



Notary Digest

Issues Affecting Notary Employers on Main Street America

By Brenda Stone

Over the last decade, many shopkeepers on Main Street America have learned that offering notary services in their brick and mortar store fronts is a perfect drawing card to attract local citizens. Signs that announce “Notary Public on Duty” hang in windows of boutique businesses, pack and ship stores, bakeries, pharmacies, and even comic book stores, to name a few. A college student who needs a form notarized may enter a comic book store in search of a notary and find a few items in the store’s unique inventory that he or she cannot do without. Bakeries that provide notary services are likely to encourage a small impulse sale when the aroma of fresh baked goods tantalizes the senses of a notary client.

The services of notary professionals bring new customers through doors!

As this trend grows, so does the need to educate those who manage and hire notaries. Business owners who are not also notaries do not receive educational publications like *The Notary Digest*. The views of many business owners about the duties of their notary employees are often skewed; righting those perceptions is tough and getting the right information into their hands is a challenge. We encourage notaries to share this article with their employers. Many will welcome the guidance and it may save them expensive litigation or even prevent loss of their businesses.

■ Common employer misconceptions

Since notary managers and employers may not have the opportunity to learn about notary laws, misconceptions are not unusual. The common ones are:

“...those who employ notaries must train and supervise them or face direct liability for failure to prevent harm to third parties.”

• Storing all notary seals in a common drawer

A few business owners have indicated to the training staff of the American Association of Notaries (AAN) that when a notary’s shift is over, he or she puts his or her seal in a drawer or box with all of the notary employees’ seals.

• Employers believe that they own notary commissions

A business owner may believe that he or she has a right to restrict the use of the commission if the business paid for its notaries’ commissions. Many owners do not “allow” their notary employees to notarize outside of the four walls of their businesses.

• Lost seal policies are non-existent

A few businesses report that notaries often misplace seals and, if that happens, the employee must pay for another one; however, they do not report to any state authority or law enforcement when the seal has been lost or stolen.

• Notaries share record books

Business clients have advised that their notary supervisors are conscientious about accurate records. In fact, many businesses keep thick, spiral-bound record books underneath the counter and compel all notaries to use the same record book.

• Collecting ID information

A few of our business clients have indicated that they require their notaries to make sure that all signers provide thumbprints. The notaries are also required to record driver license numbers and birth-dates.

• Keeping copies of ID or other documents

A few businesses indicate that they require that

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notaries make and keep copies of the customers' ID documents; other businesses provide simple affidavit forms for notaries to provide in the case of requests to make certified copies of documents such as birth certificates and marriage licenses.

- **Storing notary records**

Three businesses informed the AAN that they kept archives of notary records in the back room on shelves.

- **Rule bending**

Some who are notary employees have reported to the AAN that employers encourage them to bend the rules at times.

- **Almost all of the above are illegal.**

In comparison to the practices discussed above:

- **Seals and records must be controlled by the notary.**

Every notary must be in sole control of his or her seal. Businesses that insist on leaving them in places many have access to are making it easy for the seal to be used fraudulently. Employers should offer notaries personal secure storage areas for their seals. The same is true for notary record books. States have specific laws about surrendering a record book in the event that its owner dies or ceases to be a notary.

Notary records should be kept under lock and key when not in the possession of their notary owners. Loss of a record book or notary seal must be reported to proper authorities immediately.

- **Notary commission belongs to the notary.**

It does not matter who pays for the notary's commission, record book, or seal; those should be controlled by the notary. An employer may not keep a notary from using a commission outside of his or her business; he or she may only dictate what goes on during business hours.

- **Collect only the appropriate information.**

In some states, notaries must collect thumbprints in certain situations. However, in Texas, for instance, the Notary Section of the Secretary of State's office discourages the practice of collecting thumbprints. It is also unlawful for Texas notaries to write in their records a driver license or passport number. Business owners should consult an attorney before keeping copies of customers' ID documents; the same is true for businesses that provide affidavit forms to notary clients.

- **Notaries cannot share record books.**

In those states in which notaries are required to keep record books of their acts, one record book is kept by one notary. It is not lawful for more than one notary to use the same book. In most states that require notaries to keep record books, signers and courts must be able to request or subpoena copies of notary record book entries. A notary's name on a notarized document should lead the requesting party to the notary and his or her record book. This deters the public from locating notary records in cases where businesses keep notary records.

- **Maintaining and storing notary records.**

Notary record books should never be stacked on a shelf in the store-room of a business, especially when they contain sensitive information that can be used by ID thieves. Every notary must store his or her current or retired record books in secure places available only to him or her. In some states, notary laws require that record books be tendered with government offices when a notary does not renew his or her notary commission.

- **Rule bending is never acceptable.**

In some states, any employer or individual who asks a notary to bend the rules is committing a crime.

- **Being uninformed is expensive.**

Many businesses that employ notaries do not know that they are creating a fertile environment for trouble—expensive trouble that can bring a mom and pop business to its knees.

In 2009 and 2010, FedEx/Kinko's was involved in lengthy expensive litigation because a notary did not have sole access and control of his notary seal and it was used to commit fraud. Kinko's had no training program for its notaries, except for a short course that was written by a person who was not a notary. In a nutshell, the result of the litigation was a determination that *those who employ notaries must train and supervise them or face direct liability for failure to prevent harm to third parties.*

- **Steps that may help reduce employer liability**

- Establish a notary personnel policy manual.
- Create a training program or hire competent notary trainers to train notaries.
- Administer an internal test to every notary employee.
- Document that each notary has been trained and tested on notary procedures.
- Create and maintain a file of written statements from each supervisor that state that they understand notarial responsibilities.
- Collect meaningful quarterly or monthly reports from supervisors that indicate that each notary is complying with all statutory and common law duties.
- Require notaries to take periodic internal testing or training; document these measures.
- Establish individual secure areas for notary seals and records.
- Keep signed copies of basic rules of notarization in an employee's file. Update this annually. Some of these rules are:
 - Seals and record books must be used only by their rightful owners.
 - Notaries must store seals and records in the proper designated secure area.
 - Notaries must record or journal all notarial acts.
 - Signers must be present before a notarization takes place.
 - Notaries must positively identify each signer with government issued ID.
- Insure notaries either through an errors and omissions policy or through adequate business insurance coverage.
- Seek advice from an attorney on all of the above.

- **The AAN is here to help.**

We welcome the opportunity to help businesses learn more about their obligations as notary employers. Our Member Center contains a large library of publications and references to notary laws that is useful to notaries in all states.

The AAN can also provide solutions to covering employers' notaries with errors and omissions policies.

To learn more, visit <http://usnotaries.com>; or contact us at info@usnotaries.com.

Insider Tips from Negrete's Notaries

Tony Negrete, owner of Negrete's Notaries (NegretesNotaries.com) has been contracting with notaries to conduct loan signing appointments for nearly a decade. He agreed to be interviewed and to offer our readers his candid insight on business success.

Background: Tony started taking signing appointments as a notary signing agent and quickly moved into being one of the most consistent and solid signing services in the U.S.

Chantelle Negrete, Tony's daughter, has worked with her dad since he started the business. Tony almost always mentions Chantelle when he talks about Negrete's Notaries. His pride about his daughter's involvement in the business is never far below the surface.

Philosophy: Perhaps Tony Negrete's success is due to his belief in principles that some think of as "karma." His philosophy in life is that we will all be treated as we treat others. Perhaps a larger contributor to Tony's business success is his business philosophy. Says Tony, "I pay well and on time so that I can retain a solid notary signing agent database; I am proud of the fact that many notaries want to work with my business. After all, notaries make up the foundation of my signing service; I never forget that."

Tony, what are the worst signing agent mistakes that you encounter? "First, let me say that a mistake is a mistake, it's just that; it's not a perfect world. But please own up to your mistakes. Let me know if you are aware that a mistake has occurred before I hear about it. The most common mistakes are forgetting to apply the stamp to notarized documents. In my book, what makes mistakes bad is when signing agents refuse to fix them."

What makes you call a notary more than once? "Professionalism. When he or she does the job, and does it right the first time, I will call again."

What makes you blacklist a notary? "Calling the title company and being rude to title company employees. Calling me at the last minute and turning back a signing without a legitimate reason. Rudeness, in general, will make me avoid using a notary a second time."

In your ten years in business, surely you have accumulated a couple of interesting notary tales; will you share them? "Once, I hired a notary who had narcolepsy. She fell sound asleep during a signing appointment. The other story that I will share is one that I heard from a title company employee. A notary was conducting a signing in the borrower's living room; she was sitting on the borrower's sofa. She had a bladder condition. Suffice it to say that the title company purchased a new sofa for the borrowers."

Okay, Tony—last, but not least: Notary signing agents often wonder if there is a notary website where signing services congregate to discuss or criticize the notaries who apply to work with them. What is your response? "No there is no such website. Someone once tried to start a site like that and it did not fly. I do make notes on a notary if they do a terrible job and I won't call them again."

Tony, thank you for taking the time to provide our readers with new information on achieving success! We hope that you will be willing to contribute on a regular basis.

In our email: Signing Service Refused to Pay

Recently, we received an email from a distressed member who is also a notary signing agent. She explained that she was engaged by a signing service to notarize loan documents. The borrower rescheduled several times and our member printed and re-printed documents. She had actually gone to the borrower's home on one occasion and he refused to sign because the documents were not right.

She set out to another appointment to finish the deal when all issues between the lender and the borrower were resolved. Her car broke down while on the freeway and she had to have it towed. She called the borrower and the signing service to let them know.

The borrower said he would come to her. She did not realize that the borrower meant that he would be looking for her to be standing along a busy freeway with documents in hand after her car had been towed to a mechanic.

He reported her to the signing services as a no-show and now she is not getting paid. She asked us to help with her situation. We very much sympathize with this lady. Unfortunately, there is little that the American Association of Notaries can do to help in a situation like this. However, we can share tips on how to avoid this situation – there are measures that notaries can take to better protect themselves from loss.

1 Decide how much money you are willing to lose to any one client.

Many notaries restrict the number of work assignments that they will accept from a new client until a pattern of dependable payment is established.

2 The internet is a great source to use to see if a new client has a bad reputation.

Search Google.com; use as search terms the new client's name combined with keywords that relate to non-paying clients. Try using "deadbeats" and "non-payment." Those search terms are good places to start because they will usually flush out comments on bad companies.

3 Signs of good clients going bad.

Good clients may be teetering on the brink of financial disaster and fail to mention that to their contractors. If you receive a hot check or experience delays and

excuses for not sending your check, the company has problems. Do not extend more credit to the company until you are paid.

4 Agreed upon fee must be on your confirmation.

You have to have the fee in writing or you will not be paid your full fee. Some companies will say, "We never pay over \$90, so we would have never agreed to \$125 for any job."

5 Ask these questions before you take the assignment.

■ "When will my check be mailed?"

■ "What is your payment policy if the loan does not close for reasons outside of my control?"

6 Keep good records; be consistent.

Be organized. Develop a routine for handling paperwork and accounting tasks. You should know where your cash flow stands at all times. Consider seeking information on business practices from an accountant.

7 Consider accepting payment through credit card for new clients.

If you are not sure about the creditworthiness of a new client, rather than saying "no," ask them if they are willing to pay by credit card. Visit Square.com and Intuit.com to find out more about the services and gadgets for use with credit cards.

8 Small Claims Court.

If after 90 days a client continues to refuse to pay, prepare a small claims court petition. Be certain, however, that you can prove that you have attempted to reach the client by certified mail, return receipt requested so that the court will know that you have made every effort to settle up out of court.

Visit our Member Center and consult our library of publications for more tips on collecting past due accounts.

Sidestepping the Top 15 Notary Errors

We have asked notary public administrators, title companies, and county clerks: "What are the most common errors that you see on documents?" Their responses will help readers sidestep errors that plague even the most experienced notaries.

- Not including the seal.
- Not including notary appointment date or expiry date in states where it is required.
- Failing to sign the notarized document.
- Not making sure that the signer signs the document.
- Notarizing documents that do not need notarizing, in particular, just because the signature line has the word "Seal" next to it.
- Signing and stamping the document when it has no certificate attached.
- Using highlighters to indicate where a person should sign.
- Using correction tape or fluid.
- Not completing blanks in acknowledgments and jurats with the proper words.
- Not including the dates on acknowledgments and jurats.
- Completing the venue incorrectly or not at all.

- Impressing the seal over wording or signatures.
- Leaving blanks in the notary certificate.
- Not performing the verbal ceremony ("I swear/affirm..." or "I acknowledge...").
- Blurry or faded notary seal impression.

Because even the best of notaries make errors, the American Association of Notaries offers the following tips to aid in sidestepping errors:

- Do not fail to document your notary record book. Although it is not mentioned above, you must maintain a notary record book properly if your state requires you to. Law enforcement investigators will ask first for your notary record book if you are suspected of any wrongdoing and things may go downhill fast if it is not available and well documented.
- Use this list of errors as a checklist for your work.
- Develop a routine. Always do things in the same order.
- Consider purchasing an errors and omissions (E&O) insurance policy. You can be sued if a member of the public suffers because of your notary errors. E&O policies will provide a legal defense in most situations and the price is quite affordable. Contact us at info@usnotaries.com or visit our website to learn more.

Members Only Website

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To take advantage of all of our benefits, contact us toll-free today at 1-800-721-2663 or visit us online at <http://members.usnotaries.net/>

Members' benefits include:

- E-notary record book; access anytime, anywhere 24/7
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- Membership point rewards for purchases
- Research center for laws and FAQs
- Archives of past issues of AAN newsletters
- Calendar of events with email notification reminder – automatic personal reminder of membership expiration dates and commission expiration dates
- Free listing in our Notary and Signing Agent locator

The American Association of Notaries seeks to provide timely articles for notaries to assist them with information and ideas on managing their business and enhancing their notary education. However, the information in our articles is never meant to be legal or tax preparation advice. Please consult the tax professional or attorney of your choice for such important issues. As always, we would appreciate hearing from you. Please feel free to email us at info@usnotaries.com.



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