVERSE PARTY: A party in a hearing or trial whose interests are opposed to the interests of another party in a matter.

AFFIANT: The person who makes and signs an affidavit.

AFFIDAVIT: A sworn written or printed declaration or statement of facts, made voluntarily and confirmed by the oath or affirmation of the party making it, before a notary public or other authorized officer.

AFFIRM: To confirm or verify.

AFFIRMANT: A person who testifies on affirmation or who affirms instead of taking an oath.

AFFIRMATION: A solemn, formal declaration (made under the penalty of perjury) by a person who refuses or declines to take an oath; it is legally equivalent to an oath.

AFFIX: To attach physically or inscribe/impress, as a signature or seal.

AGGRIEVED: Injured; having suffered a loss or injury.

ALLEGATION: The claim, declaration or statement of a party to an action; a charge.

ALLEGE: To state, assert or charge.

AMEND: To change.

ANNEX: To attach to.

ANNOTATION: A note or case summary.

ANNUL: To make void or nullify.

APOSTILLE: Department of State authentication attached to a notarized certified document for possible international use.

APPELLATE COURT: Generally a reviewing, not trial court; appellate division; however, has trial jurisdiction.

ARBITRATION: Referring a dispute to an impartial (third) person, chosen by the parties involved (or judge) who agree in advance to accept the decision of the arbitrator.

ASSENT: Compliance or approval.

ATTEST: To witness or affirm to be true.

ATTESTATION: The witnessing of an instrument in writing at the request of the party making and signing it as a witness.

AUTHENTICATION: Giving legal authority to a record or other written document, causing it to be legally admissible in evidence, by certification issued by a clerk, state or federal authority.

BEARER: The person in possession of an instrument, document of title or security, payable to the bearer or endorsed in blank (no payee indicated).

BENEFIT: Any tangible or intangible gain or advantage.

BILL OF SALE: A written document given to pass title (ownership) of personal property from vendor to vendee (seller to purchaser).

BONA FIDE: In good faith without fraud.

BREACH: The breaking or violating of a law, right, obligation or duty.

CANCELLED CHECK: A check which bears the notation of cancellation of the drawee bank as having been paid and charged to the drawer.

CAPACITY: Legal competence or power.

CERTIFIED CHECK: The check of a depositor drawn on a bank on the face of which the bank has written or stamped the words "certified" or "accepted" with the date and signature of a bank official; it means that bank holds money to pay the check and is liable to pay the proper party.

CERTIFIED COPY: A copy of a document or record, signed and certified as a true copy by the public officer who keeps the original.

CHAMBERLAIN: A city officer similar to a treasurer; may serve as city clerk and custodian of public city records.

CHATTEL: Movable, personal property such as household fixtures or goods (i.e.: a car, television, etc.).

CHATTEL PAPER: A document which indicates both a monetary obligation and a security interest in a lease of (chattel) goods.

CHECK: A draft drawn upon a bank and payable on demand, signed by the maker or drawer, containing an unconditional promise to pay a certain sum (in money) to the order of the payee.

CHECK KITING: Writing a check against a bank account without enough money to cover it, expecting that the funds will be deposited before the check is cashed.

CIVIL ACTION: A lawsuit based on a private wrong, as distinguished from a crime, or to enforce rights (through remedies) of a private or non-penal nature (i.e. breach of contract, divorce, etc. compared to robbery, forgery, etc.).

CIVIL LAW: The collection of law which every nation, state, commonwealth or local municipality has established specifically for itself; "municipal law." Laws concerned with civil or private rights and remedies, as compared to criminal law.

CODICIL: A supplement or addition to a will.

COERCE: Force to compliance.

COLLUSION: A secret agreement between two or more persons to defraud another person of his rights (using the law), or to obtain an object forbidden by law; conspiracy.

COMMISSION: Authority issued from the government, one of its departments or a court, authorizing a person to perform specific acts or exercise the authority of a public office.

COMMON KNOWLEDGE: Knowledge that every reasonably intelligent person has including learning, experience, history and facts.

COMMON LAW: The collection of law based upon custom, court decisions and common usage.

COMPEL: To force or get by force.

COMPETENT: Capable, qualified and meeting all requirements; having sufficient ability or authority; being of a certain age and mental ability.

CONSENT: Agreement.

CONSIDERATION: Something of value which is the reason a person enters into a contract, including money, a right, interest, personal services and love/affection.

CONSTITUENT: A person who is served or represented by a public officer.

CONTEMPT: A willful disregard or disobedience of public authority (e.g. a court).

CONTEMPT OF COURT: Any act which is intended to embarrass or obstruct the court in the administration of justice or lessen its authority or dignity.

CONTRACT: An agreement between two or more persons which creates an obligation to do or not to do a particular thing.

CONVEYANCE: A document by which some estate or interest in real property is transferred from one person to another.

COUNSEL/COUNSELLOR: An attorney at law; a lawyer.

COVENANT: Agreements written into deeds and other documents promising performance or non-performance of certain acts; specifying certain uses or non-uses of a property.

CRIME: A misdemeanor or a felony.

CULPA: Fault, neglect or negligence.

CURSORY EXAMINATION: A rapid inspection for visible flaws, determined by ordinary examination (i.e. skimming).

DAMAGES: The sum of money awarded to a person injured by the wrongful act or omission of another.

DBA: "Doing business as." An assumed business name or use of a trade name.

DE BENE ESSE DEPOSITION: A sworn verbal examination of a witness whose testimony is considered important to a matter, but might otherwise be lost.

DECREE: An order or decision issued by a legal authority (i.e. courts).

DEEM: To hold to be true or consider.

DE FACTO: Actually existing, but not officially approved.

DEFENDANT: The party against whom a civil or criminal action is brought.

DE JURE: Legitimate or lawful.

DEPONENT: A person who testifies to the truth of certain facts or gives testimony under oath which is transcribed to a written statement.

DEPOSE: To make a deposition; to give evidence in the form of a deposition.

DEPOSITION: The testimony of a witness taken out of court or a hearing, under oath or affirmation, which is intended to be used at a judicial hearing or trial.

DEPRAVE: Corrupt; to make morally bad.

DISCOVERY DEPOSITION: A sworn verbal examination of a witness taken to extract facts from those individuals involved in a dispute, prior to a formal trial.

DOCUMENT: Anything printed or written which is relied upon to record or prove something.

DOWER: The provision which the law makes for a widow out of the lands of her husband. Dower has been abolished in most other jurisdictions.

DRAFT: A written order of the first party (drawer) instructing a second party (drawee - i.e. bank), to pay a third party (payee).

DRAWEE: The person on whom a bill or draft is drawn. The drawee of a check is the bank on which it is drawn.

DRAWER: The person who draws a bill or draft. The drawer of a check is the person who signs it.

DUE DILIGENCE: To give proper attention to a matter on a timely basis.

DULY: In proper form or manner; according to legal requirements.

DURABLE POWER OF ATTORNEY: A signed and witnessed document which permits an individual to act for another in case of incapacitation, to make financial and accounting decisions for the principal.

DURESS: Unlawful restraint or action placed upon a person by which the person is forced to perform an act against his

or her free will (i.e. a person threatening to injure another if something is not done).

ELEEMOSYNARY: Charity.

EMPOWER: Grant authority to.

ENDORSEE: The person to whom a negotiable instrument, promissory note or similar instrument is assigned, by endorsement (i.e. the party to whom a check is made payable).

ENDORSEMENT: The action of a payee, drawee, endorser or holder of a bill, note, check or other negotiable instrument, in writing his name upon the back of it, assigning and transferring the instrument (i.e. signing the back of a check to obtain the money).

ENDORSER: He who endorses (i.e. a person who signs his name as payee on the back of the check to obtain the cash or credit indicated on the front).

ENJOIN: To require a person by court order to perform or not perform some action.

ENTITY: An organization or person.

ESCROW: The status of a writing, deed, sum of money, stock or other property, put in the care of a third party until certain conditions are fulfilled.

ESTATE: The total of all real property (i.e. real estate), personal property and money owned by a person.

ET AL.: An abbreviation for the Latin *et alii* meaning "and others."

EXECUTE: To complete, perform or make; to sign.

EXECUTOR: A person appointed by a testator to carry out the directions and requests in his will and to dispose of his property according to the provisions of the last will and testament.

EXECUTRIX: A female executor.

EX OFFICIO: From office; by virtue of the office. Powers may be exercised by an officer which are not specifically given to him, but are implied in his office.

EX PARTE: On one side only; by or for one party.

EX-POST FACTO: After the fact.

EXTORTION: The obtaining of property from another by the wrongful use of actual or threatened force or violence, or under the pretense of an official right.

FELONY: Any offense punishable by death or imprisonment for a term exceeding one year; may also be punishable by fine.

FIDUCIARY: Relating to trust, confidence and good faith.

FOR CAUSE: For reasons that law and public policy recognize as sufficient for action.

FORGE: To create by false imitation or altering.

FORMA: Latin for "form"; the directed form of judicial and legal proceedings.

FRAUD: Intentionally distorting the truth. A deceptive practice intended to cause a person to give up a lawful right or property.

FRAUD, STATUTE OF: Law which requires that certain contracts must be in writing to be enforceable.

GRANTEE: A person who receives the deed of real property from the grantor.

GUARDIAN: A person who is legally in charge of either a minor or someone incapable of taking care of his own affairs.

GRANTOR: The person transferring title to or an interest in real property to a grantee.

HEIR: The person appointed by law to inherit real or personal property of another person.

HOLOGRAPHIC WILL: A will written in the personal handwriting of the testator.

INCOMPETENT: A person without adequate ability or knowledge who is unable to manage his own affairs.

INC.: Incorporated.

INDEMNIFY: To make good or compensate.

INDICTMENT: A written accusation presented by a grand jury charging a person with a criminal act or omission.

INFRA: Below; opposite of supra; often used in affidavits.

IN LIEU OF: Instead of; in place of.

IN MALAM PARTEM: In a bad sense; evil.

INSOLVENCY: Inability or lack of means to pay one's debts.

INSTRUMENT: A written document; a formal or legal document in writing, such as a contract, deed, bond, will or lease.

INTEGRITY: Moral principle and character; honesty.

INTERROGATORIES: Formal written questions used in the judicial examination of a person, who must provide written answers under oath.

INTESTATE: Dying without making a will.

IN TOTO: In the whole; entirely.

INTRA VIRES: An act within the power of a person or corporation when it is within the scope of his or its power or authority.

IPSO FACTO: By the fact itself; by the mere fact.

J.D.: Abbreviation for "Juris Doctor" or "Doctor of Jurisprudence"; equivalent to "LL.B."; the university degree required to practice law.

JOSTLE: To shove or push roughly.

JUDGE: A public officer appointed to preside and administer the law in a court of justice. "Judge," "justice" and "court" are used interchangeably.

JUDGEMENT: The final decision of the court settling a dispute and determining the rights and obligations of the parties.

JURAT: The statement of an officer before whom a statement was sworn to.

JURIS: Of law.

JURISDICTION: Areas of authority; the geographic area in which a court has power or types of cases it has authority to hear.

JURISPRUDENCE: The philosophy of law.

JUST: Right; fair; lawful.

JUST CAUSE: A reason based on fair and honest grounds.

JUSTICE COURT: An inferior court (not of record) with limited civil and criminal jurisdiction, held by justices of the peace.

LACHES: The delay or negligence in claiming one's legal rights.

LACHES, ESTOPPEL BY: A failure to do something which should have been done; failure to claim or enforce a right at a proper time.

LAWFUL AGE: Full or legal age.

LEASE: An agreement outlining the relationship of landlord and tenant (lessor and lessee).

LESSEE: A person who rents property from another.

LESSOR: A person who rents property to another; landlord.

LETTERS ROGATORY: One court requesting another court (in another, independent jurisdiction) to examine a witness with written questions or interrogatories, sent with the request.

LEWD: Indecent; lustful; obscene.

LIBER: A book.

LIEN: A legal right or security attached to real (estate) or personal property until the payment of some debt, obligation or duty.

LIS PENDENS: The doctrine that pending legal action is notice to all interested parties, so that if any right is acquired from a party to such action, the transferee takes that right, subject to the outcome of the pending action. It acts to warn potential purchasers and lenders that the title to a parcel of real estate is in litigation.

LITIGATION: A lawsuit or legal action.

LITIGANT: A person involved in a lawsuit.

LIVING WILL: A signed, dated and witnessed document allowing a person to make his wishes about life-sustaining

treatment known to others, in case of incapacity or inability to communicate.

LL.M. and LL.D.: Academic degrees in law—master and doctor of laws.

LOAN: One party transfers a sum of money to another, with an agreement to repay it with or without interest.

LOCUS SIGILLI: In place of the seal; the place occupied by the seal of written instruments. It is abbreviated L.S. on documents.

LUCID: Clear; rational; sane.

LTD.: A notation following a corporate business name, indicating its corporate status; although found in use in America, it is more commonly found in British and Canadian corporate names.

MAGISTRATE: A public civil officer empowered with limited judicial or executive power (i.e. justice of the peace).

MAJORITY: Full or legal age.

MAKER: One who makes or executes (i.e. signs a check or a note to borrow).

MAL: Bad.

MALA: Evil, wrongful or bad.

MALA IN SE: Acts morally wrong, contrary to the fundamental sense of a civilized society, such as bribery.

MALA PROHIBITA: Acts wrong, not because they are inherently evil, but for the convenience of society, such as a parking fine scofflaw.

MALFEASANCE: Evil doing or ill conduct.

MALICE: The intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury.

MALPRACTICE: Professional misconduct or unreasonable lack of skill.

MALUM IN SE: A wrong in itself; an illegal act, based upon principles of natural, moral and public law.

MARSHAL: Federal officers who execute lawful writs, process and orders issued under the authority of the United

States. U.S. Marshals may exercise the same powers in a state as a sheriff of that state.

MERCANTILE LAW: Commercial law.

MERCANTILE PAPER: Commercial paper.

MINISTERIAL: Activities which require obedience to instructions and demand no special discretion, judgment or skill.

MINISTERIAL OFFICER: One whose duties are purely ministerial, as distinguished from executive, legislative or judicial functions.

MISCONDUCT: Neglect of duty; willful illegal behavior.

MISDEMEANOR: Any offense other than a felony, generally punishable by fine or jail, or both.

MISFEASANCE: The improper performance of a lawful act.

MORAL TURPITUDE: Shameful wickedness; anything opposed to justice, honesty, modesty or good morals.

MORTGAGE: A conditional transfer or pledge of real estate as security for the payment of a debt.

MORTGAGEE: A lender in a mortgage loan transaction.

MORTGAGOR: A borrower who transfers his or her property as security for a loan; the holder of a mortgage.

MOTION: A request made to a court or judge for obtaining some action to be done in favor of the applicant.

MUNICIPAL: Associated with a local government unit such as a city, town or village.

N.A.: An abbreviation for not applicable or not available.

N.B.: An abbreviation for the Latin *nota bene,* meaning "note well" or "mark well."

NEGLIGENCE: The omission to do something which a reasonable person would do or not do.

NEGOTIABLE: Legally capable of being transferred by endorsement or delivery; usually refers to checks, notes, bonds and stocks.

NEGOTIATE: To discuss with a view of reaching agreement; to settle, transfer or sell.

NIL: Nothing.

NOMINAL DAMAGES: Award of an insignificant sum in which no substantial injury was proved to have occurred.

NONFEASANCE: Nonperformance of some act which ought to be performed; omission to perform a required duty at all or total neglect of duty.

NOTARIAL: Taken by a notary; performed by a notary in his official capacity; belonging to a notary and proving his official character, such as a notarial seal.

NOTARIAL ACTS: Official acts of a notary public.

NOTE: A document containing a promise of signer (i.e. maker) to pay a specified person or bearer a definite sum of money at a specified time.

NOTE OF PROTEST: A brief written statement of the fact of a protest, signed by the notary public on the bill, which will be transcribed into proper form at a later time.

NOTICE: Information; knowledge of the existence of a fact or state of affairs; a written warning intended to inform a person of some hearing or trial in which his interests are involved.

NULL: Of no validity or effect; void.

OATH: Any form of declaration by which a person indicates that he is bound in conscience to perform an act faithfully and truthfully.

OBLIGEE: Receiver of a promise.

OBLIGOR: A person who makes a promise.

OFFENSE: A felony or misdemeanor; a breach of the criminal laws.

OFFER: A proposal to do a thing or pay an amount, usually accompanied by an expected acceptance, counter-offer, return promise or act.

OFFEREE: The receiver of an offer.

OFFEROR: In contracts, the party who makes the offer and looks for acceptance from the offeree.

OMBUDSMAN: A Swedish word meaning "representative" or "attorney"; an official state office which receives citizens' complaints connected with the government. The ombudsman represents the citizen and acts before government on his/her behalf.

OMISSION: The intentional or unintentional neglect to perform what is required.

ORAL CONTRACT: An agreement which is partly written and partly depends on spoken words, or is totally unwritten.

ORDER: A mandate, rule or regulation; command or direction given by an authority.

ORDINANCE: A written law or statute created by the legislative body of a municipality (i.e. a city council).

ORDINARY POWER OF ATTORNEY: A signed and dated (and usually acknowledged) document authorizing another person to make decisions for a principal. This lapses if the principal becomes incompetent.

OVERDRAFT: A check written on a checking account containing less funds than the amount written on the face of the check.

OVERT: Public; open.

PACT: A bargain or agreement.

PAR: Equal; equity.

PARALEGAL: A person with legal skills, but who is not an attorney and who works under the supervision of a lawyer.

PARDON: To release from further punishment and forgive an offense; an official document granting a pardon.

PAROL: Oral or verbal.

PAROL CONTRACT: An oral contract as distinguished from a written or formal contract.

PAROL EVIDENCE: Oral or verbal evidence.

PAROLE: The procedure in which a convict is released from jail, prison or other confinement on good behavior, after serving part of his term, but before the expiration of his sentence.

PATENT: Open; obvious; evident.

PAYEE: The person to whom a bill, note or check is made or drawn.

PAYOR: The person who has drawn a note.

PECULATION: The unlawful granting of property; falsely granting entrusted money or goods to oneself.

PECUNIARY: Monetary; relating to money; financial.

PENAL: Punishable; inflicting a punishment; containing a penalty.

PENALTY: Punishment, civil or criminal; a financial punishment.

PEREMPTORY: Final; decisive; absolute.

PERFORMANCE: The fulfillment or accomplishment of a promise, contract or other obligation according to its terms.

PERIL: Risk or hazard.

PERJURY: Making a false statement under oath (or affirmation), swearing or affirming its truth, when the statement is not believed to be true.

PER SE: By itself; simply as such.

PERSON: A human being; a firm, partnership, corporation, labor organization, association, legal representative, trustee or receiver.

PETITION: A formal written document requesting court action on a certain matter.

PETITIONER: One who presents a request to a court, officer or legislative body.

PETTY: Small; minor.

PETTY OFFENSE: A crime with a maximum punishment of a fine or short term in a jail or house of correction. Any misdemeanor in which the penalty does not exceed imprisonment for a period of six months or a maximum fine of $500, or both.

P.L.: An abbreviation for "Public Laws."

PLAINTIFF: A person who starts a lawsuit.

PLEA: The defendant's answer to charges against him.

PLEADINGS: The formal charges or responses by the parties in a lawsuit of their respective claims and defenses.

POST-DATED CHECK: A draft (check) presented before the date written on it.

POWER OF ATTORNEY: An instrument authorizing another to act as one's agent or attorney. His power is legally revoked upon the death of the principal; an ordinary power of attorney.

PRESCRIBE: To direct.

PRESENTS: Now existing; at hand; relating to the present time. The body of many legal documents begins with the phrase "Know all men by these presents."

PRESENTER: Any person presenting a draft or demand for payment for honor under a credit.

PRESENTMENT: The production of a negotiable instrument to the drawee for his acceptance or to the drawer or acceptor for payment.

PRIMA FACIE: Presumable; a fact thought to be true unless disproved by evidence.

PRIMA FACIE EVIDENCE: Evidence sufficient to establish a fact, unless disproved by other evidence.

PRINCIPAL: A person who has permitted or directed another to act for his benefit.

PROBABLE CAUSE: Reasonable cause.

PROBATE: Court procedure by which a will is proved to be valid or invalid.

PROBATION: Allowing a person convicted of a minor offense to go free under a conditional suspension of sentence, during good behavior, generally under the supervision of a probation officer.

PRO BONO PUBLICO: For the public good.

PROCEEDING: The form and manner of conducting judicial business before a court or judicial officer.

PROCESS: Any method used by the court to get or use its jurisdiction over a person or a specific property; the summons or notice of the beginning of a lawsuit.

PROCUREMENT: Obtaining.

PRO FACTO: For the fact; as a fact.

PRO FORMA: As a matter of form or for the sake of form.

PROMISSORY: Containing or consisting of a promise.

PROMISSORY ESTOPPEL: A promise given by a party that induces another party to act and which may be enforceable (without consideration). The promise is enforced by refusing to allow the promisor to establish the defense of no consideration; the promisor is "estopped" from asserting the lack of consideration.

PROMISSORY NOTE: A written promise made by one or more persons to pay a specific amount of money (or other items of value) to a named person.

PROMULGATE: To officially announce.

PROOF OF EXECUTION: A formal declaration made by a subscribing witness to the execution of an instrument or document.

PROPER CARE: The degree of care which a cautious person would use under similar circumstances.

PROPRIETOR: One who has the legal right or exclusive title to anything; an owner.

PRO RATA: Proportionately.

PROSECUTE: To file criminal proceedings against a person.

PROTEST:A formal written statement by a notary public (under seal) that a specific bill of exchange or promissory note was presented on a certain day for payment or acceptance and was refused; in maritime law, a written statement sworn to by the master of a vessel before a notary public, verifying that damage suffered by the ship and/or cargo on her voyage was caused by storms or other dangers of the sea beyond his control (without negligence or misconduct).

PROTHONOTARY: Then title given to an officer who officiates as principal clerk of some courts, such as in Pennsylvania.

PROVISO: A condition, stipulation, limitation or provision included in a deed, lease, mortgage or contract that will validate the instrument. It usually begins with the word "provided."

PROXY: A person who is substituted or assigned by another to represent and act for him.

PUBLIC OFFENSE: An act or omission forbidden and punishable by law. It describes a crime as compared to an infringement of private rights.

PUBLIC OFFICIAL: The holder of a public office; not all persons in public employment are public officials.

PUNITIVE: Relating to punishment.

PURPORT: To imply; intend; claim.

PURSUANT: A following after or following out. To carry out in accordance with terms of a contract or by reason of something.

QUALIFIED: Applied to one who has taken all of the steps to prepare himself for an appointment to office, such as taking/filing the oath of office.

QUASH: To make void or vacate.

QUASI: As if.

RATIFY: To approve.

RE: Regarding the matter of (i.e. "In re: . . . ").

REAL ESTATE: Land and anything permanently affixed to the land, such as buildings, fences and items attached to the buildings, such as light, plumbing and heating fixtures (or other items which would be personal property if not attached).

REALTY: A term for real property or real estate.

REASONABLE AND PROBABLE CAUSE: Reasons that justify suspecting a person of a crime and placing him in custody.

REASONABLE CARE: The degree of care which a person of ordinary caution would exercise in the same or similar circumstances.

REASONABLE DOUBT: Doubt that would cause reasonable people to hesitate before acting in matters of importance to themselves.

REBUT: To contradict or oppose.

RECEIVER: A "neutral" person appointed by a court to manage property in litigation or the affairs of a bankrupt.

RECIDIVIST: A habitual criminal; a criminal repeater.

RECIPROCITY: Mutuality. The relationship existing between two states when each of them gives the residents of the other certain privileges, on the condition that its own residents will enjoy the privileges of the other state.

RECOGNIZANCE: An obligation entered into before a court or magistrate in which the recognizer declares that he will do some act required by and specified by law. An obligation undertaken by a person, generally a defendant in a criminal case, to appear in court on a particular day or to keep peace. It may not require a bond.

RECORDER: A public officer of a municipality charged with the duty of keeping the record books required by law to be maintained in his or her office. The recorder receives/copies documents legally entitled to be recorded.

REFEREE: A person to whom a court case is referred (by the court) to take testimony, hear parties and report the results to the court. The person acts as a judicial officer and is an extension of the court for a specific purpose; attorneys are typically appointed.

REGISTER: An officer authorized by law to keep a record called a "register" or "registry."

REGISTRY: A register or book legally authorized or recognized for the recording or registration of facts or documents.

RELATIVE: A person connected with another by either blood or marriage.

RELEASE: The giving up or abandoning of a right or claim to another.

RELEASEE: The person to whom a release is made.

RELEASOR: A person who makes a release.

REMIT: To send.

REPLEVIN: An action in which the owner regains possession of his own goods.

REPUDIATE: To reject a right, duty, obligation or privilege.

RESPONDENT: The party against whom a petition is made in a legal action (i.e. petitioner v. respondent).

RESTRAINING ORDER: A command forbidding the defendant to do a threatened act until a hearing can be held.

RETAINER: A fee paid to engage a professional's service (i.e. a lawyer or accountant).

REVOCATION: The recall of some power, authority or thing granted.

SAFE DEPOSIT BOX: A sturdy container kept by a customer in a bank, in which he deposits papers, securities and other valuable items. Two keys are required to open the box; one is retained by the bank and the other by the customer.

SALE: A contract between two parties, seller and buyer, in which the seller, for payment or promise of payment of a certain price in money, transfers to the buyer, the title and possession of property.

SANCTION: The penalty that will be given to a wrongdoer for breaking the law.

SEAL: An impression upon wax, wafer or other moldable material capable of being impressed. In current practice, a particular sign (i.e. "L.S.") or the word "seal" is sometimes made instead of an actual seal to attest the execution of the instrument.

SEALED: Authenticated by a seal; executed by the affixing of a seal.

SELF-PROVE: In self-proving a will, the testator and witnesses will swear to and sign an affidavit before a notary public declaring that the document is truly the testator's will and that it was lawfully executed. The affidavit of execution is attached to the will, but is not a part of the actual will document.

SELLER: Vendor; a person who has contracted to sell goods or property.

SETTLEMENT: An agreement.

SHAM: Something false or fake.

SHERIFF: A county officer chosen by popular election whose principal duties are to aid criminal and civil courts. The sheriff is the chief preserver of the peace who serves processes, summons juries, executes judgments and holds judicial sales.

SHOW CAUSE ORDER: An order to appear (in court) and present reasons as to why a particular order should not be confirmed, take effect or be executed.

SHYSTER: A dishonest or deceitful business or professional person.

SIGHT DRAFT: An instrument payable on presentation (i.e. check).

SIGILLUM: Latin for "a seal"; originally a seal impressed upon wax.

SIGLA: Latin for "marks or signs of abbreviation" used in writing.

SIGNATURE: The action of putting one's name at the end of an document to certify its validity. A signature may be written by hand, printed, or stamped. Whatever mark, symbol or device a person may choose to represent himself. A signature may be made by using any name, including any trade or assumed name or by a word or mark instead of a written signature.

SIGNATURE CARD: A card which a bank or other financial institution requires from its customers on which they put their signatures and other data.

SILENCE: The state of a person who does not speak or refrains from speaking. In the law of estoppel, "silence" implies knowledge and an opportunity to act upon it.

SILENCE, ESTOPPEL BY: A person is under a duty to another to speak; failure to speak is not appropriate during honest dealings.

SMALL CLAIMS COURT: A special court which provides quick, informal and inexpensive settling of small claims; limited to small debts, accounts and other matters up to a certain dollar amount.

SS.: An abbreviation used in a record, pleading or affidavit called the "statement of venue." A contraction of the Latin *scilicet.*

STALE CHECK: A check which is dated much earlier than the date of its presentation or negotiation. In most states, a personal or business check is "stale" after six months; a federal social security check after 12 months.

STANDARD OF CARE: The degree of care which a reasonably prudent person would exercise under similar conditions.

STARE DECISIS: Latin for "let the decision stand." The principle that the decisions of the court should stand as guidance for future cases; basis of common law.

STATUTE: The written law as opposed to the unwritten or common law.

STATUTE OF FRAUDS: The law that requires certain contracts to be written or partially complied with, in order to be legally enforceable.

STATUTE OF LIMITATIONS: The time limit that legal action must take place or rights be enforced. After the time period set by law, no legal action can be brought, regardless of whether any cause of action existed.

STATUTORY: Relating to a statute.

STAY: A stopping; the act of stopping a judicial proceedings by the order of a court.

STIPULATE: Arrange or settle.

SUBORDINATION CLAUSE: A clause or statement which permits the placing of a mortgage at a later date, taking priority over an existing mortgage.

SUBORN PERJURY: The offense of securing a sworn statement or testimony which was known to be false (e.g., a notary knowingly notarizes a false statement and was responsible for suggesting that the attesting person make a false statement under oath).

SUBPOENA AD TESTIFICANDUM: A command requiring a witness to appear at a certain time and place to give testimony before a court or magistrate; ordinary subpoena.

SUBPOENA DUCES TECUM: A command which requires a witness to produce certain documents or records in a trial or hearing.

SUBSCRIBE: To write underneath (i.e. name) at the end of a document.

SUBSCRIBER: A person who adds his signature to any document.

SUBSTANTIAL: Of considerable value.

SUBVERSION: The act or process of overthrowing, destroying or corrupting.

SUE: To start, continue and carry out legal action against another.

SUFFICIENT CAUSE: Cause of a substantial nature directly affecting the public's rights and interests, concerning an officer's qualifications or performance of duties, showing that he is not fit or proper to hold office.

SUMMONS: A document issued and served to a defendant in a civil suit informing him of the action and that he is required to appear in court.

SUPERSEDE: Set aside, annul or replace.

SUPRA: Above (i.e. found in superseding text of document).

SURETY: A person responsible for the debt or promise of another.

SURROGATE: The name given to the judge who has jurisdiction over the administration of probate matters (wills) and guardianships.

SUSTAIN: To affirm or approve; to support.

SWEAR: To put under oath; to administer an oath to a person; to take an oath.

SWINDLE: To defraud (another) of money or property; cheat.

SWORN: Verified.

SYNOPSIS: A brief or partial statement; a summary.

TAMPER To alter, especially to make illegal.

TANGIBLE: Having physical form.

TENANT: One who holds lands of another; a renter.

TENDER: An offer of money.

TERM: A fixed and definite period of time during which the law prescribes that an officer may hold an office.

TESTABLE: Having the legal capacity of making a will.

TESTACY: Leaving a will at one's death.

TESTAMENT: The disposition of personal property by will.

TESTAMENTUM: A will or last will.

TESTATION: Witness; evidence.

TESTATOR: The person who makes (or had made) a valid will.

TESTATRIX: A woman who makes (or had made) a valid will.

TESTES: Witnesses to the signing of a will.

TESTIFY: To give evidence as a witness. To make a solemn declaration under oath or affirmation.

TESTIMONIUM CLAUSE: The clause of a document that ends with "In witness whereof, the parties to these presents have hereunto set their hands and seals."

TESTIMONY: Evidence given by a competent witness under oath or affirmation.

THREAT: A communicated intent to inflict physical or other harm on any person or property.

TITLE: The certificate which acts as evidence of ownership.

TORT: A civil or private wrong/injury, either with or without force, against the person or property of another, for which the court will provide a remedy (in damages). It does not include breach of contract, but it can include interference with a contract (e.g. inducing a breach).

TORTIOUS: Wrongful.

TRAFFIC INFRACTION: The violation of a vehicle and traffic law not declared to be a misdemeanor or felony. A traffic infraction is not a crime and the punishment given may not be considered penal or criminal punishment; conviction will not impair his credibility as a witness.

TRANSACT: To negotiate; to carry on business; perform.

TRANSCRIPT: An official copy of a document or writing; usually refers to the record of a trial or hearing.

TREBLE DAMAGES: Damages given by law in certain cases, consisting of the award of damages (which are tripled in amount) found by the jury.

TRIBUNAL: The seat of a judge; the place where the judge administers justice.

TRUE COPY: Not an absolutely exact copy, but an accurate replica of the original (in content).

TRUST: A right of property, real or personal, held by one party for the benefit of another.

TRUSTEE: A person holding property in trust for another (e.g. a lawyer, bank, group, etc.).

TRUST FUND: Money or property set aside as a trust for the benefit of another and held by a trustee.

TRUSTOR: One who creates a trust.

ULTERIOR: Intentionally kept concealed or hidden.

UNDUE INFLUENCE: Whatever destroys free will and causes a person to do something he would not do if left to his own free decision.

ULTRA VIRES: Actions which are beyond the power of a person or corporation when it is not within the scope of his or its power or authority.

USURY: The practice of lending money at an excessive or illegal rate of interest.

UTTER: To put or send into circulation; to publish or offer.

VACATE: To put an end to; to make empty or vacant.

VAGRANT: Wandering or going from place to place by an idle person who has no lawful or visible means of support and who survives on charity and does not work, although capable.

VEND: To sell.

VENDEE: A purchaser or buyer.

VENDOR: The person who sells property.

VENUE: The particular municipality in which a court with jurisdiction may hear and determine the case; it also refers to the actual location where an official act takes place (i.e. an acknowledgment).

VERDICT: The formal and unanimous decision or finding made by a jury, reported to the court and accepted by it.

VERIFIED COPY: Copy of a document which is proved by independent evidence to be true.

VERIFY: To confirm by oath or affirmation.

VIGILANCE: Watchfulness; precaution.

VILE: Morally evil; wicked.

VINCINAGE: The county where a trial is had or a crime has been committed.

VINDICATE: To clear of suspicion, blame or doubt.

VOID: Null; having no legal force or binding effect.

V.: An abbreviation for versus (against), commonly used in legal proceedings and entitling cases; may also appear as (vs.).

WAIVE: To abandon; throw away; surrender a claim privilege or right.

WAIVER: The voluntary and intentional surrender of a known right.

WANTON: Reckless; malicious.

WARRANT: A written order based upon a complaint issued according to law and/or court rule which requires law enforcement officers to arrest a person and bring him before a magistrate or judge.

WILL: A legal document directing the disposal of one's property after death.

WITNESS: To write one's name to a deed, last will or other document for the purpose of declaring its authenticity and proving its execution.

WRIT: An order issued by a court requiring the performance of a specified act or giving authority to do it.

APPENDIX A:
STATE GOVERNMENT RESOURCES

ALABAMA

Notary Registrar
Central Filing
Office of Secretary of State
P.O. Box 5616
Montgomery, AL 36103

Law Source:
Code of Alabama,
Title 36, Chapter 20, Notaries

ALASKA

Notary Administrator
Office of Lieutenant Governor
P.O. Box 110015
Juneau, AK 99811

Law Source:
Alaska Statutes
Title 44, Chapter 50, Notaries Public

ARIZONA

Public Services Division Director
Notary Unit
State Capitol Executive Tower
1700 West Washington
Phoenix, AZ 85007

Law Source:
Arizona Revised Statutes
Title 41, Chapter 2, Article 2, Notaries Public

ARKANSAS

Notary Public Supervisor
Notary Division
Office of Secretary of State
State Capitol
Little Rock, AR 72201

Law Source:
Arkansas Statutes Annotated
Title 21, Chapter 14, Notaries Public

CALIFORNIA

Notary Public Division Chief
Office of Secretary of State
P.O. Box 942877
Sacramento, CA 94277

Law Source:
California Government Code
Title 2, Division 1, Chapter 3, Notaries Public

COLORADO

Notary Administrative Officer
Office of Secretary of State
1560 Broadway, Suite 200
Denver, CO 80202

Law Source:
Colorado Revised Statutes
Title 12, Article 55, Notaries Public

CONNECTICUT

Records & Legislative Services
Division Manager, Notary Public Unit
Office of Secretary of the State
P.O. Box 150470
Hartford, CT 06115

Law Source:
Connecticut General Statutes
Title 3, Chapter 33

DELAWARE

Notary Division Secretary
Office of Secretary of State
P.O. Box 898
Dover, DE 19903

Law Source:
Delaware Code
Title 29, Chapter 43

FLORIDA

Bureau of Notaries Public
Department of State
401 South Monroe Street
Tallahassee, FL 32399

Law Source:
Florida Statutes
Chapter 117, Notaries Public

GEORGIA

Notary Public Division Director
Office of Secretary of State
West Tower, Suite 816
2 Martin Luther King Jr. Drive, S.W.
Atlanta, GA

Law Source:
Official Code of Georgia Annotated
Title 45, Chapter 17

HAWAII

Director of Administrative Office
Department of Attorney General
425 Queen Street
Honolulu, HI 96813

Law Source:
Hawaii Revised Statutes
Chapter 456, Notaries Public

IDAHO

Notary Administrative Secretary
Office of Secretary of State
Box 83720
Boise, ID 83720

Law Source:
Idaho Code
Title 51, Chapter 1, Notary Public Act

ILLINOIS

Director of Index Department
Office of Secretary of State
111 East Monroe Street
Springfield, IL 62756

Law Source:
Illinois Revised Statutes
Chapter 102

INDIANA

Notary Public Deputy
Office of Secretary of State
State House, Room 201
Indianapolis, IN 46204

Law Source:
Indiana Code
Title 33, Article 16

IOWA

Deputy Secretary of State
Corporations Division
Office of Secretary of State
Hoover Office Building
Des Moines, IA 50319

Law Source:
Iowa Code
Chapter 77A, Notarial Acts

KANSAS

Principal Records Examiner
Office of Secretary of State
State Capitol
Topeka, KS 66612

Law Source:
Kansas Statutes Annotated
Chapter 53, Notaries Public
& Commissioners

KENTUCKY

Principal Records Examiner
Office of Secretary of Commonwealth
State Capitol
P.O. Box 821
Frankfort, KY 40602

Law Source:
Kentucky Revised Statutes
Chapter 423, Notaries Public &
Commissioners of Foreign Deeds

LOUISIANA

Commissions Supervisor
Notary Department
Office of Secretary of State
P.O. Box 94125
Baton Rouge, LA 70804

Law Source:
Louisiana Revised Statutes
Title 35, Notaries Public &
Commissioners

MAINE

Notary Public Officer
Department of Secretary of State
101 State House Station
Augusta, ME 04333

Law Source:
Maine Revised Statutes Annotated
Title 4, Chapter 19, Notaries Public

MARYLAND

Notary Department
Office of Secretary of State
State House
Annapolis, MD 21401

Law Source:
Maryland Code Annotated
Article 68, Notaries Public

MASSACHUSETTS

Notary Public Office
Office of the Governor
State House, Room 184
Boston, MA 02133

Law Source:
Massachusetts General Laws
Chapter 222, Justices of the Peace,
Notaries Public & Commissioners

MICHIGAN

Office Supervisor
Office of the Great Seal
717 West Allegan Street
Lansing, MI 48918

Law Source:
Michigan Compiled Laws Annotated
Chapter 55, Notaries Public

MINNESOTA

Director of Licensing Unit
Department of Commerce
133 East 7th Street
Saint Paul, MN 55101

Law Source:
Minnesota Statutes
Chapter 359, Notaries Public

MISSISSIPPI

Branch Director, UCC Division
Notary Department
Office of Secretary of State
P.O. Box 136
Jackson, MS 39205

Law Source:
Mississippi Code Annotated
Title 25, Chapter 33, Notaries Public

MISSOURI

Director, Commission Division
Office of Secretary of State
P.O. Box 784
Jefferson City, MO 65102

Law Source:
Revised Statutes of Missouri
Chapter 486, Commissioners
of Deeds & Notaries Public

MONTANA

Notary Clerk
Office of Secretary of State
State Capitol
P.O. Box 202801
Helena, MT 59620

Law Source:
Montana Code Annotated
Title 1, Chapter 5, Notarial Acts

NEBRASKA

Notary Division Officer
Office of Secretary of State
P.O. Box 95104
Lincoln, NE 68509

Law Source:
Nebraska Revised Statutes
Chapter 64, Notaries Public

NEVADA

Notary Division Officer
Office of Secretary of State
State Capitol Complex
Carson City, NV 89710

Law Source:
Nevada Revised Statutes
Chapter 240, Notaries Public,
Commissioners of Deeds and
Commissioned Abstracters

NEW HAMPSHIRE

Notary Officer
Department of State
State House, Room 204
107 North Main Street
Concord, NH 03301

Law Source:
New Hampshire Revised Statutes Annotated
Chapter 455, Notaries Public & Commissioners

NEW JERSEY

Notary Section Supervisor
Division of Commercial Recording
Department of State
CN-452
Trenton, NJ 08625

Law Source:
New Jersey Statutes Annotated
Title 52, Chapter 7, Notaries Public

NEW MEXICO

Operations Division Director
Office of Secretary of State
State Capitol, Room 420
Santa Fe, NM 08625

Law Source:
New Mexico Statutes Annotated
Title 14, Article 12, Notaries Public

NEW YORK

Licensing Services Division Director
Department of State
84 Holland Avenue
Albany, NY 12208

Law Source:
New York Statutes
Executive Law, Section 130, Notaries Public

NORTH CAROLINA

Notaries Public Division Director
Office of Secretary of State
300 North Salisbury Street, Room 302
Raleigh, NC 27603

Law Source:
North Carolina General Statutes
Chapter 10A, Notaries

NORTH DAKOTA

Licensing Division Supervisor
Office of Secretary of State
600 East Boulevard
Bismarck, ND 58505

Law Source:
North Dakota Century Code
Title 44, Chapter 44-06, Notaries Public

OHIO

Commission Clerk
Office of Governor
77 South High Street, B-1 Level
Columbus, OH 43215

Law Source:
Ohio Revised Code
Chapter 147, Notaries Public

OKLAHOMA

Notary Public Division
Office of Secretary of State
P.O. Box 53390
Oklahoma City, OK 73152

Law Source:
Oklahoma Statutes
Title 49, Notaries Public

OREGON

Corporation Division Director
Office of Secretary of State
Public Service Building, Suite 151
255 Capitol Street, N.E.
Salem, OR 97310

Law Source:
Oregon Revised Statutes
Chapter 194, Notaries Public

PENNSYLVANIA

Administrative Officer
Bureau of Commissions
Office of Secretary of Commonwealth
North Office Building, Room 304
Harrisburg, PA 17120

Law Source:
Pennsylvania Statutes
Title 57, Chapter 7, Notary Public

RHODE ISLAND

Notary Public Division
Office of Secretary of State
100 North Main Street
Providence, RI 02903

Law Source:
Rhode Island General Laws
Title 42, Chapter 30, Notaries
Public & Justices of the Peace

SOUTH CAROLINA

Notary Public Division
Office of Secretary of State
P.O. Box 11350
Columbia, SC 29211

Law Source:
South Carolina Code
Title 26, Chapter 1, Notaries
Public & Acknowledgments

SOUTH DAKOTA

Notary Public Division
Office of Secretary of State
500 East Capitol Building
Pierre, SD 57501

Law Source:
South Dakota Compiled Laws
Title 18, Notaries Public

TENNESSEE

Notary Clerk
Office of Secretary of State
Polk Building, 18th Floor
Nashville, TN 37243

Law Source:
Tennessee Code Annotated
Title 8, Chapter 16, Notaries Public

TEXAS

Notary Public Unit Supervisor
Office of Secretary of State
P.O. Box 12079
Austin, TX 75711

Law Source:
Texas Government Code
Title 4, Chapter 406, Notary Public
& Commissioner of Deeds

UTAH

Notary Public Administrator
Division of Corporations
Department of Commerce
P.O. Box 45801
Salt Lake City, UT 84145

Law Source:
Utah Code Annotated
Title 46, Chapter 1, Notaries Public

VERMONT

Notary Supervisor
State Archives
Office of Secretary of State
109 State Street
Montpelier, VT 05609

Law Source:
Vermont Statutes Annotated
Title 24, Chapter 5, Subchapter 9,
Notaries Public

VIRGINIA

Notary Division Clerk
Office of Secretary of Commonwealth
P.O. Box 1795
Richmond, VA 23214

Law Source:
Code of Virginia
Title 47.1, Notaries &
Out of State Commissioners

WASHINGTON

Program Manager
Notary Public Section
Licensing Department
P.O. Box 9027
Olympia, WA 98507

Law Source:
Revised Code of Washington
Title 42.22, Notaries Public

WEST VIRGINIA

Notary Public Section
Office of Secretary of State
State Capitol
Charleston, WV 25305

Law Source:
West Virginia Code
Chapter 29C, Notary Act

WISCONSIN

Notary Specialist
Office of Secretary of State
P.O. Box 7848
Madison, WI 53707

Law Source:
Wisconsin Statutes
Chapter 137, Notaries &
Commissioners of Deeds

WYOMING

Notary Licensing Officer
Office of Secretary of State
State Capitol
Cheyenne, WY 82002

Law Source:
Wyoming Statutes
Title 32, Chapter 1
Notaries Public

OTHER SUBDIVISIONS —

AMERICAN SAMOA

Office of Governor
Territory of American Samoa
Pago Pago, AS 96799

Law Source:
American Samoa Code Annotated
Title 43, Oath

DISTRICT OF COLUMBIA

Section Chief
Notary Commissions & Authentication
Office of Secretary of District
717 14th Street, NW, Suite 230
Washington, DC 20005

Law Source:
Code of the District of Columbia
Title 1, Chapter 8, Notaries Public

GUAM

Office of Attorney General
Department of Law
Guam Judicial Center
120 West O'Brien Drive
Agana, Guam 96910

Law Source:
Guam Code Annotated
Title 5, Chapter 33, Notaries Public

NORTHERN MARIANA ISLANDS

Office of the Attorney General
Commonwealth of Northern Mariana Islands
Capitol Hill, Administration Building
Saipan, MP 96950

Law Source:
Commonwealth of Marianas Code
Title 4, Division 3, Chapter 8,
Notaries Public

PUERTO RICO

Office of Notarial Inspection
Supreme Court of Puerto Rico
572 Ponce de Leon Avenue
P.O. Box 190860
San Juan, Puerto Rico 00919

Law Source:
Laws of Puerto Rico Annotated
Title 4, Notarial Act

U.S. VIRGIN ISLANDS

Office of Lieutenant Governor
18 Kongens Gade
Saint Thomas, VI 00801

Law Source:
Virgin Islands Code
Title 3, Chapter 29, Notaries Public

APPENDIX B:
VITAL RECORDS RESOURCES

Introduction

An official certificate of every birth, death, marriage, and divorce should be on file in the locality where the event occurred. The Federal Government does not maintain files or indexes of these records. These records are filed permanently either in a State vital statistics office or in a city, county, or other local office.

To obtain a certified copy of any of the certificates, write or go to the vital statistics office in the State or area where the event occurred. Addresses and fees are given for each event in the State or area concerned.

To ensure that you receive an accurate record for your request and that your request is filled expeditiously, please follow the steps outlined below for the information in which you are interested:

- Write to the appropriate office to have your request filled.
- Under the appropriate office, information has been included for birth and death records concerning whether the State will accept checks or money orders and to whom they should be made payable. This same information would apply when marriage and divorce records are available from the State office. However, it is impossible for us to list fees and addresses for all county offices where marriage and divorce records may be obtained.
- For all certified copies requested, make check or money order payable for the correct amount for the number of copies you want to obtain. Cash is not recommended because the office cannot refund cash lost in transit.
- Because all fees are subject to change, a telephone number has been included in the information for each State for use in verifying the current fee.
- Type or print all names and addresses in the letter.
- Give the following facts when writing for **birth or death records:**

  1. Full name of person whose record is being requested.
  2. Sex.
  3. Parents' names, including maiden name of mother.
  4. Month, day, and year of birth or death.
  5. Place of birth or death (city or town, county, and State; and name of hospital, if known).
  6. Purpose for which copy is needed.
  7. Relationship to person whose record is being requested.

- Give the following facts when writing for **marriage records:**

  1. Full names of bride and groom.
  2. Month, day, and year of marriage.
  3. Place of marriage (city or town, county, and State).
  4. Purpose for which copy is needed.
  5. Relationship to persons whose record is being requested.

- Give the following facts when writing for **divorce records:**

  1. Full names of husband and wife.
  2. Date of divorce or annulment.
  3. Place of divorce or annulment.
  4. Type of final decree.
  5. Purpose for which copy is needed.
  6. Relationship to persons whose record is being requested.

Place of event	*Cost of copy*	*Address*	*Remarks*
Alabama			
Birth or Death	$12.00	Center for Health Statistics State Department of Public Health P.O. Box 5625 Montgomery, AL 36103-5625	State office has had records since January 1908. Additional copies at same time are $4.00 each. Fee for special searches is $10.00 per hour. Money order or check should be made payable to **Center for Health Statistics.** Personal checks are accepted. To verify current fees, the telephone number is **(205) 242-5033.**
Marriage	$12.00	Same as Birth or Death	State office has had records since August 1936.
	Varies	See remarks	Probate Judge in county where license was issued.
Divorce	$12.00	Same as Birth or Death	State office has had records since January 1950.
	Varies	See remarks	Clerk or Register of Court of Equity in county where divorce was granted.
Alaska			
Birth or Death	$7.00	Department of Health and Social Services Bureau of Vital Statistics P.O. Box H-02G Juneau, AK 99811-0675	State office has had records since January 1913. Money order should be made payable to **Bureau of Vital Statistics.** Personal checks are not accepted. To verify current fees, the telephone number is **(907) 465-3391.** This will be a **recorded** message.
Marriage	$7.00	Same as Birth or Death	State office has had records since 1913.
Divorce	$7.00	Same as Birth or Death	State office has had records since 1950.
	Varies	See remarks	Clerk of Superior Court in judicial district where divorce was granted. Juneau and Ketchikan (First District), Nome (Second District), Anchorage (Third District), Fairbanks (Fourth District).
American Samoa			
Birth or Death	$2.00	Registrar of Vital Statistics Vital Statistics Section Government of American Samoa Pago Pago, AS 96799	Registrar has had records since 1900. Money order should be made payable to **ASG Treasurer.** Personal checks are not accepted. To verify current fees, the telephone number is **(684) 633-1222, ext. 214.** Personal identification required before record will be sent.
Marriage	$2.00	Same as Birth or Death	
Divorce	$1.00	High Court of American Samoa Tutuila, AS 96799	

Place of event	*Cost of copy*	*Address*	*Remarks*
Arizona			
Birth (long form) Birth (short form)	$8.00 $5.00	Vital Records Section Arizona Department of Health Services P.O. Box 3887 Phoenix, AZ 85030	State office has had records since July 1909 and abstracts of records filed in counties before then.
Death	$5.00		Check or money order should be made payable to **Office of Vital Records.** Personal checks are accepted. To verify current fees, the telephone number is **(602) 255-3260.** This will be a **recorded** message. Applicants must submit a copy of picture identification or have their request notarized.
Marriage	Varies	See remarks	Clerk of Superior Court in county where license was issued.
Divorce	Varies	See remarks	Clerk of Superior Court in county where divorce was granted.
Arkansas			
Birth Death	$5.00 $4.00	Division of Vital Records Arkansas Department of Health 4815 West Markham Street Little Rock, AR 72201	State office has had records since February 1914 and some original Little Rock and Fort Smith records from 1881. Additional copies of death record, when requested at the same time, are $1.00 each. Check or money order should be made payable to **Arkansas Department of Health.** Personal checks are accepted. To verify current fees, the telephone number is **(501) 661-2336.** This will be a **recorded** message.
Marriage	$5.00	Same as Birth or Death	Coupons since 1917.
	Varies	See remarks	Full certified copy may be obtained from County Clerk in county where license was issued.
Divorce	$5.00	Same as Birth or Death	Coupons since 1923.
	Varies	See remarks	Full certified copy may be obtained from Circuit or Chancery Clerk in county where divorce was granted.
California			
Birth Death	$12.00 $8.00	Vital Statistics Section Department of Health Services P.O. Box 730241 Sacramento, CA 94244-0241	State office has had records since July 1905. For earlier records, write to County Recorder in county where event occurred. Check or money order should be made payable to **State Registrar, Department of Health Services** or **Vital Statistics.** Personal checks are accepted. To verify current fees, the telephone number is **(916) 445-2684.**
Heirloom Birth	$31.00	Not available until further notice	Decorative birth certificate (11" x 14") suitable for framing.

Place of event	*Cost of copy*	*Address*	*Remarks*
Marriage	$12.00	Same as Birth or Death	State office has had records since July 1905. For earlier records, write to County Recorder in county where event occurred.
Divorce	$12.00	Same as Birth or Death	Fee is for search and identification of county where certified copy can be obtained. Certified copies are not available from State Health Department.
	Varies	See remarks	Clerk of Superior Court in county where divorce was granted.
Canal Zone			
Birth or Death	$2.00	Panama Canal Commission Vital Statistics Clerk APOAA 34011	Records available from May 1904 to September 1979.
Marriage	$1.00	Same as Birth or Death	Records available from May 1904 to September 1979.
Divorce	$0.50	Same as Birth or Death	Records available from May 1904 to September 1979.
Colorado			
Birth or Death	$12.00	Vital Records Section Colorado Department of Health 4300 Cherry Creek Drive South Denver, CO 80222-1530	State office has had death records since 1900 and birth records since 1910. State office also has birth records for some counties for years before 1910. Additional copies of the same record ordered at the same time are $6.00. Check or money order should be made payable to **Colorado Department of Health.** Personal checks are accepted. To verify current fees, the telephone number is **(303) 756-4464.** This will be a **recorded** message.
Marriage	See remarks	Same as Birth or Death	Certified copies are not available from State Health Department. Statewide index of records for 1900-39 and 1975 to present. Fee for verification is $12.00
	Varies	See remarks	Copies available from County Clerk in county where license was issued.
Divorce	See remarks	Same as Birth or Death	Certified copies are not available from State Health Department. Statewide index of records for 1900-39 and 1968 to present. Fee for verification is $12.00.
	Varies	See remarks	Copies available from Clerk of District Court in county where divorce was granted.
Connecticut			
Birth or Death	$5.00	Vital Records Department of Health Services 150 Washington Street Hartford, CT 06106	State office has had records since July 1897. For earlier records, write to Registrar of Vital Statistics in town or city where event occurred.

Place of event	*Cost of copy*	*Address*	*Remarks*
			Check or money order should be made payable to **Department of Health Services.** Personal checks are accepted. FAX requests are not accepted. Must have original signature on request. To verify current fees, the telephone number is **(203) 566-2334.** This will be a **recorded** message.
Marriage	$5.00	Same as Birth or Death	Records since July 1897 at State Registry.
		See remarks	For older records, contact the Registrar of Vital Statistics in town where marriage occurred.
Divorce		See remarks	Applicant must contact Clerk of Superior Court where divorce was granted. State office does not have divorce decrees and cannot issue certified copies.
Delaware			
Birth or Death	$5.00	Office of Vital Statistics Division of Public Health P.O. Box 637 Dover, DE 19903	State office has death records since 1930 and birth records since 1920. Additional copies of the same record requested at the same time are $3.00 each. Check or money order should be made payable to **Office of Vital Statistics.** Personal checks are accepted. To verify current fees, the telephone number is **(302) 739-4721.**
Marriage	$5.00	Same as Birth or Death	Records since 1930. Additional copies of the same record requested at the same time are $3.00 each.
Divorce	See remarks	Same as Birth or Death	Records since 1935. Inquiries will be forwarded to appropriate office. Fee for search and verification of essential facts of divorce is $5.00 for each 5-year period searched. Certified copies are not available from State office.
	$2.00	See remarks	Prothonotary in county where divorce was granted up to 1975. For divorces granted after 1975 the parties concerned should contact Family Court in county where divorce was granted.
District of Columbia			
Birth or Death	$12.00	Vital Records Branch Room 3009 425 I Street, NW Washington, DC 20001	Office has had death records since 1855 and birth records since 1874 but no death records were filed during the Civil War. Cashiers check or money order should be made payable to **DC Treasurer.** To verify current fees, the telephone number is **(202) 727-9281.**

Place of event	*Cost of copy*	*Address*	*Remarks*
Marriage	$5.00	Marriage Bureau 515 5th Street, NW Washington, DC 20001	
Divorce	$2.00	Clerk, Superior Court for the District of Columbia, Family Division 500 Indiana Avenue, NW Washington, DC 20001	Records since September 16, 1956.
	Varies	Clerk, U.S. District Court for the District of Columbia Washington, DC 20001	Records before September 16, 1956.
Florida			
Birth Death	$9.00 $5.00	Department of Health and Rehabilitative Services Office of Vital Statistics P.O. Box 210 1217 Pearl Street Jacksonville, FL 32231	State office has some birth records dating back to April 1865 and some death records dating back to August 1877. The majority of records date from January 1917. (If the exact date is unknown, the fee is $9.00 (births) or $5.00 (deaths) for the first year searched and $2.00 for each additional year up to a maximum of $50.00. Fee includes one certification of record if found or certified statement stating record not on file.) Additional copies are $4.00 each when requested at the same time. Check or money order should be made payable to **Office of Vital Statistics.** Personal checks are accepted. To verify current fees, the telephone number is **(904) 359-6900.** This will be a **recorded** message.
Marriage	$5.00	Same as Birth or Death	Records since June 6, 1927. (If the exact date is unknown, the fee is $5.00 for the first year searched and $2.00 for each additional year up to a maximum of $50.00. Fee includes one copy of record if found or certified statement stating record not on file.) Additional copies are $4.00 each when requested at the same time.
Divorce	$5.00	Same as Birth or Death	Records since June 6, 1927. (If the exact date is unknown, the fee is $5.00 for the first year searched and $2.00 for each additional year up to a maximum of $50.00. Fee includes one copy of record if found or certified statement stating record not on file.) Additional copies are $4.00 each when requested at the same time.

Place of event	*Cost of copy*	*Address*	*Remarks*
Georgia			
Birth or Death	$10.00	Georgia Department of Human Resources Vital Records Unit Room 217-H 47 Trinity Avenue, SW Atlanta, GA 30334	State office has had records since January 1919. For earlier records in Atlanta or Savannah, write to County Health Department in county where event occurred. Additional copies of same record ordered at same time are $5.00 each except birth cards, which are $10.00 each. Money order should be made payable to **Vital Records, GA. DHR.** Personal checks are not accepted. To verify current fees, the telephone number is **(404) 656-4900.** This is a **recorded** message.
Marriage	$10.00	Same as Birth or Death	Centralized State records since June 9, 1952. Certified copies are issued at State office. Inquiries about marriages occurring before June 9, 1952, will be forwarded to appropriate Probate Judge in county where license was issued.
	Varies	See remarks	Probate Judge in county where license issued.
Divorce	$2.00 for certification plus $0.50 per page	See remarks	Centralized State records since June 9, 1952. Certified copies are not issued at State office. Inquiries will be forwarded to appropriate Clerk of Superior Court in county where divorce was granted.
		See remarks	Clerk of Superior Court in county where divorce was granted.
Guam			
Birth or Death	$5.00	Office of Vital Statistics Department of Public Health and Social Services Government of Guam P.O. Box 2816 Agana, GU, M.I. 96910	Office has had records since October 16, 1901. Money order should be made payable to **Treasurer of Guam.** Personal checks are not accepted. To verify current fees, the telephone number is **(671) 734-4589.**
Marriage	$5.00	Same as Birth or Death	
Divorce	Varies	Clerk, Superior Court of Guam Agana, GU, M.I. 96910	
Hawaii			
Birth or Death	$2.00	Office of Health Status Monitoring State Department of Health P.O. Box 3378 Honolulu, HI 96801	State office has had records since 1853. Check or money order should be made payable to **State Department of Health.** Personal checks are accepted for the correct amount only. To verify current fees, the telephone number is **(808) 586-4533.** This is a **recorded** message.

Place of event	*Cost of copy*	*Address*	*Remarks*
Marriage	$2.00	Same as Birth or Death	
Divorce	$2.00	Same as Birth or Death	Records since July 1951.
	Varies	See remarks	Circuit Court in county where divorce was granted.
Idaho			
Birth Wallet card Death	$8.00 $8.00 $8.00	Vital Statistics Unit Idaho Department of Health and Welfare 450 West State Street Statehouse Mail Boise, ID 83720-9990	State office has had records since July 1911. For records from 1907 to 1911, write to County Recorder in county where event occurred.
Heirloom Birth	$30.00	Same as Birth or Death	Decorative birth certificates (8½" x 11" and 5" x 7") are suitable for framing. Check or money order should be made payable to **Idaho Vital Statistics.** Personal checks are accepted. To verify current fees, the telephone number is **(208) 334-5988.** This is a **recorded** message.
Marriage	$8.00	Same as Birth or Death	Records since May 1947. Earlier records are with County Recorder in county where license was issued.
	Varies	See remarks	County Recorder in county where license was issued.
Divorce	$8.00	Same as Birth or Death	Records since May 1947. Earlier records are with County Recorder in county where divorce was granted.
	Varies	See remarks	County records in county where divorce was granted.
Illinois			
Birth or Death	$15.00 certified copy $10.00 certification	Division of Vital Records Illinois Department of Public Health 605 West Jefferson Street Springfield, IL 62702-5097	State office has had records since January 1916. For earlier records and for copies of State records since January 1916, write to County Clerk in county where event occurred (county fees vary). The fee for a search of the State files is $10.00. If the record is found, one certification is issued at no additional charge. Additional certifications of the same record ordered at the same time are $2.00 each. The fee for a full certified copy is $15.00. Additional certified copies of the same record ordered at the same time are $2.00 each. Money orders, certified checks, or personal checks should be made payable to **Illinois Department of Public Health.** To verify current fees, the telephone number is **(217) 782-6553.** This will be a **recorded** message.

Place of event	*Cost of copy*	*Address*	*Remarks*
Marriage	$5.00	Same as Birth or Death	Marriage Index since January 1962. Selected items may be verified (fee $5.00). Certified copies are NOT available from State office. For certified copies, write to the County Clerk in county where license was issued.
Divorce	$5.00	Same as Birth or Death	Divorce Index since January 1962. Selected items may be verified (fee $5.00). Certified copies are NOT available from State office. For certified copies, write to the Clerk of Circuit Court in county where divorce was granted.
Indiana			
Birth Death	$6.00 $4.00	Vital Records Section State Department of Health 1330 West Michigan Street P.O. Box 1964 Indianapolis, IN 46206-1964	State office has had birth records since October 1907 and death records since 1900. Additional copies of the same record ordered at the same time are $1.00 each. For earlier records, write to Health Officer in city or county where event occurred. Check or money order should be made payable to **Indiana State Department of Health.** Personal checks are accepted. To verify current fees, the telephone number is **(317) 633-0274.**
Marriage	See remarks	Same as Birth or Death	Marriage index since 1958. Certified copies are not available from State Health Department.
	Varies	See remarks	Clerk of Circuit Court or Clerk of Superior Court in county where license was issued.
Divorce	Varies	See remarks	County Clerk in county where divorce was granted.
Iowa			
Birth or Death	$6.00	Iowa Department of Public Health Vital Records Section Lucas Office Building 321 East 12th Street Des Moines, IA 50319-0075	State office has had records since July 1880. Check or money order should be made payable to **Iowa Department of Public Health.** To verify current fees, the telephone number is **(515) 281-4944.** This will be a **recorded** message.
Marriage	$6.00	Same as Birth or Death	State office has had records since July 1880.
Divorce	See remarks	Same as Birth or Death	Brief statistical record only since 1906. Inquiries will be forwarded to appropriate office. Certified copies are not available from State Health Department.
	$6.00	See remarks	Clerk of District Court in county where divorce was granted.

Place of event	*Cost of copy*	*Address*	*Remarks*
Kansas			
Birth Death	$10.00 $7.00	Office of Vital Statistics Kansas State Department of Health and Environment 900 Jackson Street Topeka, KS 66612-1290	State office has had records since July 1911. For earlier records, write to County Clerk in county where event occurred. Additional copies of same record ordered at same time are $5.00 each. Check or money order should be made payable to **State Registrar of Vital Statistics.** Personal checks are accepted. To verify current fees, the telephone number is **(913) 296-1400.** This will be a **recorded** message.
Marriage	$7.00	Same as Birth or Death	State office has had records since May 1913.
	Varies	See remarks	District Judge in county where license was issued.
Divorce	$7.00	Same as Birth or Death	State office has had records since July 1951.
	Varies	See remarks	Clerk of District Court in county where divorce was granted.
Kentucky			
Birth Death	$7.00 $6.00	Office of Vital Statistics Department for Health Services 275 East Main Street Frankfort, KY 40621	State office has had records since January 1911 and some records for the cities of Louisville, Lexington, Covington, and Newport before then. Check or money order should be made payable to **Kentucky State Treasurer.** Personal checks are accepted. To verify current fees, the telephone number is **(502) 564-4212.**
Marriage	$6.00	Same as Birth or Death	Records since June 1958.
	Varies	See remarks	Clerk of County Court in county where license was issued.
Divorce	$6.00	Same as Birth or Death	Records since June 1958.
	Varies	See remarks	Clerk of Circuit Court in county where decree was issued.
Louisiana			
Birth (long form) Birth (short form) Death	$10.00 $7.00 $5.00	Vital Records Registry Office of Public Health 325 Loyola Avenue New Orleans, LA 70112	State office has had records since July 1914. Birth records for City of New Orleans are available from 1892. Death records are available since 1942. Older birth, death, and marriage records are available through the Louisiana State Archives, P.O. Box 94125, Baton Rouge, LA 70804

Place of event	*Cost of copy*	*Address*	*Remarks*
			Check or money order should be made payable to **Vital Records.** Personal checks are accepted. To verify current fees, the telephone number is **(504) 568-5152.**
Marriage			
Orleans Parish	$5.00	Same as Birth or Death	
Other Parishes	Varies	See remarks	Certified copies are issued by Clerk of Court in parish where license was issued.
Divorce	Varies	See remarks	Clerk of Court in parish where divorce was granted.
Maine			
Birth or Death	$10.00	Office of Vital Statistics Maine Department of Human Services State House Station 11 Augusta, ME 04333-0011	State office has had records since 1892. Records for 1892–1922 are available at the Maine State Archives. For earlier records, write to the municipality where the event occurred. Additional copies of same record ordered at same time are $4.00 each. Check or money order should be made payable to **Treasurer, State of Maine.** Personal checks are accepted. To verify current fees, the telephone number is **(207) 289-3184.**
Marriage	$10.00	Same as Birth or Death	Same as Birth or Death.
Divorce	$10.00	Same as Birth or Death	Same as Birth or Death.
	Varies	See remarks	Clerk of District Court in judicial division where divorce was granted.
Maryland			
Birth or Death	$4.00	Division of Vital Records Department of Health and Mental Hygiene Metro Executive Building 4201 Patterson Avenue P.O. Box 68760 Baltimore, MD 21215-0020	State office has had records since August 1898. Records for City of Baltimore are available from January 1875. Will not do research for genealogical studies. Must apply to State of Maryland Archives, 350 Rowe Blvd., Annapolis, MD 21401, (301) 974-3914. Check or money order should be made payable to **Division of Vital Records.** Personal checks are accepted. To verify current fees, the telephone number is **(301) 225-5988.** This will be a **recorded message.**
Marriage	$4.00	Same as Birth or Death	Records since June 1951.
	Varies	See remarks	Clerk of Circuit Court in county where license was issued or Clerk of Court of Common Pleas of Baltimore City (for licenses issued in City of Baltimore).

Place of event	*Cost of copy*	*Address*	*Remarks*
Divorce Verification only	No fee	Same as Birth or Death	Records since January 1961. Certified copies are not available from State office. Some items may be verified.
	Varies	See remarks	Clerk of Circuit Court in county where divorce was granted.
Massachusetts			
Birth or Death	$6.00 (In person) $11.00 (Mail request) $3.00 (State Archives)	Registry of Vital Records and Statistics 150 Tremont Street, Room B-3 Boston, MA 02111	State office has records since 1901. For earlier records, write to The Massachusetts Archives at Columbia Point, 220 Morrissey Boulevard, Boston, MA 02125 (617) 727-2816. Check or money order should be made payable to **Commonwealth of Massachusetts.** Personal checks are accepted. To verify current fees, the telephone number is **(617) 727-7388.** This will be a **recorded** message.
Marriage	Same as Birth or Death	Same as Birth or Death	Records since 1901.
Divorce	See remarks	Same as Birth or Death	Index only since 1952. Inquirer will be directed where to send request. Certified copies are not available from State office.
	$3.00	See remarks	Registrar of Probate Court in county where divorce was granted.
Michigan			
Birth or Death	$13.00	Office of the State Registrar and Center for Health Statistics Michigan Department of Public Health 3423 North Logan Street Lansing, MI 48909	State office has had records since 1867. Copies of most records since 1867 may also be obtained from County Clerk in county where event occurred. Fees vary from county to county. Detroit records may be obtained from the City of Detroit Health Department for births occurring since 1893 and for deaths since 1897. Check or money order should be made payable to **State of Michigan.** Personal checks are accepted. To verify current fees, the telephone number is **(517) 335-8655.** This will be a **recorded** message.
Marriage	$13.00	Same as Birth or Death	Records since April 1867.
	Varies	See remarks	County Clerk in county where license was issued.
Divorce	$13.00	Same as Birth or Death	Records since 1897.
	Varies	See remarks	County Clerk in county where divorce was granted.

Place of event	*Cost of copy*	*Address*	*Remarks*
Minnesota			
Birth Death	$11.00 $8.00	Minnesota Department of Health Section of Vital Statistics 717 Delaware Street, SE P.O. Box 9441 Minneapolis, MN 55440	State office has had records since January 1908. Copies of earlier records may be obtained from Local Registrar in county where event occurred or from the St. Paul City Health Department if the event occurred in St. Paul. Additional copies of the birth record when ordered at the same time are $5.00 each. Additional copies of the death record when ordered at the same time are $2.00 each. Check or money order should be made payable to **Treasurer, State of Minnesota.** Personal checks are accepted. To verify current fees, the telephone number is **(612) 623-5121.**
Marriage	See remarks	Same as Birth or Death	Statewide index since January 1958. Inquiries will be forwarded to appropriate office. Certified copies are not available from State Department of Health.
	$8.00	See remarks	Local Registrar in county where license was issued. Additional copies of the marriage record when ordered at the same time are $2.00 each.
Divorce	See remarks	Same as Birth or Death	Index since January 1970. Certified copies are not available from State office.
	Varies	See remarks	Local Registrar in county where divorce was granted.
Mississippi			
Birth Birth (short form) Death	$12.00 $7.00 $10.00	Vital Records State Department of Health 2423 North State Street Jackson, MS 39216	State office has had records since 1912. Full copies of birth certificates obtained within 1 year after the event are $7.00. Additional copies of same record ordered at same time are $3.00 each for birth; $2.00 each for death and marriage. For out-of-State requests only bank or postal money orders are accepted and should be made payable to **Mississippi State Department of Health.** Personal checks are accepted only for in-State requests. To verify current fees, the telephone number is **(601) 960-7981.** A **recorded** message may be reached on **(601) 960-7450.**
Marriage	$10.00	Same as Birth or Death	Statistical records only from January 1926 to July 1, 1938, and since January 1942.
	$3.00	See remarks	Circuit Clerk in county where license was issued.

Place of event	*Cost of copy*	*Address*	*Remarks*
Divorce	See remarks	Same as Birth or Death	Records since January 1926. Certified copies are not available from State office. Index search only available at $6.00 for each 5-year increment. Book and page number for county record provided.
	Varies	See remarks	Chancery Clerk in county where divorce was granted.
Missouri			
Birth or Death	$10.00	Missouri Department of Health Bureau of Vital Records 1730 East Elm P.O. Box 570 Jefferson City, MO 65102-0570	State office has had records since January 1910. If event occurred in St. Louis (City), St. Louis County, or Kansas City before 1910, write to the City or County Health Department. Copies of these records are $3.00 each in St. Louis City and $5.00 each in St. Louis County. In Kansas City, $6.00 for first copy and $3.00 for each additional copy ordered at same time. Check or money order should be made payable to **Missouri Department of Health.** Personal checks are accepted. To verify current fees on birth and death records, the telephone number is **(314) 751-6400.**
Marriage	No fee	Same as Birth or Death	Indexes since July 1948. Correspondent will be referred to appropriate Recorder of Deeds in county where license was issued.
	Varies	See remarks	Recorder of Deeds in county where license was issued.
Divorce	No fee	Same as Birth or Death	Indexes since July 1948. Certified copies are not available from State Health Department. Inquiries will be forwarded to appropriate office.
	Varies	See remarks	Clerk of Circuit Court in county where divorce was granted.
Montana			
Birth or Death	$10.00	Bureau of Records and Statistics State Department of Health and Environmental Sciences Helena, MT 59620	State office has had records since late 1907. Check or money order should be made payable to **Montana Department of Health and Environmental Sciences.** Personal checks are accepted. To verify current fees, the telephone number is **(406) 444-2614.**
Marriage	See remarks	Same as Birth or Death	Records since July 1943. Some items may be verified. Inquiries will be forwarded to appropriate office. Apply to county where license was issued if known. Certified copies are not available from State office.
	Varies	See remarks	Clerk of District Court in county where license was issued.

Place of event	*Cost of copy*	*Address*	*Remarks*
Divorce	See remarks	Same as Birth or Death	Records since July 1943. Some items may be verified. Inquiries will be forwarded to appropriate office. Apply to court where divorce was granted if known. Certified copies are not available from State office.
	Varies	See remarks	Clerk of District Court in county where divorce was granted.
Nebraska			
Birth Death	$8.00 $7.00	Bureau of Vital Statistics State Department of Health 301 Centennial Mall South P.O. Box 95007 Lincoln, NE 68509-5007	State office has had records since late 1904. If birth occurred before then, write the State office for information. Check or money order should be made payable to **Bureau of Vital Statistics.** Personal checks are accepted. To verify current fees, the telephone number is **(402) 471-2871.** This is a **recorded** message.
Marriage	$7.00	Same as Birth or Death	Records since January 1909.
	Varies	See remarks	County Court in county where license was issued.
Divorce	$7.00	Same as Birth or Death	Records since January 1909.
	Varies	See remarks	Clerk of District Court in county where divorce was granted.
Nevada			
Birth Death	$11.00 $8.00	Division of Health-Vital Statistics Capitol Complex 505 East King Street #102 Carson City, NV 89710	State office has records since July 1911. For earlier records, write to County Recorder in county where event occurred. Check or money order should be made payable to **Section of Vital Statistics.** Personal checks are accepted. To verify current fees, the telephone number is **(702) 687-4480.**
Marriage	See remarks	Same as Birth or Death	Indexes since January 1968. Certified copies are not available from State Health Department. Inquiries will be forwarded to appropriate office.
	Varies	See remarks	County Recorder in county where license was issued.
Divorce	See remarks	Same as Birth or Death	Indexes since January 1968. Certified copies are not available from State Health Department. Inquiries will be forwarded to appropriate office.
	Varies	See remarks	County Clerk in county where divorce was granted.

Place of event	*Cost of copy*	*Address*	*Remarks*
New Hampshire			
Birth or Death	$10.00	Bureau of Vital Records Health and Welfare Building 6 Hazen Drive Concord, NH 03301	State office has had records since 1640. Copies of records may be obtained from State office or from City or Town Clerk in place where event occurred. Additional copies ordered at the same time are $6.00 each. Check or money order should be made payable to **Treasurer, State of New Hampshire.** Personal checks are accepted. To verify current fees, the telephone number is **(603) 271-4654.** This will be a **recorded** message.
Marriage	$10.00	Same as Birth or Death	Records since 1640.
	$10.00	See remarks	Town Clerk in town where license was issued.
Divorce	$10.00	Same as Birth or Death	Records since 1808.
	Varies	See remarks	Clerk of Superior Court where divorce was granted.
New Jersey			
Birth or Death	$4.00	State Department of Health Bureau of Vital Statistics South Warren and Market Streets CN 370 Trenton, NJ 08625	State office has had records since June 1878. Additional copies of same record ordered at same time are $2.00 each. If the exact date is unknown, the fee is an additional $1.00 per year searched.
		Archives and History Bureau State Library Division State Department of Education Trenton, NJ 08625	For records from May 1848 to May 1878. Check or money order should be made payable to **New Jersey State Department of Health.** Personal checks are accepted. To verify current fees, the telephone number is **(609) 292-4087.** This will be a **recorded** message.
Marriage	$4.00	Same as Birth or Death	If the exact date is unknown, the fee is an additional $1.00 per year searched.
	$2.00	Archives and History Bureau State Library Division State Department of Education Trenton, NJ 08625	For records from May 1848 to May 1878.
Divorce	$10.00	Public Information Center CN 967 Trenton, NJ 08625	The fee is for a certified Blue Seal copy. Make check payable to **Clerk of the Superior Court.**

Place of event	*Cost of copy*	*Address*	*Remarks*
New Mexico			
Birth Death	$10.00 $5.00	Vital Statistics New Mexico Health Services Division P.O. Box 26110 Santa Fe, NM 87502	State office has had records since 1920 and delayed records since 1880. Check or money order should be made payable to **Vital Statistics.** Personal checks are accepted. To verify current fees, the telephone number is **(505) 827-2338.** This will be a **recorded** message.
Marriage	Varies	See remarks	County Clerk in county where license was issued.
Divorce	Varies	See remarks	Clerk of Superior Court where divorce was granted.
New York (except New York City)			
Birth or Death	$15.00	Vital Records Section State Department of Health Empire State Plaza Tower Building Albany, NY 12237-0023	State office has had records since 1880. For records before 1914 in Albany, Buffalo, and Yonkers, or before 1880 in any other city, write to Registrar of Vital Statistics in city where event occurred. For the rest of the State, except New York City, write to State office. Check or money order should be made payable to **New York State Department of Health.** Personal checks are accepted. To verify current fees, the telephone number is **(518) 474-3075.** This will be a **recorded message.**
Marriage	$5.00	Same as Birth or Death	Records from 1880 to present.
	$5.00	See remarks	For records from 1880–1907 and licenses issued in the cities of Albany, Buffalo, or Yonkers, apply to—Albany: City Clerk, City Hall, Albany, NY 12207; Buffalo: City Clerk, City Hall, Buffalo, NY 14202; Yonkers: Registrar of Vital Statistics, Health Center Building, Yonkers, NY 10701.
Divorce	$15.00	Same as Birth or Death	Records since January 1963.
	Varies	See remarks	County Clerk in county where divorce was granted.
New York City			
Birth or Death	$15.00	Division of Vital Records New York City Department of Health P.O. Box 3776 New York, NY 10007	Office has birth records since 1910 and death records since 1949 for those occuring in the Boroughs of Manhattan, Brooklyn, Bronx, Queens, and Staten Island. For birth records prior to 1910 and death records prior to 1949, write to Archives Division, Department of Records and Information Services, 31 Chambers Street, New York, NY 10007.

Place of event	*Cost of copy*	*Address*	*Remarks*
			Certified check or money order should be made payable to **New York City Department of Health.** To verify current fees, the telephone numbers are **(212) 619-4530** or **(212) 693-4637.** These are **recorded** messages.
Marriage			
Bronx Borough	$10.00	City Clerk's Office 1780 Grand Concourse Bronx, NY 10457	Records from 1847 to 1865. Archives Division, Department of Records and Information Services, 31 Chambers Street, New York, NY 10007, except Brooklyn records for this period which are filed with County Clerk's Office, Kings County, Supreme Court Building, Brooklyn, NY 11201. Additional copies of same record ordered at same time are $5.00 each. Records from 1866 to 1907. City Clerk's Office in borough where marriage was performed. Records from 1908 to May 12, 1943. New York City residents write to City Clerk's Office in the borough of bride's residence; nonresidents write to City Clerk's Office in borough where license was obtained. Records since May 13, 1943. City Clerk's Office in borough where license was issued.
Brooklyn Borough	$10.00	City Clerk's Office Municipal Building Brooklyn, NY 11201	
Manhattan Borough	$10.00	City Clerk's Office Municipal Building New York, NY 10007	
Queens Borough	$10.00	City Clerk's Office 120-55 Queens Boulevard Kew Gardens, NY 11424	
Staten Island Borough (no longer called Richmond)	$10.00	City Clerk's Office Staten Island Borough Hall Staten Island, NY 10301	
Divorce			See New York State
North Carolina			
Birth or Death	$10.00	Department of Environment, Health, and Natural Resources Division of Epidemiology Vital Records Section 225 North McDowell Street P.O. Box 29537 Raleigh, NC 27626-0537	State office has had birth records since October 1913 and death records since January 1, 1946. Death records from 1913 through 1945 are available from Archives and Records Section, 109 East Jones Street, Raleigh, NC 27611. Additional copies of the same record ordered at the same time are $5.00 each. Check or money order should be made payable to **Vital Records Section.** Personal checks are accepted. To verify current fees, the telephone number is **(919) 733-3526.**
Marriage	$10.00	Same as Birth or Death	Records since January 1962.
	$3.00	See remarks	Registrar of Deeds in county where marriage was performed.
Divorce	$10.00	Same as Birth or Death	Records since January 1958.
	Varies	See remarks	Clerk of Superior Court where divorce was granted.

Place of event	*Cost of copy*	*Address*	*Remarks*
North Dakota			
Birth Death	$7.00 $5.00	Division of Vital Records State Capitol 600 East Boulevard Avenue Bismarck, ND 58505	State office has had some records since July 1893. Years from 1894 to 1920 are incomplete. Additional copies of birth records are $4.00 each; death records are $2.00 each. Money order should be made payable to **Division of Vital Records.** To verify current fees, the telephone number is **(701) 224-2360.**
Marriage	$5.00	Same as Birth or Death	Records since July 1925. Requests for earlier records will be forwarded to appropriate office. Additional copies are $2.00 each.
	Varies	See remarks	County Judge in county where license was issued.
Divorce	See remarks	Same as Birth or Death	Index of records since July 1949. Some items may be verified. Certified copies are not available from State Health Department. Inquiries will be forwarded to appropriate office.
	Varies	See remarks	Clerk of District Court in county where divorce was granted.
Northern Mariana Islands			
Birth or Death	$3.00	Superior Court Vital Records Section P.O. Box 307 Saipan, MP 96950	Office has had records for birth and death since 1945 and records for marriage since 1954. Years from 1945 to 1950 are incomplete.
Marriage	$3.00	Same as Birth or Death	Money order or Bank Cashiers Check should be made payable to **Superior Court.** Personal checks are not accepted. To verify current fees, the telephone number is **(670) 234-6401, ext. 15.**
Divorce	$0.50 per page for Divorce Decree plus $2.50 for certification	Same as Birth or Death	Office has had records for divorce since 1960.

Place of event	*Cost of copy*	*Address*	*Remarks*
Ohio			
Birth or Death	$7.00	Bureau of Vital Statistics Ohio Department of Health P.O. Box 15098 Columbus, OH 43215-0098	State office has had birth records since December 20, 1908. For earlier birth and death records, write to the Probate Court in the county where the event occurred. The State Office has death records which occurred after December 31, 1936. Death records which occurred December 20, 1908–December 31, 1936, can be obtained from the Ohio Historical Society, Archives Library Division, 1985 Velma Avenue, Columbus, OH 43211-2497. Check or money order should be made payable to **State Treasury.** Personal checks are accepted. To verify current fees, the telephone number is **(614) 466-2531.** This will be a **recorded** message.
Marriage	See remarks	Same as Birth or Death	Records since September 1949. All items may be verified. Certified copies are not available from State Health Department. Inquiries will be referred to appropriate office.
	Varies	See remarks	Probate Judge in county where license was issued.
Divorce	See remarks	Same as Birth or Death	Records since September 1949. All items may be verified. Certified copies are not available from State Health Department. Inquiries will be forwarded to appropriate office.
	Varies	See remarks	Clerk of Court of Common Pleas in county where divorce was granted.
Oklahoma			
Birth or Death	$5.00	Vital Records Section State Department of Health 1000 Northeast 10th Street P.O. Box 53551 Oklahoma City, OK 73152	State office has had records since October 1908. Check or money order should be made payable to **Oklahoma State Department of Health.** Personal checks are accepted. To verify current fees, the telephone number is **(405) 271-4040.**
Marriage	Varies	See remarks	Clerk of Court in county where license was issued.
Divorce	Varies	See remarks	Clerk of Court in county where divorce was granted.
Oregon			
Birth or Death	$13.00	Oregon Health Division Vital Statistics Section P.O. Box 14050 Portland, OR 97214-0050	State office has had records since January 1903. Some earlier records for the City of Portland since approximately 1880 are available from the Oregon State Archives, 1005 Broadway, NE, Salem, OR 97310.

Place of event	*Cost of copy*	*Address*	*Remarks*
Heirloom Birth	$28.00	Same as Birth or Death	Presentation style calligraphy certificate suitable for framing. Money order should be made payable to **Oregon Health Division.** To verify current fees, the telephone number is **(503) 731-4095.** This will be a **recorded** message.
Marriage	$13.00	Same as Birth or Death	Records since January 1906.
	Varies	See remarks	County Clerk in county where license was issued. County Clerks also have some records before 1906.
Divorce	$13.00	Same as Birth or Death	Records since 1925.
	Varies	See remarks	County Circuit Court Clerk in county where divorce was granted. County Clerks also have some records before 1925.
Pennsylvania			
Birth Wallet card Death	$4.00 $5.00 $3.00	Division of Vital Records State Department of Health Central Building 101 South Mercer Street P.O. Box 1528 New Castle, PA 16103	State office has had records since January 1906. For earlier records, write to Register of Wills, Orphans Court, in county seat of county where event occurred. Persons born in Pittsburgh from 1870 to 1905 or in Allegheny City, now part of Pittsburgh, from 1882 to 1905 should write to Office of Biostatistics, Pittsburgh Health Department, City-County Building, Pittsburgh, PA 15219. For events occurring in City of Philadelphia from 1860 to 1915, write to Vital Statistics, Philadelphia Department of Public Health, 401 North Broad Street, Room 942, Philadelphia, PA 19108. Check or money order should be made payable to **Division of Vital Records.** Personal checks are accepted. To verify current fees, the telephone number is **(412) 656-3100.**
Marriage	Varies	See remarks	Make application to the Marriage License Clerks, County Court House, in county where license was issued.
Divorce	Varies	See remarks	Make application to the Prothonotary, Court House, in county seat of county where divorce was granted.

Place of event	*Cost of copy*	*Address*	*Remarks*
Puerto Rico			
Birth or Death	$2.00	Department of Health Demographic Registry P.O. Box 11854 Fernández Juncos Station San Juan, PR 00910	Central office has had records since July 22, 1931. Copies of earlier records may be obtained by writing to local Registrar (Registrador Demografico) in municipality where event occurred or by writing to central office for information. Money order should be made payable to **Secretary of the Treasury.** Personal checks are not accepted. To verify current fees, the telephone number is **(809) 728-7980.**
Marriage	$2.00	Same as Birth or Death	
Divorce	$2.00	Same as Birth or Death	
		See remarks	Superior Court where divorce was granted.
Rhode Island			
Birth or Death	$10.00	Division of Vital Records Rhode Island Department of Health Room 101, Cannon Building 3 Capitol Hill Providence, RI 02908-5097	State office has had records since 1853. For earlier records, write to Town Clerk in town where event occurred. Additional copies of the same record ordered at the same time are $5.00 each. Money order should be made payable to **General Treasurer, State of Rhode Island.** To verify current fees, the telephone number is **(401) 277-2811.** This will be a **recorded** message.
Marriage	$10.00	Same as Birth or Death	Records since January 1853. Additional copies of the same record ordered at the same time are $5.00 each.
Divorce	$1.00	Clerk of Family Court 1 Dorrance Plaza Providence, RI 02903	
South Carolina			
Birth or Death	$8.00	Office of Vital Records and Public Health Statistics South Carolina Department of Health and Environmental Control 2600 Bull Street Columbia, SC 29201	State office has had records since January 1915. City of Charleston births from 1877 and deaths from 1821 are on file at Charleston County Health Department. Ledger entries of Florence City births and deaths from 1895 to 1914 are on file at Florence County Health Department. Ledger entries of Newberry City births and deaths from the late 1800's are on file at Newberry County Health Department. These are the only early records obtainable. Additional copies of the same birth records ordered at the same time of certification are $3.00. Check or money order should be made payable to **Department of Health and Environmental Control.** Personal checks are accepted. To verify current fees, the telephone number is **(803) 734-4830.**

Place of event	*Cost of copy*	*Address*	*Remarks*
Marriage	$8.00	Same as Birth or Death	Records since July 1950.
	Varies	See remarks	Records since July 1911. Probate Judge in county where license was issued.
Divorce	$8.00	Same as Birth or Death	Records since July 1962.
	Varies	See remarks	Records since April 1949. Clerk of county where petition was filed.
South Dakota			
Birth or Death	$5.00	State Department of Health Center for Health Policy and Statistics Vital Records 523 E. Capitol Pierre, SD 57501	State office has had records since July 1905 and access to other records for some events that occurred before then. Money order should be made payable to **South Dakota Department of Health.** Personal checks are accepted. To verify current fees, the telephone number is **(605) 773-3355.** This will be a **recorded** message.
Marriage	$5.00	Same as Birth or Death	Records since July 1905.
		See remarks	County Treasury in county where license was issued.
Divorce	$5.00	Same as Birth or Death	Records since July 1905.
	Varies	See remarks	Clerk of Court in county where divorce was granted.
Tennessee			
Birth (long form) Birth (short form) Death	$10.00 $5.00 $5.00	Tennessee Vital Records Department of Health Cordell Hull Building Nashville, TN 37247-0350	State office has had birth records for entire State since January 1914, for Nashville since June 1881, for Knoxville since July 1881, and for Chattanooga since January 1882. State office has had death records for entire State since January 1914, for Nashville since July 1874, for Knoxville since July 1887, and for Chattanooga since March 6, 1872. Birth and death enumeration records by school district are available for July 1908 through June 1912. Vital Records Office keeps death records for 50 years; older records are maintained by Tennessee Library and Archives, Archives Division, Nashville, TN 37243-0312. For Memphis birth records from April 1874 through December 1887 and November 1898 to January 1, 1914, and for Memphis death records from May 1848 to January 1, 1914, write to Memphis-Shelby County Health Department, Division of Vital Records, Memphis, TN 38105. Additional copies of the same birth, marriage, or divorce record, requested at the same time, are $2.00 each.

Place of event	*Cost of copy*	*Address*	*Remarks*
			Check or money order should be made payable to **Tennessee Vital Records.** Personal checks are accepted. To verify current fees, the telephone number is **(615) 741-1763.**
Marriage	$10.00	Same as Birth or Death	Records since July 1945.
	Varies	See remarks	County Clerk in county where license was issued.
Divorce	$10.00	Same as Birth or Death	Records since July 1945.
	Varies	See remarks	Clerk of Court in county where divorce was granted.
Texas			
Birth Death	$11.00 $9.00	Bureau of Vital Statistics Texas Department of Health 1100 West 49th Street Austin, TX 78756-3191	State office has had records since 1903. Additional copies of same death record ordered at same time are $3.00 each. Check or money order should be made payable to **Texas Department of Health.** Personal checks are accepted. To verify current fees, the telephone number is **(512) 458-7111.** This is a **recorded** message.
Marriage	See remarks		Records since January 1966. Certified copies are not available from State office. Fee for search and verification of essential facts of marriage is $9.00 each.
	Varies	See remarks	County Clerk in county where license was issued.
Divorce	See remarks		Records since January 1968. Certified copies are not available from State office. Fee for search and verification of essential facts of divorce is $9.00 each.
	Varies	See remarks	Clerk of District Court in county where divorce was granted.
Utah			
Birth Death	$12.00 $9.00	Bureau of Vital Records Utah Department of Health 288 North 1460 West P.O. Box 16700 Salt Lake City, UT 84116-0700	State office has had records since 1905. If event occurred from 1890 to 1904 in Salt Lake City or Ogden, write to City Board of Health. For records elsewhere in the State from 1898 to 1904, write to County Clerk in county where event occurred. Additional copies, when requested at the same time, are $5.00 each. Check or money order should be made payable to **Utah Department of Health.** Personal checks are accepted. To verify current fees, the telephone number is **(801) 538-6105.** This is a **recorded** message.

Place of event	*Cost of copy*	*Address*	*Remarks*
Marriage	$9.00	Same as Birth or Death	State office has had records since 1978. Only short form certified copies are available.
	Varies	See remarks	County Clerk in county where license was issued.
Divorce	$9.00	Same as Birth or Death	State office has had records since 1978. Only short form certified copies are available.
	Varies	See remarks	County Clerk in county where divorce was granted.
Vermont			
Birth or Death	$5.00	Vermont Department of Health Vital Records Section Box 70 60 Main Street Burlington, VT 05402	State office has had records since 1981. Check or money order should be made payable to **Vermont Department of Health.** Personal checks are accepted. To verify current fees, the telephone number is **(802) 863-7275.**
Birth, Death, or Marriage	$5.00	Division of Public Records US Route 2-Middlesex 133 State Street Montpelier, VT 05633	Records prior to 1981. To verify current fees, the telephone number is **(802) 828-3286.**
	$5.00	See remarks	Town or City Clerk of town where birth or death occurred.
Marriage	$5.00	Same as Birth or Death	State office has had records since 1981.
	$5.00	See remarks	Town Clerk in town where license was issued.
Divorce	$5.00	Same as Birth or Death	State office has had records since 1981.
	$5.00	See remarks	Town Clerk in town where divorce was granted.
Virginia			
Birth or Death	$5.00	Division of Vital Records State Health Department P.O. Box 1000 Richmond, VA 23208-1000	State office has had records from January 1853 to December 1896 and since June 14, 1912. Only the cities of Hampton, Newport News, Norfolk, and Richmond have records between 1896 and June 14, 1912. Check or money order should be made payable to **State Health Department.** Personal checks are accepted. To verify current fees, the telephone number is **(804) 786-6228.** This is a **recorded** message.
Marriage	$5.00	Same as Birth or Death	Records since January 1853.
	Varies	See remarks	Clerk of Court in county or city where license was issued.
Divorce	$5.00	Same as Birth or Death	Records since January 1918.
	Varies	See remarks	Clerk of Court in county or city where divorce was granted.

Place of event	*Cost of copy*	*Address*	*Remarks*
Virgin Islands			
Birth or Death St. Croix	$10.00	Registrar of Vital Statistics Charles Harwood Memorial Hospital Christiansted St. Croix, VI 00820	Registrar has had birth and death records on file since 1840.
St. Thomas and St. John	$10.00	Registrar of Vital Statistics Knud Hansen Complex Hospital Ground Charlotte Amalie St. Thomas, VI 00802	Registrar has had birth records on file since July 1906 and death records since January 1906. Money order for birth and death records should be made payable to **Bureau of Vital Statistics.** Personal checks are not accepted. To verify current fees, the telephone number is **(809) 774-9000 ext. 4621 or 4623.**
Marriage	See remarks	Bureau of Vital Records and Statistical Services Virgin Islands Department of Health Charlotte Amalie St. Thomas, VI 00801	Certified copies are not available. Inquiries will be forwarded to the appropriate office.
St. Croix	$2.00	Chief Deputy Clerk Family Division Territorial Court of the Virgin Islands P.O. Box 929 Christiansted St. Croix, VI 00820	
St. Thomas and St. John	$2.00	Clerk of the Territorial Court of the Virgin Islands Family Division P.O. Box 70 Charlotte Amalie St. Croix, VI 00801	
Divorce	See remarks	Same as Marriage	Certified copies are not available. Inquiries will be forwarded to appropriate office.
St. Croix	$5.00	Same as Marriage	Money order for marriage and divorce records should be made payable to **Territorial Court of the Virgin Islands.** Personal checks are not accepted.
St. Thomas and St. John	$5.00	Same as Marriage	
Washington			
Birth or Death	$11.00	Department of Health Center for Health Statistics P.O. Box 9709 Olympia, WA 98507-9709	State office has had records since July 1907. For King, Pierce, and Spokane counties copies may also be obtained from county health departments. County Auditor of county of birth has registered births prior to July 1907.

Place of event	*Cost of copy*	*Address*	*Remarks*
			Check or money order should be made payable to **Department of Health.** To verify current fees, the telephone number is **(206) 753-5936.**
Marriage	$11.00	Same as Birth or Death	State office has had records since January 1968.
	$2.00	See remarks	County Auditor in county where license was issued.
Divorce	$11.00	Same as Birth or Death	State office has had records since January 1968.
	Varies	See remarks	County Clerk in county where divorce was granted.
West Virginia			
Birth or Death	$5.00	Vital Registration Office Division of Health State Capitol Complex Bldg. 3 Charleston, WV 25305	State office has had records since January 1917. For earlier records, write to Clerk of County Court in county where event occurred.
			Check or money order should be made payable to **Vital Registration.** Personal checks are accepted. To verify current fees, the telephone number is **(304) 558-2931.**
Marriage	$5.00	Same as Birth or Death	Records since 1921. Certified copies available from 1964.
	Varies	See remarks	County Clerk in county where license was issued.
Divorce	See remarks	Same as Birth or Death	Index since 1968. Some items may be verified (fee $5.00). Certified copies are not available from State office.
	Varies	See remarks	Clerk of Circuit Court, Chancery Side, in county where divorce was granted.
Wisconsin			
Birth Death	$10.00 $7.00	Vital Records 1 West Wilson Street P.O. Box 309 Madison, WI 53701	State Office has scattered records earlier than 1857. Records before October 1, 1907, are very incomplete. Additional copies of the same record ordered at the same time are $2.00 each.
			Check or money order should be made payable to **Center for Health Statistics.** Personal checks are accepted. To verify current fees, the telephone number is **(608) 266-1371.** This will be a **recorded** message.
Marriage	$7.00	Same as Birth or Death	Records since April 1836. Records before October 1, 1907, are incomplete. Additional copies of the same record ordered at the same time are $2.00 each.
Divorce	$7.00	Same as Birth or Death	Records since October 1907. Additional copies of the same record ordered at the same time are $2.00 each.

Place of event	*Cost of copy*	*Address*	*Remarks*
Wyoming			
Birth Death	$8.00 $6.00	Vital Records Services Hathaway Building Cheyenne, WY 82002	State office has had records since July 1909. Money order should be made payable to **Vital Records Services.** To verify current fees, the telephone number is **(307) 777-7591.**
Marriage	$8.00	Same as Birth or Death	Records since May 1941.
	Varies	See remarks	County Clerk in county where license was issued.
Divorce	$8.00	Same as Birth or Death	Records since May 1941.
	Varies	See remarks	Clerk of District Court where divorce took place.

Foreign or high-seas births and deaths and certificates of citizenship

Birth records of persons born in foreign countries who are U.S. citizens at birth

The birth of a child abroad to U.S. citizen parent(s) should be reported to the nearest U.S. Consulate or Embassy as soon after the birth as possible. To do this, the child's parent or legal guardian should file an Application for Consular Report of Birth Abroad of a Citizen of the United States of America (Form FS-579/SS-5). This form may also be used to apply for a Social Security Number for the child. A $10.00 fee is charged for reporting the birth.

The application must be supported by evidence to establish the child's U.S. citizenship. Usually, the following documents are needed:

1. the child's foreign birth certificate;
2. evidence of the U.S. citizenship of the parent(s) such as a certified copy of a birth certificate, U.S. passport, or Certificate of Naturalization or Citizenship;
3. evidence of the parents' marriage, if applicable; and
4. affidavit(s) of the physical presence of the parent(s) in the United States.

Each document should be certified as a true copy of the original by the registrar of the office that issued the document. Other documents may be needed in some cases. Contact the nearest U.S. Embassy or Consulate for details on what evidence is needed.

When the application is approved, a Consular Report of Birth Abroad of a Citizen of the United States of America (Form FS-240) is given to the applicant. This document, known as the Consular Report of Birth, has the same value as proof of citizenship as the Certificate of Citizenship issued by the Immigration and Naturalization Service.

A Consular Report of Birth can be prepared only at a U.S. Embassy or Consulate overseas, and only if the person who is the subject of the report is under 18 years of age when the application is made. A person residing abroad who is now 18 years of age or over, and whose claim to U.S. citizenship has never been documented, should contact the nearest U.S. Embassy or Consulate for assistance in registering as a U.S. citizen.

As of November 1, 1990, the U.S. Department of State no longer issues multiple copies of the Consular Report of Birth. However, a replacement Consular Report of Birth may be issued if the original document is lost or mutilated. The U.S. Department of State also issues certified copies of the Certification of Report of Birth (DS-1350), which contains the same information as on the Consular Report of Birth. The DS-1350 serves most needs and can be issued in multiple copies. Documents are issued only to the subject of the Consular Report of Birth, the subject's parents or legal guardian, or a person who submits written authorization from the subject.

To request copies of the DS-1350 or a replacement FS-240, write to Passport Services, Correspondence Branch, U.S. Department of State, 1425 K St. NW, Room 386, Washington, DC 20522-1705. Please include the following items:

1. the full name of the child at birth (and any adoptive name);
2. the date and place of birth;
3. the names of the parents;
4. the serial number of the FS-240 (if the FS-240 was issued after November 1, 1990);
5. any available passport information;
6. the signature of the requestor and the requestor's relationship to the subject;
7. a check or money order for $10.00 per document requested, made payable to the U.S. Department of State; and
8. if applying for a replacement FS-240, a notarized affidavit by the subject, parent, or legal representative that states the name, date and place of birth of the subject, and the whereabouts of the original FS-240.

To obtain a Consular Report of Birth in a new name, send a written request and fees as noted above, the original (or replacement) Consular Report of Birth, or if not available, a notarized affidavit about its whereabouts. Also, send a certified copy of the court order or final adoption decree which identifies the child and shows the change of name with the request. If the name has been changed informally, submit public records and affidavits that show the change of name.

Birth records of alien children adopted by U.S. citizens

Birth certifications for alien children adopted by U.S. citizens and lawfully admitted to the United States may be

obtained from the Immigration and Naturalization Service (INS) if the birth information is on file.

Certification may be issued for children under 21 years of age who were born in a foreign country. Requests must be submitted on INS Form G-641, which can be obtained from any INS office. (Address can be found in a telephone directory.) For Certification of Birth Data (INS Form G-350), a $15.00 search fee, paid by check or money order, should accompany INS Form G-641.

Certification can be issued in the new name of an adopted or legitimated child after proof of an adoption or legitimation is submitted to INS. Because it may be issued for a child who has not yet become a U.S. citizen, this certification (Form G-350) is not proof of U.S. nationality.

Certificate of citizenship

Persons who were born abroad and later naturalized as U.S. citizens or who were born in a foreign country to a U.S. citizen (parent or parents) may apply for a certificate of citizenship pursuant to the provisions of Section 341 of the Immigration and Nationality Act. Application can be made for this document in the United States at the nearest office of the Immigration and Naturalization Service (INS). The INS will issue a certification of citizenship for the person if proof of citizenship is submitted and the person is within the United States. The decision whether to apply for a certificate of citizenship is optional; its possession is not mandatory because a valid U.S. passport or a Form FS-240 has the same evidentiary status.

Death records of U.S. citizens who die in foreign countries

The death of a U.S. citizen in a foreign country may be reported to the nearest U.S. consular office. If reported, and a copy of the local death certificate and evidence of U.S. citizenship are presented, the consul prepares the official "Report of the Death of an American Citizen Abroad" (Form OF-180). A copy of the Report of Death is then filed permanently in the U.S. Department of State (see exceptions below).

To obtain a copy of a report filed in 1960 or after, write to Passport Services, Correspondence Branch, U.S. Department of State, Washington, DC 20522-1705. The fee for a copy is $10.00. Fee may be subject to change.

Reports of Death filed before 1960 are maintained by the National Archives and Records Service, Diplomatic Records Branch, Washington, DC 20408. Requests for such records should be sent directly to that office.

Reports of deaths of persons serving in the Armed Forces of the United States (Army, Navy, Marines, Air Force, or Coast Guard) or civilian employees of the Department of Defense are not maintained by the U.S. Department of State. In these cases, requests for copies of records should be sent to the National Personnel Records Center (Military Personnel Records), 9700 Page Ave., St. Louis, Missouri 63132-5100.

Records of birth and death occurring on vessels or aircraft on the high seas

When a birth or death occurs on the high seas, whether in an aircraft or on a vessel, the record is usually filed at the next port of call.

1. If the vessel or aircraft docked or landed at a foreign port, requests for copies of the record may be made to the U.S. Department of State, Washington, DC 20522-1705.
2. If the first port of entry was in the United States, write to the registration authority in the city where the vessel or aircraft docked or landed in the United States.
3. If the vessel was of U.S. registry, contact the local authorities at the port of entry and/or search the vessel logs at the U.S. Coast Guard Facility at the vessel's final port of call for that voyage.

Records maintained by foreign countries

Most, but not all, foreign countries record births and deaths. It is not possible to list in this publication all foreign vital records offices, the charges they make for copies of records, or the information they may require to locate a record. However, most foreign countries will provide certifications of births and deaths occurring within their boundaries.

Persons who need a copy of a foreign birth or death record should contact the Embassy or the nearest Consulate in the U.S. of the country in which the death occurred. Addresses and telephone numbers for these offices are listed in the U.S. Department of State Publication 7846, "Foreign Consular Offices in the United States," which is available in many local libraries. Copies of this publication may also be purchased from the U.S. Government Printing Office, Washington, DC 20402.

If the Embassy or Consulate is unable to provide assistance, U.S. citizens may obtain assistance by writing to the Office of Overseas Citizens Services, U.S. Department of State, Washington, DC 20520-4818. Aliens residing in the United States may be able to obtain assistance through the Embassy or Consulate of their country of nationality.

Fax completed request to the participating agency where the birth occurred.

Birth Certificate Request

Credit Card _____ Expires _____

Certificate Holder's Name _____
(first) (middle) (last)

Father's Name _____
(first) (middle) (last)

Mother's Maiden Name _____
(first) (middle) (last)

Birth Date _____ County/City _____

Hospital _____ Sex ❑ Male ❑ Female

Relationship ❑ Self ❑ Mother ❑ Father ❑ Other _____

Reason _____

Ship Method ❑ Overnight Courier ❑ Regular Mail

Ship To Name _____

Address _____

City _____ State _____ Zip _____

(photo ID)

Required in Arizona, Idaho, Indiana, New York

Phone _____

_____
Signature Date

VitalChek® Network Inc. - For further information call toll free 1-800-255-2414.

VCN 3/96

AGENCY LISTINGS BY STATE-COUNTY/CITY

ALABAMA All state locations 334-613-5418
ALABAMA FAX ONLY 334-240-3315

ALASKA All state locations 907-465-3392

ARIZONA All state locations General Info .. 602-255-3260
ARIZONA FAX ONLY (photo I.D. required) .. 602-249-3040

ARKANSAS All state locations 501-661-2726
ARKANSAS FAX ONLY 501-663-2832

CALIFORNIA All state locations FAX ONLY .. 800-858-5553
ALAMEDA/OAKLAND 510-272-5069
ALAMEDA/OAKLAND FAX ONLY 510-268-1172
BUTTE/OROVILLE 916-538-7635
CITY OF BERKELEY 510-644-6950
CONTRA COSTA/MARTINEZ 510-646-2366
FRESNO/FRESNO 209-488-3476
HUMBOLDT/EUREKA 707-445-7382
IMPERIAL/EL CENTRO 619-339-4272
KERN/BAKERSFIELD 805-861-2181
LOS ANGELES/LA 310-462-2137
LOS ANGELES/LA FAX ONLY 310-964-3469
MARIN/SAN RAFAEL 415-499-6094
MENDOCINO/UKIAH 707-463-4376
MERCED/MERCED 209-385-7627
MONTEREY/SALINAS 408-755-5841
NAPA/NAPA 707-253-4246
*NEVADA/NEVADA CITY 916-265-1221
ORANGE COUNTY/SANTA ANA 714-834-2872
ORANGE COUNTY/SANTA ANA FAX ONLY .. 714-972-3950
PLACER/AUBURN 916-889-7963
*RIVERSIDE/RIVERSIDE 909-275-1957
SACRAMENTO/SACRAMENTO 916-440-6334
SAN BERNARDINO/SAN BERNARDINO 909-387-8314
SAN DIEGO/SAN DIEGO 619-237-0502
SAN JOAQUIN/STOCKTON 209-468-8075
SAN LUIS OBISPO 805-781-5068
SAN MATEO/REDWOOD CITY 415-363-4713
SANTA BARBARA/SANTA BARBARA 805-568-2250
SANTA CLARA/SAN JOSE 408-299-2481
SANTA CLARA/SAN JOSE FAX ONLY 408-280-6611
SANTA CRUZ/SANTA CRUZ 408-454-2800
SOLANO/FAIRFIELD 707-421-6294
SONOMA/SANTA ROSA 707-527-2645
TRINITY/WEAVERVILLE 916-623-1215
VENTURA/VENTURA 805-654-2295
YOLO/WOODLAND 916-666-8130

COLORADO All state locations 303-692-2224
COLORADO FAX ONLY 800-423-1108
BOULDER/BOULDER General Info 303-441-1158
DENVER/DENVER 303-436-7352
EL PASO/COLORADO SPRINGS 719-520-7475
LARIMER/FT. COLLINS 970-498-7610
MESA 970-248-6900
TRI-COUNTIES 303-220-9200
JEFFERSON/LAKEWOOD 303-239-7093

DELAWARE All state locations 302-739-4721

FLORIDA All state locations 904-359-6911
FLORIDA FAX ONLY 904-359-6993
ALACHUA/GAINESVILLE 352-955-2356
BREVARD/ROCKLEDGE 407-690-3435
BROWARD/FT. LAUDERDALE 954-467-4413
COLLIER/NAPLES 941-774-8205
DADE/MIAMI 305-324-2489
DUVAL/JACKSONVILLE 904-630-3330
ESCAMBIA/PENSACOLA 904-435-6543
HILLSBORO/TAMPA 813-272-6200
LEON/TALLAHASEE 904-922-6377
OKALOOSA/FT. WALTON 904-833-9255
PALM BEACH/WEST PALM BEACH 407-653-2350
PINELLAS/ST. PETERSBURG 813-893-2483
SARASOTA/SARASOTA 941-316-1043
ST. JOHNS/ST. AUGUSTINE 904-825-5055

GEORGIA All state locations 404-656-7456
GEORGIA FAX ONLY 404-524-4278
CHATHAM/SAVANNAH 912-356-2138
FULTON/ATLANTA 404-730-1260
FULTON/ATLANTA FAX ONLY 404-681-4448
RICHMOND/AUGUSTA 706-667-4335

HAWAII All state locations 808-586-4538

AGENCY LISTINGS BY STATE-COUNTY/CITY

IDAHO All state locations General Info 208-334-5988
IDAHO FAX ONLY (photo I.D. required) 208-389-9096

ILLINOIS All state locations 217-782-6553
ILLINOIS FAX ONLY 217-523-2648
CHAMPAIGN/URBANA 217-384-3720
COLES/CHARLESTON 217-348-0501
COOK/CHICAGO 312-443-7538
KANKAKEE/KANKAKEE 815-937-3080
LAKE/WAUKEGAN General Info 708-360-6636
LAKE/WAUKEGAN FAX ONLY(photo I.D. required) 708-360-3608
LASALLE/OTTAWA 815-434-8202
MACON/DECATUR 217-424-1305
MADISON/EDWARDSVILLE 618-692-6290
MCHENRY/WOODSTOCK 815-334-4242
PEORIA General Info 309-672-6059
PEORIA FAX ONLY 309-672-6063
ROCK ISLAND/ROCK ISLAND 309-786-4451
SANGAMON/SPRINGFIELD 217-753-6700
WHITESIDE/MORRISON 815-772-5189
WILL/JOLIET 815-740-4638
WINNEBAGO/ROCKFORD 815-987-3050

INDIANA All state locations 317-383-6274
INDIANA FAX ONLY (photo I.D. required) .. 317-383-6210
ALLEN/FT.WAYNE General Info 219-449-7147
MARION/INDIANAPOLIS General Info 317-541-2480
MARION/INDIANAPOLIS FAX ONLY 317-541-2411

IOWA All state locations 515-281-4944

KANSAS All state locations 913-296-1400

KENTUCKY All state locations 502-564-4212
KENTUCKY FAX ONLY 502-227-0032

MAINE All state locations 207-287-3181
MAINE FAX ONLY 207-287-1907
*BANGOR 207-945-4400

MARYLAND All state locations 410-764-3038
MARYLAND FAX ONLY 410-358-7381

*MASSACHUSETTS All state locations 617-753-8606
MASSACHUSETTS FAX ONLY 617-423-2038

*MICHIGAN All state locations 517-335-8666
MICHIGAN FAX ONLY 517-321-5884

*MINNESOTA All state locations 612-623-5121
MINNESOTA FAX ONLY 612-331-5776
HENNEPIN/MINNEAPOLIS 612-348-8919

MISSISSIPPI All state locations 601-960-7988
MISSISSIPPI FAX ONLY 601-352-8013

*MISSOURI All state locations 314-751-6387
KANSAS CITY 816-274-1428

MONTANA All state locations 406-444-4228
MONTANA FAX ONLY 406-444-1803

NEBRASKA All state locations 402-471-2871

NEVADA All state locations 702-687-4481
NEVADA FAX ONLY 702-687-6151
CLARK/LAS VEGAS 702-383-1223

NEW HAMPSHIRE All state locations 603-271-4650
CITY OF DOVER 603-743-6000
CITY OF NASHUA 603-594-3305

NEW JERSEY All state locations 609-633-2960
NEW JERSEY FAX ONLY 609-392-4292
NEW BRUNSWICK 908-745-5016
RED BANK 908-530-2755

NEW MEXICO All state locations 505-827-2316
NEW MEXICO FAX ONLY 505-984-1048

NEW YORK CITY 212-788-4505
NEW YORK CITY FAX ONLY 212-962-6105

*NEW YORK
All state locations except for NYC 518-474-3038
..... 518-474-3077
NEW YORK FAX ONLY (photo I.D. required) .. 518-432-6286
ALBANY 518-434-5045
BUFFALO 716-851-5844

AGENCY LISTINGS BY STATE-COUNTY/CITY

HEMPSTEAD 516-489-5080
HUNTINGTON 516-351-3207
MONROE/ROCHESTER 716-274-6135
WATERTOWN 315-785-7780

NORTH CAROLINA All state locations 919-733-3526

NORTH DAKOTA All state locations 701-328-2360

OHIO All state locations FAX ONLY 614-466-6604
AKRON 216-375-2976
CINCINNATI 513-352-2964
CINCINNATI FAX ONLY 513-352-1420
CLEVELAND 216-664-2315
CLEVELAND FAX ONLY 216-664-4471
FRANKLIN/COLUMBUS 614-645-7323
MONTGOMERY/DAYTON 513-225-4790
MONTGOMERY/DAYTON FAX ONLY 513-225-4048
MUSKINGUM/ZANESVILLE 614-454-9741
YOUNGSTOWN 216-742-8783

OREGON All state locations 503-731-4108
OREGON FAX ONLY 503-234-8417

PENNSYLVANIA All state locations 412-656-3100
PENNSYLVANIA FAX ONLY 412-652-8951
ERIE 814-871-4262
HARRISBURG 717-772-3481
PITTSBURGH 412-565-5114
SCRANTON 717-963-3989

*RHODE ISLAND All state locations 401-277-2812

SOUTH CAROLINA All state locations 803-734-6663
SOUTH CAROLINA FAX ONLY 803-799-0301

SOUTH DAKOTA All state locations 605-773-4961

TENNESSEE All state locations 615-741-0778
TENNESSEE FAX ONLY 615-726-2559
DAVIDSON/NASHVILLE 615-340-5611
SHELBY/MEMPHIS 901-576-7608
SHELBY/MEMPHIS FAX ONLY 901-576-7832

TEXAS All state locations ..... Any Texas Number Below
DALLAS ..... 214-670-3248 or 214-670-4535
FORT WORTH 817-871-7269
HOUSTON ..... 713-794-9061 or 713-794-9069
HOUSTON FAX ONLY 713-794-9991
SAN ANTONIO 210-207-8816
SAN ANTONIO FAX ONLY (photo I.D. required) 210-226-3539

*UTAH All state locations 801-538-6380
UTAH FAX ONLY 801-538-9467
PROVO 801-370-8707

VERMONT All state locations 802-828-3286

VIRGINIA All state locations 804-644-2537
..... 804-644-2723
VIRGINIA FAX ONLY 804-644-2550

WASHINGTON D.C. 1-800-669-8309
WASHINGTON D.C. FAX ONLY 202-783-0136

WASHINGTON STATE All state locations .. 360-753-5842
..... 360-753-4379
WASHINGTON STATE FAX ONLY 360-352-2586
KING/SEATTLE 206-296-4768
KING/SEATTLE FAX ONLY 206-622-0868
SNOHOMISH/EVERETT 206-339-5290
SPOKANE/SPOKANE 509-324-1524

WEST VIRGINIA All state locations 304-558-2931

*WISCONSIN All state locations 608-266-1372
MILWAUKEE/MILWAUKEE 414-278-4003

WYOMING General Info 307-777-7591
WYOMING FAX ONLY 307-635-4103

Unlisted states or born abroad 1-800-255-2414

*For emergency use only.

For further information or alternate payment methods, call toll free 1-800-255-2414

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APPENDIX C:
HAGUE CONVENTION ABOLISHING THE REQUIREMENTS OF LEGALISATION FOR FOREIGN PUBLIC DOCUMENTS

The States signatory to the present Convention,

Desiring to abolish the requirement of diplomatic or consular legalisation for foreign public documents,

Have resolved to conclude a Convention to this effect and have agreed upon the following provision:

Article 1

The present Convention shall apply to public documents which have been executed in the territory of one contracting State and which have to be produced in the territory of another contracting State.

For the purposes of the present Convention, the following are deemed to be public documents:

(a) Documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process server (*huissier de justice*);

(b) Administrative documents;

(c) Notarial acts;

(d) Official certificates which are placed on documents

signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date, and official and notarial authentications of signatures.

However, the present Convention shall not apply:

(a) To documents executed by diplomatic or consular agents;

(b) To administrative documents dealing directly with commercial or customs operations.

Article 2

Each contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the documents have to be produced cer tify the authenticity of the signature, the capacity in whi ch the persons signing the document have acted and, where appropriate, the identity of the seal or stamp which it bears.

Article 3

The only formality that may be required in order to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears, is the addition of the certificate described in Article 4, issued by the competent authority of the State from which the document emanated.

However, the formality mentioned in the preceding paragraph cannot be required when either the laws, regulations, or practice in force in the State where the document is produced or an agreement between two or more contracting States have abolished or simplified it, or exempt the document itself from legalisation.

Article 4

The certificate referred to in the first paragraph of Article 3 shall be placed on the document itself or an *allonge;* it shall be in the form of the model annexed to the present Convention.

It may, however, be drawn up in the official language of the authority which issued it. The standard terms appearing therein may be in a second language also. The title *Apostille (Convention de La Haye du 5 octobre 1961)* shall be in the French language.

Article 5

The certificate shall be issued at the request of the person who has signed the document or of any bearer.

When properly filled in, it will certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which the document bears.

The signature, seal and stamp on the certificate are exempt from all certification.

Article 6

Each contracting State shall designate by reference to their official function, the authorities who are competent to issue the certificate referred to in the first paragraph of Article 3.

It shall give notice of such designation to the Ministry of Foreign Affairs of the Netherlands at the time it deposits its instrument of ratification or of accession or its declaration of extension. It shall also give notice of any change in the designated authorities.

Article 7

Each of the authorities designated in accordance with Article 6 shall keep a register or card index in which it shall record the certificates issued, specifying:

(a) The number and date of the certificate,

(b) The name of the person signing the public document and the capacity in which he has acted, or in the case of unsigned documents, the name of the authority which has affixed the seal or stamp.

At the request of any interested person, the authority which has issued the certificate shall verify whether the particulars in the certificate correspond with those in the register or card index.

Article 8

When a treaty, convention or agreement between two or more contracting States contains provisions which subject the certification of a signature, seal or stamp to certain formalities, the present Convention will only override such provisions if those formalities are more rigorous than the formality referred to in Articles 3 and 4.

Article 9

Each contracting State shall take the necessary steps to prevent the performance of legalisations by its diplomatic or consular agents in cases where the present Convention provides for exemption.

Article 10

The present Convention shall be open for signature by the States represented at the Ninth session of the Hague Conference on Private International Law and Iceland, Ireland, Liechtenstein and Turkey.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 11

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 10.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification

Article 12

Any State not referred to in Article 10 may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 11. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Such accession shall have effect only as regards the relations between the acceding State and those contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph d) of Article 15. Any such objection shall be notified to the ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force as between the acceding State and the States which have raised no objection to its accession on the sixtieth day after the expiry of the period of six months mentioned in the preceding paragraph.

Article 13

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extension shall be notified to the ministry of Foreign Affairs of the Netherlands.

When the declaration of extension is made by a State which has signed and ratified, the Convention shall enter into force for the territories concerned in accordance with Article 11. When the declaration of extension is made by a State which has acceded, the Convention shall enter into force for the territories concerned in accordance with Article 12.

Article 14

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 11, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, the Convention shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation will only have effect as regards the State which has notified it. The Convention shall remain in force of the other contracting States.

Article 15

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 10, and to the States which have acceded in accordance with Article 12, of the following:

(a) The notification referred to in the second paragraph of Article 6;

(b) The signatures and ratifications referred to in Article 10;

(c) The date on which the present Convention enters into force in accordance with the first paragraph of Article 11;

(d) The accessions and objections referred to in Article 12 and the date on which such accessions take effect;

(e) The extensions referred to in Article 13 and the date on which they take effect;

(f) The denunciations referred to in the third paragraph of Article 14.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at the Hague the 5th October 1961, in French and in English, the French text prevailing in case of divergence between the two texts, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Ninth session of the Hague Conference on Private International Law and also to Iceland, Ireland, Liechtenstein and Turkey.

[Signatures omitted.]

ANNEX TO THE CONVENTION
Model of certificate

The certificate will be in the form of a square with sides at least 9 centimetres long

APOSTILLE
(Convention de La Haye du 5 octobre 1961)

1. Country: .....
   This public document
2. has been signed by .....
3. acting in the capacity of .....
4. bears the seal/stamp of .....

Certified

5. at ..... 6. the .....
7. by .....
8. N .....
9. Seal/stamp: 10. Signature:

.....

Convention abolishing the requirement of legalization for foreign public documents, with annex. Done at the Hague October 5, 1961; entered into force for the United States October 15, 1981. (TIAS 10072; 527 UNTS 189).

Parties to the Convention

In addition to the United States, the following are parties to the Convention:

Contracting State	Territories to which Extended
Antigua and Barbuda	
Argentina	
Austria	
Bahamas	
Belgium	
Botswana	
Brunei	
Cyprus	
Fiji	
Finland	
France	Entire territory of the French Republic Anglo-French Condominium of the New Hebrides
(Vanuatu)†	
Germany, Federal Republic of	Land Berlin (Western Sectors of Berlin)
Greece	
Hungary	
Israel	
Italy	
Japan	
Lesotho	
Liechtenstein	
Luxembourg	
Malawi	
Malta	
Mauritius	
Netherlands	the Kingdom in Europe Netherlands, Antilles, and Aruba

†Now independent and no confirmation issued by the newly independent country that the Convention is deemed to apply.

Contracting State	Territories to which Extended
Norway	
Portugal	Angola†
	Mozambique†
	and other overseas departments
Seychelles	
Spain	
Surinam	
Swaziland	
Switzerland	
Tonga	
Turkey	
United Kingdom of Great Britain and Northern Ireland	Anguilla
	the Bailiwich of Guernsey
	Barbados†
	Bermuda
	British Antarctic Territory
British Guiana (Guyana)†	
British Solomon Islands	
	Protectorate (Solomon Islands)†
	Cayman Islands
Dominica†	
	Falkland Islands
	Gibraltar
	Gilbert and Ellice Islands (Kiribati/Tuvalu)†
	Grenada†
	Hong Kong
	the Isle of Man
	Jersey
	Montserrat
	New Hebrides (Vanuatu)†
	St. Helena

†Now independent and no confirmation issued by the newly independent country that the Convention is deemed to apply.

Contracting State	Territories to which Extended
	Saint Christopher and Nevis†
	Saint Lucia†
	Saint Vincent†
	Southern Rhodesia (Zimbabwe)†
Turks and Caicos Islands	
British Virgin Islands	
United States	Those territories for the foreign relations of which the United States is responsible
Yugoslavia	

———

1 In accordance with Article 12, paragraph 1, the instrument of accession by the Argentine Republic to the abovementioned Convention was deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands on 8 May 1987.

The instrument of accession contains the declaration annexed to this notification. "In accordance with the terms of Article 12, paragraph 1, of the Convention any State not mentioned in Article 10 may accede to this Convention. In accordance with Article 12, paragraph 2, such accession shall have effect only as regards the relations between the Argentine Republic and those contracting States (at present: Antigua and Barbuda, Austria, Bahamas, Belgium, Botswana, Brunei Darussalam, Cyprus, Fiji, Finland, France, the *Federal Republic of Germany,* Greece, Hungary, Israel, Italy, Japan, Lesotho, Liechtenstein, Luxembourg, Malawi, Malta, Mauritius, the Kingdom of the Netherlands, Norway, Portugal, Seychelles, Spain, Surinam, Swaziland, Switzerland, Tonga, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of American and Yugoslavia) which have not raised an objection to its accession in the six months after the

†Now independent and no confirmation issued by the newly independent country that the Convention is deemed to apply.

receipt of this notification. For practical reasons this six months' period will extend from 20 June 1987 till 20 December 1987."

"The Argentine Republic rejects the extension of the application of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, concluded at the Hague on October 5, 1961, to the Malvinas, South Georgia, and South Sandwich Islands, as notified by the United Kingdom of Great Britain Netherlands on February 24, 1965, and reaffirms its sovereign rights over the Malvinas, south Georgia, and South Sandwich Islands, which form an integral part of its national territory.

"The United Nations General Assembly has adopted resolutions 2065 (XX), 3169(XXVIII), 31/49, 37/9, 38/12, 39/6, 40/21, and 41/40, acknowledging the Islands, and urging the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland to continue negotiating in order to reach a peaceful and definitive solution to the dispute as soon as possible, through the good offices of the United Nations Secretary-General, who is to inform the General Assembly of the progress achieved.

"The Argentine Republic also rejects the extension of the Convention, notified on the same date as above, to the so-called "British Antarctic Territory," and thereby reaffirms the rights of the Republic to the Argentine Antarctic Sector, including those relating to its corresponding maritime sovereignty or jurisdiction. It further recalls the safeguards on claims of territorial sovereignty in Antarctica set forth in Article IV of the Antarctic Treaty, done at Washington on December 1, 1959, to which the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland are parties." (Translation provided by the Division of Language Services, Department of State)

———

Authorities in the United States of America Competent to Issue the Certificate Referred to in Article 3 of the Convention.

I. Authentication Officer and Acting Authentication Officer, United States Department of State

II. Clerks and deputy clerks of the following: The Supreme Court of the United States, the Courts of Appeals for the First through the Eleventh Circuits, the District of Columbia Circuit and the Federal Circuit; the United States District Courts; the United States Court of International Trade; the United States Claims Court; the District Court of Guam, the District Court of the Virgin Islands, and the District Court for the Northern Mariana Islands. The District Court for the District of the Canal Zone ceased to exist on Mar. 31, 1982. Its records have been transferred to the National Archives which will certify those records.

III. Officers of the individual States and other subdivisions as indicated:

States:

Alabama: Secretary of State

Alaska: Lieutenant Governor; Attorney General; Clerk of the Appellate Court.

Arizona: Secretary of State; Assistant Secretary of State

Arkansas: Secretary of State; Chief Deputy Secretary of State

California: Secretary of State; any Assistant Secretary of State; any Deputy Secretary of State

Colorado: Secretary of State; Deputy Secretary of State

Connecticut: Secretary of State; Deputy Secretary of State

Delaware: Secretary of State; Acting Secretary of State

Florida: Secretary of State

Georgia: Secretary of State; Notary Public Division Director

Hawaii: Lieutenant Governor of the State of Hawaii

Idaho: Secretary of State; Chief Deputy Secretary of State; Deputy Secretary of State; Notary Public Clerk

Illinois: Secretary of State; Assistant Secretary of State; Deputy Secretary of State

Indiana: Secretary of State; Deputy Secretary of State

Iowa: Secretary of State; Deputy Secretary of State

Kansas: Secretary of State; Assistant Secretary of State; any Deputy Assistant Secretary of State

Kentucky: Secretary of State; Assistant Secretary of State

Louisiana: Secretary of State

Maine: Secretary of State; Deputy Secretary of State

Maryland: Secretary of State
Massachusetts: Deputy Secretary of State for Public Records
Michigan: Secretary of State; Deputy Secretary of State
Minnesota: Secretary of State; Deputy Secretary of State
Mississippi: Secretary of State; any Assistant Secretary of State
Missouri: Secretary of State; Deputy Secretary of State
Montana: Secretary of State; Chief Deputy Secretary of State; Government Affairs Bureau Chief
Nebraska: Secretary of State; Deputy Secretary of State
Nevada: Secretary of State; Chief Deputy Secretary of State; Deputy Secretary of State
New Hampshire: Secretary of State; Deputy Secretary of State
New Jersey: Secretary of State; Assistant Secretary of State
New Mexico: Secretary of State
New York: Secretary of State; Executive Deputy Secretary of State; any Deputy Secretary of State; any Special Deputy Secretary of State
North Carolina: Secretary of State; Deputy Secretary of State
North Dakota: Secretary of State; Deputy Secretary of State
Ohio: Secretary of State; Assistant Secretary of State
Oklahoma: Secretary of State; Assistant Secretary of State; Budget Officer of the Secretary of State
Oregon: Secretary of State; Deputy Secretary of State; Acting Secretary of State; Assistant to the Secretary of State
Pennsylvania: Secretary of the Commonwealth; Executive Deputy Secretary of the Commonwealth
Rhode Island: Secretary of State; First Deputy Secretary of State; Second Deputy Secretary of State
South Carolina: Secretary of State
South Dakota: Secretary of State; Deputy Secretary of State
Tennessee: Secretary of State
Texas: Secretary of State; Assistant Secretary of State
Utah: Lieutenant Governor; Deputy Lieutenant Governor; Administrative Assistant
Vermont: Secretary of State; Deputy Secretary of State
Virginia: Secretary of the Commonwealth; Chief Clerk, Office of the Secretary of the Commonwealth
Washington (State): Secretary of State; Assistant Secretary of State; Director, Department of Licensing

West Virginia: Secretary of State; Under Secretary of State; any Deputy Secretary of State

Wisconsin: Secretary of State; Assistant Secretary of State

Wyoming: Secretary of State; Deputy Secretary of State

Other Subdivisions:

American Samoa: Secretary of American Samoa; Attorney General of American Samoa

District of Columbia (Washington, D.C.): Executive Secretary; Assistant Executive Secretary; Mayor's Special Assistant and Assistant to the Executive Secretary; Secretary of the District of Columbia

Guam (Territory of): Director, Department of Administration; Acting Director, Department of Administration; Deputy Director, Department of Administration; Acting Deputy Director, Department of Administration

Northern Mariana Islands (Commonwealth of the): Attorney General; Acting Attorney General; Clerk of the Court, Commonwealth Trial Court, Deputy Clerk, Commonwealth Trial Court

Puerto Rico (Commonwealth of): Under Secretary of State; Assistant Secretary of State for External Affairs; Assistant Secretary of State; Chief, Certifications Office; Director, Office of Protocol; Assistant Secretary of State for International Affairs; Chief, Certification Office

Virgin Islands of the United States: no authority designated

APPENDIX D:
NOTARY AUTHENTICATION TABLE

State	City	Issuing Official	Cost
1. ALABAMA	Montgomery	County Judge of Probate; Circuit Clerk in Jefferson County certified by Secretary of State (Apostille Certification)	Varies $ 5.00
2. ALASKA	Juneau	Lt. Governor	$ 2.00
3. ARIZONA	Phoenix	Secretary of State, Notary Division	$ 3.00
4. ARKANSAS	Little Rock	Secretary of State, Notary Division	$10.00
5. CALIFORNIA	Sacramento	Secretary of State, Notary Public Division	$20.00
6. COLORADO	Denver	Secretary of State, Notary Division	$ 2.00
		Same Day Service	$12.00
7. CONNECTICUT	Hartford	Secretary of State, Authentication Unit	$20.00
		If used in an adoption	$ 5.00
8. DELAWARE	Dover	Secretary of State, Division of Corporations	$ 2.00
		Apostille Certification	$10.00
9. DISTRICT OF COLUMBIA	Secretary of D.C., Notary Public Section		$ 5.00
		:Apostille Certification	$ 6.00
10. FLORIDA	Tallahassee	Department of State, Bureau of Notaries	$10.00
11. GEORGIA	Atlanta	Secretary of State, Notary Division	$ 2.00
		Apostille Certification	$ 3.00

State	City	Issuing Official	Cost
12. GUAM	Agana	Attorney General, Notary Department	15.00
13. HAWAII	Honolulu	Lt. Governor	$ 1.00
14. IDAHO	Boise	Secretary of State	$ 6.00
15. ILLINOIS	Springfield	Secretary of State, Index Department Notary Section	2.00
16. INDIANA	Indianapolis	Secretary of State, Authentications	$ .50
17. IOWA	Des Moines	Secretary of State, Corporations Department	$ 5.00
18. KANSAS	Topeka	Secretary of State, Notary Division	$ 1.00
		Apostille Certification	$ 5.00
19. KENTUCKY	Frankfort	County Clerk	Varies
		Secretary of State (Apostille Certification)	$ 5.00
20. LOUISIANA	Baton Rouge	Secretary of State, Notary Department	$ 5.00
21. MAINE	Augusta	Secretary of State, Notary Division	$10.00
22. MARYLAND	Annapolis	Circuit Court Clerk	Varies
23. MASSACHUSETTS	Boston	Secretary of State, Commission Section	$ 3.00
24. MICHIGAN	Lansing	Department of State, Great Seal Office	$ 1.00
25. MINNESOTA	Saint Paul	Secretary of State	$ 5.00
26. MISSISSIPPI	Jackson	Secretary of State, Notary Division	$ 2.00
27. MISSOURI	Jefferson City	Secretary of State, Notary Clerk	$10.00
28. MONTANA	Helena	Secretary of State, Notary Division	$ 2.00
29. NEBRASKA	Lincoln	Secretary of State, Notary Division	$10.00
30. NEVADA	Carson City	Secretary of State, Notary Division	$20.00
31. NEW HAMPSHIRE	Concord	Secretary of State	$ 5.00
32. NEW JERSEY	Trenton	Secretary of State, Notary Section	$25.00
33. NEW MEXICO	Santa Fe	Secretary of State, Notary Division	$ 1.00

34. NEW YORK	Albany	County Clerk	$ 3.00
		Secretary of State, Notary Division	$25.00
35. NORTH CAROLINA	Raleigh	Secretary of State, Notaries Public Division	$ 2.00
36. NORTH DAKOTA	Bismarck	Secretary of State	$ 5.00
37. OHIO	Columbus	Clerk of Court of Common Pleas, County Commission	Varies
		Certified by Secretary of State	$ 5.00
38. OKLAHOMA	Oklahoma City	County Court Clerk	$ 3.00
		Certified by Secretary of State	$10.00
39. OREGON	Salem	Secretary of State, Notary Section	$ 2.00
		Apostille Certification	$ 5.00
40. PENNSYLVANIA	Harrisburg	Department of State, Commission Bureau	$15.00
41. PUERTO RICO	San Juan	Department of State, Certification Division	$ 3.00
42. RHODE ISLAND	Providence	Secretary of State, Notary Division	$ 5.00
43. SOUTH CAROLINA	Columbia	Secretary of State, Notary Division	$ 2.00
44. SOUTH DAKOTA	Pierre	Secretary of State	$ 2.00
45. TENNESSEE	Nashville	County Court Clerk of Notary's Commission	$ 2.00
		:Secretary of State, Notary Section (for Notaries-at-large)	$ 2.00
46. TEXAS	Austin	Secretary of State, Notary Public Section	$10.00
47. UTAH	Salt Lake City	Department of Commerce, Notary Department	$10.00
		:Lt. Governor (Apostille Certification)	$ 5.00
48. VERMONT	Montpelier	Secretary of State	$ 2.00
49. VIRGINIA	Richmond	Secretary of Commonwealth	$10.00
50. VIRGIN ISLANDS	Charlotte Amalie, St. Thomas	Lt. Governor	$ 5.00
51. WASHINGTON	Olympia	Secretary of State	$15.00
52. WEST VIRGINIA	Charleston	Secretary of State	$ 5.00
53. WISCONSIN	Madison	Secretary of State, Notary Records	$ 5.00
54. WYOMING	Cheyenne	Secretary of State, Notary Division	$ 3.00

APPENDIX E:
NOTARY AUTHENTICATION DIRECTORY

		When an instrument is notarized outside the state for recording within the state, must it be authenticated if notary affixes his seal?
1. ALABAMA	Secretary of State P.O. Box 5616 Attention: Authentication Montgomery, AL 36103-5616 205/242-7210	No
2. ALASKA	Lieutenant Governor P.O. Box AA Juneau, AK 99811 907/465-3509	No
3. ARIZONA	Secretary of State Notary Division Capitol West Wing, 7th Floor 1700 West Washington Phoenix, AZ 85007-2808 602/542-4086	No†

†Uniform Recognition of Acknowledgements Act adopted.

4. ARKANSAS	Secretary of State State Capitol Little Rock, AR 72201-1094 501/682-3463	Yes[1]
5. CALIFORNIA	Secretary of State Notary Public Division P.O. Box 924877 Sacramento, CA 94277-0001 916/445-6507	Yes
6. COLORADO	Secretary of State 1560 Broadway, Suite 200 Denver, CO 80202 303/894-2251	No[1]
7. CONNECTICUT	Secretary of State Records & Legislative Services Division Notary Public Unit 30 Trinity Street Hartford, CT 06106 203/566-5273	Customary†
8. DELAWARE	Secretary of State Notary Division P.O. Box 793 Dover, DE 19903 302/739-6479	No
9. DISTRICT OF COLUMBIA	Secretary of District of Columbia Notary Commissions & Authentications Section 717 14th St., N.W., Suite 230 Washington, D.C. 20005 202/727-3117	No
10. FLORIDA	Secretary of State Capitol Building #2002 Tallahassee, FL 32399-0250 904/488-7251	Yes

†Uniform Recognition of Acknowledgements Act adopted.

11. GEORGIA	Secretary of State Notary Public Division West Tower, Suite 820 2 Martin Luther King Jr. Drive, SE Atlanta, GA 30334 404/656-2899	No
12. HAWAII	Lieutenant Governor P.O. Box 3226 Honolulu, HI 96801 808/586-1500	No†
13. IDAHO	Secretary of State Statehouse, Room 203 Boise, ID 83720 208/334-2300	No
14. ILLINOIS	Secretary of State Index Department Notary Section 111 East Monroe Street Springfield, IL 62756 217/782-7017	Yes
15. INDIANA	Secretary of State Authentications Deputy State House, Room 201 Indianapolis, IN 46204 317/232-6542	Yes
16. IOWA	Secretary of State Corporations Division Hoover Building, 2nd Floor Des Moines, IA 50319 515/281-3677	Yes
17. KANSAS	Secretary of State Notary Clerk State Capitol, 2nd Floor Topeka, KS 66612-1594 913/296-2236	No†

†Uniform Recognition of Acknowledgements Act adopted.

18. KENTUCKY	Secretary of State Administrative Office State Capitol, Room 150 Frankfort, KY 40601-3493 502/564-3490	No†
19. LOUISIANA	Secretary of State Notarial Section P.O. Box 94125 Baton Rouge, LA 70804- 9125 504/342-4981	No
20. MAINE	Secretary of State Bureau of Corporations, Elections and Commissions State House Station #101 Augusta, ME 04333-0101 207/289-4181 207/289-4173	Yes
21. MARYLAND	Secretary of State Certification Desk State House Annapolis, MD 21401 301/974-5521	Yes†
22. MASSACHU-SETTS	Secretary of State Division of Public Records State McCormack Bldg., Room 1719 One Ashburton Place Boston, MA 02108 617/727-2836	Yes†
23. MICHIGAN	Department of State Great Seal and Registration Lansing, MI 48915 517/373-0082	Yes
24. MINNESOTA	Secretary of State State Office Building, Room 180 100 Constitution Avenue St. Paul, MN 55155 612/297-1455	No†

†Uniform Recognition of Acknowledgements Act adopted.

25. MISSISSIPPI	Secretary of State Notary Division P.O. Box 136 Jackson, MS 39205-0136 601/359-1615	No
26. MISSOURI	Secretary of State Commission Division P.O. Box 778 Jefferson City, MO 65102 314/751-4756	No
27. MONTANA	Secretary of State Executive Records Department State Capitol Helena, MT 59620 406/444-5379	No†
28. NEBRASKA	Secretary of State Notary Division State Capitol, Room 2300 Lincoln, NE 68509 402/471-2558	Yes
29. NEVADA	Secretary of State State Capitol Complex Carson City, NV 89710 702/687-5115 702/687-5203	No†
30. NEW HAMPSHIRE	Secretary of State State House, Room 204 107 North Main Street Concord, NH 03301-4948 603/271-3242	No†
31. NEW JERSEY	Department of State Division of Commercial Recording Notary Public Section CN-452 Trenton, NJ 08625 609/530-6421	Yes

†Uniform Recognition of Acknowledgements Act adopted.

32. NEW MEXICO	Secretary of State Executive-Legislative Building Santa Fe, NM 87503 505/827-3600	Yes†
33. NEW YORK	(A) Department of State Division of Licensing Services 162 Washington Avenue Albany, NY 12231 518/474-4770 (B) Department of State Apostille Unit 270 Broadway, 27th Floor New York, NY 10007-2372 212/587-5779	Yes
34. NORTH CAROLINA	Secretary of State Notary Division 300 N. Salisbury Street, Rm. 302 Raleigh, NC 27603-5909 919/733-3406	No†
35. NORTH DAKOTA	Secretary of State Capitol Building 600 E. Boulevard Avenue Bismarck, ND 58505-0500 701/224-2900	No†
36. OHIO	Secretary of State Elections Section 30 E. Broad St., 14th Floor Columbus, OH 43266-0418 614/466-2585	Yes
37. OKLAHOMA	Secretary of State 101 State Capitol Building Oklahoma City, OK 73105 405/521-3911	Yes

†Uniform Recognition of Acknowledgements Act adopted.

38. OREGON	Secretary of State Notary Section 142 State Capitol Salem, OR 97310 503/378-4724	Yes
39. PENNSYLVANIA	Department of State Bureau of Commissions, Elections and Legislation 305 North Office Building Harrisburg, PA 17120-0029 717/787-5280	Yes†
40. RHODE ISLAND	Secretary of State Notary Division 100 North Main Street Providence, RI 02903 401/277-2340	Yes
41. SOUTH CAROLINA	Secretary of State Wade Hampton Building, Room 105 P.O. Box 11350 Columbia, SC 29211 803/734-2167	No†
42. SOUTH DAKOTA	Secretary of State Notary Public Division 500 East Capitol Pierre, SD 57501-5077 605/773-5004	Yes†
43. TENNESSEE	Secretary of State James K. Polk Building Suite 1800 Nashville, TN 37243-0306 615/741-3699	Yes
44. TEXAS	Secretary of State Notary Public Unit P.O. Box 12079 Austin, TX 78711-2079 512/463-5705	Yes

†Uniform Recognition Acknowledgements Act adopted.

45. UTAH	(A) Lieutenant Governor 203 State Capital Salt Lake CIty, UT 84114 801/538-1040 (B) Division of Corporations and Commercial Code Attention: Notary Coordinator 160 East 300 South, P.O. Box 45801 Salt Lake City, UT 84145-0801 801/530-6078	Yes†
46. VERMONT	Secretary of State State Office Building Montpelier, VT 05602-2710 802/828-2363	Yes
47. VIRGINIA	Secretary of Commonwealth Attention: Authentication P.O. Box 1-D Richmond, VA 23201 804/786-2441	No†
48. WASHINGTON	Department of Licensing Professional Licensing Services Notary Section P.O. Box 9027 Olympia, WA 98507-9027 206/753-3836	Yes
49. WEST VIRGINIA	Secretary of State State Capitol, #157-K Charleston, WV 25305 304/345-4000	Yes
50. WISCONSIN	Secretary of State P.O. Box 7848 Madison, WI 53707-7848 608/266-5503	No†

†Uniform Recognition of Acknowledgements Act adopted.

51. WYOMING	Secretary of State State Capitol Cheyenne, WY 82002-0020 307/777-5342	No†

†Uniform Recognition of Acknowledgements Act adopted.

APPENDIX F:
UNITED STATES DEPARTMENT OF STATE
FOREIGN MISSIONS ROSTER

AFGHANISTAN—Embassy of the Republic of Afghanistan
2341 Wyoming Avenue, NW
Washington, DC 20008
(202) 234-3770
(202) 328-3516 FAX

ALBANIA—Embassy of the Republic of Albania
1511 K Street, NW, Suite 1000
Washington, DC 20005
(202) 223-4942
(202) 628-7342 FAX

ALGERIA—Embassy of the Democratic and Popular Republic of Algeria
2118 Kalorama Road, NW
Washington, DC 20008
(202) 265-2800
(202) 667-2174 FAX

IRAQI INTERESTS SECTION
1801 P. Street, NW
Washington, DC 20036
(202) 483-7500
(202) 462-5066 FAX

ANDORRA—Embassy of Andorra
Two United Nations Plaza, 25th Floor
New York, NY 10017
(212) 750-8064
(212) 750-6630 FAX

ANGOLA—Embassy of the Republic of Angola
1050 Connecticut Avenue, NW, Suite 760
Washington, DC 20036
(202) 785-1156
(202) 785-1258 FAX

ANTIGUA AND BARBUDA—Embassy of Antigua and Barbuda
3216 New Mexico Avenue, NW
Washington, DC 20016
(202) 362-5211
(202) 362-5225 FAX

ARGENTINA—Embassy of the Argentine Republic
1600 New Hampshire Avenue, NW
Washington, DC 20009
(202) 939-6400
(202) 332-3171 FAX

ARMENIA—Embassy of the Republic of Armenia
2225 R Street, NW
Washington, DC 20008
(202) 319-1976
(202) 319-2982 FAX

AUSTRALIA—Embassy of Australia
1601 Massachusetts Avenue, NW
Washington, DC 20036
(202) 797-3000
(202) 797-3168 FAX

AUSTRIA—Embassy of Austria
3524 International Court, NW
Washington, DC 20008
(202) 895-6700
(202) 895-6750 FAX

AZERBAIJAN—Embassy of the Republic of Azerbaijan
927 15th Street, NW Suite 700
P.O. Box 28790
Washington, DC 20038
(202) 842-0001
(202) 842-0004 FAX

BAHAMAS—Embassy of the Commonwealth of The Bahamas
2220 Massachusetts Avenue, NW
Washington, DC 20008
(202) 319-2660
(202) 319-2668 FAX

BAHRAIN—Embassy of the State of Bahrain
3502 International Drive
Washington, DC 20008
(202) 342-0741
(202) 362-2192 FAX

BANGLADESH—Embassy of the People's Republic of Bangladesh
2201 Wisconsin Avenue, NW
Washington, DC 20007
(202) 342-8372
(202) 342-8376 FAX

BARBADOS—Embassy of Barbados
2144 Wyoming Avenue, NW
Washington, DC 20008
(202) 939-9200
(202) 332-7467 FAX

BELARUS—Embassy of the Republic of Belarus
1619 New Hampshire Avenue, NW
Washington, DC 20009
(202) 986-1604
(202) 986-1805 FAX

BELGIUM—Embassy of Belgium
3330 Garfield Street, NW
Washington, DC 20008
(202) 333-6900
(202) 333-3079 FAX

BELIZE—Embassy of Belize
2535 Massachusetts Avenue, NW
Washington, DC 20008
(202) 332-9636
(202) 332-6888 FAX

BENIN—Embassy of the Republic of Benin
2737 Cathedral Avenue, NW
Washington, DC 20008
(202) 232-6656
(202) 265-1996 FAX

BOLIVIA—Embassy of the Republic of Bolivia
3014 Massachusetts Avenue, NW
Washington, DC 20008
(202) 483-4410
(202) 328-3712 FAX

BOSNIA AND HERZEGOVINA—Embassy of the Republic of Bosnia and Herzegovina
1701 L Street, Suite 760
Washington, DC 20036
(202) 833-3612
(202) 833-2061 FAX

BOTSWANA—Embassy of the Republic of Botswana
3400 International Drive, NW, Suite 7M
Washington, DC 20008
(202) 833-3612
(202) 833-2061 FAX

BRAZIL—Brazilian Embassy
3400 Massachusetts Avenue, NW
Washington, DC 20008
(202) 745-2700
(202) 745-2827 FAX

BRUNEI—Embassy of the State of Brunei Darussalam
Watergate
2600 Virginia Avenue, NW, Suite 300, 3rd. Floor
Washington, DC 20037
(202) 342-0159
(202) 342-0158 FAX

BULGARIA—Embassy of the Republic of Bulgaria
1621 22nd Street
Washington, DC 20008
(202) 387-7969
(202) 234-7973 FAX

BURKINA FASO—Embassy of Burkina Faso
2340 Massachusetts Avenue, NW
Washington, DC 20008
(202) 332-5577
(202) 667-1882 FAX

BURMA—Embassy of the Union of Burma
2300 S Street, NW
Washington, DC 20008
(202) 332-9044
(202) 332-9046 FAX

BURUNDI—Embassy of the Republic of Burundi
2233 Wisconsin Avenue, NW, Suite 212
Washington, DC 20007
(202) 342-2574
(202) 342-2578 FAX

CAMBODIA—Royal Embassy of Cambodia
4500 16th Street, NW
Washington, DC 20011
(202) 726-7742
(202) 726-8381 FAX

CAMEROON—Embassy of the Republic of Cameroon
2349 Massachusetts Avenue, NW
Washington, DC 20008
(202) 265-8790
(202) 387-3826 FAX

CANADA—Embassy of Canada
501 Pennsylvania Avenue, NW
Washington, DC 20001
(202) 682-1740
(202) 682-7726 FAX

CAPE VERDE—Embassy of the Republic of Cape Verde
3415 Massachusetts Avenue, NW
Washington, DC 20007
(202) 965-6820
(202) 965-1207 FAX

CENTRAL AFRICAN REPUBLIC—Embassy of Central African Republic
1618 22nd Street, NW
Washington, DC 20008
(202) 483-7800
(202) 332-9893 FAX

CHAD—Embassy of the Republic of Chad
2002 R Street, NW
Washington, DC 20009
(202) 462-4009
(202) 265-1937 FAX

CHILE—Embassy of Chile
1732 Massachusetts Avenue, NW
Washington, DC 20036
(202) 785-1746
(202) 887-5579 FAX

CHINA—Embassy of the People's Republic of China
2300 Connecticut Avenue, NW
Washington, DC 20009
(202) 328-2500
(202) 328-2564 FAX

COLUMBIA—Embassy of Columbia
2118 Leroy Place, NW
Washington, DC 20008
(202) 387-8338
(202) 232-8643 FAX

COMOROS—Embassy of the Federal and Islamic Republic of the Comoros
C/o Permanent Mission of the Federal and Islamic Republic of the Comoros to the United Nations
336 East 45th Street, 2nd Floor
New York, NY 10017
(212) 972-8010
(212) - FAX

CONGO, REPUBLIC OF—Embassy of the Republic of Congo
4891 Colorado Avenue, NW
Washington, DC 20011
(202) 726-5500
(202) 726-1860 FAX

COSTA RICA—Embassy of Costa Rica
2114 S Street, NW
Washington, DC 20008
(202) 234-2945
(202) 265-4795 FAX

COTE D'IVOIRE—Embassy of the Republic of Cote d'Ivoire
2424 Massachusetts Avenue, NW
Washington, DC 20009
(202) 797-0300
(202) - FAX

CROATIA—Embassy of the Republic of Croatia
2343 Massachusetts Avenue, NW
Washington, DC 20008
(202) 588-5899
(202) 588-8936 FAX

CYPRUS—Embassy of the Republic of Cyprus
2211 R Street, NW
Washington, DC 20009
(202) 462-5772
(202) 483-6710 FAX

CZECH—Embassy of the Czech Republic
3900 Spring of Freedom Street, NW
Washington, DC 20008
(202) 274-9101
(202) 966-8540 FAX

DENMARK—Royal Danish Embassy
3200 Whitehaven Street, NW
Washington, DC 20008
(202) 234-4300
(202) 328-1470 FAX

DJIBOUTI—Embassy of the Republic of Djibouti
1156 15th Street, NW, Suite 515
Washington, DC 20005
(202) 331-0270
(202) 331-0302 FAX

DOMINICA—Embassy of the Commonwealth of Dominica
3216 New Mexico Avenue, NW
Washington, DC 20016
(202) 364-6781
(202) 364-6791 FAX

DOMINICAN REPUBLIC—Embassy of the Dominican Republic
1715 22nd Street, NW
Washington, DC 20008
(202) 332-6280
(202) 265-8057 FAX

ECUADOR—Embassy of Ecuador
2535 15th Street, NW
Washington, DC 20009
(202) 234-7200
(202) 667-3482 FAX

EGYPT—Embassy of the Arab Republic of Egypt
3521 International Court, NW
Washington, DC 20008
(202) 895-5400
(202) 244-4319 FAX

EL SALVADOR—Embassy of El Salvador
2308 California Street, NW
Washington, DC 20008
(202) 265-9671
(202) 328-0563 FAX

EQUATORIAL GUINEA—Embassy of Equatorial Guinea
1511 K Street, NW, Suite 405
Washington, DC 20005
(202) 393-0525
(202) 393-0348 FAX

ERITREA—Embassy of the State of Eritrea
1708 New Hampshire Avenue, NW
Washington, DC 20009
(202) 319-1991
(202) 319-1304 FAX

ESTONIA—Embassy of Estonia
2131 Massachusetts Avenue, NW
Washington, DC 20008
(202) 588-0101
(202) 588-0108 FAX

ETHIOPIA—Embassy of Ethiopia
2134 Kalorama Road, NW
Washington, DC 20008
(202) 234-2281
(202) 328-7950 FAX

FIJI—Embassy of the Republic of Fiji
2333 Wisconsin Avenue, NW, Suite 240
Washington, DC 20007
(202) 337-8320
(202) 337-1996 FAX

FINLAND—Embassy of Finland
3301 Massachusetts Avenue, NW
Washington, DC 20008
(202) 298-5800
(202) 298-6030 FAX

FRANCE—Embassy of France
4101 Reservoir Road, NW
Washington, DC 20007
(202) 944-6000
(202) 944-6166 FAX

GABON—Embassy of the Gabonese Republic
2034 20th Street, NW, Suite 200
Washington, DC 20009
(202) 797-1000
(202) 332-0668 FAX

GAMBIA, THE—Embassy of The Gambia
1155 15th Street, NW, Suite 1000
Washington, DC 20005
(202) 785-1399
(202) 785-1430 FAX

GEORGIA—Embassy of the Republic of Georgia
1511 K Street, NW, Suite 424
Washington, DC 20005
(202) 393-5959
(202) 393-6060 FAX

GERMANY, FEDERAL REPUBLIC OF—Embassy of the Federal Republic of Germany
4645 Reservoir Road, NW
Washington, DC 20007
(202) 298-4000
(202) 298-4249 FAX

GHANA—Embassy of Ghana
3512 International Drive, NW
Washington, DC 20008
(202) 686-4520
(202) 686-4527 FAX

GREAT BRITAIN—SEE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

GREECE—Embassy of Greece
2221 Massachusetts Avenue, NW
Washington, DC 20008
(202) 939-5800
(202) 939-5824 FAX

GRENADA—Embassy of Grenada
1701 New Hampshire Avenue, NW
Washington, DC 20009
(202) 265-2561
(202) 265-2468 FAX

GUATEMALA—Embassy of Guatemala
2220 R Street, NW
Washington, DC 20008
(202) 745-952
(202) 745-1908 FAX

GUINEA—Embassy of the Republic of Guinea
2112 Leroy Place, NW
Washington, DC 20008
(202) 483-9420
(202) 483-8688 FAX

GUINEA-BISSAU—Embassy of the Republic of Guinea-Bissau
918 16th Street, NW, Mezzanine Suite
Washington, DC 20006
(202) 872-4222
(202) 872-4226 FAX

GUYANA—Embassy of Guyana
2490 Tracy Place, NW
Washington, DC 20008
(202) 265-6900
(202) 232-1297 FAX

HAITI—Embassy of the Republic of Haiti
2311 Massachusetts Avenue, NW
Washington, DC 20008
(202) 332-4090
(202) 745-7215 FAX

The HOLY SEE—Apostolic Nunciature
3339 Massachusetts Avenue, NW
Washington, DC 20008
(202) 333-7121
(202) 337-4036 FAX

HONDURAS—Embassy of Honduras
3007 Tilden Street, NW
Washington, DC 20008
(202) 966-7702
(202) 966-9751 FAX

HUNGARY—Embassy of the Republic of Hungary
3910 Shoemaker Street, NW
Washington, DC 20008
(202) 362-6730
(202) 966-8135 FAX

ICELAND—Embassy of Iceland
1156 15th Street, NW, Suite 1200
Washington, DC 20005
(202) 265-6653
(202) 265-6656 FAX

INDIA—Embassy of India
2107 Massachusetts Avenue, NW
Washington, DC 20008
(202) 939-7000
(202) 483-3972 FAX

INDONESIA—Embassy of the Republic of Indonesia
2020 Massachusetts Avenue, NW
Washington, DC 20036
(202) 775-5200
(202) 775-5365 FAX

IRELAND—Embassy of Ireland
2234 Massachusetts Avenue, NW
Washington, DC 20008
(202) 462-3939
(202) 232-5993 FAX

ISRAEL—Embassy of Israel
3514 International Drive, NW
Washington, DC 20008
(202) 364-5500
(202) 363-5610 FAX

ITALY—Embassy of Italy
1601 Fuller Street, NW
Washington, DC 20009
(202) 328-5500
(202) 483-2187 FAX

IVORY COAST—See Cote d'Ivoire

JAMAICA—Embassy of Jamaica
1520 New Hampshire Avenue, NW
Washington, DC 20026
(202) 452-0660
(202) 452-0081 FAX

JAPAN—Embassy of Japan
2520 Massachusetts Avenue, NW
Washington, DC 20008
(202) 939-6700
(202) 328-2187 FAX

JORDAN—Embassy of the Hashemite Kingdom of Jordan
3504 International Drive, NW
Washington, DC 20008
(202) 966-2664
(202) 966-3110 FAX

KAZAKSTAN—Embassy of the Republic of Kazakstan
3421 Massachusetts Avenue, NW
Washington, DC 20008
(202) 333-4504
(202) 333-4509 FAX

KENYA—Embassy of the Republic of Kenya
2249 R Street, NW
Washington, DC 20008
(202) 387-6101
(202) 462-3829 FAX

KOREA—Embassy of Korea
2450 Massachusetts Avenue, NW
Washington, DC 20008
(202) 939-5600
(202) 342-1597 FAX

KUWAIT—Embassy of the State of Kuwait
2940 Tilden Street, NW
Washington, DC 20008
(202) 966-0702
(202) 966-0517 FAX

KYRGYZSTAN—Embassy of the Kyrgyz Republic
1732 Wisconsin Avenue, NW
Washington, DC 20007
(202) 338-5141
(202) 338-5139 FAX

LAOS—Embassy of the Lao People's Democratic Republic
2222 S Street, NW
Washington, DC 20008
(202) 332-6416
(202) 332-4923 FAX

LATVIA—Embassy of Latvia
4325 17th Street, NW
Washington, DC 20011
(202) 726-8213
(202) 726-6785 FAX

LEBANON—Embassy of Lebanon
2560 28th Street, NW
Washington, DC 20008
(202) 939-6300
(202) 939-6324 FAX

LESOTHO—Embassy of the Kingdom of Lesotho
2511 Massachusetts Avenue, NW
Washington, DC 20008
(202) 797-5533
(202) 234-6815 FAX

LIBERIA—Embassy of the Republic of Liberia
5201 16th Street, NW
Washington, DC 20011
(202) 723-0437
(202) 723-0436 FAX

LITHUANIA—Embassy of the Republic of Lithuania
2622 16th Street, NW
Washington, DC 20009
(202) 234-5860
(202) 328-0466 FAX

LUXEMBOURG—Embassy of the Grand Duchy of Luxembourg
2200 Massachusetts Avenue, NW
Washington, DC 20008
(202) 265-4171
(202) 328-8270 FAX

MACEDONIA—Embassy of the Former Yugoslav Republic of Macedonia
3050 K Street, NW, Suite 210
Washington, DC 20007.
(202) 337-3063
(202) 337-3093 FAX

MADAGASCAR—Embassy of the Republic of Madagascar
2374 Massachusetts Avenue, NW
Washington, DC 20008
(202) 265-5525
(202) 265-3034 FAX

MALAWI—Embassy of Malawi
2408 Massachusetts Avenue, NW
Washington, DC 20008
(202) 797-1007
(202) 265-0976 FAX

MALAYSIA—Embassy of Malaysia
2401 Massachusetts Avenue, NW
Washington, DC 20008
(202) 328-2700
(202) 483-7661 FAX

MALI—Embassy of the Republic of Mali
2130 R Street, NW
Washington, DC 20008
(202) 332-2249
(202) 332-6603 FAX

MALTA—Embassy of Malta
2017 Connecticut Avenue, NW
Washington, DC 20008
(202) 462-3611
(202) 387-5470 FAX

MARSHALL ISLANDS—Embassy of the Republic of the Marshall Islands
2433 Massachusetts Avenue, NW
Washington, DC 20008
(202) 234-5414
(202) 232-3236 FAX

MAURITANIA—Embassy of the Islamic Republic of Mauritania
2129 Leroy Place, NW
Washington, DC 20008
(202) 232-5700
(202) 319-2623 FAX

MAURITIUS—Embassy of Republic of Mauritius
4301 Connecticut Avenue, NW, Suite 441
Washington, DC 20008
(202) 244-1491
(202) 966-0983 FAX

MEXICO—Embassy of Mexico
1911 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 728-1600
(202) 797-8458 FAX

MICRONESIA—Embassy of the Federated States of Micronesia
1725 N Street, NW
Washington, DC 20036
(202) 223-4383
(202) 223-4391 FAX

MOLDOVA—Embassy of the Republic of Moldova
2101 S Street, NW
Washington, DC 20008
(202) 667-1130
(202) 667-1204 FAX

MONGOLIA—Embassy of Mongolia
2833 M Street, NW
Washington, DC 20007
(202) 333-7117
(202) 298-9227 FAX

MOROCCO—Embassy of the Kingdom of Morocco
1601 21st Street, NW
Washington, DC 20009
(202) 462-7979
(202) 265-0161 FAX

MOZAMBIQUE—Embassy of the Republic of Mozambique
1990 M Street, NW, Suite 570
Washington, DC 20036
(202) 293-7146
(202) 835-0245 FAX

NAMIBIA—Embassy of the Republic of Namibia
1605 New Hampshire Avenue, NW
Washington, DC 20009
(202) 986-0540
(202) 986-0443 FAX

NEPAL—Royal Nepalese Embassy
2131 Leroy Place, NW
Washington, DC 20008
(202) 667-4550
(202) 667-5534 FAX

NETHERLANDS—Royal Netherlands Embassy
4200 Linnean Avenue, NW
Washington, DC 20008
(202) 244-5300
(202) 362-3430 FAX

NEW ZEALAND—Embassy of New Zealand
37 Observatory Circle, NW
Washington, DC 20008
(202) 328-4800
(202) 328-4836 FAX

NICARAGUA—Embassy of Nicaragua
1627 New Hampshire Avenue, NW
Washington, DC 20009
(202) 939-6570
(202) 939-6545 FAX

NIGER—Embassy of the Republic of Niger
2204 R Street, NW
Washington, DC 20008
(202) 483-4224
(202) 483-3169 FAX

NIGERIA—Embassy of the Federal Republic of Nigeria
1333 16th Street, NW
Washington, DC 20036
(202) 986-8400
(202) 775-1385 FAX

NORWAY—Royal Norwegian Embassy
2720 34th Street, NW
Washington, DC 20008
(202) 333-6000
(202) 337-0870 FAX

OMAN—Embassy of the Sultanate of Oman
2535 Belmont Road, NW
Washington, DC 20008
(202) 387-1980
(202) 745-4933 FAX

PAKISTAN—Embassy of Pakistan
2315 Massachusetts Avenue, NW
Washington, DC 20008
(202) 939-6200
(202) 387-0484 FAX

Iranian Interests Section
2209 Wisconsin Avenue, NW
Washington, DC 20007
(202) 965-4990
(202) 965-1073 FAX

PALAU—Embassy of the Republic of Palau
2000 L Street, NW, Suite 407
Washington, DC 20036
(202) 452-6814
(202) 452-6281 FAX

PANAMA—Embassy of the Republic of Panama
2862 McGill Terrace, NW
Washington, DC 20008
(202) 483-1407
(202) 483-8413 FAX

PAPUA NEW GUINEA—Embassy of Papua New Guinea
1615 New Hampshire Avenue, NW, 3rd Floor
Washington, DC 20009
(202) 745-3680
(202) 745-3679 FAX

PARAGUAY—Embassy of Paraguay
2400 Massachusetts Avenue, NW
Washington, DC 20008
(202) 483-6960
(202) 234-4508 FAX

PERU—Embassy of Peru
1700 Massachusetts Avenue, NW
Washington, DC 20036
(202) 833-9860
(202) 659-8124 FAX

PHILIPPINES—Embassy of the Philippines
1600 Massachusetts Avenue, NW
Washington, DC 20036
(202) 467-9300
(202) 328-7614 FAX

POLAND—Embassy of the Republic of Poland
2640 16th Street, NW
Washington, DC 20009
(202) 234-3800
(202) 328-6271 FAX

PORTUGAL—Embassy of Portugal
2125 Kalorama Road, NW
Washington, DC 20008
(202) 328-8610
(202) 462-3726 FAX

QATAR—Embassy of the State of Qatar
4200 Wisconsin Avenue, NW
Washington, DC 20016
(202) 274-1600
(202) - FAX

ROMANIA—Embassy of Romania
1607 23rd Street, NW
Washington, DC 20008
(202) 332-4846
(202) 232-4748 FAX

RUSSIA—Embassy of the Russian Federation
2650 Wisconsin Avenue, NW
Washington, DC 20007
(202) 298-5700
(202) 298-5735 FAX

RWANDA—Embassy of the Republic of Rwanda
1714 New Hampshire Avenue, NW
Washington, DC 20009
(202) 232-2882
(202) 232-4544 FAX

SAINT KITTS AND NEVIS—Embassy of Saint Kitts and Nevis
3216 New Mexico Avenue, NW
Washington, DC 20016
(202) 686-2636
(202) 686-5740 FAX

SAINT LUCIA—Embassy of Saint Lucia
3216 New Mexico Avenue, NW
Washington, DC 20016
(202) 364-6792
(202) 364-6728 FAX

SAINT VINCENT AND THE GRENADINES—Embassy of Saint Vincent and the Grenadines
3216 New Mexico Avenue, NW
Washington, DC 20016
(202) 364-6730
(202) 364-6736 FAX

SAUDI ARABIA—Embassy of Saudi Arabia
601 New Hampshire Avenue, NW
Washington, DC 20037
(202) 342-3800
(202) 337-4084 FAX

SENEGAL—Embassy of the Republic of Senegal
2112 Wyoming Avenue, NW
Washington, DC 20008
(202) 234-0540
(202) 332-6315 FAX

SEYCHELLES—Embassy of the Republic of Seychelles
C/o the Permanent Mission of Seychelles to the United Nations
820 Second Avenue, Suite 900F
New York, NY 10017
(212) 972-1785
(212) 972-1786 FAX

SIERRA LEONE—Embassy of Sierra Leone
3501 International Place, NW
Washington, DC 20008
(202) 537-3100
(202) 537-0876 FAX

SINGAPORE—Embassy of the Republic of Singapore
3501 International Place, NW
Washington, DC 20008
(202) 537-3100
(202) 537-0876 FAX

SLOVAKIA—Embassy of the Slovak Republic
2201 Wisconsin Avenue, NW, Suite 250
Washington, DC 20007
(202) 965-5161
(202) 965-5166 FAX

SLOVENIA—Embassy of the Republic of Slovenia
1525 New Hampshire Avenue, NW
Washington, DC 20036
(202) 667-5363
(202) 667-4563 FAX

SOLOMON ISLANDS—Embassy of the Solomon Islands
C/o the Permanent Mission of the Solomon Islands to the United States
820 Second Avenue, Suite 800
New York, NY 10017
(212) 599-6193
(212) - FAX

SOMALIA—Embassy of the Somali Democratic Republic
(Embassy ceased operations on May 8, 1991)

SOUTH AFRICA—Embassy of the Republic of South Africa
3051 Massachusetts Avenue, NW
Washington, DC 20008
(202) 232-4400
(202) 265-1607 FAX

SPAIN—Embassy of Spain
2375 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 452-0100
(202) 833-5670 FAX

SRI LANKA—Embassy of the Democratic Socialist Republic of Sri Lanka
2148 Wyoming Avenue, NW
Washington, DC 20008
(202) 483-4025
(202) 232-7181 FAX

SUDAN—Embassy of the Republic of Sudan
2210 Massachusetts Avenue, NW
Washington, DC 20008
(202) 338-8565
(202) 667-2406 FAX

SURINAME—Embassy of the Republic of Suriname
4301 Connecticut Avenue, NW, Suite 108
Washington, DC 20008
(202) 244-7488
(202) 244-5878 FAX

SWAZILAND—Embassy of the Kingdom of Swaziland
3400 International Drive, NW
Washington, DC 20008
(202) 362-6683
(202) 244-8059 FAX

SWEDEN—Embassy of Sweden
1501 M Street, NW
Washington, DC 20005
(202) 467-2600
(202) 467-2699 FAX

SWITZERLAND—Embassy of Switzerland
2900 Cathedral Avenue, NW
Washington, DC 20008
(202) 745-7900
(202) 387-2564 FAX

Cuban Interest Section
2630 16th Street, NW
Washington, DC 20009
(202) 797-8518
(202) - FAX

SYRIA—Embassy of the Syrian Arab Republic
2215 Wyoming Avenue, NW
Washington, DC 20008
(202) 232-6313
(202) 234-9548 FAX

TANZANIA—Embassy of the Republic of Tanzania
2139 R Street, NW
Washington, DC 20008
(202) 939-6125
(202) 797-7408 FAX

THAILAND—Embassy of Thailand
1024 Wisconsin Avenue, NW
Washington, DC 20007
(202) 944-3600
(202) 944-3611 FAX

TOGO—Embassy of the Republic of Togo
2208 Massachusetts Avenue, NW
Washington, DC 20008
(202) 234-4212
(202) 232-3190 FAX

TONGA—Embassy of the Kingdom of Tonga
(Resident in London)

TRINIDAD AND TOBAGO—Embassy of the Republic of Trinidad and Tobago
1708 Massachusetts Avenue, NW
Washington, DC 20036
(202) 467-6490
(202) 785-3130 FAX

TUNISIA—Embassy of Tunisia
1515 Massachusetts Avenue, NW
Washington, DC 20005
(202) 862-1850
(202) 862-1858 FAX

TURKEY—Embassy of the Republic of Turkey
1714 Massachusetts Avenue, NW
Washington, DC 20036
(202) 659-8200
(202) 659-0744 FAX

TURKMENISTAN—Embassy of Turkmenistan
2207 Massachusetts Avenue, NW
Washington, DC 20008
(202) 588-1500
(202) 588-0697 FAX

UGANDA—Embassy of the Republic of Uganda
5911 16th Street, NW
Washington, DC 20011
(202) 726-7100
(202) 726-1727 FAX

UKRAINE—Embassy of Ukraine
3350 M Street, NW
Washington, DC 20007
(202) 333-0606
(202) 333-0817 FAX

UNITED ARAB EMIRATES—Embassy of the United Arab Emirates
3000 K Street, NW, Suite 600
Washington, DC 20007
(202) 338-6500
(202) 333-3246 FAX

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND—British Embassy
3100 Massachusetts Avenue, NW
Washington, DC 20008
(202) 588-6500
(202) 588-7870 FAX

URUGUAY—Embassy of Uruguay
1918 F Street, NW
Washington, DC 20006
(202) 331-1313
(202) 331-8142 FAX

UZBEKISTAN—Embassy of the Republic of Uzbekistan
1746 Massachusetts Avenue, NW
Washington, DC 20036
(202) 887-5300
(202) 293-6804 FAX

VENEZUELA—Embassy of the Republic of Venezuela
1099 30th Street, NW
Washington, DC 20007
(202) 342-2214
(202) 342-6820 FAX

VIETNAM—Embassy of Vietnam
1233 20th Street, NW
Washington, DC 20036
(202) 861-0737
(202) 861-0917 FAX

WESTERN SAMOA—Embassy of the Independent State of Western Samoa
820 Second Avenue, Suite 800D
New York, NY 10017
(212) 599-6196
(212) 599-0797 FAX

YEMEN—Embassy of the Republic of Yemen
2600 Virginia Avenue, NW, Suite 705
Washington, DC 20037
(202) 965-4760
(202) 337-2017 FAX

YUGOSLAVIA—Embassy of the Former Socialist Federal Republic of Yugoslavia
2410 California Street, NW
Washington, DC 20008
(202) 462-6566
(202) 462-2508 FAX

ZAIRE—Embassy of the Republic of Zaire
1800 New Hampshire Avenue, NW
Washington, DC 20009
(202) 234-7690
(202) 686-3631 FAX

ZAMBIA—Embassy of the Republic of Zambia
2419 Massachusetts Avenue, NW
Washington, DC 20008
(202) 265-9717
(202) 332-0826 FAX

ZIMBABWE—Embassy of the Republic of Zimbabwe
1608 New Hampshire Avenue, NW
Washington, DC 20009
(202) 332-7100
(202) 483-9326 FAX

EUROPEAN UNION—Delegation of the European Commission
2300 M Street, NW
Washington, DC 20037
(202) 862-9500
(202) 429-1766 FAX

The following is a list of countries with which diplomatic relations have been severed.

After each country, in parenthesis, is the name of the country's protecting power in the United States.

CUBA (Switzerland)

IRAN (Pakistan)

IRAQ (Algeria)

APPENDIX G

DIGITAL SIGNATURE TUTORIAL

The authentication of computer-based business information interrelates both technology and the law, and calls for cooperation between people of different professional backgrounds and areas of expertise. Each field of expertise brings to the topic of authentication a different repertoire of concepts. Often the concepts from the information security field correspond only loosely to concepts from the legal field, even though both fields apply the same term to their differing concepts.

This interdisciplinary contrast exists even for basic, central concepts such as "authentication" or "digital signature". From a technical point of view, "digital signature" means the result of applying to specific information the technical processes described below. From a legal point of view, handwriting one's name on paper has been the principal means of signature for centuries. In addition, the legal concept of signature recognizes, in many cases, not only a handwritten name but any mark made with the intention of authenticating the marked document.[1] In an electronic setting, today's broad legal concept of "signature" may well include markings such as digitized images of paper signatures, typed notations such as "s/John Smith", or even addressing notations such as letterheads, electronic mail origination headers, and the like. From an information security viewpoint, these simple elec-

tronic signatures are entirely different from the "digital signatures" described in this tutorial and in technical documents, although "digital signature" is sometimes used colloquially or in some legal writing to mean another or any form of computer-based signature. To avoid confusion, this publication uses "digital signature" only in the sense in which the term is used in information security terminology, as meaning the result of applying the technical processes described in this tutorial.

The differences between digital signatures and other electronic signatures are significant, not only in terms of process and result, but also because those differences make digital signatures more serviceable for legal purposes. However, some electronic signatures, though perhaps legally recognizable as signatures, may not be as secure as digital signatures, and may lead to uncertainty and disputes.

To understand why digital signatures serve well in legal applications, this tutorial begins with an overview of the significance of signatures in legal transactions. It then explains digital signature technology in simple terms, and examines how, with some legal and institutional infrastructure, digital signature technology can be applied as a computer-based alternative to traditional signatures.

Signatures and the Law

A signature is not part of the substance of a transaction, but rather of its representation or form. Parties often represent their transactions in signed writings. Signing writings and other formalistic legal processes or customs serve the following general purposes:[2]

- **Evidence:** A signature identifies the signer with the signed document; by signing, the signer marks the text in her own unique way and makes it attributable to her.[3]
- **Ceremony:** Signing calls to the signer's attention the legal significance of his act, and thereby helps prevent "inconsiderate engagements".[4] The act of signing may satisfy a human desire to mark an event.[5]
- **Approval:** In certain contexts defined by law or custom, a

signature expresses the signer's approval or authorization of the writing, or the signer's intention that it have legal effect.[6]

- **Efficiency and logistics:** A signature on a written memorandum often imparts a sense of clarity and finality to the transaction, especially if the signature is used to indicate approval or authorization. Because of this apparent clarity and finality, signatures may lessen the need to inquire beyond the face of a document,[7] and, at face value, a document may be processed more efficiently and with less risk than a document beneath which traps for the unwary may lie. Negotiable instruments, for example, attain their ability to change hands with ease, rapidity, and minimal interruption through legal rules triggered by compliance with certain formal requirements including a signature.[8] Furthermore, the finality of signing makes it useful as a decisive point in staging how a transaction takes effect.

Although achieving these purposes is salutary, legal systems vary, both among themselves and over time, in the degree to which a particular form, including one or more signatures, is required for a legal transaction. If a particular form is required, legal systems also vary in prescribing consequences for failure to cast the transaction in the required form. The statute of frauds of the common law tradition, for example, requires a signature, but does not render a transaction invalid for lack of one. Rather, it makes it unenforceable in court,[9] and the persistent notion that the underlying transaction remained valid led case law to greatly limit the practical application of the statute.

In general, the trend in most legal systems for at least this century has been toward reducing formal requirements in law,[10] or toward minimizing the consequences of failure to satisfy formal requirements. Nevertheless, sound practice remains to formalize a transaction in a manner that best assures the parties of its validity and enforceability.[11] In current practice, that formalization usually entails documenting the transaction and signing or authenticating the documentation.

However, the centuries-old means of documenting transactions and creating signatures are changing fundamentally.

Documents continue to be written on paper, but sometimes merely to satisfy the need for a legally recognized form. In many instances, the information exchanged to effect a transaction never takes paper form. It also no longer moves as paper does; it is not physically carried from place to place but rather streams along digital conduits at a speed impossible for paper. The computer-based information is also utilized differently than its paper counterpart. Paper documents can be read efficiently only by human eyes, but computers can also read digital information and take programmable actions based on the information.

The law has only begun to adapt to the new technological forms. The basic nature of the transaction has not changed; however, the transaction's form, the means by which it is represented and effected, is changing. Formal requirements in law need to be updated accordingly. The legal and business communities need to develop and adopt rules and practices which recognize in the new, computer-based technology the effects achieved or desired from the paper forms.

To achieve the basic purposes of signatures outlined above, the following effects are needed:[12]

- **Signer authentication:** To provide good evidence of who participated in a transaction, a signature should indicate by whom a document or message is signed and be difficult for any other person to produce without authorization.
- **Document authentication:** To provide good evidence of the substance of the transaction, a signature should identify what is signed,[13] and make it impracticable to falsify or alter, without detection, either the signed matter or the signature.[14]
- **Affirmative act:** To serve the ceremonial and approval functions of a signature, a person should be able to create a signature to mark an event, indicate approval and authorization, and establish the sense of having legally consummated a transaction.
- **Efficiency:** Optimally, a signature and its creation and verification processes should provide the greatest possible as-

surance of authenticity and validity with the least possible expenditure of resources.

The concepts of signer authentication and document authentication comprise what is often called "nonrepudiation service" in technical documents. The nonrepudiation service of information security "provides proof of the origin or delivery of data in order to protect the sender against false denial by the recipient that the data has been received, or to protect the recipient against false denial by the sender that the data has been sent."[15] In other words, a nonrepudiation service provides evidence[16] to prevent a person from unilaterally modifying or terminating her legal obligations arising out of a transaction effected by computer-based means.

Digital signature technology generally surpasses paper technology in yielding these desired effects.[17] To understand why, one must first understand how digital signature technology works.

How Digital Signature Technology Works

Digital signatures are created and verified by means of cryptography, the branch of applied mathematics that concerns itself with transforming messages into seemingly unintelligible forms and back again. For digital signatures, two different keys are generally used, one for creating a digital signature or transforming data into a seemingly unintelligible form, and another key for verifying a digital signature or returning the message to its original form.[18] Computer equipment and software utilizing two such keys is often termed an "**asymmetric cryptosystem**".

The keys of an asymmetric cryptosystem for digital signatures are termed the **private key**, which is known only to the signer[19] and used to create the digital signature, and the **public key**, which is ordinarily more widely known and is used to verify the digital signature. A recipient must have the corresponding public key in order to verify that a digital signature is the signer's. If many people need to verify the signer's digital signatures, the public key must be distributed

to all of them, perhaps by publication in an on-line repository or directory where they can easily obtain it.

Although the keys[20] of the pair are mathematically related, it is XE "Computational infeasibility:deriving private key from public"computationally infeasible[21] to derive one key from the other, if the asymmetric cryptosystem has been designed and implemented securely for digital signatures.[22] Although many people will know the public key of a given signer and use it to verify that signer's signatures, they cannot discover that signer's private key and use it to forge digital signatures.

Use of digital signatures is comprised of two processes, one performed by the signer and the other by the receiver of the digital signature:

- **Digital signature creation** is the process of the computing a code derived from and unique to both the signed message and a given private key. For that code or digital signature to be secure, there must be at most only a negligible chance that the same digital signature could be created by any other message or private key.[23]
- **Digital signature verification** is the process of checking the digital signature by reference to the original message and a public key, and thereby determining whether the digital signature was created for that same message using the private key that corresponds to the referenced public key.

A more fundamental process, termed a "**hash function**"[24] in computer jargon, is used in both creating and verifying a digital signature. A hash function creates in effect a digital freeze frame of the message, a code usually much smaller than the message but nevertheless unique to it.[25] If the message changes, the hash result of the message will invariably[26] be different. Hash functions enable the software for creating digital signatures to operate on smaller and predictable amounts of data, while still providing a strong evidentiary correlation to the original message content.

As illustrated in figure 1, to sign a document or any other item of information, the signer first delimits precisely what is to be signed. The delimited information to be signed is

termed the "**message**" in the ABA Guidelines and Utah Act. Then a hash function in the signer's software computes a hash result, a code unique to the message. The signer's software then transforms the hash result into a digital signature by reference to the signer's private key. This transformation is sometimes described as "encryption". The resulting digital signature is thus unique to both the message and the private key used to create it.

Typically, a digital signature is attached to its message and stored or transmitted with its message. However, it may also be sent or stored as a separate data element, so long as it maintains a reliable association with its message. Since a digital signature is unique to its message, it is useless if wholly dissociated from its message.

Verification of a digital signature, as illustrated in Figure 2, is accomplished by computing a new hash result of the original message by means of the same hash function used in creating the digital signature. Then, using the public key, the verifier checks whether the digital signature was created using the corresponding private key, and whether the newly computed hash result matches the hash result derived from the digital signature. If the signer's private key was used and the hash results are identical, then the digital signature is verified. Verification thus indicates (1) that the digital signature was created using the signer's private key, because only the signer's public key will verify a digital signature created with the signer's private key,[27] and (2) that the message was not altered since it was signed, because the hash result computed in verification matches the hash result from the digital signature, which was computed when the message was digitally signed.

Various asymmetric cryptosystems create and verify digital signatures using different mathematical formulas and procedures, but all share this overall operational pattern.

The processes of creating a digital signature and verifying it accomplish the essential effects desired of a signature:

- **Signer authentication:** If a public and private key pair is associated with an identified signer as described below, a digital signature by the private key effectively identifies the signer with the message. The digital signature cannot be

forged by a person other than the proper signer, unless the proper signer loses control of the private key, such as by divulging it or losing a computer-readable card and its associated personal identification number (PIN) or pass phrase.[28]

- **Message authentication:** The process of digitally signing also identifies the matter to be signed, typically with far greater certainty and precision than paper signatures. Verification also reveals any tampering with the message, since processing the hash results (one made at signing and the other made at verifying) discloses whether the message is the same as when signed.
- **Affirmative act:** Creating a digital signature requires the signer to provide her private key and invoke a software function to create a digital signature. This act can be the basis of a ceremony and can be used in staging the completion of a transaction.[29]
- **Efficiency:** The processes of creating and verifying a digital signature provide a high level of assurance that the digital signature is genuinely the signer's and are almost entirely automated or capable of automation. They can be set up to run with great speed and accuracy, with human interaction only for non-routine processing decisions. Compared to paper methods such as checking bank signature cards, methods so impracticable that they are rarely actually used, digital signatures yield a high degree of assurance without adding greatly to the resources required for processing.

The core of the programs used for digital signatures have undergone thorough peer review, and an extensive scientific and technical literature underlies them. Digital signatures have been accepted in several national and international standards developed in cooperation with and accepted by many corporations, banks, and government agencies. The likelihood of malfunction or a security problem in a digital signature cryptosystem designed and implemented as prescribed in the industry standards is extremely remote, and far less than the risk of undetected forgery or alteration on paper or of using other less secure electronic signature techniques.

Public Key Certificates

To verify a digital signature, the verifier must obtain a public key and have assurance that that public key corresponds to the signer's private key. However, a public and private key pair has no intrinsic association with any person; it is simply a pair of numbers. The association between a particular person and key pair must be made by people using the fact-finding capabilities of their senses.

In a transaction involving two parties, for example, the parties could bilaterally identify each other with the key pair each party will use, but making such an identification is no small task, especially when the parties are geographically distant from each other, communicate over an open, insecure information network, are not natural persons but rather corporations or similar artificial entities, and act through agents whose authority must be ascertained. Since reliably identifying a remote party involves considerable effort, establishing a remote party's digital signature capability specially for each of many transactions is inefficient. Instead, a prospective digital signer will often wish to identify itself with a key pair and reuse that identification in multiple transactions over a period of time.

To that end, a prospective signer could issue a statement such as: "Signatures verifiable by the following public key are mine". However, others doing business with the signer may well be unwilling to take the signer's own purported word for its identification with the key pair. Especially for electronic transactions made over worldwide information networks rather than face to face, a party would run a great risk of dealing with a phantom or an impostor, or of facing a disavowal of a digital signature by claiming it to be the work of an impostor, particularly if a transaction proves disadvantageous for the purported signer. To assure that each party is indeed identified with a particular key pair, one or more third parties trusted by both of the others must associate an identified person on one end of the transaction with the key pair creating the digital signature received at the other end, and vice versa. That trusted third party is termed a "**certification**

authority" in the ABA Guidelines, the Utah Act, and most technical standards.

To associate a key pair with a prospective signer, a certification authority issues a certificate, an electronic record that sets forth a public key and represents that the prospective signer identified in the certificate holds the corresponding private key. That prospective signer is termed the "subscriber". Thus, a certificate's principal function is to identify a key pair with a subscriber, so that a person verifying a digital signature by the public key listed in the certificate can have assurance that the corresponding private key is held by the subscriber also listed in the certificate.

To assure the authenticity and inviolability of the certificate, the certification authority digitally signs it. The issuing certification authority's digital signature on the certificate can be verified using the public key listed in another certificate, and that other certificate can be verified by the public key listed in yet another certificate, and so on, until the person relying on the digital signature is adequately assured of its genuineness.

To make a public key and its identification with a specific subscriber readily available for use in verification, the certificate may be published in a repository. Repositories are on-line databases of certificates available for retrieval and use in verifying digital signatures. Often, retrieval is accomplished automatically by having the verification program inquire of the repository to obtain certificates as needed.

Once issued, a certificate may prove to be unreliable, such as in situations where the subscriber misrepresents his identity to the certification authority. In other situations, a certificate may be reliable enough when issued but come to be unreliable sometime thereafter. For example, if the subscriber loses control of the private key, the certificate becomes unreliable, since digital signatures created by the lost private key would appear to be the subscriber's according to the certificate. In such situations where the certificate has become unreliable, the certification authority, perhaps at the subscriber's request, may suspend (temporarily invalidate) or revoke (permanently invalidate) the certificate. Immediately

upon suspending or revoking a certificate, the certification authority must publish notice of the revocation or suspension, or at least notify persons who inquire or who are known to have received a digital signature verifiable by reference to the unreliable certificate.

Challenges and Opportunities

The prospect of fully implementing digital signatures in general commerce presents both advantages and disadvantages, or benefits and costs. The costs or disadvantages consist mainly of:

- **Institutional overhead:** The cost of establishing and utilizing certification authorities, repositories, and other important services, as well as assuring quality in the performance of their functions through means such as professional accreditation, oversight by another, superior certification authority,[30] licensing and governmental regulation, periodic auditing, or legal and financial responsibility for errors and omissions.
- **Product cost:** A digital signer will require software that may well be more expensive than a simple pen, and may probably also have to pay a certification authority to issue a certificate. Equipment to secure one's private key may also be advisable. Recipients of digital signatures will incur expenses for verification software and perhaps for access to certificates in a repository.

On the plus side, the principal advantage to be gained is more reliable authentication of messages. Digital signatures, if properly implemented and utilized:

- **Impostors:** Minimize the risk of dealing with impostors or persons who can escape responsibility by claiming to have been impersonated.
- **Message corruption:** Minimize the risk of tampering with messages, altering the terms of a transaction and covering up the traces of the alteration, or false claims that a message was altered after it was sent.
- **Formal legal requirements:** Strengthen the support for concluding that legal requirements of form, such as writ-

ing, signature, and an original document, are satisfied, since digital signatures are functionally on a par with or superior to paper forms.

- **Open systems:** Retain a high degree of information security, even for information sent over open, insecure, but inexpensive and widely used communication channels.

Considering the alternatives, such as paper signatures, computerized images of handwritten signatures, or typed signatures such as "s/John Smith", the benefits of digital signatures outweigh their burdens. The ABA Guidelines and Utah Act are intended to advance legal recognition of digital signatures and establish an institutional infrastructure to support digital authentication.

NOTES

Note 1

See, e.g., Uniform Commercial Code §1-201(39) (1992).

Note 2

This list is not exhaustive. For example, Restatement (Second) of Contracts notes another function, termed the "deterrent function", which seeks to "discourage transactions of doubtful utility. Restatement (Second) of Contracts §72 comment c (1981). Professor Perillo also notes, in an especially comprehensive list, earmarking of intent, clarification, managerial efficiency, publicity, education, as well as taxation and regulation as functions as served by the statute of frauds. Joseph M. Perillo, The Statute of Frauds in the Light of the Functions and Dysfunctions of Form, 43 Fordham L. Rev. 39, 48-64 (1974) (hereinafter "Perillo").

Note 3

Restatement (Second) of Contracts, statutory note preceding §110 (1982) (purpose of the statute of frauds, which includes a signature requirement); Lon L. Fuller, Consideration and Form, 41 Colum. L. Rev. 799, 800 (1941) (hereinafter "Fuller"); Jeremy Bentham, The Works of Jeremy Bentham 508-85 (Bowring ed. 1839) (Bentham called forms serving evidentiary functions

"preappointed [i.e., made in advance] evidence"). A handwritten signature creates probative evidence in part because of the chemical properties of ink that make it adhere to paper, and because handwriting style is quite unique to the signer; Perillo at 64-69.

Note 4

2 John Austin, Lectures on Jurisprudence 939-44 (4th ed. 1873); Restatement (Second) of Contracts §72 comment c (1982) and statutory note preceding §110 (1982) (what is here termed a "ceremonial" function is termed a "cautionary" function in the Restatement); Perillo at 53-56; Fuller at 800; Rudolf von Jhering, Geist des rämischen Rechts §45 at 494-98 (8th ed. 1883) (hereinafter "Jhering").

Note 5

See Perillo at 47-48; Bruce Cohen, The Basis of Contract, 46 Harv. L. Rev. 553, 582-83 (1933).

Note 6

See United Nations Commission on International Trade Law (UNCITRAL) Draft Model Law on the Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Data Communication art. 6 (1994). For example, a signature on a written contract customarily indicates the signer's assent. A signature on the back of a check is customarily taken as an endorsement; *see also* Uniform Commercial Code §3-204 (1990).

Note 7

See Perillo at 50-53; Fuller at 801-802; Jhering §45 at 494-97 (analogizing the form of a legal transaction to minting of coins, which serves to make their metal content and weight apparent without further examination). The notion of clarity and finality from a form is related to the evidentiary function; the clarity and finality are largely predicated on form providing good evidence. In other words, the basic premise of the efficiency and logistical function is that a signed, written document is such a good indicator of what the transaction is that the transaction should be considered to be as the signed document says. The moment of signing the document thus becomes decisive.

This premise that a document can adequately capture a transaction has been undermined in modern times, except for negotiable instruments and certain other simple, highly stylized, and statutorily supported transactions. Rules designed to treat written documents as final, such as the common law's parol evidence rule, have been repealed or have degenerated to obstacles usually surmountable, albeit at a significant cost.

Note 8

See, e.g., United Nations Convention on International Bills of Exchange and International Promissory Notes arts. 3(1)(d) (bills of exchange) and 3(2)(d) (promissory notes); Uniform Commercial Code §3-401 (1990) (a person is not liable on an instrument unless the person signed it); *see generally* Uniform Commercial Code §3-104 (1990) (requirements for negotiability).

Note 9

2 Arthur L. Corbin, Corbin on Contracts §279 at 20-23 (1950). In English law, the original 1677 statute of frauds was repealed in 1954 by the Law Reform (Enforcement of Contracts) Act, 2 & 3 Eliz. II, c. 34, except for its suretyship and real property provisions. However, it remains in force throughout the United States and in much of the British Commonwealth outside the United Kingdom.

Note 10

See Perillo at 41-42.

In Anglo-American law, many examples of the trend away from formal requirements can be cited, such as:

- The common law seal has little remaining significance. Restatement (Second) of Contracts, statutory note preceding §95 (1982).
- A legally recognized signature has become nothing more than a mark made with the intention of authenticating the signed matter. *See, e.g.,* Uniform Commercial Code §1-201(39) (1990).
- Case law has greatly limited the effects of the statute of frauds through the part performance doctrine, promissory and equitable estoppel (e.g. Monarco v. Lo Greco, 35 Cal. 2d 621, 220 P.2d 737 (1950) (Traynor, J.)), leniency in determining what consti-

tutes a sufficient memorandum, and by permitting restitution and reformation of a contract within the statute, and case law rationales.

For a classic examination of the advantages and disadvantages of formal requirements, *see* Jhering at 470–504.

Note 11

Michael Braunstein, Remedy, Reason, and the Statute of Frauds: A Critical Economic Analysis 1989 Utah L. Rev. 383, 423–26 (1989); Jhering at 474 (inattention to legally appropriate form for expressing intent exacts its own consequences (rächt sich selber")).

Note 12

These effects include those listed in the U.S. Comptroller General's rationale for accepting digital signatures as sufficient for government contracts under 31 U.S.C. 1501(a)(1): "The electronic symbol proposed for use by certifying officers . . . embodied all of the attributes of a valid, acceptable signature: it was unique to the certifying officer, capable of verification, and under his sole control such that one might presume from its use that the certifying officer, just as if he had written his name in his own hand, intended to be bound." In re National Institute of Standards and Technology Use of Electronic Data Interchange to Create Valid Obligations, file B-245714 (Comptroller Gen'l, 1991).

Note 13

A paper signature identifies the signed matter less than perfectly. Ordinarily, the signature appears below what is signed, and the physical dimensions of the paper and the regular layout of the text are relied upon to indicate alteration. However, those mechanisms are not enough to prevent difficult factual questions from arising. *See, e.g.,* Citizens Nat'l Bank of Downers Grove v. Morman, 78 Ill. App. 3d 1037, 398 N.E.2d 49 (1979); Newell v. Edwards, 7 N.C. App. 650, 173 S.E.2d 504 (1970); Zions First Nat'l Bank v. Rocky Mountain Irrigation, Inc., 795 P.2d 658, 660–63 (Utah 1990); Lembo v. Federici, 62 Wash. 2d 972, 385 P.2d 312 (1963).

Note 14

The consequences of altering a signed writing are often

serious. At Anglo-American common law, a material and fraudulent alteration of a written contract which is either integrated or required to be in writing makes the contract avoidable. Restatement (Second) of Contracts §286 (1987). The rules regarding alterations in negotiable instruments are generally more limited in effect, *see, e.g.,* United Nations Convention on International Bills of Exchange and International Promissory Notes art. 35 (material alteration without authorization or assent is ineffective, but the original text remains effective); Uniform Commercial Code §§3-416(a)(2), 3-417(a)(2), 4-207(a)(3), 4-208(a)(2) (1990) (state law throughout the United States).

Note 15

ISO/IEC JTC1/SC21 Project 97.21.9 Q53 (1989); Warwick Ford, Computer Communications Security: Principles, Standard Protocols & Techniques 29-30 (1994); Michael S. Baum, Federal Certification Authority Liability and Policy: Law and Policy of Certificate-Based Public Key and Digital Signatures 9 (1994).

Note 16

A nonrepudiation service provides only proof of facts to defend against an opponent's effort to avoid a transaction. *See* Michael S. Baum, Federal Certification Authority Liability and Policy: Law and Policy of Certificate-Based Public Key and Digital Signatures §3 and appendix 1 §2(d) (1994).

Note 17

For a more thorough examination of properties desirable in a digital signature, seegenerally Mitchell, Piper & Wild, Digital Signatures, in Contemporary Cryptology: The Science of Information Integrity 325, 341-46 (Gustavus Simmons ed. 1991).

Note 18

Although the roots of digital signatures lie in cryptography, a digital signature does not necessarily involve encryption or confidentiality of the signed message. Generally, a digital signature is an appendage to its message, and the transformations involved in creating the digital signature do not affect the message or make it

confidential, although some implementations may provide for optional message confidentiality.

Note 19

Of course, the holder of the private key may choose to divulge it, or may lose control of it, and thereby make forgery possible. The ABA Guidelines and Utah Act seek to address this problem in two ways, (1) by requiring a subscriber, who holds the private key, to use a degree of care in its safekeeping (*cf.* 12 C.F.R. part 205 (1994) (commonly termed "Regulation E"), and (2) enabling the subscriber to disassociate himself from the key by temporarily suspending or permanently revoking his certificate. *See* ABA Guidelines 3.11 and 3.12.

A variety of methods are available for securing the private key. The safer methods store the private key in devices about the size of a credit card or 3½-inch floppy disk. Such a device or "cryptographic token" executes the signature program within itself, so that the private key is never divulged outside the token and does not pass into the main memory or processor of the signer's computer. The signer must typically present to the token some authenticating information, such as a password, pass phrase, or personal identification number, for the token to run a process requiring access to the private key. Besides cryptographic tokens, other, generally less secure, methods exist for keeping the private key safe.

Note 20

Many cryptographic systems will function securely only if the keys are lengthy and complex, too lengthy and complex for a person to easily remember or use. In modern cryptography, keys are ordinarily kept and used on computer media.

Note 21

"Computationally infeasible" is a relative concept based on current and foreseeable technology. *See* Bruce Schneier, Applied Cryptography: Protocols, Algorithms, and Source Code in C 7 (1994). Digital signature algorithms are available which have undergone extensive testing and cryptographic analysis to assure their im-

pregnability under the most challenging present or foreseeable conditions. Their reliability is limited by an inability to predict the future, but they can nevertheless provide a degree of security better than available alternatives, including paper.

Note 22

See generally Warwick Ford, Computer Communications Security: Principles, Standard Protocols and Techniques 71-75 (1994); Charlie Kaufman, Radia Perlman & Mike Speciner, Network Security: Private Communication in a Public World 48-56 (1995) (hereinafter Kaufman, et al., Network Security).

Note 23

Bruce Schneier, Applied Cryptography: Protocols, Algorithms, and Source Code in C 27-38 (1994).

Note 24

Hashing is a process by which a computer program arranges a body of information into a table. Hashing may serve a variety of programming objectives besides information security, such as look-up and retrieval. In the ABA Guidelines and Utah Act, "hash function" is used for the hashing portion of a program, and "hash result" is used to describe the index output from hashing. *See* ABA Guidelines 1.10 and 1.11.*

Note 25

See generally Warwick Ford, Computer Communications Security 75-84 (1994); Kaufman, et al., Network Security 101-27; Nechvatal, Public Key Cryptography, in Comtemporary Cryptology: The Science of Information Integrity 179, 199-202 (Gustavus Simmons ed. 1991); Bruce Schneier, Applied Cryptography: Protocols, Algorithms, and Source Code in C 27-28 (1994).

Besides the properties listed above, a secure hash function also produces a hash result from which it is computationally infeasible to reconstruct the original message.

Note 26

It is extremely improbable that two messages will produce the same hash result. *See* Kaufman, et al., Network Security at 102.

Note 27

Bruce Schneier, Applied Cryptography: Protocols, Algorithms, and Source Code in C 31-38 (1994).

Note 28

A digital signature should be time-stamped because a signer can prospectively terminate its digital signature capability by suspending or revoking the signer's association with the key pair as of a particular date. The time of a digital signature also needs to be checked against the validity period of the certificate, which is the record that links the signer to the key pair, to insure that the certificate has not yet expired.

Note 29

One property of the act of signing is that it is a discrete process for each signature; each act yields a result that can be considered unique. Each signature may accordingly be a distinct act of legal consequence. Multiple signatures may mean multiple obligations, or simply repetitions of the same obligation, depending heavily on the content of the signed message. Two signed checks for one hundred dollars each create a total obligation of $200; however, two identically worded documents, in which A agrees to sell and B agrees to buy certain land, most likely manifest a single contract of which two originals are extant.

Sometimes it is important to distinguish between originals and copies, to prevent copies from being mistaken for distinct obligations. The digital signature technology described in this tutorial does not address this need; however, systems could be devised incorporating additional functionality to distinguish between an original and its copies, if such a distinction is significant. Whether such a distinction is significant is a principal issue underlying Guideline 5.5 (digitally signed documents as originals).

Note 30

A hierarchy among certification authorities is implicit in some implementations of the requirement that a certification authority identify the subscriber with the public

key of a certain key pair in a certificate, which the certification authority digitally signs. To digitally sign, a certification authority must itself have a key pair identified in another certificate signed by another certification authority. That certification authority must also have a key pair identified in yet another certificate, and so on. The chain of certificates suggests perhaps the rudiments of a heirarchical structure, which may assist in assuring that certification authorities are trustworthy. *See* Guideline 1.32, especially comment 1.32.4.

DIGITAL SIGNATURE ACT: EXAMPLES

Subscriber Denies Verified Digital Signature

Susan owned and operated a video movie sales and rental business. Her supplier informed her that she could place purchase orders from her Internet account for faster service, if she digitally signed the orders and obtained a certificate from a licensed certification authority.

Susan visited Cedric, a licensed certification authority, who issued her a certificate. Cedric gave Susan a printout of the certificate with its contents labeled for identification, and Susan signed a receipt containing a second printout to which was appended the following paragraph:

Acceptance: The undersigned has reviewed the foregoing certificate, finds it to be accurate and in accordance with representations made to the licensed certification authority issuing it, and therefore hereby accepts the foregoing certificate pursuant to the Utah Digital Signature Act. Susan signed below the paragraph in ink and noted the current date. Cedric also took an instant photograph of Susan and attached it to her signed acceptance.

Susan connected to her supplier's WorldWide Web catalog of new offerings and ordered 500 copies of Dangerous Dreams, a movie that had just begun to show in theaters. She digitally signed the purchase order using the private key corresponding to the public key in the certificate Cedric had issued.

The next evening, she decided to take in a movie, saw Dangerous Dreams, and disliked it. The 500 copies of Dangerous Dreams arrived the next morning. Susan rejected the shipment and phoned her supplier to explain, deciding to feign ignorance of the order. She acted surprised, told the supplier that she had never ordered the 500 copies of Dangerous Dreams.

Finding itself overstocked with Dangerous Dreams inventory, the supplier sued Susan for breach of their sales contract. Susan alleged in her answer that she had never ordered Dangerous Dreams and that the order was within the statute

of frauds of Utah Uniform Commercial Code 70A-2-201 (1994).

Under the Utah Act:

Cedric, the certification authority, has little risk of liability, since the foregoing facts do not indicate that he breached a duty under the Utah Act. He also appears to have documented the issuance and acceptance process well, should evidence of them be needed in the litigation between Susan and the supplier.

Susan, the subscriber, will probably be held liable for breach of a promise to purchase the 500 videotapes, assuming that the contract between Susan and the supplier requires her to accept delivery of goods shipped as ordered. Susan will probably fail to persuade the trier of fact that she had nothing to do with the purchase order, since it bears her digital signature verified by the public key in the certificate.

If she challenges the certificate, Cedric has good evidence to support it. Susan will bear the burden of proof in attacking her signature pursuant to 406. Her statute of frauds claim will probably fail, because the purchase order would be considered signed under 401 of the Utah Act and written under 403.

The supplier can probably recover from Susan for breach of their sales contract. If Susan succeeds in challenging the certificate, the supplier could probably recover damages from Cedric for his error, but it does not appear from the foregoing facts that Cedric erred.

The repository does not appear to be liable from the foregoing facts.

Subscriber Loses Private Key, Revokes Certificate

Cedric, a licensed certification authority, duly issued a certificate to Susan, who accepted it. Cedric thereupon published the certificate in a recognized repository.

Susan, a grocer, authorized Agnes to use the private key corresponding to the public key listed in the certificate to purchase inventory as needed. Agnes failed to comply with the terms of her employment, so Susan placed her on probation.

Unable to resolve the problems with Agnes and continue intensive supervision of her performance, Susan removed purchasing from among Agnes's duties. Susan also revoked the certificate for Agnes's key pair, and Cedric published notice of the revocation in the repository that the certificate indicated as the repository in which notice of revocation would be published.

Resenting her reassignment, Agnes issues several unnecessary orders and quit her job.

Northwest Supply, Inc. received an order for 500 crates of lettuce, but did not bother to verify the digital signature on the order. Northwest shipped the 500 crates of lettuce. Since Susan already had plenty of lettuce and could find no evidence of an order of 500 crates to Northwest, Susan rejected the shipment. Northwest was able to sell only 50 crates of the lettuce at a price that did not even cover the expenses of sale. The rest of the lettuce rotted. Northwest sued Susan for the price of the lettuce.

Southwest Supply, Inc. also received an unauthorized order from Agnes. Southwest tried to verify the digital signature on the order, but found it could not be verified by any known certificate.

Southwest requested Susan to confirm the order, but Susan could find no record of it and informed Southwest that the order was apparently spurious. Southwest ignored the order.

Under the Utah Act:

> Susan, the subscriber, is probably not liable for breach of its sales contract with Northwest, since Northwest can produce no properly authenticated order.
>
> Revocation of the certificate gave notice to Northwest that the digital signature capability allocated to Agnes was no longer reliable. Thus, at the time of the digital signature, no reliable link between Susan and the critical key pair exists, so

Northwest has clear notice that the key pair can no longer be identified as Susan's.

Northwest, which relied to its detriment on an unverifiable digital signature, will very likely bear the loss due to the order it filled despite the unverifiability of the order's digital signature. The only evidence identifying the digital signature with Susan is evidence that Susan, through revocation, had indicated was unreliable. Having notice that the digital signature was unreliable, Northwest will bear the loss of relying on it, despite clear notice through revocation of the certificate.

Southwest realized that the digital signature was unreliable and therefore did not rely on it. Southwest suffered no loss.

Susan, the subscriber, is very likely not liable for the lettuce shipped by Northwest, since she revoked the certificate and thereby gave notice that digital signatures verifiable by the corresponding public key were unreliable.

The repository appears to have performed its duty to effect publication as required. It is accordingly not liable.

Subscriber Loses Private Key, Does not Suspend or Revoke Certificate

Cedric, a licensed certification authority, duly issues a certificate to Susan, who accepts it. Cedric thereupon publishes the certificate in a recognized repository. Susan's private key, which corresponds to the public key named in the certificate, is kept on a floppy disk, which she places in her purse.

Irving steals Susan's purse, including the private key. Susan never suspends or revokes the certificate. Before the certificate expires, Irving discloses the private key to Fred, who cashes a check drawn on Susan's account payable to a numbered, anonymous account in a state having rigorous bank secrecy laws. Fred disappears immediately after cashing the check and cannot be found.

Under the Utah Act:

Cedric, the certification authority, is not liable for any loss in this scenario, since Cedric issued and published the certificate in compliance with the law ("duly"). Even if he had erred in issuing the certificate, demonstrating proximate causation of the forgery loss from an error in issuance may be difficult.

Susan, the subscriber, is liable if she failed to exercise reasonable care in safeguarding the private key. Thus, if the trier of fact finds her negligent in keeping the private key safe, Susan will be liable for the loss caused by the forgery.

Since Susan failed to revoke the certificate, she runs a serious risk of liability for negligence in safeguarding the private key, until the certificate expires of its own accord.

The repository is not liable, since it published a certificate at the request of a duly licensed certification authority and never received a notice that the certificate was revoked or suspended.

Fred, the forger, is, of course, liable, but, since he "disappeared", he cannot be served with process, so a court cannot obtain jurisdiction over him to enable anyone else to recover from him.

Irving, the interloper and thief, is also liable under the common law tort of conversion. However, finding Irving and collecting a judgment from him could prove problematic.

Certification Authority Retains and Misuses Subscribers Private Key

After a rather large claim was paid pursuant to a title insurance policy for an encumbrance appearing on the county recorder's records shortly after a closing, the XYZ Title Company decides to file all deeds and mortgages electronically henceforth. Cedric, an XYZ employee, obtains a license as a certification authority and buys the Certificates R Us software

package containing "everything you need" to be a certification authority.

At XYZ's next closing, Susan, the grantor, appears, pen in hand, to sign her deed, but Cedric persuades Susan to sign digitally using a certificate he will issue at no additional charge other than the "usual" closing costs.

Cedric uses the Certificates R Us software and his portable computer to generate a key pair for Susan, and issues Susan a short-term certificate, which she accepts. Cedric publishes the certificate in a recognized repository. Susan digitally signs the deed and Cedric records it. Susan also signs a request authorizing an electronic funds transfer for the benefit of XYZ Title Company to cover the closing costs.

After the closing but before the certificate expires, Cedric realizes that Susan's private key is still on his portable computer. He helps himself to another funds transfer from Susan's account, which he requests, authorizes, and digitally signs using her private key.

He makes the transfer for the benefit to ABC Home Electronics for a new stereo.

Susan, in reviewing a the status of her account, cannot account for some funds and discovers a funds transfer to ABC on her bank statement. After a conversation with ABC, she sues Cedric and XYZ Title Company.

Under the Utah Act:

> Cedric, the certification authority, is liable as a constructive trustee of the private key for Susan's benefit. Since he did not act in the interest of Susan, the beneficiary of the constructive trust, in buying himself the stereo, he could be surcharged (in other words, Susan could collect money damages from him for breach of his fiduciary duty).
>
> Alternatively, rather than surcharge the trustee and collect a money judgment, Susan could also trace the proceeds of her private key and take the stereo, since Cedric has the legal but not the equitable title to the stereo. Since Susan's loss arises, not from her reliance on the certificate but rather from Cedric's

breach of a fiduciary duty, the liability limits applicable to reliance on a certificate do not apply.

XYZ Title Company, the certification authority's employer, may be vicariously liable under respondeat superior principles for Cedric's breach of trust and conversion of the trust property.

Certificates R Us, producer of the software used by Cedric and XYZ, could perhaps be liable under a products liability or warranty claim, if its key management functionality wrongfully failed to provide warnings and processes to the certification authority for eradicating a subscriber's private key.

Certification Authority Misidentifies the Subscriber

Susan Smith, a subscriber, applies to Cedric, a licensed certification authority, for a certificate. Oddly enough, Susan prefers to pronounce her name "Suzanne" in spoken English, and she does so with Cedric. Cedric asks her several questions orally, but asks for nothing in writing and does not ask to see a driver's license or other evidence of identity.

Since Susan does not have a distinguished name, Cedric gives her one. Cedric issues a certificate bearing the name "Suzanne Smith" and publishes it in a recognized repository.

There is someone else in the community who actually bears the name "Suzanne Smith". Susan signs a contract and purchase order for a quantity of widgets from UV Wholesale, Inc. (UVW). UVW has accounts for both Susan Smith and Suzanne Smith.

After checking the certificate, they conclude that the order is from Suzanne, and ship and invoice accordingly. Suzanne is surprised to find widgets at her loading dock, so she rejects the shipment and refuses to pay the invoice. Meanwhile, when the widgets do not arrive on time, Susan covers by buying widgets from RST.

After UVW fails to receive payment for the widgets it shipped, the signature problems are finally sorted out and the defect in the certificate is discovered. UVW then sues both Susan (who pronounces her name "Suzanne") for fraud and

negligent misrepresentation, and Cedric for certification authority malpractice (misrepresentation in the certificate).

Susan cross-claims against Cedric for issuing a faulty certificate, and Cedric cross-claims against Susan for misrepresentation.

Under the Utah Act:

> Cedric, the certification authority, is probably liable to UVW for failure to confirm Susan's identity in accordance with Cedric's representations pursuant to 303. Proper confirmation would have pointed up the error in spelling Susan's name.
>
> Susan, the subscriber, may be required to indemnify Cedric pursuant to 304(4), and may also be liable to UVW under the common law, if a tribunal concludes that her pronunciation of her name amounts to fraud or negligent misrepresentation.
>
> The repository is not liable, since it merely executed a request for publication. Section 502(2) provides that a recognized repository is not liable for effecting publication of information provided by a certification authority.

Failure to Check for Revocation of Certificate

Cedric, a licensed certification authority, has issued and published a certificate at the request of Susan, a subscriber.

Susan then loses her private key and revokes the certificate.

Cedric effects the revocation and publishes notice of it.

Later, Irving finds Susan's private key, and, rather than return it to her, he uses it to write himself a check drawn on Susan's account, on his way into oblivion. The bank accepts the check, verifies the signature in its local cache of certificates without discovering the revocation, and pays cash to Irving.

Susan eventually protests the charge against her account for an item not properly payable under Uniform Commercial Code 4-401 (1992).

Under the Utah Act:

Cedric, the certification authority, is not liable, because no failure to comply with applicable practice requirements is indicated in the facts as given.

Susan, the subscriber, is not liable for losing the private key, because she revoked the certificate before Irving signed the check

INTRODUCTION TO UTAH DIGITAL SIGNATURE ACT

History of the Utah Digital Signature Act

Utah adopted its Digital Signature Act (the "1995 Utah Act") on February 21, 1995. It was signed by Michael Leavitt, Governor of Utah, on March 9, 1995, and took effect on May 1, 1995.[1] Utah was the first legal system in the world to adopt a comprehensive statute enabling electronic commerce through digital signatures. Thereafter, the 1996 amendment became effective on April 29, 1996.

The original 1995 Utah Act, and it's 1996 amendment were drafted by the ad hoc Digital Signature Legislative Facilitation Committee, chaired initially by Assistant Utah Attorney General Michael Wims and later by George Danielson. The Committee was comprised of volunteers representing public- and private-sector organizations involved in Utah business. As other states began considering digital signature legislation, and the Utah Department of Commerce began implementing the original 1995 Act, the drafters received comments and suggestions from many sources, including the Information Security Committee of the American Bar Association's Science and Technology Section. To reflect these suggestions in the text of the legislation, the Legislative Facilitation Committee reconvened beginning in September of 1995, and recommended amendments to the original, 1995 Act. The Utah Digital Signature Act set forth in this publication incorporates the 1996 amendments.

Senator Craig Peterson, the sponsor of the original, 1995 Utah Act, also sponsored the bill to effect the amendments in the 1996 General Session of the Utah Legislature, which met in January and February, 1996.

Although the 1996 Utah Act has legal effect as of this writing (October 11, 1996), implementing regulations have not been adopted, no certification authority has yet been licensed, and no recognized repository is yet available. Implementation of these mandates is underway, but until implementation is complete and effective, the Utah Act cannot be considered effective as a practical matter.

To implement the Utah Act, the Division of Corporations and Commercial Code of the Utah Department of Commerce plans to:

> Draft regulations for recognition of repositories in consultation with potential repository providers and an ad hoc advisory committee. This task should be complete by December, 1996. Drafts of regulations under consideration appear on this website.
>
> Cooperate with other states in developing a distributed digital signature infrastructure for interstate electronic commerce.
>
> Draft regulations for licensing certification authorities and filling in other details of the amended, 1995 Utah Act. This task should be complete by March 1997.[2]

The legal and institutional infrastructure envisioned in the Utah Act for digital signatures should be fully implemented and ready for business in July of 1997.

Broader Cooperative Efforts

The original, 1995 Utah Act and the 1996 Amended Utah Act were developed in collaboration with the Information Security Committee of the Science and Technology Section of the American Bar Association (the "ABA Committee"). The Utah Digital Signature Legislative Facilitation Committee and the ABA Committee shared some common redactive personnel, and the ABA Committee has for the most part taken an active and supportive interest in the Utah Act.

After the initial draft of the Utah Act was formulated and considered by the ABA Committee, the Committee wrote its Digital Signature Guidelines ("ABA Guidelines"), which it described as "general, abstract statements of principle, intended to serve as long-term, unifying foundations for digital signature law across varying legal settings" and "a common framework of unifying principles that may serve as a common basis for more precise rules in various legal systems."[3]

The Utah Act is consistent with the ABA Guidelines, and indeed, depends on them to elucidate underlying principles

and rationales and add commentary and elaboration. While the ABA Guidelines and the Utah Act were both under development, commentary was systematically directed to the ABA Guidelines rather than the Utah Act, if it pertained to fundamental or broad-based considerations. As the Guidelines evolved in the ABA Committee, so did the legislative text; concepts developed and decided by the Committee were reflected in the Guidelines and the legislative text. The ABA Guidelines are accordingly indispensable to a well-founded understanding and analysis of the Utah Act, and it refers to them in the commentary on almost every section.

Along with the Guidelines, the ABA Committee also reviewed and altered the text of the Utah Act, and many of the amendments to the 1995 Utah Act resulted from further consideration of the Act by the ABA Committee after it had been adopted by the Utah Legislature.

Need for New Law on Digital Signatures

Modem legal systems, including that of the United States, include well-established rules regarding signatures. To a great extent, those existing rules apply to digital as well as paper signatures. However, digital signatures differ significantly from their paper counterparts in some respects, including:

> **Need for certification authorities:** Paper signatures have an intrinsic association with a particular person because they are made in the signer's unique handwriting. However, a key pair used to create digital signatures has no intrinsic association with anyone[4] such an association must be made by a certification authority identifying a person with a particular key pair. The reliability of every digital signature created by a private key will depend in part on the reliability of a certification authority's association of that key with a person.[5]
>
> **Ability to prevent forgery:** One whose paper signature is forged can often do little to prevent the forgery[6] or to warn others of a particularly serious danger of forgery. With digital signatures, however, forgery prevention differs: absent highly unlikely, co-

incidental malfunctions of multiple key generation systems, a digital signature cannot be forged at all unless the subscriber fails to safeguard the private key. In other words, a person is quite powerless to prevent forgery of her paper signature, but, in all but rare instances, only the subscriber can prevent the most likely cause of forged digital signatures, by keeping the private key safe. Since liability for a loss should fall on persons who are best able to avert the loss, a subscriber should bear a large share of the responsibility for a forged digital signature caused by the subscriber's failure to safeguard the private key. See Utah Act 305; ABA Guideline 4.3.

Adaptation of rules determining the effect of a digital signature: Current rules for recognizing valid signatures, satisfying writing requirements, admitting documents into evidence, determining what constitutes an original document, and similar formal requirements do not clearly address documents or records in computer form. People today face some uncertainty in legally relying on computer-based information. In some respects, computer-based information differs from paper-based information in ways that justify differing legal treatment. Some of these differences are eliminated by digital signatures, and the Utah Act reflects the ways in which digitally signed information is functionally equivalent to paper-based information.

These needs warrant supplementation of existing signature law in order to better attune it to the properties of digital signatures and the needs of electronic commerce.

However, in supplementing existing legal rules, the Utah Act and regulations take a minimalistic approach, leaving current law unchanged except where a clear need exists for special rules to facilitate digital signatures and electronic commerce. In supplementing existing rules, the Utah Act generally mandates very little, but rather gives parties (such as certification authorities, subscribers, and receivers of digital signatures) an option to comply with the Act's require-

ments and thereby gain greater legal certainty and efficiency for their transactions. If, however, they choose to forgo such benefits or doubt that the new legal approach effectively delivers such benefits, they remain at liberty to proceed according to preexisting, generally applicable law independent of the Utah Act.[7] In short, one can opt into the Law, or choose to remain outside its scope.

There are two reasons for the Utah Act's opt-in approach: first, a need to avoid burdening transactions with legal sanctions that could operate without regard to the parties' intent, and second, a need to maximize the range of options available by contract. Accordingly, the Utah Act does not invalidate any mark which, under preexisting law, may be valid as a signature, for failure to comply with the Utah Act's requirements for digital signatures. Were the Utah Act to invalidate digital signatures for failure to comply with requirements such as certification authority licensing, it would create intent-defeating inequities and hyper technicalities like those which led the law to debilitate and then often discard earlier formal requirements such as the seal. It would also tend to limit the range of possibilities open to persons contracting with each other regarding digital signatures. Preserving contractual options accords with common business practices in the current EDI world, in which contracts are used extensively to define relationships and modes of operation between trading partners. Preserving contractual flexibility is especially important in view of the fact digital signature practices and institutions are emerging, and contracts can respond and adapt to changes and new ideas as they develop.

Although maintaining contractual flexibility is important, an efficient and fully effective legal infrastructure for digital signatures cannot be realized only by contractual means. It is costly to establish separate, one-to-one contracts with every person with whom one intends to do business, and limiting the prospects of electronic commerce to such narrow transactional bandwidth would severely and unnecessarily restrict the range of available commerce and business prospects. Establishing a separate, contractual predicate for each possible opportunity for doing business is so unwieldy an approach that it becomes infeasible if the potential parties

are numerous. Government filings, for example, such as tax returns, court documents, and the like, can realize benefits through automation, but it is not practicable or customary for the government to contract with each person who must or may file. As electronic transactions become commonplace and involve ever more numerous potential parties, the need for a more generally applicable legal approach increases.

Need for Legislation

The ABA Guidelines are a conceptual framework suitable for establishment by statute, case law, or other means of creating law. They recognize that, in the Anglo-American legal tradition, both legislatures and courts are sources of law. Since technological progress, including progress in digital signature technology, seems likely to continue, but enactment of statutes is not assured, courts may, in some instances, be the institutions to make the law on digital signatures.[8]

However, although courts clearly have the power to extend existing common law rules and interpret existing statutes so as to provide for digital signatures, legislation is preferable to a case-law approach, briefly because:

> **Uniformity among states:** Digital signatures are an important means of facilitating electronic commerce, which often traverses state boundaries. Institutions such as NCCUSL have demonstrated effectiveness in establishing a generally uniform system of laws nationwide, and in making that nationwide network of laws generally compatible with laws of other legal systems.[9] Case law is also quite consistent between states, but generally less so without a guiding statutory backbone.
>
> **Uniformity among nations:** Electronic commerce flows as easily across national boundaries as state lines. Treaty law is enacted law, and most of the world outside the United States and the British Commonwealth follows the civil law tradition, which values enacted, codified law.[10] Legislation is therefore more in keeping with the needs of international trade.

Timing: Case law is the result of a gradual process of accretion as cases are litigated, especially when they are litigated before appellate courts.[11] Ordinarily, the deliberate rate of change in case law serves well the need for stability and predictability, but in the case of digital signature technology, waiting for case law to evolve would leave commerce in a period of uncertainty. The duration of the uncertainty would depend on the unpredictable time required for cases to arrive in appellate litigation.[12] Even when opportunities for development present themselves, additional time may be required for the developing law in various jurisdictions to resolve itself into a coherent, systematic framework of rules.

Method: The processes by which case law is developed tend to look toward existing bodies of law and seek to reason by reference to precedent or analogy.[13] Perhaps the most familiar body of United States law akin to digital signatures is the common law of signatures and Uniform Commercial Code 1-201(39) (1987), which paraphrases the common law. These existing signature doctrines have a minimalist orientation, recognizing that signature requirements can in some cases be mere formal niceties defeating the intent of the parties. The resulting case law generally lists toward laxity in applying signature requirements, and the cases which have given rise to the laxity often present factual situations in which authentication and intent seem apparent but the signature is formally questionable. In contrast, currently envisioned digital signature law, including the Utah Act, would preserve the common law in this respect, but add a zone of higher assurance within it. The common law's evolution toward laxity, though correct under the circumstances of the cases, nevertheless may not be very informative for rules designed to provide greater reliability and certainty in a radically new environment such as the Internet. Therefore, the past-ori-

ented methods of precedent and analogy may have less than their usual utility.

Institutional resources: The procedural rules of courts and the constriction of an appellate court's field of vision to the record in an instant case leave the judiciary institutionally under equipped to make law in a new field of technology outside the ordinary range of judicial notice[14]. Processes designed for the adjudication of disputes may leave courts lacking the capabilities of legislatures and administrators to build a sound technical knowledge base, assemble technical experts, build consensus among them, apply technical standards, and formulate a coherent, systematic approach to respond proactively to a business need.

Comprehensive approach: Lawmaking through cases may also lack the opportunities necessary to formulate and implement a comprehensive solution to all facets of a problem. The opportunit

DIGITAL SIGNATURE ACT

CHAPTER 3

UTAH DIGITAL SIGNATURE ACT (1996)

Part 1

Title, Interpretation, and Definitions.

46-3-101. Title.
46-3-102. Purposes and construction.
46-3-103. Definitions.
46-3-104. Role of the division.

Part 2

Licensing and Regulation of Certification Authorities.

46-3-201. Licensure and qualifications of certification authorities.
46-3-202. Performance audits and investigations.
46-3-203. Enforcement of requirements for licensed certificate authorities.
46-3-204. Dangerous activities by any certification authority prohibited.
46-3-205 to 46-3-207. Repealed.

Part 3

Duties of Certification Authority and Subscriber.

46-3-301. General requirements for certification authorities.
46-3-302. Issuance of a certificate.
46-3-303. Warranties and obligations of certification authority upon issuance of a certificate.
46-3-304. Representations and duties upon acceptance of a certificate.
46-3-305. Control of the private key.
46-3-306. Suspension of a certificate—Criminal penalty.
46-3-307. Revocation of a certificate.
46-3-308. Expiration of a certificate.
46-3-309. Recommended reliance limits and liability.
46-3-310. Collection based on suitable guaranty.

Part 4

Effect of a Digital Signature.

46-3-401. Satisfaction of signature requirements.
46-3-402. Unreliable digital signatures.
46-3-403. Digitally signed document is written.

PART 1
TITLE, INTERPRETATION, AND DEFINITIONS
46-3-101. Title.

Statute text

This chapter is known as the "Utah Digital Signature Act."
History
History: C. 1953, 46-3-101, enacted by L. 1995, ch. 61, 1.

Annotations

Effective Dates.—Laws 1995, ch. 61 became effective on May 1, 1995, pursuant to Utah Const., Art. VI, Sec. 25. 46-3-102. Purposes and construction.

Statute text

This chapter shall be construed consistent with what is commercially reasonable under the circumstances and to effectuate the following purposes: (1) to facilitate commerce by means of reliable electronic messages; (2) to minimize the incidence of forged digital signatures and fraud in electronic commerce; (3) to implement legally the general import of relevant standards, such as X.509 of the International Telecommunication Union (formerly International Telegraph and Telephone Consultative Committee or CCITT); and (4) to establish, in coordination with multiple states, uniform rules regarding the authentication and reliability of electronic messages.

History
History: C. 1953, 46-3-102, enacted by L. 1996, ch. 205, 1.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 1 repeals former 46-3-102, as enacted by Laws 1995, ch. 61, 2, relating to the purposes and construction of the Utah Digital Signature Act, and enacts the present section, effective April 29, 1996. 46-3-103. Definitions.

Statute text

For purposes of this chapter, and unless the context expressly indicates otherwise: (1) "Accept a certificate" means: (a) to manifest approval of a certificate, while knowing or having notice of its contents; or (b) to apply to a licensed certification authority for a certificate, without canceling or revoking the application, if the certification authority subsequently issues a certificate based on the application. (2) "Asymmetric cryptosystem" means an algorithm or series of algorithms which provide a secure key pair. (3) "Certificate" means a computer-based record which: (a) identifies the certification authority issuing it; (b) names or identifies its subscriber; (c) contains the subscriber's public key; and (d) is digitally signed by the certification authority issuing it. (4) "Certification authority" means a person who issues a certificate. (5) "Certification authority disclosure record" means an on-line, publicly accessible record which concerns a licensed certification authority and is kept by the division. A certification authority disclosure record has the contents specified by rule of the division pursuant to Section 46-3-104. (6) "Certification practice statement" means a declaration of the practices which a certification authority employs in issuing certificates generally, or employs in issuing a material certificate. (7) "Certify" means the declaration of material facts by the certification authority regarding a certificate. (8) "Confirm" means to ascertain through appropriate inquiry and investigation. (9) "Correspond," with reference to keys, means to belong to the same key pair. (10) "Digital signature" means a transformation of a message using an asymmetric cryptosystem such that a

person having the initial message and the signer's public key can accurately determine whether: (a) the transformation was created using the private key that corresponds to the signer's public key; and (b) the message has been altered since the transformation was made. (11) "Division" means the Division of Corporations and Commercial Code within the Utah Department of Commerce. (12) "Forge a digital signature" means either: (a) to create a digital signature without the authorization of the rightful holder of the private key; or (b) to create a digital signature verifiable by a certificate listing as subscriber a person who either: (i) does not exist; or (ii) does not hold the private key corresponding to the public key listed in the certificate. (13) "Hold a private key" means to be able to utilize a private key. (14) "Incorporate by reference" means to make one message a part of another message by identifying the message to be incorporated and expressing the intention that it be incorporated. (15) "Issue a certificate" means the acts of a certification authority in creating a certificate and notifying the subscriber listed in the certificate of the contents of the certificate. (16) "Key pair" means a private key and its corresponding public key in an asymmetric cryptosystem, keys which have the property that the public key can verify a digital signature that the private key creates. (17) "Licensed certification authority" means a certification authority to whom a license has been issued by the division and whose license is in effect. (18) "Message" means a digital representation of information. (19) "Notify" means to communicate a fact to another person in a manner reasonably likely under the circumstances to impart knowledge of the information to the other person. (20) "Operative personnel" means one or more natural persons acting as a certification authority or its agent, or in the employment of or under contract with a certification authority, and who have: (a) managerial or policy-making responsibilities for the certification authority; or (b) duties directly involving the issuance of certificates, creation of private keys, or administration of a certification authority's computing facilities. (21) "Person" means a human being or any organization capable of signing a document, either legally or as a matter of fact. (22) "Private key" means the key of a key pair used to create a digital signature. (23) "Public key" means the

key of a key pair used to verify a digital signature. (24) "Publish" means to record or file in a repository. (25) "Qualified right to payment" means an award of damages against a licensed certification authority by a court having jurisdiction over the certification authority in a civil action for violation of this chapter. (26) "Recipient" means a person who receives or has a digital signature and is in a position to rely on it. (27) "Recognized repository" means a repository recognized by the division pursuant to Section 46-3-501. (28) "Recommended reliance limit" means the limitation on the monetary amount recommended for reliance on a certificate pursuant to Subsection 46-3-309(1). (29) "Repository" means a system for storing and retrieving certificates and other information relevant to digital signatures. (30) "Revoke a certificate" means to make a certificate ineffective permanently from a specified time forward. Revocation is effected by notation or inclusion in a set of revoked certificates, and does not imply that a revoked certificate is destroyed or made illegible. (31) "Rightfully hold a private key" means to be able to utilize a private key: (a) which the holder or the holder's agents have not disclosed to any person in violation of Subsection 46-3-305(1); and (b) which the holder has not obtained through theft, deceit, eavesdropping, or other unlawful means. (32) "Signer" means a person who creates a digital signature for a message. (33) "Subscriber" means a person who: (a) is the subject listed in a certificate; (b) accepts the certificate; and (c) holds a private key which corresponds to a public key listed in that certificate. (34) (a) "Suitable guaranty" means either a surety bond executed by a surety authorized by the Utah Insurance Department to do business in this state, or an irrevocable letter of credit issued by a financial institution authorized to do business in this state by the Utah Department of Financial Institutions, which, in either event, satisfies all of the following requirements, that it: (i) is issued payable to the division for the benefit of persons holding qualified rights of payment against the licensed certification authority named as the principal of the bond or customer of the letter of credit; (ii) is in an amount specified by rule of the division pursuant to Section 46-3-104; (iii) states that it is issued for filing pursuant to this chapter; (iv) specifies a term of effectiveness extending at

least as long as the term of the license to be issued to the certification authority; and (v) is in a form prescribed by rule of the division. (b) A suitable guaranty may also provide that the total annual liability on the guaranty to all persons making claims based on it may not exceed the face amount of the guaranty. (c) A financial institution acting as a certification authority may satisfy the requirements of this subsection from its assets or capital, to the extent of its lending limit as provided in Title 7, Financial Institutions Act. (35) "Suspend a certificate" means to make a certificate ineffective temporarily from a specified time forward. (36) "Time-stamp" means either: (a) to append or attach to a message, digital signature, or certificate a digitally signed notation indicating at least the date and time the notation was appended or attached, and the identity of the person appending or attaching the notation; or (b) the notation thus appended or attached. (37) "Transactional certificate" means a valid certificate incorporating by reference one or more digital signatures. (38) "Trustworthy system" means computer hardware and software which: (a) are reasonably secure from intrusion and misuse; (b) provide a reasonable level of availability, reliability, and correct operation; and (c) are reasonably suited to performing their intended functions. (39) (a) "Valid certificate" means a certificate which: (i) a licensed certification authority has issued; (ii) the subscriber listed in it has accepted; (iii) has not been revoked or suspended; and (iv) has not expired. (b) A transactional certificate is a valid certificate only in relation to the digital signature incorporated in it by reference. (40) "Verify a digital signature" means, in relation to a given digital signature, message, and public key, to determine accurately that: (a) the digital signature was created by the private key corresponding to the public key; and (b) the message has not been altered since its digital signature was created.

History

History: C. 1953, 46-3-103, enacted by L. 1996, ch. 205, 2.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 2 repeals former 46-3-103, as enacted by Laws 1995, ch. 61, 3, relating

to definitions for terms used in the Utah Digital Signature Act, and enacts the present section, effective April 29, 1996. Compiler's Notes.—This section was amended by Laws 1996, ch. 79, 60, effective April 29, 1996, but the repeal and reenactment of this section by ch. 205 was given precedence by the Office of Legislative Research and General Counsel. Cross-References.—Department of Financial Institutions, 7-1-201. Insurance Department, 31A-2-101 et seq. 46-3-104. Role of the division.

Statute text

(1) The division shall be a certification authority, and may issue, suspend, and revoke certificates in the manner prescribed for licensed certification authorities in Part 3 of this chapter. (2) The division shall maintain a publicly accessible database containing a certification authority disclosure record for each licensed certification authority. The division shall publish the contents of the database in at least one recognized repository. (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall make rules as required by this chapter and in furtherance of its purposes, including rules: (a) governing licensed certification authorities, their practice, and the termination of a certification authority's practice; (b) determining an amount appropriate for a suitable guaranty, in light of: (i) the burden a suitable guaranty places upon licensed certification authorities; and (ii) the assurance of financial responsibility it provides to persons who rely on certificates issued by licensed certification authorities; (c) for reviewing software for use in creating digital signatures and publish reports concerning software; (d) specifying reasonable requirements for the form of certificates issued by licensed certification authorities, in accordance with generally accepted standards for digital signature certificates; (e) specifying reasonable requirements for recordkeeping by licensed certification authorities; (f) specifying reasonable requirements for the content, form, and sources of information in certification authority disclosure records, the updating and timeliness of such information, and other practices

and policies relating to certification authority disclosure records; and (g) specifying the form of certification practice statements.

History

History: C. 1953, 46-3-104, enacted by L. 1996, ch. 205, 3.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 3 repeals former 46-3-104, as enacted by Laws 1995, ch. 61, 4, relating to contents of a certificate, and enacts the present section, effective April 29, 1996.

PART 2
LICENSING AND REGULATION OF CERTIFICATION AUTHORITIES

46-3-201. Licensure and qualifications of certification authorities.

Statute text

(1) To obtain or retain a license a certification authority shall: (a) be the subscriber of a certificate published in a recognized repository; (b) employ as operative personnel only persons who have not been convicted of a felony or a crime involving fraud, false statement, or deception; (c) employ as operative personnel only persons who have demonstrated knowledge and proficiency in following the requirements of this chapter; (d) file with the division a suitable guaranty, unless the certification authority is the governor, a department or division of state government, the attorney general, state auditor, state treasurer, the judicial council, a city, a county, or the Legislature or its staff offices provided that: (i) each of the above-named governmental entities may act through designated officials authorized by ordinance, rule, or statute to perform certification authority functions; and (ii) one of the above-named governmental entities is the subscriber of all certificates issued by the certification authority; (e) have the right to use a trustworthy system, including a secure means for controlling usage of its private key; (f) present proof to

the division of having working capital reasonably sufficient, according to rules of the division, to enable the applicant to conduct business as a certification authority; (g) maintain an office in Utah or have established a registered agent for service of process in Utah; and (h) comply with all other licensing requirements established by division rule. (2) The division shall issue a license to a certification authority which: (a) is qualified under Subsection (1); (b) applies in writing to the division for a license; and (c) pays the required filing fee. (3) (a) The division may classify and issue licenses according to specified limitations, such as a maximum number of outstanding certificates, cumulative maximum of recommended reliance limits in certificates issued by the certification authority, or issuance only within a single firm or organization. (b) A certification authority acts as an unlicensed certification authority when issuing a certificate exceeding the limits of the license. (4) (a) The division may revoke or suspend a certification authority's license for failure to comply with this chapter, or for failure to remain qualified pursuant to Subsection (1). (b) The division's actions under this subsection are subject to the procedures for adjudicative proceedings in Title 63, Chapter 46b, Administrative Procedures Act. (5) The division may recognize by rule the licensing or authorization of certification authorities by other governmental entities, provided that those licensing or authorization requirements are substantially similar to those of this state. If licensing by another governmental entity is so recognized: (a) Part 4 of this chapter, which relates to presumptions and legal effects, applies to certificates issued by the certification authorities licensed or authorized by that governmental entity in the same manner as it applies to licensed certification authorities of this state; and (b) the liability limits of Section 46-3-309 apply to the certification authorities licensed or authorized by that governmental entity in the same manner as they apply to licensed certification authorities of this state. (6) Unless the parties provide otherwise by contract between themselves, the licensing requirements in this section do not affect the effectiveness, enforceability, or validity of any digital signature except that Part 4 of this chapter does not apply to a digital signature

which cannot be verified by a certificate issued by a licensed certification authority. Further, the liability limits of Section 46-3-309 do not apply to unlicensed certification authorities.
History
History: C. 1953, 46-3-201, enacted by L. 1995, ch. 61, 5; 1996, ch. 205, 4.

Annotations

Amendment Notes.—The 1996 amendment, effective April 29, 1996, rewrote the section. Effective Dates.—Laws 1995, ch. 61 became effective on May 1, 1995, pursuant to Utah Const., Art. VI, Sec. 25. 46-3-202. Performance audits and investigations.

Statute text

(1) A certified public accountant having expertise in computer security, or an accredited computer security professional, shall audit the operations of each licensed certification authority at least once each year to evaluate compliance with this chapter. The division may specify qualifications for auditors in greater detail by rule. (2) (a) Based on information gathered in the audit, the auditor shall categorize the licensed certification authority's compliance as one of the following: (i) full compliance, which means the certification authority appears to conform to all applicable statutory and regulatory requirements; (ii) substantial compliance, which means the certification authority generally appears to conform to all applicable statutory and regulatory requirements; however, one or more instances of noncompliance or inability to demonstrate compliance were found in the audited sample, but were likely to be inconsequential; (iii) partial compliance, which means the certification authority appears to comply with some statutory and regulatory requirements, but was found not to have complied or not to be able to demonstrate compliance with one or more important safeguards; or (iv) noncompliance, which means the certification authority complies with few or none of the statutory and regulatory requirements, fails to keep adequate records to demonstrate compliance with more than a few requirements, or refused to

submit to an audit. (b) The auditor shall report the date of the audit of the licensed certification authority and resulting categorization to the division. (c) The division shall publish in the certification authority disclosure record it maintains for the certification authority, the date of the audit, and the resulting categorization of the certification authority. (3) (a) The division may exempt a licensed certification authority from the requirements of Subsection (1) if: (i) the certification authority to be exempted requests exemption in writing; (ii) the most recent performance audit, if any, of the certification authority resulted in a finding of full or substantial compliance; and (iii) the certification authority declares under oath or affirmation that one or more of the following is true with respect to the certification authority: (A) the certification authority has issued fewer than six certificates during the past year and the total of the recommended reliance limits of all such certificates does not exceed $10,000; (B) the aggregate lifetime of all certificates issued by the certification authority during the past year is less than 30 days and the total of the recommended reliance limits of all such certificates does not exceed $10,000; or (C) the recommended reliance limits of all certificates outstanding and issued by the certification authority total less than $1,000. (b) If the certification authority's declaration pursuant to Subsection (3)(a) falsely states a material fact, the certification authority shall have failed to comply with the performance audit requirement of this subsection. (c) If a licensed certification authority is exempt under this subsection, the division shall publish in the certification authority disclosure record it maintains for the certification authority a statement that the certification authority is exempt from the performance audit requirement.
History

History: C. 1953, 46-3-202, enacted by L. 1995, ch. 61, 6; 1996, ch. 205, 5.

Annotations

Amendment Notes.—The 1996 amendment, effective April 29, 1996, added Subsections (2)(b) and (3)(b) making related

redesignation changes; in Subsection (1) substituted "having expertise in computer security, or an accredited computer security professional" for "approved by division rule" and added the second sentence; in Subsection (2)(c) and (3)(c) added "it maintains for the certfication authority"; in Subsection (3)(a) added "The division may"; in Subsection (3)(c) added "a statement"; and made stylistic and related changes throughout the section. Effective Dates.—Laws 1995, ch. 61 became effective on May 1, 1995, pursuant to Utah Const., Art. VI, Sec. 25. 46-3-203. Enforcement of requirements for licensed certificate authorities.

Statute text

(1) The division may investigate the activities of a licensed certification authority material to its compliance with this chapter and issue orders to a certification authority to further its investigation and insure compliance with this chapter. (2) As provided in Section 46-3-201, the division may restrict a certification authority's license for its failure to comply with an order of the division, or may suspend or revoke the license of a certification authority. (3) Any person who knowingly or intentionally violates an order of the division issued pursuant to this section or Section 46-3-204 is subject to a civil penalty of not more than $5,000 per violation or 90% of the recommended reliance limit of a material certificate, whichever is less. (4) The division may order a certification authority in violation of this chapter to pay the costs incurred by the division in prosecuting and adjudicating proceedings relative to, and in enforcement of, the order. (5) Pursuant to Title 63, Chapter 46b, Administrative Procedures Act: (a) the division shall exercise its authority under this section in accordance with procedures for adjudicative proceedings; (b) a licensed certification authority may obtain judicial review of the division's actions under this section; and (c) if the division seeks injunctive relief, as provided in Section 46-3-204, to compel compliance with any of its orders, the division may collect the cost of enforcement as provided in Subsection 63-46b-19(1)(d)(iii).

History

History: C. 1953, 46-3-203, enacted by L. 1996, ch. 205, 6.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 6 repeals former 46-3-203, as enacted by Laws 1995, ch. 61, 7, relating to contents of a certification authority disclosure record, and enacts the present section, effective April 29, 1996. 46-3-204. Dangerous activities by any certification authority prohibited.

Statute text

(1) A certification authority, whether licensed or not, may not conduct its business in a manner that creates an unreasonable risk of loss to subscribers of the certification authority, to persons relying on certificates issued by the certification authority, or to a repository. (2) (a) The division may publish in one or more recognized repositories brief statements advising subscribers, persons relying on digital signatures, and repositories about any activities of a licensed or unlicensed certification authority, of which the division has actual knowledge, which create a risk prohibited by Subsection (1). (b) The certification authority named in a statement as creating such a risk may protest the publication of the statement by filing a brief, written defense. Upon receipt of such a protest, the division shall: (i) publish the written defense along with the division's statement; (ii) publish notice that a hearing has been scheduled to determine the facts and to decide the matter; and (iii) promptly give the protesting certification authority notice and a hearing as provided in Title 63, Chapter 46b, Administrative Procedures Act. (c) (i) Following the hearing, the division shall: (A) rescind the advisory statement if its publication was unwarranted pursuant to this section; (B) cancel the advisory statement if its publication is no longer warranted; (C) continue or amend the advisory statement if it remains warranted; or (D) take further legal action to eliminate or reduce a risk prohibited by Subsection (1). (ii) The division shall publish its decision in one or more recognized repositories. (3) As provided in Title 63, Chapter 46b, Administra-

tive Procedures Act, the division may issue orders and obtain injunctions or other civil relief to prevent or restrain a certification authority from violating this section, regardless of whether the certification authority is licensed. This section does not create a right of action in any person other than the division.

History

History: C. 1953, 46-3-204, enacted by L. 1996, ch. 205, 7.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 7 repeals former 46-3-204, as enacted by Laws 1995, ch. 61, 8, relating to contents of a certification authority disclosure record, and enacts the present section, effective April 29, 1996. 46-3-205 to 46-3-207. Repealed.

Annotations

Repeals.—Laws 1996, ch. 205, 28 repeals 46-3-205 to 46-3-207, as enacted by Laws 1995, ch. 61, 9 to 11, relating to record keeping by certification authorities, cessation of their activities and prohibition of hazardous activities by any certification authority, effective April 29, 1996.

PART 3
DUTIES OF CERTIFICATION AUTHORITY AND SUBSCRIBER

46-3-301. General requirements for certification authorities.

Statute text

(1) A licensed certification authority or subscriber shall use only a trustworthy system: (a) to issue, suspend, or revoke a certificate; (b) to publish or give notice of the issuance, suspension, or revocation of a certificate; and (c) to create a private key. (2) A licensed certification authority shall disclose any material certification practice statement, and any fact material to either the reliability of a certificate which it has issued or its ability to perform its services. A certification authority may require a signed, written, and reasonably spe-

cific inquiry from an identified person, and payment of reasonable compensation, as conditions precedent to effecting a disclosure required in this subsection.
History
History: C. 1953, 46-3-301, enacted by L. 1996, ch. 205, 8.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 8 repeals former 46-3-301, as enacted by Laws 1995, ch. 61, 12, relating to the issuance of a certificate, and enacts the present section, effective April 29, 1996. Compiler's Notes.—This section was amended by Laws 1996, ch. 79, 61, effective April 29, 1996, to correct a minor grammatical error, but the repeal and reenactment of this section by ch. 205 was given precedence by the Office of Legislative Research and General Counsel. 46-3-302. Issuance of a certificate.

Statute text

(1) A licensed certification authority may issue a certificate to a subscriber only after all of the following conditions are satisfied: (a) the certification authority has received a request for issuance signed by the prospective subscriber; and (b) the certification authority has confirmed that: (i) the prospective subscriber is the person to be listed in the certificate to be issued; (ii) if the prospective subscriber is acting through one or more agents, the subscriber authorized the agent or agents to have custody of the subscriber's private key and to request issuance of a certificate listing the corresponding public key; (iii) the information in the certificate to be issued is accurate after due diligence; (iv) the prospective subscriber rightfully holds the private key corresponding to the public key to be listed in the certificate; (v) the prospective subscriber holds a private key capable of creating a digital signature; and (vi) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the prospective subscriber. (c) The requirements of this subsection may not be waived or disclaimed by the licensed certification authority or the subscriber. (2) (a) If the subscriber accepts the issued certificate, the certification authority shall

publish a signed copy of the certificate in a recognized repository agreed upon by the certification authority and the subscriber named in the certificate, unless the contract between the certification authority and the subscriber provides otherwise. (b) If the subscriber does not accept the certificate, a licensed certification authority shall not publish the certificate or shall cancel its publication if the certificate has already been published. (3) Nothing in this section precludes a licensed certification authority from conforming to standards, certification practice statements, security plans, or contractual requirements more rigorous than, but consistent with, this chapter. (4) (a) A licensed certification authority which has issued a certificate: (i) shall revoke a certificate immediately upon confirming that it was not issued as required by this section; or (ii) may suspend, for a reasonable period of time not to exceed 48 hours, a certificate which it has issued in order to conduct an investigation to confirm grounds for revocation under Subsection (i). (b) The certification authority shall give notice of the revocation or suspension to the subscriber as soon as practicable. (5) (a) The division may order the licensed certification authority to suspend or revoke a certificate which the certification authority issued if, after giving the certification authority and subscriber any required notice and opportunity for a hearing in accordance with Title 63, Chapter 46b, Administrative Procedures Act, the division determines that: (i) the certificate was issued without substantial compliance with this section; and (ii) the noncompliance poses a significant risk to persons reasonably relying on the certificate. (b) The division may suspend a certificate for a reasonable period of time not to exceed 48 hours upon determining that an emergency requires an immediate remedy and in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

History

History: C. 1953, 46-3-302, enacted by L. 1996, ch. 205, 9.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 9 repeals former 46-3-302, as enacted by Laws 1995, ch. 61, 13, relat-

ing to representations by a subscriber accepting a certificate, and enacts the present section, effective April 29, 1996. 46-3-303. Warranties and obligations of certification authority upon issuance of a certificate.

Statute text

(1) (a) By issuing a certificate, a licensed certification authority warrants to the subscriber named in the certificate that: (i) the certificate contains no information known to the certification authority to be false; (ii) the certificate satisfies all material requirements of this chapter; and (iii) the certification authority has not exceeded any limits of its license in issuing the certificate. (b) The certification authority may not disclaim or limit the warranties of this subsection. (2) Unless the subscriber and certification authority otherwise agree, a certification authority, by issuing a certificate, shall: (a) act promptly to suspend or revoke a certificate in accordance with Sections 46-3-306 and 46-3-307; and (b) notify the subscriber within a reasonable time of any facts known to the certification authority which significantly affect the validity or reliability of the certificate once it is issued. (3) By issuing a certificate, a licensed certification authority certifies to all who reasonably rely on the information contained in the certificate that: (a) the information in the certificate and listed as confirmed by the certification authority is accurate; (b) all foreseeable information material to the reliability of the certificate is stated or incorporated by reference within the certificate; (c) the subscriber has accepted the certificate; and (d) the licensed certification authority has complied with all applicable laws of this state governing issuance of the certificate. (4) By publishing a certificate, a licensed certification authority certifies to the repository in which the certificate is published and to all who reasonably rely on the information contained in the certificate that the certification authority has issued the certificate to the subscriber.

History

History: C. 1953, 46-3-303, enacted by L. 1996, ch. 205, 10.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 10 repeals former 46-3-303, as enacted by Laws 1995, ch. 61, 14, relating to control of the private key, and enacts the present section, effective April 29, 1996. 46-3-304. Representations and duties upon acceptance of a certificate.

Statute text

(1) By accepting a certificate issued by a licensed certification authority, the subscriber listed in the certificate certifies to all who reasonably rely on the information contained in the certificate that: (a) the subscriber rightfully holds the private key corresponding to the public key listed in the certificate; (b) all representations made by the subscriber to the certification authority and material to information listed in the certificate are true; (c) all material representations made by the subscriber to a certification authority or made in the certificate and not confirmed by the certification authority in issuing the certificate are true. (2) An agent, requesting on behalf of a principal that a certificate be issued naming the principal as subscriber, certifies that the agent: (a) holds all authority legally required to apply for issuance of a certificate naming the principal as subscriber; and (b) has authority to sign digitally on behalf of the principal, and, if that authority is limited in any way, that adequate safeguards exist to prevent a digital signature exceeding the bounds of the person's authority. (3) A person may not disclaim or contractually limit the application of this section, nor obtain indemnity for its effects, if the disclaimer, limitation, or indemnity restricts liability for misrepresentation as against persons reasonably relying on the certificate. (4) (a) By accepting a certificate, a subscriber undertakes to indemnify the issuing certification authority for any loss or damage caused by issuance or publication of a certificate in reliance on a false and material representation of fact by the subscriber, or the failure by the subscriber to disclose a material fact if the representation or failure to disclose was made either with intent to deceive the certification authority or a person relying on the certificate or was made

with negligence. (b) If the certification authority issued the certificate at the request of an agent of the subscriber, the agent personally undertakes to indemnify the certification authority pursuant to Subsection (a) as if the agent was an accepting subscriber in his own right. The indemnity provided in Subsection (a) may not be disclaimed or contractually limited in scope, however, a contract may provide consistent, additional terms regarding the indemnification. (5) In obtaining information of the subscriber material to issuance of a certificate, the certification authority may require the subscriber to certify the accuracy of relevant information under oath or affirmation of truthfulness and under penalty of criminal prohibitions against false, sworn statements.
History
History: C. 1953, 46-3-304, enacted by L. 1996, ch. 205, 11.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 11 repeals former 46-3-304, as enacted by Laws 1995, ch. 61, 15, relating to duties of the certification authority, and enacts the present section, effective April 29, 1996. 46-3-305. Control of the private key.

Statute text

(1) By accepting a certificate issued by a licensed certification authority, the subscriber identified in the certificate assumes a duty to exercise reasonable care to retain control of the private key and prevent its disclosure to any person not authorized to create the subscriber's digital signature. (2) A private key is the personal property of the subscriber who rightfully holds it. (3) If a certification authority holds the private key corresponding to a public key listed in a certificate which it has issued, the certification authority holds the private key as a fiduciary of the subscriber named in the certificate, and may use that private key only with the subscriber's prior, written approval, unless the subscriber expressly grants the private key to the certification authority and expressly permits the certification authority to hold the private key according to other terms.

History

History: C. 1953, 46-3-305, enacted by L. 1996, ch. 205, 12.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 12 repeals former 46-3-305, as enacted by Laws 1995, ch. 61, 16, relating to suspension of a certificate, and enacts the present section, effective April 29, 1996. Cross-References.—Sentencing for misdemeanors, 76-3-201, 76-3-204, 76-3-301. 46-3-306. Suspension of a certificate—Criminal penalty.

Statute text

(1) (a) Unless the certification authority and the subscriber agree otherwise, the licensed certification authority which issued a certificate which is not a transactional certificate shall suspend the certificate for a period not exceeding 48 hours: (i) upon request by a person identifying himself as the subscriber named in the certificate, or as a person in a position likely to know of a compromise of the security of a subscriber's private key, such as an agent, business associate, employee, or member of the immediate family of the subscriber; or (ii) by order of the division pursuant to Subsection 46-3-302(5). (b) The certification authority need not confirm the identity or agency of the person requesting suspension under Subsection (1)(a)(i). (2) (a) Unless the certificate provides otherwise or the certificate is a transactional certificate, the division, a court clerk, or a county clerk may suspend a certificate issued by a licensed certification authority for a period of 48 hours, if: (i) a person requests suspension and identifies himself as the subscriber named in the certificate or as an agent, business associate, employee, or member of the immediate family of the subscriber; and (ii) the requester represents that the certification authority which issued the certificate is unavailable. (b) The division, court clerk, or county clerk may: (i) require the person requesting suspension under Subsection (2)(a) to provide evidence, including a statement under oath or affirmation, regarding any information described in Subsection (2)(a); and (ii) suspend or de-

cline to suspend the certificate in its discretion. (c) The division, attorney general, or county attorney may investigate suspensions by the division, a court clerk, or a county clerk for possible wrongdoing by persons requesting suspension under Subsection (2)(a). (3) (a) Immediately upon suspension of a certificate by a licensed certification authority, the licensed certification authority shall publish notice, signed by the licensed certification authority, of the suspension in any repositories specified in the certificate for publication of notice of suspension. If any repository specified in the certificate no longer exists or refuses to accept publication, or is no longer recognized pursuant to Section 46-3-501, the licensed certification authority shall publish the notice in any recognized repository. (b) If a certificate is suspended by the division, a court clerk, or a county clerk, the division or clerk shall give notice as required in Subsection (3)(a) for a licensed certification authority, provided that the person requesting suspension pays in advance any fee required by a repository for publication of the notice of suspension. (4) A certification authority shall terminate a suspension initiated by request only: (a) if the subscriber named in the suspended certificate requests termination of the suspension and the certification authority has confirmed that the person requesting suspension is the subscriber or an agent of the subscriber authorized to terminate the suspension; or (b) when the certification authority discovers and confirms that the request for the suspension was made without authorization by the subscriber, provided that this subsection does not require the certification authority to confirm a request for suspension. (5) The contract between a subscriber and a licensed certification authority may limit or preclude requested suspension by the certification authority, or may provide otherwise for termination of a requested suspension. However, if the contract limits or precludes suspension by the division, a court clerk, or a county clerk when the issuing certification authority is unavailable, the limitation or preclusion shall be effective only if notice of the limitation or preclusion is published in the certificate. (6) A person may not knowingly or intentionally misrepresent to a certification authority his identity or authorization in requesting suspension of a certificate. Violation of

this subsection is a class B misdemeanor. (7) While the certificate is suspended, the subscriber is released from the duty to keep the private key secure pursuant to Subsection 46-3-305(1).

History

History: C. 1953, 46-3-306, enacted by L. 1996, ch. 205, 13.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 13 repeals former 46-3-306, as enacted by Laws 1995, ch. 61, 17, relating to revocation of a certificate, and enacts the present section, effective April 29, 1996. Cross-References.—Sentencing for misdemeanors, 76-3-201, 76-3-204, 76-3-301. 46-3-307. Revocation of a certificate.

Statute text

(1) A licensed certification authority shall revoke a certificate which it issued, but which is not a transactional certificate, after: (a) receiving a request for revocation by the subscriber named in the certificate; and (b) confirming that the person requesting revocation is that subscriber, or is an agent of that subscriber with authority to request the revocation. (2) A licensed certification authority shall confirm a request for revocation and revoke a certificate within one business day after receiving both a subscriber's written request and evidence reasonably sufficient to confirm the identity and any agency of the person requesting the suspension. (3) A licensed certification authority shall revoke a certificate which it issued: (a) upon receiving a certified copy of the subscriber's death certificate, or upon confirming by other evidence that the subscriber is dead; or (b) upon presentation of documents effecting a dissolution of the subscriber, or upon confirming by other evidence that the subscriber has been dissolved or has ceased to exist. (4) A licensed certification authority may revoke one or more certificates which it issued if the certificates are or become unreliable, regardless of whether the subscriber consents to the revocation. (5) Immediately upon revocation of a certificate by a licensed certification authority, the licensed certification authority shall

publish signed notice of the revocation in any repository specified in the certificate for publication of notice of revocation. If any repository specified in the certificate no longer exists or refuses to accept publication, or is no longer recognized pursuant to Section 46-3-501, the licensed certification authority shall publish the notice in any recognized repository. (6) A subscriber ceases to certify the information, as provided in Section 46-3-304, and has no further duty to keep the private key secure, as required by Section 46-3-305, in relation to a certificate whose revocation the subscriber has requested, beginning with the earlier of either: (a) when notice of the revocation is published as required in Subsection (5); or (b) two business days after the subscriber requests revocation in writing, supplies to the issuing certification authority information reasonably sufficient to confirm the request, and pays any contractually required fee. (7) Upon notification as required by Subsection (5), a licensed certification authority is discharged of its warranties based on issuance of the revoked certificate and ceases to certify the information, as provided in Section 46-3-303, in relation to the revoked certificate.

History

History: C. 1953, 46-3-307, enacted by L. 1996, ch. 205, 14.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 14 repeals former 46-3-307, as enacted by Laws 1995, ch. 61, 1 , relating to expiration of a certificate, and enacts the present section, effective April 29, 1996. 46-3-30 . Expiration of a certificate.

Statute text

A certificate shall indicate the date on which it expires. When a certificate expires, the subscriber and certification authority cease to certify the information in the certificate as provided in this chapter and the certification authority is discharged of its duties based on issuance of that certificate.

History

History: C. 1953, 46-3-30 , enacted by L. 1996, ch. 205, 15.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 15 repeals former 46-3-30 , as enacted by Laws 1995, ch. 61, 19, relating to liability of a certification authority, and enacts the present section, effective April 29, 1996. 46-3-309. Recommended reliance limits and liability.

Statute text

(1) By specifying a recommended reliance limit in a certificate, the issuing certification authority and the accepting subscriber recommend that persons rely on the certificate only to the extent that the total amount at risk does not exceed the recommended reliance limit. (2) Unless a licensed certification authority waives application of this subsection, a licensed certification authority is: (a) not liable for any loss caused by reliance on a false or forged digital signature of a subscriber, if, with respect to the false or forged digital signature, the certification authority complied with all material requirements of this chapter; (b) not liable in excess of the amount specified in the certificate as its recommended reliance limit for either: (i) a loss caused by reliance on a misrepresentation in the certificate of any fact that the licensed certification authority is required to confirm; or (ii) failure to comply with Section 46-3-302 in issuing the certificate; (c) liable only for direct, compensatory damages in any action to recover a loss due to reliance on the certificate, which damages do not include: (i) punitive or exemplary damages; (ii) damages for lost profits, savings, or opportunity; or (iii) damages for pain or suffering.
History
History: C. 1953, 46-3-309, enacted by L. 1996, ch. 205, 16.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 16 repeals former 46-3-309, as enacted by Laws 1995, ch. 61, 20, relating to collection from a guaranty, and enacts the present section, effective April 29, 1996. 46-3-310. Collection based on suitable guaranty.

Statute text

(1) (a) Notwithstanding any provision in the suitable guaranty to the contrary: (i) if the suitable guaranty is a surety bond, a person may recover from the surety the full amount of a qualified right to payment against the principal named in the bond, or, if there is more than one such qualified right to payment during the term of the bond, a ratable share, up to a maximum total liability of the surety equal to the amount of the bond; or (ii) if the suitable guaranty is a letter of credit, a person may recover from the issuing financial institution the full amount of a qualified right to payment against the customer named in the letter of credit, or, if there is more than one qualified right to payment during the term of the letter of credit, a ratable share, up to a maximum total liability of the issuer equal to the amount of the credit. (b) Claimants may recover successively on the same suitable guaranty, provided that the total liability on the suitable guaranty to all persons making claims based upon qualified rights of payment during its term may not exceed the amount of the suitable guaranty. (2) In addition to recovering the amount of a qualified right to payment, a claimant may recover from the proceeds of the guaranty, until depleted, reasonable attorney fees and court costs incurred by the claimant in collecting the claim, provided that the total liability on the suitable guaranty to all persons making claims based upon qualified rights of payment or recovering attorney fees and court costs during its term may not exceed the amount of the suitable guaranty. (3) To recover a qualified right to payment against a surety or issuer of a suitable guaranty, the claimant shall file written notice of the claim with the division stating the name and address of the claimant, the amount claimed, and the grounds for the qualified right to payment, and any other information required by rule of the division. (4) Recovery of a qualified right to payment from the proceeds of the suitable guaranty shall be forever barred unless: (a) the claimant substantially complies with Subsection (3); and (b) notice of the claim is filed within two years after the occurrence of the violation of this chapter which is the basis for the claim.

History

History: C. 1953, 46-3-310, enacted by L. 1996, ch. 205, 17.

Annotations

Effective Dates.—Laws 1996, ch. 205 became effective on April 29, 1996, pursuant to Utah Const., Art. VI, Sec. 25.

PART 4
EFFECT OF A DIGITAL SIGNATURE
46-3-401. Satisfaction of signature requirements.

Statute text

(1) Where a rule of law requires a signature, or provides for certain consequences in the absence of a signature, that rule is satisfied by a digital signature if: (a) that digital signature is verified by reference to the public key listed in a valid certificate issued by a licensed certification authority; (b) that digital signature was affixed by the signer with the intention of signing the message; and (c) the recipient has no knowledge or notice that the signer either: (i) breached a duty as a subscriber; or (ii) does not rightfully hold the private key used to affix the digital signature. (2) Nothing in this chapter precludes any symbol from being valid as a signature under other applicable law, including Uniform Commercial Code, Subsection 70A-1-201(39). (3) This section does not limit the authority of the State Tax Commission to prescribe the form of tax returns or other documents filed with the State Tax Commission.
History
History: C. 1953, 46-3-401, enacted by L. 1996, ch. 205, 1 .

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 18 repeals former 46-3-401, as enacted by Laws 1995, ch. 61, 21, relating to presumptions established by a digital signature, and enacts the present section, effective April 29, 1996. 46-3-402. Unreliable digital signatures.

Statute text

Unless otherwise provided by law or contract, the recipient of a digital signature assumes the risk that a digital signature

is forged, if reliance on the digital signature is not reasonable under the circumstances. If the recipient determines not to rely on a digital signature pursuant to this section, the recipient shall promptly notify the signer of its determination not to rely on the digital signature.
History
History: C. 1953, 46-3-402, enacted by L. 1996, ch. 205, 19.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 19 repeals former 46-3-402, as enacted by Laws 1995, ch. 61, 22, relating to the effects of a digital signature, and enacts the present section, effective April 29, 1996. 46-3-403. Digitally signed document is written.

Statute text

(1) A message is as valid, enforceable, and effective as if it had been written on paper, if it: (a) bears in its entirety a digital signature; and (b) that digital signature is verified by the public key listed in a certificate which: (i) was issued by a licensed certification authority; and (ii) was valid at the time the digital signature was created. (2) Nothing in this chapter precludes any message, document, or record from being considered written or in writing under other applicable state law.
History
History: C. 1953, 46-3-403, enacted by L. 1996, ch. 205, 20.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 20 repeals former 46-3-403, as enacted by Laws 1995, ch. 61, 23, relating to digital signatures making instruments payable to bearer, and enacts the present section, effective April 29, 1996. 46-3-404. Digitally signed originals.

Statute text

A copy of a digitally signed message is as effective, valid, and enforceable as the original of the message, unless it is evident

that the signer designated an instance of the digitally signed message to be a unique original, in which case only that instance constitutes the valid, effective, and enforceable message.

History

History: C. 1953, 46-3-404, enacted by L. 1996, ch. 205, 21.

Annotations

Effective Dates.—Laws 1996, ch. 205 became effective on April 29, 1996, pursuant to Utah Const., Art. VI, Sec. 25. 46-3-405. Certificate as an acknowledgment.

Statute text

Unless otherwise provided by law or contract, a certificate issued by a licensed certification authority is an acknowledgment of a digital signature verified by reference to the public key listed in the certificate, regardless of whether words of an express acknowledgment appear with the digital signature or whether the signer physically appeared before the certification authority when the digital signature was created, if that digital signature is: (1) verifiable by that certificate; and (2) affixed when that certificate was valid.

History

History: C. 1953, 46-3-405, enacted by L. 1996, ch. 205, 22.

Annotations

Effective Dates.—Laws 1996, ch. 205 became effective on April 29, 1996, pursuant to Utah Const., Art. VI, Sec. 25. 46-3-406. Presumptions in adjudicating disputes.

Statute text

In adjudicating a dispute involving a digital signature, a court of this state shall presume that: (1) a certificate digitally signed by a licensed certification authority and either published in a recognized repository or made available by the issuing certification authority or by the subscriber listed in the certificate is issued by the certification authority which digitally signed it

and is accepted by the subscriber listed in it; (2) the information listed in a valid certificate, as defined in Section 46-3-103, and confirmed by a licensed certification authority issuing the certificate is accurate; (3) if a digital signature is verified by the public key listed in a valid certificate issued by a licensed certification authority: (a) that the digital signature is the digital signature of the subscriber listed in that certificate; (b) that the digital signature was affixed by the signer with the intention of signing the message; and (c) the recipient of that digital signature has no knowledge or notice that the signer: (i) breached a duty as a subscriber; or (ii) does not rightfully hold the private key used to affix the digital signature; and (4) a digital signature was created before it was time stamped by a disinterested person utilizing a trustworthy system.
History
History: C. 1953, 46-3-406, enacted by L. 1996, ch. 205, 23.

Annotations

Effective Dates.—Laws 1996, ch. 205 became effective on April 29, 1996, pursuant to Utah Const., Art. VI, Sec. 25.

PART 5
STATE SERVICES AND REORGANIZED REPOSITORIES

46-3-501. Recognition of repositories.

Statute text

(1) A repository may apply to the division for recognition by filing a written request and providing evidence to the division that the repository meets the requirements of Subsection (2). The division shall determine whether to grant or deny the request in the manner provided for adjudicative proceedings in Title 63, Chapter 46b, Administrative Procedures Act. (2) The division shall recognize a repository, after finding that the repository: (a) is operated under the direction of a licensed certification authority; (b) includes a database containing: (i) certificates published in the repository; (ii) notices of suspended or revoked certificates published by licensed certification authorities or other persons suspending or revoking

certificates as provided in Sections 46-3-306 and 46-3-307; (iii) certification authority disclosure records for licensed certification authorities; (iv) all orders or advisory statements published by the division in regulating certification authorities; and (v) other information as determined by rule of the division; (c) operates by means of a trustworthy system; (d) contains no significant amount of information which the division finds is known or likely to be untrue, inaccurate, or not reasonably reliable; (e) contains certificates published by certification authorities required to conform to rules of practice which the division finds to be substantially similar to, or more stringent toward the certification authorities, than those of this state; (f) keeps an archive of certificates that have been suspended or revoked, or that have expired within at least the past three years; and (g) complies with other requirements prescribed by rule of the division. (3) The division's recognition of a repository may be discontinued upon the repository's written request for discontinuance filed with the division at least 30 days before discontinuance. (4) The division may discontinue recognition of a repository: (a) upon passage of an expiration date specified by the division in granting recognition; or (b) in accordance with the procedures for adjudicative proceedings prescribed by Title 63, Chapter 46b, Administrative Procedures Act, if the division concludes that the repository no longer satisfies the conditions for recognition listed in this section or in rules of the division.

History

History: C. 1953, 46-3-501, enacted by L. 1996, ch. 205, 24.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 24 repeals former 46-3-501, as enacted by Laws 1995, ch. 61, 24, relating to division duties, and enacts the present section, effective April 29, 1996. 46-3-502. Liability of repositories.

Statute text

(1) Notwithstanding any disclaimer by the repository or any contract to the contrary between the repository, a certifica-

tion authority, or a subscriber, a repository is liable for a loss incurred by a person reasonably relying on a digital signature verified by the public key listed in a suspended or revoked certificate if: (a) the loss was incurred more than one business day after receipt by the repository of a request to publish notice of the suspension or revocation; and (b) the repository had failed to publish the notice of suspension or revocation when the person relied on the digital signature. (2) Unless waived, a recognized repository or the owner or operator of a recognized repository is: (a) not liable: (i) for failure to publish notice of a suspension or revocation, unless the repository has received notice of publication and one business day has elapsed since the notice was received; (ii) for any damages pursuant to Subsection (1) in excess of the amount specified in the certificate as the recommended reliance limit; (iii) for misrepresentation in a certificate published by a licensed certification authority; (iv) for accurately recording or reporting information which a licensed certification authority, the division, a county clerk, or court clerk has published as provided in this chapter, including information about suspension or revocation of a certificate; or (v) for reporting information about a certification authority, a certificate, or a subscriber, if such information is published as provided in this chapter or a rule of the division, or is published by order of the division in the performance of its licensing and regulatory duties pursuant to this chapter; and (b) liable pursuant to Subsection (1) only for direct compensatory damages, which do not include: (i) punitive or exemplary damages; (ii) damages for lost profits, savings, or opportunity; or (iii) damages for pain or suffering.

History

History: C. 1953, 46-3-502, enacted by L. 1996, ch. 205, 25.

Annotations

Repeals and Reenactments.—Laws 1996, ch. 205, 25 repeals former 46-3-502, as enacted by Laws 1995, ch. 61, 25, relating to recognition of repositories, and enacts the present section, effective April 29, 1996. 46-3-503. Repealed.

Annotations

Repeals.—Laws 1996, ch. 205, 28 repeals 46-3-503, as enacted by Laws 1995, ch. 61, 26, concerning limited liability of repositories, effective April 29, 1996. 46-3-504. Exemptions.

Statute text

(1) The following governmental entity records are exempt from Title 63, Chapter 2, Government Records Access and Management Act: (a) records containing information that would disclose, or might lead to the disclosure of private keys, asymmetric cryptosystems, or algorithms; or (b) records, the disclosure of which might jeopardize the security of an issued certificate or a certificate to be issued. (2) For purposes of this section, "record" has the meaning described in Section 63-2-103.
History
History: C. 1953, 46-3-504, enacted by L. 1995, ch. 61, 27.

Annotations

Effective Dates.—Laws 1995, ch. 61 became effective on May 1, 1995, pursuant to Utah Const., Art. VI, Sec. 25.

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INDEX

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