

Notary Recipe

Notary Note:

Notaries are **expected** to use **reasonable care**. While definitions of reasonable care vary from state to state, the term is generally defined in law as the degree of attentiveness and precaution that would be exercised by a person of ordinary prudence and intelligence.

Since an ordinarily prudent person abides by the law, reasonable care means, above all, adhering to all rules, principles, and practices prescribed by statute, regulation, and official directive.

These steps to a Consistent & Professional notarization outlined are **essential ingredients** of Reasonable Care in this Notary's Recipe.

1) Require Personal Appearance:

Personal appearance must be made at the time of the notarization – **Not** before and **Not** after and in the state and county on the Notary's certificate.

Personal appearance means being **face to face** in the **same** room. A telephone call from the signer does not constitute personal appearance, nor does mere recognition of a familiar signature by the notary.

Every notarial certificate states that the signer **was** in the **notary's presence**. This statement may be clear and direct, as in:

On _____ (date), before me, a notary public, personally appeared _____...

Or it may less direct, as in:

Subscribed and sworn to before me by _____....

Any Notary who does not require the physical presence of a document signer could be prosecuted for a criminal act of issuing a false certificate. This would be in addition to other criminal charges that could arise out of the Notary's willing participation in fraud, as well as civil lawsuits filed against the Notary to recover losses from a forgery, and the administrative penalty of commission revocation.

This, personal appearance means more than being under the **same roof** and **within earshot**: it also means being where the Notary **can see each signer and communicate face to face**.

The law does provide for **two (2)** very narrow and strictly controlled exceptions to the rule prohibiting notarization of the signatures of an absent person:

1. Notarization through an attorney-in-fact.
2. Notarization through a subscribing witness.

2) Make That Careful Identification:

Every document signer appearing before the Notary **must** be carefully identified.

Identifying individual document signers is the **most important** function of the Notary Public. The Notary is the gatekeeper who screens out these imposters and protects the community from fraud.

The Notary may identify a document signer in any one of three (3) ways:

1. Personal Knowledge of identity.

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Personal Knowledge means strong familiarity with an individual resulting from numerous interactions in association with other people over a period of time long enough to eliminate every reasonable doubt that the person has the identity claimed.

2. The oath of a credible witness.

The **credible witness** should have a reputation for honesty. The witness should be a competent individual who won't be tricked, cajoled, bullied, or otherwise influenced into identifying someone he or she doesn't really know. And the witness should have no personal or financial interest in the transaction described in the notarized document. **Please Note:** The Credible Witness **NEEDS** to be known by **BOTH** the **NOTARY** and the **SIGNER**.

3. Reliable identification documents (ID cards).

The **best IDs** contain three (3) elements: a photograph, a physical description and a signature. State driver's licenses and official non-drivers' IDs, U.S. military IDs and "green cards" issued by the U.S. Citizenship and Immigration Services are among the most reliable identifiers. In addition, a properly stamped U.S. or foreign passport without a physical description is generally considered acceptable.

Social Security cards and **birth certificates** are **worthless** as identifying documents because they are easily counterfeited and they lack the signer's photograph (along with **no physical description**).

3) Ensure the Signer's Willingness and Awareness:

Before notarizing, a careful Notary **will make certain** of the person's willingness to sign and general awareness.

Some Notaries are not legal or medical expert's, they are only expected to make a layperson's commonsense judgment about whether a signer knows what he or she is doing. The safest policy for the Notary is never to notarize if there is any doubt at all about willingness or awareness.

A document signer who is able to respond intelligibly in a simple conversation with the Notary should be considered aware enough to sign at that moment. A person who cannot respond intelligibly or maintain a simple conversation should not be considered responsible, barring compelling evidence to the contrary.

If there is any doubt about a signer's awareness, the Notary may consult an available expert, such as the person's physician or attorney. If such an expert indicates the signer is aware, it is usually safe to notarize. However, the Notary's common sense should prevail in all cases, and, if the signer cannot communicate coherently with the notary, the individual's awareness must be considered in doubt and the notarization should not be performed.

Determining awareness may be especially difficult for signers with certain disabilities:

- Physical disability impairing communication.
- Intellectual disability impairing comprehension.
- Legal disability imposing disqualification.

Persons with physical, intellectual, and legal disabilities still have legal rights and, often, a

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legitimate and urgent need to execute a legal document. In determining their competence to sign, the Notary should treat them with dignity and respect.

4) *Checking the Signature:*

To **prevent** invalidation or rejection of a document, a Notary **must pay particular attention** to the signature that is being notarized.

A surprising number of Notaries assume that every notarized document must be signed in the Notary's presence. This is not so. Only for **jurats** ("subscribed and sworn before me..."), and in some states, signature witnessing ("signed or subscribed before me....") must the notarized signature be made in front of the notary. For **acknowledgments**, the document may have already been signed long before it is brought before the Notary, but the **signer must** appear in person at the time of notarization, be identified by the Notary, and acknowledge the signature as his or her own.

The notary should compare the notarized signature on the document with the signature on any ID documents presented and with the signature left in the Notary's journal of notarial acts. All signatures made by the same signer should have the same general appearance. If the signer seems to be laboring over a journal signature, this may be an indication of forgery in progress.

5) *Look for Blank Spaces:*

Notarizing a **blank** or **incomplete** document is a **VERY BAD** idea. In fact, laws in several states explicitly prohibit a Notary from doing so, and officials in many other states discourage this practice.

Common Sense would prevent most Notaries from notarizing a signature on a completely blank sheet of paper, because a fraudulent document could later be created on the sheet above the notarial certificate. Also, it would be impossible to make a journal record of a document with such features as a title or date.

Documents complete except for blank spaces that will be filled in later also have great potential for fraudulent misuse. Incomplete spaces are a danger for the document signer, who may be victimized, and for the Notary, who may be found negligent in a subsequent lawsuit.

The prudent Notary will **decline** to notarize a blank sheet of paper, and ask the signer to fill in the blank spaces of an incomplete document before notarizing. If the spaces are inapplicable and intended to be left blank, the signer should be asked to **line through each space (using a pen)** or to write "**Not Applicable**" or "**N/A**" in the blanks. Increasingly, state laws prohibit in the notarization of blank or incomplete documents.

6) *Scanning the Document:*

Before notarizing **any** signature, the notary should first briefly scan the document to spot potential problems and collect certain particulars about the document for the journal record.

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There is a ***significant difference*** between scanning and reading. In scanning, one's eye jumps from point to point to learn certain critical particulars – the title of the document, the date of the execution and the names of signers. Reading involves methodic absorption of all the information contained in the document.

There are three (3) major reasons for scanning a document before notarizing:

1. To spot blank and missing portions.
2. To gather information for the Notary's journal.
3. To avert obvious frauds.

One reason to scan every document is to spot blank or missing portions in order to avoid the problems (see prior ingredient – Looking for Blank Spaces). The Notary needs to hold the entire bound document, count the pages, scan for blanks, and extract information for the journal.

A Notary whom merely fills out the notarial certificate without seeing the entire document might be accused of negligence and in some states would be violating explicit laws that prohibit notarization of incomplete documents.

Perhaps the most important reason to scan each document is to extract certain critical bits of information for the journal of notarial acts. (Even though that Delaware does not require in keeping a journal, it is recommended and strongly encouraged to do so anyway). Recording this information can protect the Notary against financial losses resulting in lawsuits.

Prudent Notaries record the following information about each notarized document:

- The Document's title or type.
- The document's date.
- The number of pages in the document.
- The correct names of all document signers.

The four (4) items listed are not all that should be recorded in the journal of notarial acts but this is information that the Notary will only be able to get by personally scanning the document's pages.

Scanning the document ***does not mean*** invading the signer's privacy. It merely means knowing enough about the document to describe it in the public record. This protects both the signer and the Notary.

7) Check the Document Dates:

Notaries ***should*** pay attention to dates – both the date on the document and the date of the notarial certificate. **A prudent Notary will adopt the following practices with dates:**

- ***Never*** predate or postdate a notarial certificate.
- ***Be Attentive*** to the sequence of dates.
- ***Do Not*** perform open-ended notarizations.

Notaries must ensure that the date of notarization written on any notarial certificate is accurate and true. Notaries ***must*** refuse any request to predate or postdate their notarial forms, since knowingly completing such a false official certificate would be a criminal act. The only lawful

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date on a notarial certificate is the date the signer actually appeared. The chronology of the document date and the certificate date is of high importance.

For **acknowledgments**, a document's date of signing may precede or be the same as the date on the Notary certificate but it should never follow the certificate date. This would indicate the document had been notarized before it was signed – a logical impossibility – and could cause rejection by the recorder.

For **jurats**, the date of signing must always be exactly the same as the date of notarization, since the document must be signed in the Notary's presence.

The Notary should be aware that some documents bear no date at all, apart from the notarial certificate date. Some documents may bear dates other than a date of signing – perhaps a future date that a transaction will take effect – in which it may follow the notarial certificate date.

8) Completing a Detailed Journal Entry:

A **Detailed Journal** of notarial acts is the Notary's **best defense** against lawsuits because it can prove that the Notary used reasonable care.

How you may ask? A journal entry may aid the Notary Public by describing the ID cards or credible witness that the Notary relied on to identify a document signer, and by providing a signature and possibly a thumbprint as proof that the individual did actually appear before the Notary.

To **prevent** a document signer from leaving before vital information that has been recorded, the prudent Notary **always** completes the journal entry before filling out the notarial certificate and affixing the seal or stamp.

For each notarial act, the following information should be entered in the Notary's recordbook:

- The type of notarial act.
- The date and time of the notarial act.
- The title or type and date of the document.
- How each signer and witness were identified.
- The signature, name and address of each signer and witness.
- The fees charged, if any.
- The signer's right thumbprint (optional unless a specific state requires it).
- Other pertinent and useful information.

To prevent theft, loss and tampering, Notaries **must** retain personal control over their journals. When not in use, the journal should be kept in a secured area along with the Notary's seal/stamp. Even if paid for by an employer, the journal – like the seal/stamp – belongs to the Notary and must go with the Notary upon terminating employment. Employers who keep the Notary's seal/stamp or journal may be criminally prosecuted in some states.

9) Completing the Notarial Certificate:

After identifying the signer and making a journal entry, Notaries must carefully attend to

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the final part of any notarial act: completing the notarial certificate wording. This wording is part of the document – either printed on the signature page or on an attachment stapled to it – and indicates exactly what the notary is certifying.

As a general rule, it is **improper** for a Notary merely to stamp and sign a document that lacks notarial wording, though many signers in a hurry may request such an act. Without certificate wording to indicate that an oath has been administered, a signer identified, or another official act performed, a Notary's signature and seal are meaningless.

There are three (3) common kinds of notarial certificate, corresponding to the three (3) common kinds of notarial acts: **acknowledgment, jurat, and certified copy**. Often the certificate wording required for a notarial act will be preprinted at the end of a document.

If the certificate wording does not come with the document, a non-attorney Notary **may NOT** choose the needed certificate or even recommend which one to use since this choice may have significant legal implications. Instead, the Notary must ask the signer to find out what kind of certificate – acknowledgment, jurat or other is required. The agency that issued the document, the person who specified that notarization was needed or the agency that will receive the notarized document should be contacted for an answer.

The Notary should follow these rules in regard to notarial certificate:

- Use the appropriate certificate.
- Ensure all insertions are correct.
- Fill out the certificate completely.
- Secure a loose certificate.

Lastly, **every Notary** should be aware of a **restriction** in regard to certificates. **Never** give or send a signed and sealed certificate to anyone and trust that that person to affix it to a document as promised. On one but the involved notary is authorized to attach, replace or destroy his or her own notarial certificate. If a certificate contains a mistake, then the whole document must be returned to the Notary for correction of the certificate.

10) Affixing a Legible Seal Impression:

If Notaries **paid more attention** to the proper use and maintenance of their official seals, there would be fewer document rejections and far fewer lawsuits.

One of the most common reasons that recorders reject notarized documents is because the Notary simply forgot to affix an official seal or signature on the notarial certificate. Another reason for rejection is that the name in the seal is Not exactly the same name as the Notary.

Adherence to the following rules regarding the seal can save a Notary a lot of trouble:

1. Be careful about placement of the seal.
2. Know how to correct a smudged or incomplete seal imprint.
3. Avoid unauthorized use of the seal.
4. Safeguard the seal when not in use.

A seal should be affixed as close to the Notary's signature as possible **without** overprinting it. If there is no room near the signature line, the Notary may have

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to use some ingenuity in finding space for the seal, perhaps affixing its impression in a margin or as a last resort, on a paper attachment in which the certificate language has been retyped. An inking seal **should not** be stamped over wording, particularly over a signature. Many county recorders are insistent that nothing at all intrude into the border of the seal.

While the embossing seal may be applied over the letters L.S. – abbreviating the Latin term Locus Sigilli, meaning place of the seal – an inking seal **should be affixed next to but not over the letters** to ensure legibility of the wording of the seal. To prevent document rejection by a recorder, Notaries **should not** affix an inking seal half on a document and half on a loose certificate.

If a seal impression is illegibly smudged or incomplete, another imprint should be made nearby on the same sheet of paper. The Notary **should not** try to re-stamp over the original image or write in missing words with pen and ink, an almost certain for document rejection by recorders.

11) Avoid the Unauthorized Practice of Law:

In serving the general Public by notarizing documents, non-attorney Notaries can sometimes get into trouble by being too helpful. Even when pressured by a persistent client, they **must resist** the temptation to give legal advice, to avoid the unauthorized practice of law.

The **basic role** of the Notary as a ministerial officer is to **follow** legal directions, **not to give** them. Notaries may not help other persons draft, prepare, complete, select or understand documents.

Most Notaries who engage in the unauthorized practice of law do so innocently and unknowingly in an attempt to help out a friend, client or employer.

There are several rules that Notaries should obey to avoid the unauthorized practice of law:

1. **Do not** choose certificates.
2. **Do not** prepare Documents.
3. **Do not** give advice.

Everyone likes to be helpful, especially to clients, supervisors and friends. However, **the best way** for Notaries to **avoid** the unauthorized practice of law is to know the lawful limits of their helpfulness.

12) Avoid Misconduct:

Notaries who clearly understand the penalties that the law may impose for their misconduct will view the performance of any notarization with heightened seriousness.

Misconduct occurs when a Notary purposely or negligently violates a law, regulation, official directive or expected standard of honesty, care or good judgment in the execution of a notarial act. The misconduct may result from performing a prohibited act or failing to perform a mandatory act. Because a Notary is a public official held to a high standard of conduct, he or she may be subject to certain penalties (commission suspension or revocation) even when the

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infraction had nothing to do with a notarization but nonetheless casts doubt on the Notary's integrity.

A Notary is subject to three (3) kinds of penalty for misconduct:

1. Administrative penalties.
2. Criminal penalties.
3. Civil penalties.

Any or all of these penalties may be imposed for a single violation, although each may require a separate hearing or trial. For a single act or misconduct, a Notary could lose his or her commission, be fined and imprisoned and have to compensate a financially injured person for damages.

The Notary's best defense against administrative, criminal and civil penalties is to use reasonable care. **In using Reasonable Care, there are three (3) duties in which Notaries should be particularly attentive:**

1. Requiring document signers to appear in person before them.
2. Carefully identifying these signers.
3. Keeping a journal of all notarial acts.

The overwhelming majority of administrative, criminal and civil actions against Notaries result from a Notary's failure to exercise reasonable care in these three (3) areas.

No list of reasonably careful steps could be all-inclusive. The best way for Notaries to protect themselves is to take precautions greater than those required by law, and, when the law is vague, to bend over backward in their prudence.

THIS RECIPE YIELDS:

Using All of These Twelve Ingredients, A Professional, Cordial, Correctly Done and Integral, Respectful, Impartial, Consistent and Routinely notarization ***has been*** accomplished.