Help Deter Identity Theft

By Dora A. Valles

Every employee of a state or federal agency is bound by law and civil duty to protect and uphold the privacy of personal information entrusted to them. Notaries public are public servants and officers of the state who take an official oath of office to faithfully perform their obligations. As such, they are obligated to comply with strict security requirements to defend the privacy and security of their clients.

Protect the Personal Information Recorded in Your Notary Record Book

Some states have more stringent notary laws than others, and some require their notaries to maintain a notary record book of all legal and notarial acts performed. These are often considered public records. If state law dictates the pages from a notary record book are public information, then any member of the public may obtain a copy of any page in a notary’s record book. Think of the ramifications!

The rules for notaries are not the same in all states. Some dictate that copies from a notary record book can only be obtained through the state’s commissioning authority or through a subpoena. There are a few states that prohibit notaries from recording identification numbers assigned by government agencies. In some states, notaries are required to redact all identification numbers from copies they provide. If state law stipulates that entries in a notary record book are public information, notaries are still obligated to take careful precautions when providing information from their notary record books. Ultimately, notaries must follow their states’ statutes in determining what course of action to take when third parties seek information from their notary record books. Learn your state’s statutes, administrative rules, and/or directives from the commission authority regarding making copies of pages from your notary record books.

A notary must never disclose the details of any notarial transaction unless required to by state laws or court order. Be aware that the information recorded in your books is not protected by privacy laws in many states. However, even though the information in a notary record book is subject to public disclosure, notaries should never violate the confidentiality of signers.

Because identity theft has affected so many Americans, notaries must strengthen their efforts to protect and safeguard the personal information listed in their record books. Untrained notaries will sometimes use a social security number to verify the identity of a signer to provide services, but a social security number does not meet the requirements of satisfactory evidence of identification, as legally required by most states. Don’t make this mistake. Never use a social security number to establish the identity of a signer; many states have enacted statutes making it illegal to disclose social security numbers to third parties looking for public information pursuant to the states’ open-records statutes.

Take Security Measures

One of the most important security measures you can take to prevent improper access to the information you record is to have a tamper-evident, permanently bound notary record book with consecutively numbered pages. This will make it obvious if pages have been removed. Never share a book with another notary. Vigilantly guard your notary record books and all other notarial records. Your notary record books should only be surrendered or destroyed pursuant to state statute, rule of law, court order, or at the direction of the state’s commissioning authority. You should not give your record books to any employer, even when you stop working there. Your books must be under your complete and exclusive control and should be protected under lock and key when not in use. Notaries who record their work in a computer e-record book must also protect against viruses, Trojan horses, and other data security breaches.

State Laws Slow in Addressing E-notarization Technology

The Importance of Notarial Certificates

International Authentication by Apostille

Legal Limitations

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State Laws Slow in Addressing E-notarization Technology

Not so long ago, the performance of notarial acts only involved paper-based documents. Now notaries are performing more notarial acts associated with electronic documents. The distinguishing feature of an electronic notarization (e-notarization, or eNotarization) is that everything is processed from beginning to end on a computer. The initial document is created on the computer, the signatures of the signer and notary are affixed electronically by secure digital methods (e.g., public key encryption), the execution of the notarial certificate is algorithmically generated by the computer, and the final electronically notarized document stays stored on the computer.

**PROS**

- The larger mortgage and financial institutions are taking advantage of processing closing documents through e-notarization technology because such documents are designated to be electronically signed, notarized, and stored on the computer.
- The lending process involves generating a massive number of documents per transaction, which e-notarization can greatly reduce.

**CONS**

- Many businesses and individuals do not trust their sensitive legal documents to be electronically signed, notarized, and stored by an electronic system for fear that they may become invalid due to some defect in the electronic infrastructure.
- Many states have failed to implement state laws, rules, and regulations for standards regarding the execution of e-notarization. When state statute is silent on the subject matter of e-notarization, the acceptable guidelines to receive, process, and file an electronically notarized document are generally left up to the county recording officials; however, the acceptable guidelines in one county may not be acceptable in another county, or another county may not be equipped to receive electronic documents. More states have to take an active role to enact laws that should include security measures, prescribed digital signature technologies, reliable electronic systems, and the verification requirements.
- Without state standards and regulations, e-notarization will be an open gateway for fraudulent digital transactions.
- For many notaries, the preparation and tools required for performing electronic notarizations are just too costly. The technology for e-notarization in the common workplace does not necessarily promote efficiency, cost-effectiveness, or any other major benefit.

In 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act (E-SIGN). In a nutshell, E-SIGN states that a signature, contract, or other record of any transaction in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because it is in electronic form.

In 1999, the Uniform Electronic Transactions Act (UETA) was enacted in most states. UETA recognizes that electronically based transactions and records are the “functional equivalent” of their paper counterparts. Both E-SIGN and UETA essentially share the same fundamental purpose of promoting the growth of e-commerce by providing a legal foundation that allows electronic documents and signatures to have the same legal effect as paper documents with inked signatures.

Because E-SIGN and UETA failed to establish notarial powers, limitations, procedures, and the recording of electronic documents, many states adopted the Uniform Real Property Electronic Recording Act (URPERA). This act authorizes the county recording officials to accept instruments concerning real property to be filed electronically only if an electronic recording system is in place to receive such instruments. However, not all recording officials in all states have the ability to receive electronically notarized documents or documents sent electronically for filing or recording.

Pennsylvania was the first state to implement a successful electronic recording system that allows its county recording officials to accept and record hundreds of e-notarized documents. According to the Pennsylvania Department of State, “The Electronic Notarization Initiative was established on January 30, 2006, to enhance economic development in Pennsylvania, and was the first of its kind in the nation. E-Notarization allows qualified Pennsylvania notaries public to perform notarizations electronically, in compliance with provisions of the amended Notary Public Law and the Uniform Electronic Transactions Act.”

Florida also enacted new laws that provide procedures and requirements for its notaries to conduct electronic notarizations to guarantee security, reliability, and uniformity of the notary’s electronic signature and seal. Other states, such as California, Colorado, Michigan, Texas, Utah, and Wisconsin, also authorize their notaries to perform electronic notarizations; however, notaries in some of these states are performing e-notarizations without state-adopted rules, laws, or regulations, which are desperately needed in most states.

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**What is a Notarial Certificate?**

The notarial certificate, sometimes referred to as an attestation clause, generally includes the following particulars:

- Where the notarization was performed
- What identification document was used to verify the identity of the signer
- If the certificate is an acknowledgment, it states that the signer acknowledged signing the document freely
- If the certificate is a jurat, it states that the signer swore to the truthfulness of the statements of the document

All documents presented for notarization must already contain a printed notarial certificate. The words on it specify which notarial procedures will be conducted in the notarial ceremony. If a notary is presented with a document for notarization that does not contain a notarial certificate, the notary must refuse to notarize the document. Simply signing the notary’s name and affixing a notary seal to a document does not constitute a valid notarization. Most states require their notaries to attest an official act by the evidence of a notarial certificate. A notary who is not a licensed attorney may not select the attestation clause for any document that does not contain a notarial certificate. Many courts of law have held that the selection and preparation of a notarial certificate by a notary public who is not a licensed attorney constitutes the unauthorized practice of law.

**Be Alert When Executing a Notarial Certificate**

At the time of the execution of the notarization, and in the presence of the document signer, the notary must sign, date, and stamp his/her notary seal on the notarial certificate. A notary must never complete the notarial certificate after the fact or alter the certificate after the fact. A notary may not allow another individual to change or make corrections to a notarial certificate the notary has executed. The notarization date on the notarial certificate must never be predated or postdated. A notary must always make sure that the notarization date on the notarial certificate is the date the acknowledgment or oath was actually taken.

**Correct the Notarial Certificate**

Sometimes a notary must make necessary alterations to the notarial certificate to make certain that the statements in the certificate are based on the particulars of the notarization. If the notarial certificate contains incorrect information, missing information, or errors, the notary marks a line through the incorrect information in ink, initials the mistakes, and inserts the new information just above the mistakes. Correction fluids must never be used to correct or remove

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the incorrect information or errors. The notary must thoroughly complete the notarial certificate, leaving no room for alterations. Record the errors, omissions, and corrections made on the notarial certificate in a notary record book. The statements in the notarial certificate must be based on accuracy and truthfulness. A notary who knowingly attests to false statements in a notarial certificate may be subject to civil and criminal liability, including the revocation of his/her notary commission by the state's commissioning authority.

Sign the Notarial Certificate

◆ Execute the notarial certificate with a clear and legible handwritten signature. In some states, notaries may not use a rubber-stamped or otherwise artificially generated signature when notarizing documents. Even if your state's laws do not require it, provide your original handwritten signature to maintain the integrity of the notarization.

◆ Sign your name exactly as it appears on your certificate of appointment or commission.

◆ Do not sign over printed wording or other signatures.

◆ Never use a title such as "Dr.," "Mr.," "Mrs.," "Ms.," or "Ph.D" in your official signature.

◆ Never allow another individual to sign your signature on any document.

◆ Sign the notarial certificate only at the time of the performance of the notarial act.

Know your state's notary laws to determine the proper format when affixing your official signature and seal to a notarial certificate.

Authenticate Notarial Act with a Notary Seal

Even though the use of a notary seal is optional in some states, it's prudent to authenticate an official act with your seal of office. Make sure that your official seal is in compliance with your state's notary statutes. When affixing a notary seal to a notarial certificate, be sure that the seal's imprint is clear and contains all of the required components of the seal. Notaries in some states are allowed to use either an embossed seal or a rubber ink stamp to authenticate their official acts. When using an embossed seal, be sure to darken the raised letters of the impression so that it is legible on a photocopy. An embosser seal is often used as a safeguard to identify an original document and diminishes the potential for fraud.

To order a rubber ink stamp or an embossed notary seal, please contact this Association by calling 1-800-721-2663 or visit our website: http://www.usnotaries.com

Countries that have signed the Hague Convention, including the United States, support a universal document authentication form known as an apostille. An apostille attached to a document from any of these countries will be recognized as valid in other Hague Convention countries. An apostille is essentially a secondary verification of a document that has been notarized or that has been certified by an issuing government agency. In the United States, apostilles are often added to documents such as birth certificates, death certificates, divorce decrees, etc., which must first be issued and certified by the custodian of the record (such as the civil registrar or vital statistics office) before the state's designated authority, often the secretary of state, can issue an apostille. Most states will not accept a notary public-certified copy of a recordable document for issuing an apostille (the original, obtained from the issuing agency, must be presented), and many foreign countries will not accept these documents without an apostille.

However, notaries public are used for many other types of documents that will need an apostille for presentation outside the United States. For example, universities issuing copies of transcripts or diplomas will have the document notarized, and it can then, in many states, be issued an apostille by the secretary of state or other state-designated official. Other notarized documents, depending on state laws, might require an intermediary certification of the notary's signature by the county clerk's office before the document is eligible for an apostille.

For further information regarding apostilles or the authentication process, contact your state's designated authority or the U.S. Department of State, Office of Authentication, by visiting their website, http://www.state.gov/m/la/auth/, or the Hague Convention website: http://www.hcch.net.

Get Prepared for Hurricane Season

The hurricane season began June 1 and will continue through November 30. If you live in an area of the country that is affected by hurricanes, it is important that you prepare yourself, your family, and your business. Many websites, such as redcross.org and fema.gov provide excellent checklists for this, or look at http://www.fpl.com/3storm.

As a notary, it is especially important that you keep your records and supplies safe.

◆ Keep your archived notary record books in sturdy, waterproof containers.

◆ If a hurricane is approaching, keep your current record book, seal, and stamp in a sturdy zippered plastic bag and, if possible, take the bag with you if you evacuate. In the aftermath of a disaster, notarial services are in high demand, and many notaries are unable to offer their services because they have lost their official supplies.

◆ Back up your crucial computer files and, if possible, take the backups with you if you evacuate. Even better, protect your data with an inexpensive online backup service such as carbonite.com or mozy.com

Quotations to Live By

“A slip of the foot you may soon recover, but a slip of the tongue you may never get over.”

Benjamin Franklin

“An investment in knowledge always pays the best interest.”

Benjamin Franklin

“Better to remain silent and be thought a fool than to speak out and remove all doubt.”

Abraham Lincoln

“It is a mistake to try to look too far ahead. The chain of destiny can only be grasped one link at a time.”

Sir Winston Churchill
A notary public who is not a licensed attorney must never imply that he or she has duties, rights, powers, or privileges that are not conferred by state notary laws. Performing or offering to perform any of the following functions is not allowed, and is considered unlawful practice of law:

■ preparing legal documents
■ completing legal forms
■ explaining documents
■ counseling on legal rights, obligations, or liabilities regarding any document or situation
■ recommending a course of action for a business or legal transaction
■ counseling on immigration matters
■ completing immigration forms
■ selecting an attestation clause for a document that does not include a notarial certificate

Unless licensed to practice law, a notary must not make any comments or suggestions that might appear as legal advice. This would constitute the unauthorized practice of law, which is a criminal offense in most states. Learn your state notary laws so you will understand your legal limitations.

Steer Clear of Immigration Matters

A notary should never give advice on immigration matters, complete forms, or charge fees for immigration services unless he or she is an attorney. Federal statutes and regulations allow only licensed attorneys and individuals whom the U.S. Citizenship and Immigration Services has appointed as “designated entities” to assist aliens in the preparation of legalization status.

Do Not Use Notario Público when Advertising Notary Services

Some states prohibit notaries public from using the term notario público or any equivalent non-English term on any business card, advertisement, notice, or sign. In Mexico and other Spanish-speaking countries, a notario público is a licensed attorney with special expertise. A notario público in Mexico is authorized to provide legal advice, prepare legal documents, be an arbitrator, be a mediator, issue judicial opinions, intervene in judicial proceedings, ensure that legal documents meet legal requirements, ensure payment of taxes, and protocolize public deeds.

Because of rising incidents of fraud committed against Spanish-speaking individuals by notaries calling themselves notario públicos, many states have enacted laws requiring its notaries who advertise their services in any language other than English, whether by signs, pamphlets, stationery, other written communication, or by radio or television, must also include with the advertisement a notice that the notary public is not an attorney. The statutory requirements state that the notice must be posted in English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message: “I am not an attorney licensed to practice law in this state and may not give legal advice or accept fees for legal advice.”