

Performing Notarial Acts in Delaware

Steps to an Expert Notarial Act

Step 1: Require the Physical Presence of the Signer.

The presence requirement is the cornerstone of notary law. No matter what reason or rationalization notaries may give, there is NO excuse for performing a notarization when the signer(s) of the document are not present with the notary.

Physical Appearance

This presence is personal, physical appearance of the document signer before you, at the time of the notarization. That means the person is face-to-face with you in the same room. Remember that you must also communicate with the person and be able to hear and observe the person's responses and behavior. You simply cannot do that if the person is not standing before you.

No Exceptions

There is NO substitute for the presence of the signer. You are not allowed to call the signer on the telephone to verify that he/she signed the document and then perform the notarial act. Some notaries are guilty of doing just that.

Step 2: Examine the document.

Notaries may never perform any notarial act on a blank or incomplete document. An acknowledgment is a statement by a person that the person has executed an Instrument willingly for the purposes stated within. It would be impossible to proceed with notarization on a document with blanks (that should be completed prior to notarization) left unfilled, as the "purposes contained therein" are not fully stated. There would also be a serious problem with a document requiring an oath or affirmation which involves a signer swearing to or affirming the truthfulness of a document. If there are blanks, the signer is taking an oath or making an affirmation that is based on the truthfulness of that blank space as well as the remainder of the document. If a document was executed with blank spaces, those spaces could be filled in by another party once the document left the signer's hands and alter the intent of the document being executed.

You don't need to read the entire document; it is NOT your job to know or understand its contents. However, you should scan the document to make certain assessments.

- If there are blanks in the text, call them to the signer's attention and ask him/her if these blanks were meant to be filled-in prior to the notarial act. If so, the signer must address the blanks in some way, either by adding the appropriate information or indicating "none" or N/A." Remember that you may not advise the client how to complete any blanks. Have the signer initial any changes that he/she makes.
- To be eligible for a notarial act, a document must display the signer's original, "wet-ink" signature. If the notarial act is an oath/affirmation, the document must be signed in the notary's presence so in this case, you definitely have an original signature. If the notarial act is an acknowledgment, it is permissible for the document to have been signed previously, but you must be confident the signature is indeed original, stroked directly onto the document in "wet-ink." If in doubt, you may ask the signer to sign the document again, and write, "duplicate signature at notary's request."

- Next, look at the notarial certificate. Check the format. You also want to look for the key words, sworn (or affirmed) or acknowledged. These words tell you which notarial act is required – whether you have to administer an oath (or affirmation) or take an acknowledgment. If, as with an oath/affirmation the notarial certificate indicates that the notary must witness the person sign the document (“signed before me” or “subscribed before me”), the client must sign the document in your presence, even if it was already signed previously. The notarial certificate must be fully contained on one page of the document and may not be split between two pages.
- Ensure the date on the document is not later than the date of notarization.
- Determine fees you will charge, if any, and discuss these with the signer(s).

Step 3 – Identify the Named Signer.

The named signer is the person whose execution (signing) of the document requires a notarial act. You must positively identify the person. Remember to rely only upon a form of identification that is acceptable according to Delaware statutes.

Delaware law allows three (3) categories of identification for a notarization: Personal Knowledge, Satisfactory Evidence or the oath of a credible witness(es).

Personal Knowledge

Personal knowledge means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has identified claimed. Make no assumptions. If the acquaintance is only casual, or there is any question or doubt a signer’s identity, do NOT rely on personal knowledge.

Satisfactory Evidence – Identification documents

Title 29, Part IV, Chapter 43, Subchapter 2, §4321

When the signer is not personally known to the notary, he/she must present satisfactory evidence of identification in the form of an acceptable identification document. According to Delaware law, the following specific government-issued identification documents which bear a photographic image of the individual’s face and signature are acceptable:

- A United States Passport
- A Certificate of United States citizenship
- A Certificate of Naturalization
- An UNEXPIRED foreign passport
- An alien registration card with photograph
- A state-issued driver’s license (CURRENT..Not Expired)
- A state-issued identification card (CURRENT..Not Expired)
- A United States military card

Detecting fraudulent Identification

Carefully examine any identification presented to you and look for obvious alterations. Make sure that the photo is a true likeness of the individual before you and the signature matches the signature on the document presented. If the document has a physical description, compare the description with the person in your presence. If you are not sure, then you should politely ask for another reliable form of identification to verify or validate what has been presented.

You cannot be expected to detect skillfully forged identification documents. Sometimes a person will have identification documents for aliases, including Social Security cards, driver's licenses and so forth. If the imposter has effectively created one or more false identities, these fraudulent documents may have been actually issued by a government authority. If the notary is ever in doubt about the identification presented, the notary should simply refuse to perform the notarial service until satisfactory identification is provided.

Satisfactory Evidence – Credible Witness

A credible witness is an honest, reliable and impartial person who personally knows the signer and the notary must know the credible witness. This establishes a link of positive identification from the notary to the credible witness signer.

A credible witness is someone willing to swear an oath (or affirmation) about the identity of a signer who lacks other identification. A credible witness may be used for a signer who has no acceptable form of identification document and who cannot reasonably be expected to obtain a current identification document. Examples would be an elderly person living in a nursing home or a handicapped person who does not drive. A credible witness may not be used as a convenience.

The credible witness must be physically present in order to swear an affidavit before the notary and should remain present throughout the course of the underlying notarial act. The notary must positively identify the credible witness through personal knowledge only, then have the credible witness fill out the body of the Credible Witness affidavit.

NOTE: If the notary does not personally know the credible witness, the notarization CANNOT proceed with just one credible witness. Delaware law does allow the use of TWO credible witnesses unaffected by the document or transaction who each personally knows the individual and shows the notary documentary identification as described above. In other words, if the notary does not know the credible witness, a second credible witness would be needed and both would have to provide the notary with an acceptable identification document.

Once the credible witness completes the body of the affidavit, the notary administers an oath/affirmation to the credible witness and completes the jurat portion of the affidavit. (This concludes a full notarial act over the credible witness affidavit and should have its own, separate entry in the notary's journal) Finally, the notary attaches the completed credible witness affidavit to the original document requiring the notarial act.

Step 4 – Enter Transaction in the Journal.

Delaware notaries are not required to maintain a journal. Keeping a record of all notarial acts can prove helpful if a notarial act is ever questioned. If the notary is keeping a journal, this is the time to fill in the journal entry. The signer may be asked to sign the journal entry (not required but recommended) and provide some information. If the notary waits until after the notarization to complete to journal entry, he or she may find that the signer is out the door and has not signed the journal.

If the credible witness is being used for identification, use a separate entry to record information about the credible witness. If utilizing more than one journal entry, draw a connection between the entries by noting in each, "Enter Numbers (X) and (Y) are related entries.

Journals are available for purchase from The American Society of Notaries at (850) 671-5164, online at www.ASNNotary.org OR from the Delaware Notary Association website (www.delawarenotaryassociation.org), then select the “Notary Supplies” tab.

Step 5 – Perform the Verbal Ceremony.

For an acknowledgment, this is the time to question the signer to ascertain within reason that he or she is mentally capable of understanding the document and is willing to sign the document. If the document hasn't been signed, ask the signer if he or she understands the document.

“Mr./Ms. Jones, what is this document?”

“What happens if you sign the document?”

“Do you really want to sign this document?”

A document requiring an acknowledgment does not have to be signed in the presence of the notary but must display the signer's original “wet-ink” signature.

If the signer answers satisfactory, have the person sign the document and carry out the verbal ceremony for an acknowledgment. This verbal ceremony is also used for a document that has been brought to the notary already signed.

“Do you acknowledge or declare that you understand this document and have signed it voluntarily for the purposes stated in it?”

For a document requiring an oath:

“Do you swear, under the penalties of perjury, that the information contained in this document is the truth, so help you God?”

For a document requiring an affirmation:

“Do you affirm, under penalties of perjury, that the information contained in this document is the truth?”

Step 6 – Complete the Notarial Certificate.

Make sure to complete the notarial certificate with all the required elements. Correct any wrong information or write in missing information. Sign the notarial certificate in ink exactly as you are commissioned and stamp your notary seal close to your signature being careful not to impress your seal over any text or signatures.

Notarial Certificates

The notary must complete a certificate attesting to the transaction being executed. For every notarial act performed, the notary must fill out, date, sign and seal a notarial certificate containing the following elements:

1. Venue: This is the location where the notarization actually took place, typically seen in the format, “State of Delaware, County of _____.”
2. Type the notarial act performed, typically an oath, affirmation or acknowledgment. This act is evidenced by the key words “sworn”, “affirmed” or “acknowledged.”
3. Statement attesting that the signer personally appeared at the time the notarization took place. This fact is usually indicated by the words “before me” or “personally appeared.”

4. Exact date of the notarization. The notarial certificate cannot be backdated or postdated to accommodate a request from the signer of another party. This date is the date that the person personally appeared before you (the notary) and made an acknowledgment, took the oath or made an affirmation.
5. Printed name of the person for whom the notarial act was performed. Without this specific notation, one could presume that the notarization is for all who signed the document no matter when they signed it or gave their oath/affirmation or acknowledgment to a notary. Of only one multiple signers is present, the notarial certificate should carefully detail that the notarization is only for the person or persons who personally appeared before you: for example, "John Smith, Only," This will also prevent another signature from being added to the document and having it appear that you notarized for a person who was not actually present.
6. Type the Identification. The details of the form of identification used to prove the identity of the signer must be included, based on personal knowledge, satisfactory evidence identification document or by credible witness. You should include the type of document (ie. Currently Delaware driver's license") and name of the agency that issued the identification document. Do not write the serial number of any identification card, United States passport or any other number on the notarial certificate – that could make your client vulnerable to identity theft.
7. The official signature of the notary. The notary must sign in ink, using his/her exact commissioned name.
8. The exact commissioned name of the notary printed below the signature.
9. The notary's official seal. Impress your notary seal near your signature, but not over a signature or any writing.

Loose Notarial Certificates

Occasionally, a notary will be presented with a document with no notarial certificate. The notary is not authorized to tell the client what type of notarial act is needed but may show the signer different options and let the signer choose the notarial act needed. The notary may then attach a certificate and continue with the notarization. Notarial certificates that are attached to a document are called loose certificates. It is always preferable to type or write the notarial certificate on the document, just below the person's signature or on the back of the document. If there is no room, you may use a loose certificate.

When using a loose certificate, be sure that you connect the document with the notarial certificate with the following statement:

"This certificate is attached to a ___ page document dealing with/entitled _____ and dated _____."

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