

Should I Not Have Done That?

Vermont Bar Association

Notary Public Continuing Education

Presented by Jim Knapp

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This program counts as the mandatory CE for renewing your notary commission.



Disclaimer

I am a lawyer, but I am not your lawyer.

While this program is intended to provide continuing education for notaries public, it is not intended to be legal advice for your specific situation. If you have a question about how to do something in a specific situation, you should obtain advice from an attorney.



What is a notary public?

- A person who is authorized by law to:
 - Verify the identity of a person who
 - Signs an instrument
 - Makes or takes an oath
 - Issue a certificate confirming that the named person signed the document or made or took the oath



What Can a Notary Public Do?

- Take an acknowledgement
- Administer an oath or affirmation
- Take a verification on oath or affirmation
- Attest a signature
- Note a protest of a negotiable instrument*

■ *Don't worry about it, no one is going to ask you to do this but if they do, send them to a lawyer



What is an Acknowledgement

26 VSA 5304(1)

- ➡ (1) “Acknowledgment” means a declaration by an individual before a notary public that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.



What Can I Not Do?


- Advise people about the documents that they are signing (that is likely the practice of law, for which you must have a license)
- Authenticate documents as “true copies” – **except** you may certify that a printed document is a true copy of a digital or electronic document
- Perform a notarial act with respect to
 - A document in which you or your spouse is a party
 - A document in which you or your spouse have a direct financial interest



What should I be thinking about when I perform a notarial act?

- Is the signer **in your presence?**
- Have you identified the person who is about to take the action?
- Verification that the signing party executed the document or took or made the oath
- Preparation of a certificate of notarial act
- Record keeping

A Day in the Life of a Notary Public



We are looking over the shoulder of a colleague of yours, as they work through a typical day in an office, just like yours. Like you, this person is also a notary public. As one of the few places in town where there is easy access to notary public services, our favorite notary public sees “a lot.”

Phantoms Signing Documents

- Our favorite notary is working diligently at their desk. The “boss” is working with some customers in their office. The customers leave, seem happy (that’s good, right) and disappear. The boss comes out to the notary’s desk with a stack of documents and says, “here, notarize these”. Upon a quick review, it appears that the signatures to be notarized are those of the customers, not the boss. On raising the point – I didn’t see them sign – the boss responds, “Don’t worry about it, I did”. The notary completes the notarial certificates and returns the documents.
- Should I not have done that?



In your Presence?

- Means
 - In your physical presence
- After March 2020 on a temporary basis it also means appearing through a suitable bi-directional communications link, as long as you follow the rules for remote ink notarial acts
 - Check the requirements in the current applicable rules
- Permanent rules are in process to allow an appearance through a suitable bi-directional communications link, as long as you are duly certified to perform remote notarial acts and follow the applicable rules

Wait, Who are You, and Why are You HERE?

- As the day continues, our favorite notary public is now working on invoices that need to be paid. Another employee is taking care of customers at the front counter. A visitor arrives with a document that needs to have an acknowledgment attached. Our favorite notary asks for two forms of identification. The visitor presents an expired US Passport and a library card from a neighboring town's library. Expressing some concern, our favorite notary suggests the visitor needs to come back with some better identification. The next person in line behind this visitor is someone the notary knows socially, who also appears to know the person needing the acknowledgment. The next person in line tells the notary "It's OK, I know "visitor" and they are who they say they are. Based on the identification, our favorite notary fills out the acknowledgment and signs it.
- Should I not have done that?



How do I identify the person who is going to sign or take the oath?

- ***You know the person, personally***

- Prior dealings sufficient to provide reasonable certainty of the signer's identity

- ***You have satisfactory evidence of the person's identity***

- Typical Identification – Driver's License, Passport, Non-Driver ID*
- Another form of Government ID (photograph or signature)
 - And Satisfactory to you

*The government ID may be expired as long as it expired within the last three years.



NO ID, Now What?

- There is an option to have a third party verify the identity of the person whose acknowledgement or oath you are going to take.
- Third party (witness) verification on oath or affirmation
 - Witness must appear before you
 - Witness must be known to you or can be identified by government identification (Driver's License, Passport, Non-driver ID)
 - Witness states under oath that the signer is who they claim to be
 - If you use this form of identification, create and keep a written record of the key information
- You may request additional information to verify a signers identity

Formalities are Important

- Just before lunch, our favorite notary is getting ready to go out and do some errands when another person comes into the office. This new visitor has a document that looks like some kind of a contract relating to a car. It has been signed by one party and the visitor asks the notary public to “notarize” their signature. The visitor signs the document with a flourish and hands it to our favorite notary. There is no place for the notary to sign, so our favorite notary signs their name at the bottom of the page and puts their notary stamp under their signature.
- Should I not have done that?



Ok, I identified the person, they signed, now what?

- Fill out the notarial certificate on the document, sign it, and affix your stamp or seal to the document.
- If the document doesn't have a notarial certificate, then you have to add one. The statute provides short form certificates that you can copy and use (see next page) for two samples.
- The Secretary of State website has samples of seals and stamps. **You are NOT required to have a stamp or seal**, but having one is generally a good idea
- And don't forget to update your stamp or seal if it has the date your commission expires on it!

Sample Notarial Certificates

For an Acknowledgement by an Individual

State of Vermont
County of _____

This record (document) was
acknowledged before me on <date> by
<name of signer>.

Date: _____

Notary Signature
Notary Public
Commission No. _____
Commission Expires: _____

For an Oath or Affirmation

State of Vermont
County of _____

Signed and sworn to (or affirmed)
before me on <date> by <name of
person signing>.

Date: _____

Notary Signature
Notary Public
Commission No. _____
Commission Expires: _____

It's Early, Before that Second Coffee

- Our favorite notary public is working on land records recording when a visitor comes into the office. The visitor has their passport and some other documents that are in a language other than English. They explain that in order to extend their visa they need to send “authenticated” copies of their current passport and visa to their home country. They ask you to make a copy of their documents, then add the following language - I am a Notary Public - duly appointed by the Ministry of State and I certify that I have examined the original document and compared it to this copy and this is a true and accurate copy of the original document. Our favorite notary fills out the form and signs it.
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Renew Your Commission On Time

- Several months have passed, and it is now early February. Our favorite notary is in the office getting materials ready for Town Meeting when a resident appears in the office needing to have their signature on a deed acknowledged. Our favorite notary pulls out their pen and stamp and sets to completing the certificate on the deed. After our favorite notary fills out the notarial certificate, signs it and puts their stamp on the document, they notice that the expiration date for their commission was last week. Assuming that there has to be a grace period, the notary hands the document back to the resident who leaves.
- Should I not have done that?



I forgot to renew my notary commission and it expired. What now?

- You cannot perform notarial acts unless you have a valid notary public commission.
- There is no grace period or automatic extension.
- Check the Secretary of State's website for information about renewing your notary commission.



That's It
Thanks for Joining Us Today
Be Careful, Do Good Work!