

Notaries Public

OVERVIEW FOR THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
3/14/2017

DEPUTY SECRETARY OF STATE CHRIS WINTERS

Notarial Acts

- Official acts of certification, attestation or administration authorized by law to be performed by a notarial officer
- A way to bring our private papers into public sphere in a reliable way
- A fraud deterrent – you are who you say you are
- Preserve the integrity, reliability and legality of transactions
- Mostly land records, but many other uses in official papers and filings: mortgages, deeds, oaths, affidavits, and certificates

Notarial Acts - Acknowledgement

- 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.

Notarial Acts – 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.
- 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.”
- 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.”

Who Can Perform

- Commissioned Notaries
 - Assistant Judges appoint – history
 - 1700s and 1800s – known to the Judges

- Ex Officio Notaries (by virtue of the office they hold)
 - Court clerks
 - County clerks
 - Town clerks and assistants
 - Law enforcement

Notary Law today

- Title 24, Chapter 5
 - § 183 – appointments sent to SoS
 - §§ 441-446 – appointments, oaths, powers, liabilities

- Title 32, Chapter 17
 - §§ 1403, 1436 - fees

- Most laws written in the late 1700's

Requirements and Best Practices

- Best practices
 - Personal appearance
 - Positive proof of identity
 - Signer's act of acknowledgment required
 - Observed lack of duress required
 - Signer's awareness of document signing required
- Other
 - Journal / recordkeeping
 - Seal / stamp
 - Conflict of interest provision
- Guidance in SoS publications from the 1990s, but no basis in statute

State by State Comparison by PRIA

- Best practices for all 50 States on these five factors
 - Personal appearance
 - Positive proof of identity
 - Signer's act of acknowledgment required
 - Observed lack of duress required
 - Signer's awareness of document signing required
- Vermont's score? 0-5
- https://www.pria.us/files/resource_library_files/Notary/NotaryAcknowledgementExpectations.pdf

Why Update Vermont's Notary Law? What's the Problem?

- Notarization is the assurance by a duly appointed and impartial Notary Public that a document is authentic, that its signature is genuine, and that its signer acted without duress or intimidation, and intended the terms of the document to be in full force and effect. The central value of notarization lies in the Notary's impartial screening of a signer for identity, willingness and awareness. This screening detects and deters document fraud, and helps protect the personal rights and property of private citizens from forgers, identity thieves and exploiters of the vulnerable.
- The Notary Public plays a key role in lending integrity to those important transactions of commerce and law. We need sound standards for the performance of notarial acts.

Why Update Vermont's Notary Law? What's the Problem?

This bill will:

- Ensure that Vermont's standards are current and compatible with other states and will not interfere with interstate transactions or commerce;
- Provide clear standards for notaries to follow and for the public to rely on, including identification and record keeping;
- Protect the public and preserve the integrity and reliability of notarized transactions; and
- Create a more stable and streamlined system of licensing and accountability that serves the public in an efficient and effective way.

What's the Problem? Examples.

- Blank signatures, yet still notarized
- Attorney notarizing his own signature
- Unrecognizable signature, no certificate, no expiration date
- Claim of property theft through a quit claim deed
- Notarizing things you shouldn't – copies of birth certificates, minutes, etc.

2017 Legislative Proposal

➤ Goals:

- Update a very old law
- Provide real protections and codify best practices
- Allow for electronic notarization (impacts)
- Standardize to ensure other states will take Vermont notarizations (interstate commerce)
- Streamline the commissioning process
- Have actual enforcement for misconduct
- Require minimal competency and provide education

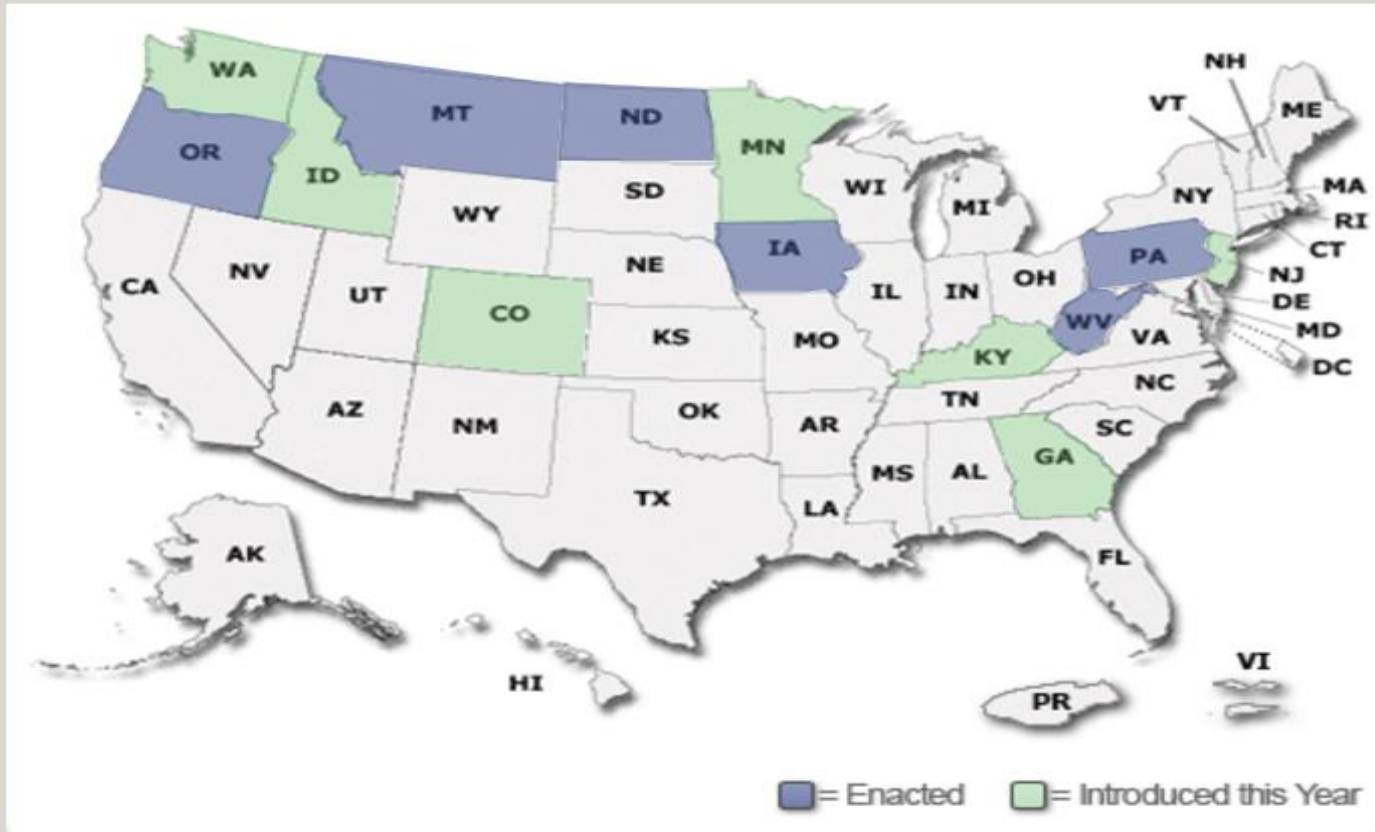
Based on the Revised Uniform Law on Notarial Acts (RULONA)

- Uniform law Commission
- Recommended for adoption by all states in 2010
- Support from NNA, ASN, PRIA, many others
- Passed in several states
- [RULONA ULC website](#)

RULONA States

Legislative Enactment Status Law on Notarial Acts, Revised

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Updating the Commissioning Process

- Verify qualifications
- Provide online services
- Simple Examination and Training
- Support for Notaries – classes, online resources
- Public protection and enforcement when needed

Notary Commissioning Process

- Application to county clerks
- Application to Assistant Judges for approval
- Assistant Judge certifies appointment signs
- Certificate back to county clerk
- County Clerk creates a bound volume of appointments
- County Clerk sends to the Secretary of State
- Secretary of State creates a bound volume of appointments
- Secretary of State creates an online database of commissioned notaries
- Secretary of State will certify to any member of the public the validity of a notary or signature
- Start from scratch every 4 years

Notary Commissioning Issues

- ❑ Notaries living in other states
- ❑ Notaries with felony convictions
- ❑ Commissions processed by paper all at once, delays, expirations, lapses in coverage
- ❑ Unsigned applications
- ❑ Not always an actual review of the application
- ❑ Secretary of State database dependent on all of the counties, lots of forms sent back
- ❑ Check processing issues
- ❑ No enforcement

Conclusions

- Current notary law is practically nonexistent, is not protective of the public, and interferes with interstate commerce
- Good notaries engage in best practices out of a personal sense of responsibility and professionalism, not because of the law
- Notaries get little training or guidance, putting them and the public at risk
- The law and the commissioning process are desperately in need of reform

Questions?

- Resources found on the VSARA portion of our webpage
- Use our online lookup or contact Kathy Watters for commissioned notaries, certification of signatures, or Apostilles
- Review our Notary Guide published in 1996 with few updates
- Contact:

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