NOTARY HANDBOOK

Colorado Secretary of State
1700 Broadway Suite 300
Denver CO 80290
303.894.2200
http://www.sos.state.co.us/

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I. Purpose of the Notary Handbook

This handbook has been prepared by the office of the Secretary of State for current and prospective notaries public in the state of Colorado. As a notary public, you hold an important position; therefore, it is vital that you understand the notary duties and responsibilities you have been charged with. The purpose of this handbook is to help familiarize you with Colorado Notary Law so that you can perform your duties correctly.

Notaries public are authorized to perform certain official duties that are critical to those who need them. By acting as an agent of the state by notarizing documents, you help to prevent fraud and forgery. Because the work of notaries public is so important, please make sure you take the time to review this guide carefully. It is critical for you to understand the obligations of being a notary public and for you to perform those duties in a manner that merits the trust, confidence, and respect appropriate to the office.

This handbook will cover: Notary powers, duties, responsibilities and liabilities under the Colorado Notaries Public Act.

Notary applications, change of address forms, and the Colorado notary law are available on the Secretary of State's website, along with other information, at:
http://www.sos.state.co.us/pubs/bingo_raffles/notary_public.htm

II. What is a Notary?

"Notary" or "Notary Public" means any individual appointed and commissioned to perform notarial acts [12-55-102(3) C.R.S.]. Because the definition in the Colorado Revised Statutes is so brief the following information has been included to further describe what a Notary is.

Various definitions/synonyms for "notary public" can be drawn from other states' statutes. The following list is representative rather than all-inclusive.

> A notary is a verifier, authenticator, person of integrity appointed to the office, person commissioned to seal documents, impartial agent for the state, public recorder of acts, public servant, government functionary. The notary acts as an unbiased/disinterested/official WITNESS, to the identity of the person who signs a document. The notary is a STATE OFFICER (every bit as much as the Governor or the Secretary of State, though at a much lower level).
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> In this context, *while notarizing*, a notary is responsible not to a customer or a supervisor, but to the people of the State of Colorado through the Secretary of State, the elected representative of those people.

III. What are a Notary's Powers?

For notaries, powers = duties; they are two sides of the same coin. Colorado notaries have three powers or duties that every notary should know and be able to perform. These require the exercise of "public officer" powers, shared with such officials as judges and county clerks, but not given to the general public.

The Act [12-55-110 (1) C.R.S.] lists the notary powers/duties and divides them somewhat repetitively and apparently randomly under seven subsections [(a)-(f), including (d.5)]. The three main powers that the notary will be exercising are the administration of oaths and affirmations, acknowledgments, and copy certifications. It is important to note that notary laws vary from state to state, sometimes widely. Some states' notaries have only two powers, and some have four or five.

Colorado notaries do have a fourth power, but it is very rarely—and then usually improperly and erroneously—exercised. Most notaries have never heard of it, and will never be asked to do it; nevertheless, a discussion of notices of dishonor has been included here.

IV. Definitions

Note: Also see the Notaries Public Act, section **12-55-102. Definitions**.

Acknowledgement: An acknowledgment is a signed statement by the notary that the signer (1) personally appeared before the notary, (2) was positively identified by the notary, and (3) acknowledged having signed the document. Acknowledgments are executed on deeds, documents affecting property, and the like. (The notary does not have to actually see the person sign the document.)

Affiant: The person who subscribes his signature to an affidavit. The person to whom an oath or affirmation is administered.

Affidavit: A written declaration made under oath or affirmation before a notary public or other authorized officer, in which the signer swears or affirms that the statements or declarations in the document are true.

Affirmation: A solemn declaration that the information contained in the document is true and accurate, made by persons who decline taking an oath for religious or conscientious reasons. An affirmation is equivalent to an oath and is just as binding.

Apostille: *Apostille* is a French word which means a *certification*. In notarial usage, it refers to a certificate used to authenticate the signature of a notary public and other public officers, placed on documents that are to be sent overseas. The Apostille certifies that the notary's commission is current and the notary is in good standing, and it is signed by the Secretary of State. This type of authentication is accepted for legal use in all the nations that are members of the Hague Convention of October 5, 1961.

Authentication: This term refers to either an Apostille or a Certificate of Magistracy.

Certificate of Magistracy: A certificate used to authenticate the signature of a notary public, placed on documents that are to be sent overseas to countries that are not members of the Hague Convention of October 5, 1961.

Certified Copy: A document that is signed by a public official as a true copy of the original document that is held in the office of the public official. Certified copies can only be obtained from the office of the public official in which the original is held. Examples include birth certificates, death certificates, and marriage certificates. Colorado notaries cannot certify copies of these documents.

Credible Witness: A person who is personally known to the notary and who swears or affirms to the identity of another person, unknown to the notary, who is signing and attesting to a document.

Competence: The mental ability to distinguish right from wrong and to manage one's own affairs. A notary should be certain that all parties understand what they are signing and swearing or affirming to.

Execute: To make a document valid by signing one's name to it.

Instrument: A legal document, such as a contract, deed, will, or mortgage, which is to be signed.

Journal: A notarial journal is an official record of notarial acts performed by the notary public. Although required by statute for instruments affecting the title to real property, it is strongly encouraged as a best practice for all notarial acts.

Jurat: A jurat is a signed statement by the notary stating that the signer (1) personally appeared before the notary, (2) signed the document in the presence of the notary, and (3) took an oath or affirmation administered by the notary, e.g. "Do you swear that the statements in this document are true, so help you God?" or "Do you affirm that the statements in this document are true?". This act must be stated clearly on every notarial certificate (notarization).

Oath: A solemn, formal declaration or promise to tell the truth, made before a notary public, under penalty of perjury. Traditionally, the oath invokes reference to a deity (under God) as witness.

Notarial Certificate: The required statement that appears at the end of a document that is completed and signed by the notary public. This statement includes the jurat, the venue or location where the notarization occurred, the date of the notarization, and the notary public's signature, seal, and commission expiration date. This is sometimes also called simply the "notarization".

Notarial Seal: Official seal of a notary public. The Colorado Notaries Public Act, section 12-55-112, describes the mandatory requirements for the Colorado notarial seal.

Perjury: A false statement made under oath. Subject to punishment by fine and/or imprisonment.

SS.: An abbreviation of the Latin word *silicet*, (to wit) meaning "in particular" or "namely". Commonly referred to as "jurisdiction". Traditionally included to the right of the venue in a notarial certificate.

Subscribe: To sign.

Venue: The location in which the notarization was performed. This must include the state and county. Examples are: "State of Colorado, County of Adams" or "State of Colorado, City and County of Denver".

V. Oaths and Affirmations

These notarizations are sometimes lumped together as "jurats." "Jurat" is short for the Latin "juratum est," meaning, "It has been sworn." These notarizations all require the exercise of the notary's **power to administer oaths.** [12-55-110(1) and 119 C.R.S.]

Note that "oaths," as used herein, is intended to include affirmations. There is a minor difference, however. Technically, an oath is defined as a vow, promise, pledge or solemn declaration that refers to a supreme being—e.g., "This is the truth, the whole truth, and nothing but the truth, so help me God" or "I swear to God" or the like. An affirmation, on the other hand, does not include the word "swear" nor invoke a deity—e.g., "I solemnly affirm" or "I affirm under penalty of perjury" or the like.

The power to administer oaths is the one most used by the majority of notaries. It is the power required to be exercised every time a notary completes the common "Subscribed and sworn to" notarization, the one that almost everybody has encountered at one time or another.

Many notaries don't even know what "subscribed and sworn to" means, however. It's important to learn, though, for several reasons:

- In order to comply with the law [12-55-119 C.R.S.] and avoid violations,
- Because businesses, individuals, and governments depend on the notary's knowledge and proper performance,
- For protection of both notary and client, primarily by placing responsibility for the truth of the document on the client, where it belongs.

It is simple to perform the oath/affirmation process properly. It takes only three basic steps. The notary must:

1. Hear the client affirm or swear to the document, to his/her identity as the document signer (and rarely, to other facts about himself or herself that a document may require. The affirmation in the Notary Application [12-55-105 C.R.S.] is an example of such "other facts" that may have to be sworn/affirmed—the applicant must state "under penalty of perjury" that he has read the notary law and will act in accord with it.)

2. See the client sign the document; and

3. Complete the notarial certificate or "notarization."

Many notaries don't do the process properly, however. They watch the signing and fill out the notarial certificate, but omit the most important part of a jurat, the administration of the oath or affirmation. With such a notary, a client may sign a document without even being aware that s/he is supposedly swearing to it. The client may not even have read the document thoroughly, much less have been prepared to affirm anything about it under penalty of perjury.

Such a client may complain about the notary's careless, ignorant, or improper performance later. The complaint may even stick. After all, the notary is a public officer who has "carefully read the notary law of this state" and solemnly undertaken to perform all notarizations in conformance with that law [12-55-105 C.R.S.].

Such problems can be avoided by simply taking the extra twenty seconds to administer the oath or affirmation *every time* you, as a notary, do a jurat. Look down at the bottom of a document and see if the notarization says "subscribed and sworn to" or "affirmed before me" or "attested this day" or any similar words indicating an oath or affirmation is required. If it does, don't just watch the client sign and then fill in the notarial certificate. Put the client under oath and have him/her swear to or affirm both the document and his/her identity.

How do you do this? The notary law gives notaries the power to administer oaths and affirmations [12-55-110 C.R.S.] and tells them to exercise that power in appropriate cases [12-55-119 C.R.S.], but it does not give notaries any specific instructions or wording for this purpose. For this reason, a notary should adopt wording for jurats that is understandable to both the notary and the client, and should use it consistently. Some samples of wording are listed below.

Sample Affirmations and Oaths

For an oath, substitute the word "swear" for the word "affirm" and add "so help you God" to the end of the statement.

- Do you affirm (swear) under penalty of perjury that you are (Name of individual swearing or affirming) and that what you are about to say is true (so help you God)?

- Do you affirm (swear) under penalty of perjury that you are (Name of individual swearing or affirming) and that you have read and understood ____(document name)_____ and that to the best of your knowledge and belief it is true (so help you God)?

- Do you affirm (swear) under penalty of perjury that you are (Name of individual swearing or affirming) and that you have executed this ___(insert type of document executed)___ and that it is your free act and deed (so help you God)?

VI. Acknowledgments

A notary also has the power to witness and certify certain *unsworn* statements and declarations. These notarizations all require the exercise of the notary's **power to take acknowledgments**. [12-55-110(1) and part 2 of article 55 of title 12, the Colorado Uniform Recognition of Acknowledgments Act]

The power to take acknowledgments is less used by notaries who have a general practice, but is virtually the only power used by those who specialize in closings and other real estate transactions. Anyone, notary or not, who has bought or sold a house has encountered acknowledgments. They are therefore somewhat familiar, if only from the client's standpoint, to many people.

Acknowledgments do not involve any oath or affirmation. They do not say "subscribed and sworn to" or "affirmed" or make any other reference to an oath. Instead, they say "Acknowledged before me" or at least contain the word "acknowledged" somewhere in the notarization.

Upon seeing that word, a notary therefore knows that s/he will *not* be administering an oath, but will be carrying out some other duties instead, before signing and sealing the document. In the case of an acknowledgment, these duties are three in number.

The notary must:

First: Identify the client as the document signer. The client will not be taking an oath as to his/her identity, so this is *entirely* the notary's responsibility on acknowledgments. A

wise notary identifies all signers carefully, no matter what notarial duty is performed, but acknowledgments call for special attention in this respect.

> What is "satisfactory" identification? [12-55-110 (4) (b) C.R.S.] Satisfactory identification may be:

Documentary identification, such as a driver's license, state, military, or student ID card, a passport. Colorado statutes require that the identification be a "current identification card or document issued by a federal or state governmental entity containing a photograph and signature of the individual who is so named." Acceptable documentary identification has both a picture and a signature. (Note: The notary law does not actually prohibit the use of other documentary identification as secondary identification, and some notaries accept social security cards, birth certificates, credit cards, and other less satisfactory ID. Secondary identification should contain both the picture and signature of the person.

1. A sworn credible introduction, which is an identification of the client given under oath by a person the notary knows, and such person knows the document signer. Caution: this does *not* mean two strangers can come before the notary, the first can identify him/herself and swear to the other's identity, and the notary can go ahead and take the acknowledgment from the second!

2. Personal knowledge of the client, which is generally the best identification a notary can have for any type of transaction.

For some acknowledgments, client identification may have a second part. A signer may be acknowledging in a representative capacity. In such cases, the notary should identify the individual AND his or her capacity.

Second: Assess the client's basic competence and understanding of the document. Again, a wise notary does not do any type of notarization for a client who is obviously not competent. However, a notary has a little more responsibility for this assessment on acknowledgments than on other types of notarizations.

If a client is, for example, obviously drunk or drugged or otherwise disoriented, or too ill to communicate or know what is happening, or too young to understand the transaction at all, a notary should not take the client's acknowledgment. Such a client cannot meaningfully acknowledge a document or execute it as his/her own act and deed.

This assessment can be made in the course of a brief discussion of the transaction, by asking the client about the transaction, or just by asking if the client understands what the document is and agrees with it. Unless the notary is an attorney, it is never the place of the notary to counsel or advise the client about the transaction, or attempt to convey the legal implications of a document presented for notarization, or explain a transaction or its effects to a client. The "too helpful" notary exceeds his/her lawful powers and takes on liabilities s/he should not and need not have—e.g., for the unauthorized practice of law.

Third: Be satisfied that the client is not under duress or being coerced to make the acknowledgment. Acknowledgments must be voluntary. They must be the "free will act and deed" of the client. For this reason, a notary who sees evidence of duress or coercion used to extract an acknowledgment from a client should not proceed with the notarization until and unless the duress issues are resolved to the notary's satisfaction.

Duress situations are rare, and outside the experience of the majority of notaries. Every notary should be at least minimally prepared to handle such a situation, however. Duress questions are never easy, but they are very difficult indeed when they come as a complete surprise to the notary.

If a duress issue arises, how should a notary handle it?

Step one is to evaluate the situation. A notary should first be sure s/he is dealing with a genuine duress question. Not everything that looks like coercion at first glance is an interference with a client's "free will act and deed," and once in a while duress is proper and lawful.

Example: Client is before the notary to sign over his share in the family home to his soon-to-be-ex-wife. He complains bitterly that he does not wish to do so, but has been forced to by an unjust court system that "always sides with the woman."

Here is a more difficult example with no single "right" or "wrong" answer: A notary is notarizing for a real estate transaction. The clients are spouses who are getting a second mortgage on their house. The wife appears a little before the time for the closing and the notary assembles the documents, sits down with the wife, and asks her about the transaction. The wife appears to understand the transaction perfectly well, but volunteers the information that she doesn't want to engage in it. It is all her husband's idea. She is reluctant to argue with him, however, because—although he is the perfect husband 99% of the time—once in a while he gets drunk and turns violent. At those times, he is likely to recall any resistance she has shown him and literally beat her up for it. She tells the notary that it is safer and easier for her just to go through with the transaction. When the notary seems hesitant, the wife tells the notary to forget she said anything about her husband's violent tendencies, and asks the notary not to mention their conversation to the husband when he shows up.

Is it proper for the notary to take the wife's acknowledgment? The answer should be "yes" for most notaries. The individual notary's professional judgment governs in every specific case, however. A notary may ask for help in difficult situations, but, in the end, the notary's decision governs as to whether a client is adequately identified and sufficiently competent and willing to make an acknowledgment. A notary is expected to be a disinterested witness, not an intruder into the transaction. S/he is to be a neutral observer, exercising only the judgment of an "ordinary and prudent person" A notary is *not* a doctor, advisor, law enforcement officer, etc.

Once you, the notary, have checked off identity, competence, and willingness on your mental list—and this process shouldn't take more than a minute or two—what is the next step in completing an acknowledgment? All that is left is to watch the client sign and fill out the notarial certificate. Technically, most acknowledgments don't have to be signed in the notary's presence. However, the best practice would be to have the client sign the acknowledgment in front of the notary. It isn't illegal for the client to acknowledge the pre-signed signature, as well as the document as a whole, before the notary. If such a case should arise, the notary should protect against possible impostor problems by:

1. Checking the signature against the one on the ID the client has provided to the notary, also ensuring that the picture on the ID matches the client's appearance; and
2. Having the client sign the notary's journal while the notary watches, to be sure the "in presence" signature matches the other two.

Oaths and Affirmations vs. Acknowledgements

Administering oaths and affirmations and taking acknowledgments are most notaries' two main duties. Many people lump them together, but there are differences between them. The most obvious is the oath itself.

> In a **jurat**, you, the notary, are guaranteeing to anyone who sees the document that you administered an oath or affirmation to the signer, and the signer swore to certain facts about the document—e.g., that it was true and complete—and about himself or herself—e.g., that s/he is the individual named in the document as the signer. You also guarantee that you witnessed the signing of the document.
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> In an **acknowledgment**, you are guaranteeing that, while the signer was in your presence, you identified him or her, and that s/he appeared to you to be willing and able to execute the document. You also guarantee, though not always, that you witnessed the "execution" of the document, which is its completion by signing.

These are not major differences, and there is a lot of overlap between these two duties. A notary should know which one s/he is doing, however, especially when the notary must notarize documents that do not have pre-printed notarial certificates on them. In those cases, it is not possible to tell, just by glancing at the bottom of the document, whether you should administer an oath or take an acknowledgment. How do you decide?

A notary actually does not decide which notarial act to perform for a particular document. A smart notary asks the client which notarial act is being requested. The client, of course, won't know—but *will* know who wanted the document notarized in the first place, or who its intended recipient is. From that person or entity, the client can find out which notarization is wanted.

Why shouldn't the notary make this determination?

1. This is not a responsibility assigned to the notary by law. Remember that the notary's function is that of a disinterested witness.

2. This is not a responsibility the notary wants. It creates liabilities a notary should not take on. There are situations in which the wrong notarization will render the document useless for its intended purpose. The notary should not be the one whose wrong decision delayed a client's transaction or forced a client to re-execute a document.

3. This is a decision that may have legal implications—notaries who are not lawyers should not feel free to adopt "lawyer-like" responsibilities.

VII. Copy Certifications

A notary is also empowered in some cases, and in accord with the requirements of the Notaries Public Act, to make certified copies of certain original documents [12-55-120 C.R.S.]. A notary, like some other public officials—county clerks, courts, registrars of vital statistics, the Secretary of State, etc.—has the **power to certify copies**.

This is the newest and least used of the three basic powers. Demand for certified copies is increasing steadily, however. Every notary should know how and when to make them.

For many uses, a copy properly certified by a notary is as acceptable as the original of a document, and some of these uses require multiple certified copies. The Secretary of State's office most frequently sees examples of notarized copies in the following areas:

- Employment matters—e.g., diplomas, awards and honors, ratings;
- Business affairs—e.g., licenses and permits, powers of attorney, contracts and agreements;
- Adoptions—e.g., home studies, financial statements, health assessments;
- International travel—e.g., passports, drivers' licenses, other documents for backup of originals.

This power is restricted, and must be exercised in accord with section 12-55-120. Note that the word "facsimile," as used in this section, has nothing to do with a fax machine or a faxed copy of a document.

To make a certified copy, the notary must:

1. See the *original* document [12-55-120(1) C.R.S.]. A notary is not permitted to make certified copies of copies, no matter how "official" those copies may look.

2. Have a special written request for the certified copy [12-55-120(1) (a) and (b) C.R.S.]. The written request must include the two statements shown at (a) and (b) and must be signed by the client.

3. Have two copies of the original document, one to certify and one for the notary to keep.

4. Make sure the copies are "complete, full, true, and exact facsimiles" of the original. A notary is responsible for the accuracy of the copies. The notary may make a manual comparison, by careful proof reading or by use of a light table, but most notaries ensure accuracy by making the copies themselves.

5. Certify the client's copy, using the certification form shown in the law. A notary must always add this notarization him/herself, since it is the only notarial certificate that cannot be preprinted, and must accurately complete all the blanks in it.

When these steps are completed, the notary returns the original document and the certified copy to the client. The notary keeps his/her copy and the client's signed, written request. The request should <u>not</u> be given back to the client when the notarization is finished.

The written request is the notary's protection if s/he is later questioned about whether it was proper to certify a copy of a specific document. The notary is not expected to know, at least not in every instance, whether or not it is lawful to copy a particular document. In some cases, this is actually a legal issue, which a notary cannot resolve. The client therefore takes the major portion of this responsibility, in the form of the signed, written request.

If the question should arise, a sensible notary does not certify copies, with or without the written request, when it is obvious to any reasonable person, without any special knowledge or expertise, that such certification would be unlawful. A signed, written request from the client does not take away every shred of a notary's responsibility. For example, a notary may not certify a copy of a birth certificate. Only the Colorado Department of Health may certify these copies. [25-2-117(1) C.R.S.].

These are the three principal duties of a Colorado notary. There is a fourth notarial duty that is very seldom requested or performed in Colorado.

Notices of Dishonor

A Colorado notary is also empowered to **present and give notices of dishonor and protest notes and other negotiable instruments**, but only in accord with specific UCC provisions. [12-55-110(1) (f); also, parts 1 (Negotiable Instruments) and 5 (Dishonor) of article 3 of title 4,C.R.S.]

Requests for notices of dishonor and protests are very rare although the office is seeing more of them lately. Apparently, these "notices of dishonor" are tied to fraudulent UCC filings. Lawful requests, made in accord with both the notary law and the UCC, are even rarer. They may, in fact, be nonexistent at this point. The world of commerce has now grown past any real need for a notary to be involved in this function.

(See CRS 4-3-503 and 504, permitting notices of dishonor to be given by any person and by any commercially reasonable means, and waiving the need for such notices altogether in many cases.)

In any case, a notary should not exercise this power unless and until s/he is familiar with CRS 4-3-501 through 506, and with at least the definitional provisions of part 1 of title 4, article 3. Colorado notaries may make notices and protests *only* in cases involving the dishonor of a negotiable instrument.

VIII. Notarial Certificate or Notarization

Notarial certificates, often called notarizations, are official public records of a notary's acts. They are the notary's testimony about what s/he has done and witnessed in his/her official capacity. As such, they must all contain certain basic elements, regardless of the specific notarial act performed. [12-55-112; 119; 120 C.R.S. and 12-55-208 C.R.S.]

What must be in a notarial certificate?

- **Where** the notarization took place, the **venue** of the notarial act. In Colorado, this consists of the county—or city and county in the case of Broomfield and Denver—and the state.

The law previously had a requirement for the notary's address on most notarial certificates. This requirement is long gone, but the occasional notary still comes across a preprinted certificate with blanks for the notary's address. A notary is not required to put information in those blanks. S/he can simply line or "X" through them. For the client's comfort, however, the notary may wish to fill them in. For this purpose, if the notary prefers not to have his/her home address shown to everyone who may see the client's document, the notary may use a business address.

- **When** the notarization took place, the **date** of the notarial act. A notary may *not* pre- or post-date any notarial certificate. This is true no matter how a

client may plead or bully for an exception to this requirement, and no matter what date is on the document itself.

- **What** the notarial act was, whether oath or affirmation, acknowledgment, or preparation of a certified copy. This can be a very brief description—for example, "Subscribed and sworn to before me," or a more detailed one—for example, the copy certification form, or one of the longer acknowledgments.

- **Who** the notary is. This requires more than just a name. Each certificate must also contain:

1. The notary's **seal**, either embossed or rubber-stamped. The seal must be just as described in [12-55-112 (2) C.R.S.]. A notary should not use any seal until s/he has personally checked it against both the commission certificate and the 112 (2) requirements.

Seals are manufactured and sold by private companies, not by the state. The manufacturer may not be familiar with Colorado's seal requirements, and may not have seen the notary's commission certificate. A notary's name, or some other word may be misspelled, or there may be unauthorized additions to the seal. Have any mistakes corrected *before* using the seal.

(Note: Colorado law does not have any size, shape, or color of ink restrictions for notary seals, but consider your clients and the public at large before deciding on a size too small to read, a bizarre color or shape, or any other unusual variant. Also, the law has no preference for one type of seal over the other. Some notaries prefer an embosser because it is traditional and better accepted by some clients, or because it is harder to reproduce, and copies do not look like originals. Some prefer a rubber stamp because copies *do* look like originals, and the seal is easy to read in the copy without being rubbed with the side of a pencil lead or otherwise "raised.")

The seal goes anywhere "under or near" the notary's signature. The law is not specific about placement, nor does it require that a seal be right side up. The seal should not obscure the text of the document itself, however. Some preprinted notarial certificates have the letters "ss" printed in a space next to or under the certificate itself. These letters are intended to indicate the spot for the seal.

(Note: "ss" is archaic, and actually has no meaning on a notarial certificate. It is a survival from medieval documents. Its original meaning is not known for certain, but it was probably clerical shorthand for the Latin "scilicet," meaning "to wit.")

2. The notary's **commission expiration date**, which should be the exact month, day, and year of expiration of the term shown on the notary's current commission certificate.

This should go without saying, but does not. Notaries use incorrect or incomplete commission expiration dates with some frequency. Sometimes the notary does not recall the date correctly, or remembers only the month and year and hopes that will suffice.

More often, the notary uses a rubber stamp for the date. Just as with the seal, the date stamp is supplied by a private company. The Secretary of State has not seen the stamp or checked its accuracy. The notary may fail to check it, too, assuming it is "official" and correct, and may end up stamping the wrong date on every notarization.

The Secretary of State cannot authenticate a notarization that shows a wrong or incomplete expiration date. Rejection by the Secretary of State upsets the client who was seeking the authentication, and occasionally leads to the filing of a complaint against the notary.

Worse yet are the cases of former notaries who manufacture their own commission expiration dates by adding four years to the dates on their previous commissions. Such notaries are usually under the impression that they have renewed their commissions when they have not. The result is that these individuals continue to "notarize" when they are actually not notaries at all, which causes more serious problems.

The moral of the story for notaries: Check the expiration date on your commission certificate and on any expiration date stamp you may use. It is not safe to assume or to guess.

AND there is an additional reason for checking a commission certificate: Once in a while, the Secretary of State's Office makes a mistake. The error rate on commission certificates is historically small—less than one-fourth of one percent over the last decade—but mistakes do happen. If a notary discovers an error in a certificate, s/he should note the error on the certificate itself and return it to the Secretary of State as soon as possible. It will be replaced immediately. A notary need not refrain from notarizing while the certificate correction is being processed.

3. The notary's **official signature**, exactly as it appears on the notary's application.

This, too, should go without saying but does not. Notaries are officially identified and authenticated by their signatures, as well as their commission dates. Even a small change from the signature on file with the Secretary of State makes it impossible to authenticate a notary. It may even make it impossible to find him or her on the notary records.

> There are an estimated half million commission records, past and present, on the Secretary of State's computerized notary list. About 100,000 notary commissions are current at any one time. As would be expected with these numbers, there are multiple instances of two or more notaries with the same name, or with very similar names. A notary's signature is therefore a very important identifier.
>
> (Note: If a notary changes his or her name, s/he is required by law to notify the Secretary of State [see below]. If a notary's signature changes—for example, with an arm injury or arthritis—s/he is requested to notify the Secretary of State by filing a change of signature form so that his/her notarizations can be authenticated without problems or delays.)

A notary is responsible for ensuring that all of the foregoing information is included in every notarization s/he performs. If a document does not have a preprinted notarial certificate, the notary must add one. Handwritten certificates are acceptable. So are "loose certificates," which are notarizations on a separate sheet of paper. It is wise to describe the document carefully in a loose certificate, however, so that the notarization does not end up attached to something else.

The notary is also responsible for the accuracy of the information in the certificate. If a preprinted notarization contains was prepared in another county or state, for example, and shows the wrong venue, the notary must either correct it or refrain from performing the notarization.

Notarization Format Examples

Colorado notary law establishes notarization forms in sections 12-55-119 and 12-55-120, and, for acknowledgements, in section 12-55-208. The following formats are provided here as a reference. (Note: If the document is to be signed by more than one person, the notary may add "by ____[document signer's name(s)]____." to an affirmation or oath to clarify which signature(s) the notary is certifying.)

(1) For an affirmation:

Subscribed and affirmed before me in the county of _____, State of Colorado, this _____ day of _____, 20__.

Notary Seal

_____
(Notary's official signature)

_____
(Commission expiration date)

(2) For an oath:

Subscribed and sworn to before me in the county of _____, State of Colorado, this _____ day of _____, 20__.

Notary Seal

_____
(Notary's official signature)

_____
(Commission expiration date)

(3) For a certification of a photocopy of a document:

State of Colorado, County (or City) of _____, I, _____(name of notary)____, a Notary Public in and for said state, do certify that on __(date)__, I carefully compared with the original the attached facsimile of _____(type of document)_____ and the facsimile I now hold in my possession. They are complete, full, true, and exact facsimiles of the document they purport to reproduce.

Notary Seal

_____
(Notary's official signature)

_____
(Commission expiration date)

(4) Acknowledgement Formats:

(a) For an individual acting in his own right:

State of Colorado
County of _____
The foregoing instrument was acknowledged before me this (date) by (name of person acknowledging).

Notary Seal

_____
(Notary's official signature)

_____
(Commission expiration date)

(b) For a corporation:

State of Colorado
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.

Notary Seal

_____
(Notary's official signature)

_____
(Commission expiration date)

(c) For a partnership:

State of Colorado
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.

Notary Seal

_____
(Notary's official signature)

_____
(Commission expiration date)

(d) For an individual acting as principal by an attorney in fact:

State of Colorado
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).

Notary Seal

_____
(Notary's official signature)

_____
(Commission expiration date)

(e) By any public officer, trustee, or personal representative:

State of Colorado
County of _____
The foregoing instrument was acknowledged before me this (date) by
(name and title of position).

Notary Seal

_____
(Notary's official signature)

_____
(Commission expiration date)

IX. Notary Journal

The notarial certificate ("notarization") itself is the universal method of recording notarial acts. This is the record a notary is always required to make. It is not a record the notary can keep in his/her possession, however, and it is not the one people think of first. The record that occurs to most of us is the **notary journal**. [12-55-111 C.R.S.]

What is a notary journal? It is a "day-to-day" chronological record of a notary's official acts, a record that the notary maintains and keeps in his/her possession. A journal is not necessarily kept in a bound book printed for the specific purpose of recording notarial acts. Those are handy to have, since they feature built-in reminders of the types of information a notary may want to track on his/her notarizations. They are not required by law, however. A notary may keep a journal in a diary, a spiral notebook, a calendar, a file folder, or on a computer, as far as the Notaries Public Act is concerned.

Why do notaries keep journals? Primarily for the following reasons:

1. To protect themselves;

2. To protect and assist clients and the general public; and

3. Because the law requires it, for some—but not all—transactions, in some—but not all—situations.

What transactions does Colorado law require to be recorded in a notary's journal? [12-55-111 (1) C.R.S.] At present, though the Secretary of State's office is working to change this, the Notaries Public Act requires only **acknowledgments to instruments affecting the title to real property** to be recorded in the journal. In fact, the Act exempts a notary from keeping a journal at all in some cases [12-55-111 (3) C.R.S.]. If the notary's firm or employer, in the regular course of business, keeps the documents s/he notarizes, or copies of them, the notary may dispense with the journal altogether.

The Secretary of State recommends that notaries keep records of *all* their official acts.

What information about each notary transaction does Colorado law require to be in the journal? [12-55-111 (3) C.R.S.] The Act does not actually mandate any particular information. It does, however, give a list [(3) (a)-(f)] of items that a notary's journal *may* contain. The list is fairly comprehensive. It may represent so much work for a particular notary that s/he must choose whether to keep less information for each transaction or to keep a less complete journal. In that case, a notary should consider keeping the complete journal and using some abbreviations, shorthand, and ditto marks for the information for each transaction. Remember that a journal is for the notary's protection. The more complete the journal, the better the protection.

(Note: We do recommend that the notary have each client sign the journal at the time of the notarization. This takes hardly any extra time, and forestalls a client's allegation that s/he signed the document, but not in the notary's presence.)

X. What records must a notary maintain with the Secretary of State?

The Notaries Public Act requires every notary to keep his or her record with the Secretary of State's office **accurate and up-to-date** at all times during his or her commission term [12-55-113, 114, and 115 C.R.S.]. A notary must notify the Secretary of State of:

1. Changes to the information in the notary's official file, including name, business address, and home address changes;

2. Loss of the notary's official seal or journal, or loss of control of his or her electronic journal or signature; and

3. An event that ends the notary's term before the assigned commission expiration date, such as a move out of state, or a resignation of the commission for personal reasons.

These notifications, with one exception, must bear the notary's official signature, as filed with the Secretary of State. Name changes must have two signatures, the old one and the new one. The signature(s) may be live or electronic, but *must* be present on the notice. This helps prevent the making of changes to a notary's record by anyone other than the notary.

The one exception to the official signature requirement, and the only notification that is to be filed by someone other than the notary, is for the death of a notary during his/her commission term. All other required notice filings are the notary's personal and individual responsibility.

A form for reporting changes is available on the Secretary of State's website at http://www.sos.state.co.us/pubs/bingo_raffles/notary_change_form.pdf or you may write a letter specifying the changes, making sure to sign the letter with your official notary signature.

Notices of the first two types listed above are to be filed within thirty days of the event that necessitates the notice. If a notary has overlooked this requirement, however, and it has been longer than thirty days since the seal loss or the move or the name change, s/he should file the notice anyway, as soon as possible. Such a notary may well file in time to prevent a complaint or an admonition from the Secretary of State, and the notification itself does not require any statement about how long it has been since the change took place.

(Note: Effective November 21, 2005 and until further notice, no fee is required.)

The Act does not give a deadline for filing of notices of the third type, but does make the added requirement of the return of the notary journal and seal with such notices. Also, if a notary is moving out of state or resigning his/her commission, s/he must send a letter of resignation with the seal, journal and "other papers and copies relating to the notary's notarial acts." [12-55-115(2) C.R.S.]. The notary's commission ceases to be in effect upon a filing of this type, and the former notary no longer has either the powers and privileges or the obligations and liabilities of the notary office.

Contrary to what notaries often believe, "resignation" in [12-55-115 C.R.S.] does not mean resignation from an employment position for which the notary originally obtained the commission. The Act does not require a notary to resign his/her commission when quitting a particular job, even if his/her employer paid for the notary seal, journal, and commission fee. Neither may the former employer resign the commission on behalf of the notary. The notary in such a situation who wishes to keep the commission must, however, file a change of business address.

XI. What Does the Notary Law Prohibit?

The Notaries Public Act sets forth the affirmative powers and duties of a Colorado notary, including the basics every notary should know (III, above). The Act also contains the negatives corresponding to these affirmatives, the notary prohibitions, with which notaries should be equally well acquainted [12-55-107, 110, 110.3, 112, 116, 117, 118, 121 C.R.S.]. What are these notary "don'ts"?

A notary may not:

1. Misstate or omit facts on a commission application. [12-55-107 C.R.S.] It is not lawful, for example, to omit the required home address and telephone number [12-55-104 C.R.S.], or to substitute a business address or number. (Note: Notaries lose a little privacy when they gain public officer status and powers. Notary information is not published or put on the web by the Secretary of State, nor is it given out over the telephone. It is, however, public. It is released to anyone upon proper written or in-person request. For this reason, an individual who has compelling reasons for keeping any of the application information completely private is advised to consider carefully whether s/he should assume the notary office.)

2. Engage in the unauthorized practice of law. [12-55-107, 110.3 C.R.S.] Unless s/he is also an attorney, a notary should not advise a client about the transaction for which notarization is requested, even if the client asks and even if the notary has some expertise in the area of the transaction. It is possible for a notary to get into trouble just by being too helpful.

3. Use false or misleading advertising, advertising that represents a level of authority or claims any power, duty, right, or privilege that is not granted to a notary by law. [12-55-107, 110.3 C.R.S.]

4. Perform any notarial act in connection with a transaction in which the notary has a disqualifying interest. A notary has a disqualifying interest if s/he is a party to the transaction, and also if s/he may receive any advantage, right, title, interest, cash, or property as a direct result of the notarization. [12-55-110 C.R.S.] (A notary fee that may not exceed $5 per notarization [12-55-121 C.R.S.] is excepted.) Colorado law, unlike that of some other states, does not specifically prohibit notarizing for immediate family members. Colorado's disqualifying interest definition is broad enough to exclude many immediate family transactions, however.

5. Notarize any blank document. [12-55-110 C.R.S.] This means any document with a blank in it that might be filled in after the time of the client's oath to, or acknowledgment of, that document. This provision does *not* require blanks to be filled in with specific information. A client may put "Not Applicable," or "X," or a line, scribble, or other material in such spaces. A notary may then notarize the document, as long as no blanks remain in it.

6. Sign a certificate to the effect that a document was signed, acknowledged, sworn to, or otherwise attested by any individual *unless* that individual signed, acknowledged, swore to, or otherwise attested the document while in the **physical presence** of the notary. [12-55-110 C.R.S.] (Note: This is an important prohibition. Most major notary cases arise from an allegation that an alleged signer/attester of a document was not in the notary's presence for the notarization.)

7. Sign such a certificate as is described in the preceding paragraph *unless* the attesting individual is personally known by the notary, or satisfactorily identified to the notary, as the person named in the document. [12-55-110 Subsection (4) (b)] gives several examples of "satisfactory evidence" of identity. This provision says, " 'satisfactory evidence' includes, but is not limited to" these examples. The examples probably constitute a safe harbor, but they are not the only possibilities for client identification.

8. Represent himself or herself as an immigration consultant or expert, unless s/he is a Colorado licensed attorney.

9. Solicit or accept compensation to prepare documents for a judicial or administrative proceeding, including an immigration or citizenship proceeding.

10. Solicit or accept compensation to represent the interest of another in a judicial or administrative proceeding, or to obtain relief on behalf of another from any state or federal officer, agency, or employee.

11. Use the phrase “notario” or “notario publico” to advertise notary services.

12. (The section from which the four preceding prohibitions are drawn [12-55-110.3 C.R.S.] has an interesting enforcement feature. In accord with subsection (4), “knowing and willful violation of the provisions of this section shall constitute a deceptive trade practice pursuant to section 6-1-105 CRS.” This is the only reference in the Act to notarial deceptive trade practices.)

13. Apply an embossed seal in a manner that makes any of the printing or writing on a document illegible or incapable of photographic reproduction. [12-55-112 C.R.S.]

14. Use an electronic signature without a document authentication number. [12-55-112 C.R.S.]

15. Willfully violate the duties imposed by the Act, or unlawfully use a notary journal, seal, electronic signature, or other papers or records relating to notarial acts. [12-55-116, 118 C.R.S.] These are actually notary crimes—misdemeanors contained in the Notaries Public Act rather than in the Colorado criminal code. The crime of willful impersonation of a notary is also found here [12-55-117 C.R.S.], though it does not, of course, apply to a commissioned notary.

16. Charge more than $5 (or $10 for an electronic signature) per notarization.

XII. Consequences of Violating the Notary Law

A notary may incur three general types of consequences or penalties for violations of the notary law. These can be classed, for the sake of brevity, as follows:

1. Administrative [12-55-107, 108 C.R.S.], in the form of revocation or denial of commission by the Secretary of State;

2. Civil, in the form of penalties or damages assessed as a result of a civil lawsuit against the notary; and

3. Criminal [12-55-116 C.R.S.], in the form of fines or imprisonment imposed as a result of a criminal proceeding against the notary.

A notary cannot lose his/her commission, or be assessed damages or penalties, for that matter, without a chance to defend him or herself. If the Secretary of State receives a complaint against a notary, the notary is contacted and informed of the complaint and given a chance to respond to it. After that, if there are still questions about the alleged violation(s), further investigation is done. If the matter is still not resolved, notice is given and a public hearing is held to give the notary the opportunity to defend against the allegations.

XIII. Electronic Notarization

Colorado is a state on the leading edge in the electronic notarization area. We are one of the first states to have specific statutory and regulatory provisions on electronic notarization actually in effect [12-55-106.5(1)], not just under consideration or in trial or "pilot program" use. In fact, Colorado is apparently *the* first state with rules in effect that allow e-notarization by simple, secure, and easily available means and, at the same time, preserve the basic transaction safeguards that notarization has historically provided. We are fortunate to have the best of both worlds in the transition from the pen-and-paper era to the age of electrons. Remember that electronic notarization does not mean remote notarization.

A. e-Notarization Basics

Every notary and prospective notary, whether or not s/he wishes to be certified to notarize electronically at this time, should be aware of some e-notarization basics.

- Most importantly: electronic notarization does not change a notary's basic duties, functions, and responsibilities. The requirements of law discussed above are not waived or altered when a notary uses an electronic signature. A notary must still be in a client's presence, identify the client, and administer an oath to, or take an acknowledgment from, that client.

- A notary must be certified to notarize electronically before doing any such notarization.

- A notary must be familiar with the law and rules regulating electronic notarization before being certified.

- Electronic notarization is not yet in wide demand, and has not been generally accepted by individuals, businesses, and governmental entities, foreign or domestic. In the short term, a notary cannot anticipate a large volume of electronic business, and some notaries will do no such business at all.

- Electronic notarization will require a learning process and some new technology for clients, as well as for notaries. For example, clients, like notaries, will need to have satisfactory, identifiable, secure electronic signatures and know how and in what situations to use them.

B. Electronic Signatures

There are two types of electronic signatures that Colorado provides for in the statute and in the rules.

1. The document authentication numbers issued by the Secretary of State and used as the electronic signature,

2. An electronic signature purchased from a private sector vendor such as Verisign, when used in conjunction with the document authentication numbers issued by the Secretary of State.

These signatures are only used on electronic documents; i.e., there is no paper, the document just resides on the computer, and both the signer and the notary are signing electronically. There is absolutely no reason for a notary to use an electronic signature if paper is involved.

C. Use of a Journal

The journal must be used for every notarial act whenever an electronic signature has been used.

The journal should include all of the information required by the statutes for the use of a journal for acknowledgments affecting real estate and should include the pen and ink signature of the signer who uses an electronic signature. Some notaries actually capture the thumbprint of a signer, however, the Secretary of State does not take a position on this practice.

Notaries should remember that this is new territory for all of us. We are all learning together, and your input to the Secretary of State will be as important in some ways as the Secretary's is to you. Please share your experiences, good and bad, and your comments, criticisms, suggestions, and ideas in the electronic notarization area. All contributions are welcome!

XIV. Colorado Secretary of State Contact Information

Mike Shea, Director of Licensing
Division of Licensing
1700 Broadway Suite 300
Denver CO 80290
303.860.6911

Notary Desk
sos.licensing@sos.state.co.us
303-894-2200 x6405