

Refusing to Notarize When There is a Question of Benefit

A Notary Public should comply with every reasonable request when called upon to notarize a document. However, there are times when a request may not only be unreasonable, but may actually be unlawful. It is important for notaries to be clear about statutory restrictions against certain types of notarizations based on the laws of their own State, but also, a notary must be able to use sound judgment when he or she is faced with specific notarial situations. Obviously, and in every state, notaries are disallowed from notarizing their own signature. But what about occasions when a notary is asked to notarize signatures and documents of family members? For the majority of states whether or not to notarize for family members is more or less a gray area; few, if any, guidelines are included in the notary procedures. Only a few of the states indicate considerations and guidelines when notarizing for relatives. In those states the basic stipulation is that notaries are permitted to notarize for family members as long as they (the notary) are, "not named in the document and will not receive a 'benefit' or have an 'interest' in the transaction."

What is meant by 'benefits' or 'interests' with respect to notarizations? There are various types of interests inherent in familial transactions; notaries must be aware of them and steer clear of notarizing when they occur. Interests may be direct - where the notarized document will presently and directly benefit the notary; or indirect - where the notarized document will provide a future benefit to the notary. Certain transactions may contain what is known as vested interest. Vested interests are interests which contain a promise of present or future enjoyment. An example of a transaction in which the notary may experience a vested interest from the family member might be when notarizing a deed or mortgage during a transfer of real property. If a mother or father is purchasing a property where the notary will presently take up residence, or in which they may inherit the property on the parent's death, the notary has a vested interest in the transaction and should not notarize.

There are other transactions in which a notary may obtain a beneficial interest. This may occur, for instance, if a notary is named as a beneficiary in a trust or pension. The notary is not the owner of the fund or capital, but has the potential of receiving benefits from that fund or capital based on certain conditions. If a notary is presented with this type of document from a family member, he or she should also abstain from notarizing.

What arises from the above types of transactions is a conflict of interests. The conflict of interests does not exist between one constituent and another but between the notary and the constituent. Notaries, by law and definition, must be at all times an impartial witness or a disinterested party to transactions. This means that the notary must have absolutely no interest, benefit or stake in the transaction. When there is a beneficial or vested interest, the notary receives a profit and should extricate himself from anything connected with the transaction. It is very important for the notary to realize that the benefits inherent in these transactions may be obscure and subtle. On the face of it, there may be no apparent benefit from the transaction. But where family relations are concerned, there are eventualities which exist which may initiate a future benefit to the notary. For this reason, notaries are encouraged to steer clear of notarizing for family members and wherever possible, a notary should direct the family member to another notary. These hidden benefits may also exist in transactions between friends, so notaries must constantly be vigilant to assure that no transaction in which they have performed the notarization contains a personal benefit, should it ever be challenged in a court a legal proceeding. Friends and family members may be annoyed or bewildered when the notary refuses to notarize for them. A good way to handle these situations is to explain that for the mutual best interests of the notary and family member, it is prudent for an unrelated notary to perform the transaction.