

Notary Digest

Uniform Notary Law Changes Anticipated

By Brenda Stone

The laws that guide notaries in at least ten states may be affected significantly in July at a conference meeting in Chicago. An item on the agenda of the National Conference of Commissioners on Uniform State Laws (NCCUSL) holds particular interest for notaries.

The agenda for July 11, 2010 calls for "Consideration of Revisions to the Uniform Law on Notarial Acts." While the July 11th meeting of the NCCUSL is certainly not a law-making session that will impact notaries from any state immediately, the uniform law recommendations made by the Uniform Law Commissioners (ULC) are considered genuinely, if not relied upon, by state lawmakers when evaluating changes to state law where interstate uniformity is desirable. In 1982, the NCCUSL had a significant effect on notary law in several states that ultimately adopted the notary law recommendations and included the uniform law in their statutes. If the current recommendations are adopted, this could eventually create changes in the notary law of those states, as well as other others that may consider the recommendations and determine a compelling need for updating state notary law. (Please note: Links to companion documentation and source material are provided at the end of this article.)

■ What's Driving the Update?

The perceived need for an updated uniform notary law is documented in an article entitled, "Patchwork Notary Laws Prod NCCUSL Into Updating ULONA" published in February 2009 by The Legal Description. The article's author, Andrea Golby, cited a proposal submitted in 2008 to the NCCUSL that called for a revision to the 1982 ULONA. The proposal identified five key areas of the 1982 ULONA in which states adopted differing legislation that, thereby, created the patchwork effect:

- **Citizenship requirements:** Some states have attempted to make U.S. citizenship a prerequisite for being appointed a notary.
- **Education requirements:** In an attempt to curb fraud and identity theft, legislators have introduced new requirements for education and testing for notaries to complete prior to their commission.

- **Identification:** The proposal pointed out that states have different standards for satisfactory evidence of a person's identity.

- **Journal requirements:** States are starting to require notaries to keep records of their official notary acts, but this has led to opposition from real estate, banking, and legal professionals.

- **Stamp/seal requirements:** States have adopted a variety of requirements for the use of stamps and seals by notaries. This has created confusion about whether a document has been notarized properly when it has crossed state lines.

Also according to Golby's article, Carmelo D. Bramante of CDB Consultancy said the most important thing about an updated ULONA for the mortgage finance and real estate settlement industry was that it would bring uniformity of the notarial process so that industry members can be certain that they know that if the transaction happened in one state, the same procedure would happen in another. Bramante's company, CDB Consultancy, provides consulting services to the mortgage lending, land title, and recording segments of the real estate finance industry, which gives her an optimal vantage point for her role as an Official Observer to the NCCUSL's Drafting Committee to Revise the ULONA and qualifies her to urge the NCCUSL to consider revisions to the 1982 ULONA.

■ The Role of the ULC and the NCCUSL

The NCCUSL has been in existence for 118 years and provides states with non-partisan, well-conceived, and well-drafted legislation that brings clarity and stability to critical areas of the law. Its voting members, the Uniform Law Commissioners, must be lawyers who are qualified to practice law. The commissioners hold positions as lawyer-legislators, attorneys in private practice, state and federal judges, law professors, and legislative staff attorneys, who have been officially appointed by state governments, the District of Columbia, Puerto Rico or the U.S. Virgin Islands, to research, draft, and promote enactment of uniform state laws in areas where uniformity is desirable and practical.

Each uniform law is years in the making. Every proposed uniform law endures a long process of committee presen-

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PREPARING YOUR BUSINESS FOR DISASTER

Whether as a result of weather, utility disruption, or a manmade emergency, disaster and the need for evacuation can strike at any time and in any place. No notary's business is immune to disruption due to catastrophic events. To properly prepare for such emergencies and/or the need for evacuation, notaries should determine what is necessary to resume business operations and make plans to protect it.

Critical to survival of a notary business:

- Transportation—a well-maintained vehicle.
- Communication—cell phone, email access, adequate internet access.
- Equipment—computer and a laser printer.
- Notary duties—current notary seal and a notary journal; notary record protection.
- Business development—client contact list; digital files with marketing materials.
- Records—business, financial, and client records.

Creating a disaster recovery plan:

A disaster recovery plan should anticipate the following topics:

Equipment and income replacement plan: Do an insurance “check-up” with your insurance agent. Assure that business vehicles and business equipment are covered by the right type of insurance. Not knowing that certain things are not included in a policy will not mitigate the financial hit caused by the lack of sufficient coverage. Consider purchasing a “business interruption insurance policy.” This type of coverage could carry a business through a tough period by providing income even if the business is shut down for any length of time.

Computer file back-up plan: Implement a daily computer file back-up routine. Consider an online service such as Carbonite.com or Idrive.com if you do not have a computer back-up plan.

Paper record preservation plan: Keep critical paper files, receipts, and financial records collected in one area so they can be moved quickly. Keep vehicle repair and maintenance records in this area, as well, so that your vehicle records will be included to move during evacuation.

Create a notary business evacuation kit: One part of your business disaster recovery plan should be a description of an evacuation kit and its contents. This kit will guide you through the process of collecting and preserving the details of your notary business. The following may give you ideas on how to create an evacuation kit.

In a waterproof container, permanently store a copy of your disaster recovery plan; a supply of two gallon Ziploc® Bags, a “master list” of things to do prior to an evacuation; critical phone numbers; copies of business related insurance policies; a current list of business equipment assets along with their identifying numbers, price, dates and places of purchase; a list of available wireless internet connectivity spots along common evacuation routes; and a back-up cell phone with a power supply.

The master list in the evacuation kit should include a reminder to forward home and business phones to the notary's cell phone before evacuating and, if feasible, a reminder to pack up paper and a printer with the necessary power and connection

cords. The master list should also include a checklist of critical items to collect, organize, and store in Ziploc® bags at the time of evacuation. Such critical items include a current notary commission, current and past journals, current and discarded notary seal(s), back-up computer files stored on exterior hard drives or other media, operating system and software disks, paper and/or electronic media financial records, laptop computer and digital camera with power supplies, cell phone(s) and cell phone charger(s). These tasks and items may seem obvious, but a master list is an invaluable tool to assure that phone chargers and power cords are not left behind due to a quick escape.

The kit's phone list should include contact information for utility companies, clients and vendors, insurance agents, banks, FedEx, UPS, neighboring business owners or residents, and the post office.

Once the plan is written, the original should be kept in a fire-proof area or at another location with a trusted business advisor, such as an attorney or accountant. If evacuation time comes, open the evacuation kit container, review the kit's copy of your disaster recovery plan, check to make sure all items in the evacuation kit are present, complete the master list of things to do, close up the kit, and load it into your vehicle.

Finally, consult Ready.gov for additional assistance in developing a comprehensive business disaster plan. To learn more about insurance policies that may enhance your current notary business coverage, please contact us at info@usnotaries.com.

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tation, approvals, analysis, consideration, and re-drafting before it is proposed to the entire body of commissioners at the national conference. Every state, the District of Columbia, and territory has one vote in the national conference. A majority of states must be present for voting to take place and at least 20 states must approve the recommended uniform law before the law is formally adopted as a Model Act or Uniform Law.

Once approved by at least twenty Uniform Law Commissioners, the new Uniform Law or Model Act is officially encouraged by commissioners for consideration by the jurisdictions they represent. The adopted law or act is disseminated to legislatures, who are urged to adopt Uniform Acts exactly as written to “promote uniformity in the law among the states. Uniform Laws or Model Acts are designed to serve as guideline legislation that states can borrow from or adapt to suit their individual needs and conditions.

■ History of Uniform Laws Relating to Notarial Acts

Twenty-eight years ago, the Notary Committee of the NCCUSL adopted, and recommended for enactment in all states, the 1982 Uniform Law on Notarial Acts (ULONA). The stated purpose of the 1982 ULONA was to simplify and standardize all required forms of notarization or signature verification and to recognize out-of-state and foreign notarial acts. After adoption and recommendation by vote at the NCCUSL, the 1982 ULONA was approved by the American Bar Association and adopted into use by Delaware, the District of Columbia, Kansas, Minnesota, Nevada, New Hampshire, New Mexico, Oklahoma, Oregon, Wisconsin, and Wyoming. The 1982 ULONA superseded two earlier acts by the NCCUSL: the Uniform Recognition of Acknowledgments Act of 1964 and the Uniform Acknowledgment Act, which was first adopted by the NCCUSL in 1939.

From the late summer of 2008 until the end of May 2010 a committee dedicated to revising the 1982 ULONA worked diligently to craft a modern uniform law to present for approval to the NCCUSL at its annual meeting in 2009 and again in 2010. An initiative of this type must be read at two annual meetings before it can be voted on by the NCCUSL. If an initiative is adopted, the NCCUSL sends it out to the states for their consideration. The Drafting Committee to Revise the ULONA consists of representatives from Arizona, Connecticut, the District of Columbia, Florida, Hawaii, Illinois, Iowa, Massachusetts, Minnesota, New Jersey, New Mexico, North Dakota, Pennsylvania, and Washington. (Committee members from the District of Columbia and Minnesota are there as members of the American Bar Association.) The names of all such representatives appear in the introductory pages of the RULONA.

■ Technology and Transaction Changes

Most notaries are already aware of the changing landscape of technology and transactional procedure and this is addressed on the first page of the proposed revision's opening remarks. The remarks state, “Since that date [1982], countless societal and technological changes have occurred requiring notarial officers and the notarial acts which they perform to adapt. This version of ULONA adapts the notarial process to accommodate those changes and makes the Act more responsive to current transactions and practices.” For obvious reasons, in 1982, no consideration was given to clarifying notarial practices that involved electronic media. The proposed Revised Uniform Law on Notary Acts (RULONA) addresses electronic notarization and strongly recommends a complete set of notary laws that the members of the Drafting Committee to

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Revise the ULONA of the NCCUSL believe will maintain the integrity of the performance of a notary act.

■ Significant Differences

The earlier law simply defined requirements for forms and acts and clarified the proof of the authority of notarial officers. The RULONA is far more detailed. In a nutshell, the RULONA is a complete set of modernized, comprehensive laws regarding the duties of notaries public while performing on tangible media (i.e., a paper document and paper journal) or performing electronic notarization duties using an electronic journal.

Unlike many states' current notary laws, the proposed uniform law covers almost every imaginable situation relating to the performance of notary duties. The proposed RULONA is lengthy and detailed, but well organized and clearly stated. For instance, Section 6 is short, but devoted entirely to the requirement of a signer's personal appearance before the notary. Section 7 explains acceptable types of signer identification documents. Section 8, another short section, outlines when a notarization may be refused. Subsequent sections cover similar basic and more complicated notary concepts. However, Section 15 of the proposed law

may conflict somewhat with existing state law in that Section 15 describes the official stamp to be used by a notary. This may conflict with certain states' current laws, which do not necessarily require a notary to have an official notary stamp that bears certain elements that are determined by state law. Thereafter, in Section 17, the RULONA calls for notaries to be required to use a journal and, oddly enough, this section is written so that the journal requirement does not apply to notaries who are also attorneys. The comments attached to this section also state that it is one of two sections of the proposed law that are "optional." In other words, this section is not considered by the NCCUSL to be absolutely necessary, but it is strongly recommended that it be incorporated to all states' notary law. The other optional section is Section 21 entitled, "Examination of Notary Public." The NCCUSL's strong recommendation attached to Section 21 is that all notaries receive education and examination before acquiring a notary commission. This section would be a major conflict with the majority of states' notary laws; only a few states currently require examination or education of notaries or notary applicants.

The American Association of Notaries encourages

readers to review the entire proposed RULONA, which will be considered in July. The next issue of The Notary Digest will update readers on the decision of the NCCUSL.

Those who are located in the states that have already adopted all or a part of the 1982 ULONA may want to pay particular attention to the final decision by the NCCUSL on July 11. While the NCCUSL is not a lawmaker for any state, its influence on state law is undeniable.

For more information, and to review the complete proposed RULONA and the 1982 ULONA, please review the following links:

Proposed RULONA 2010

http://www.law.upenn.edu/bll/archives/ulc/ulona/2010am_draft.pdf

1982 ULONA

<http://www.law.upenn.edu/bll/archives/ulc/fnact99/1980s/ulna82.pdf>

NCCUSL Website

<http://www.nccusl.org/>

CDB Consultancy

<http://www.cdbconsultancy.com>

Steps for Avoiding ID Theft Victimization

When Debbie began her business as a mobile notary signing agent, she spent time each day contacting signing services to market her new business. However, it was not long before she encountered a serious problem. The kind of information she was repeatedly asked to provide to prospective signing service clients was what Debbie considered highly sensitive information. Almost every signing service she solicited work from required her to provide a copy of her state driver's license and a copy of her Social Security card. Knowing nothing about the integrity or honesty of the owners of the signing services she was hoping to work for, Debbie refused to do this. It was obvious to Debbie that copies of those two documents would provide all the information necessary about her credit file to allow a would-be identity thief to prey upon her.

As time went on, Debbie's efforts to market her new business provided dismal results. Almost every company she hoped to work for asked for this kind of private information. Even worse, though a company did not ask for a copy of her driver's license and Social Security card in its introductory sign-up package, similar problems came once she worked for them. Many of the companies insisted that she send copies of the two documents after the work was performed. To make matters worse, the companies' representatives also told her that getting her check from them for the work she had done was contingent upon her providing not only her driver's license and Social Security card, but also a signed IRS W-9 form that required her taxpayer's number. Debbie did not get paid for a few of the assignments she performed because she continued to refuse to give this information to the signing service companies.

Understandably, Debbie was almost ready to cease attempts to operate a notary signing agent business out of fear of exposing herself to identity theft.

However, when tax time came in April, she discussed this problem with her tax preparer, who gave her excellent insight and advice. The tax preparer explained why companies were asking for W-9 forms with her taxpayer number on it. Debbie learned that almost all companies that hire contract labor and independent business owners to perform a service have certain IRS reporting requirements. The request for a W-9 is a common and prudent request on the hiring entity's part, because a hiring entity is obligated to report a contractor's payments to the IRS and to report the taxpayer number of the contractor. The second thing Debbie learned was that she could apply online for a federal income tax number (FTIN) that would be linked to her name and her Social Security number; using an FTIN would provide a shield for her Social Security number and greatly reduce the identity theft risks she feared. Rather than provide her Social Security number, Debbie could substitute her new FTIN on the required W-9 forms.

During Debbie's and the tax preparer's discussion, the tax preparer suggested that Debbie take two steps to protect herself. First, when a company asked for a copy of her driver's license, Debbie could provide a copy with her birth date and driver's license hidden by a black marker, leaving only her picture, her name and her address. Second, she should never send a copy of her Social Security card; instead, Debbie should provide a signed W-9 form with her FTIN to the company. The tax preparer directed Debbie to the IRS.gov website and told her to search the site for "federal tax identification number" and to follow the links that the search returned in order to apply for such a number. The process was not complicated or difficult and was completed instantly. Once Debbie had this number, she was able to use it on W-9 forms when she bid for notary loan signing contract work rather than providing her personal Social Security number, which would give access to predators and make her vulnerable to identity theft.

All notaries who contract with companies for loan work may want to consider taking these steps to protect their Social Security numbers. For more information on the subject of federal tax identification numbers, readers should visit the IRS.gov website and use the search feature to find additional information. The American Association of Notaries never gives legal or tax advice; please discuss the suggestions in this article with your certified public accountant or tax adviser.

Apostille FAQs

Since a notarial act is an integral part of the apostille process, notaries often have questions this subject. Below are the questions we have identified to be common points of confusion to notaries regarding the use and issuance of apostilles. Be sure to read the last question and its answer. What you learn may be very surprising!

What is an apostille? An apostille is a certificate that is often required for conducting international business by individuals and corporations. An apostille will not be issued by a U.S. state authority for the purpose of conducting business inside the U.S.

What purpose does the apostille certificate serve? An apostille authenticates the current status of the notary's commission and the notary's authority; it does not authenticate a document and it does not make a document more "official." Representatives in foreign business often request an apostille in order to authenticate an American notary's status and, thereby, the credibility of the signature on the document. If the notary's authority is proven by issuance of an apostille, the foreign business representative can assume that the notary performed according to law and, while doing so, correctly identified the signer of the document before notarizing his or her signature.

What office or authority issues apostilles? The notary's commissioning office is usually the state authority that issues apostilles. Notaries should be informed about the apostille process and should be able to direct clients who

request an apostille to the correct authority's website and to the webpage where the apostille process, requirements, and fees are described

Why is the subject of apostilles so important for notaries to understand?

Essentially, if the notary does not execute his or her duties correctly, the request for apostille will be rejected by the notary's state authority. For instance, the following situations illustrate how critical the notary's actions are to the apostille process:

- A notary will have completed a notarial certificate before an apostille is requested from the state's authentication office. If the certificate language is not acceptable by the notary's state, the notary has erred and the apostille will not be issued.
- The document the notary certificate is attached to must be a signed document. If the document is not signed, the notary should not have performed the notarial act. Therefore, the notary is at fault and the apostille will not be issued.
- The document the notary certificate is attached to must appear to be complete and must not contain blanks. If there are blanks in the document or the document does not appear to be complete, the notary has not performed properly and the apostille will not be issued.
- The notarial certificate must be filled out correctly. It must be dated. The venue must be correct and the notary's commission expiration date must match the one on record with the notary's state. The notary's signature must match the one on file with the notary's state commissioning office, as well. If there is any defect in the notary's information, the venue, or the certificate it will be rejected based on the notary's error. The apostille will not be issued.

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- 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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