



PRIA®

Property Records Industry Association

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NOTARY BEST PRACTICES FOR RECORDABLE DOCUMENTS

Notary Essentials Workgroup
Property Records Industry Association

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Introduction

*Whether the document is on paper or in electronic form,
the notary's essential function is the same.*

Notaries public may be appointed or commissioned by various political jurisdictions¹ to act as impartial witnesses. Though the notary's functions as defined in statute may vary, all notaries have the power to administer oaths, take affidavits, and take signers' acknowledgments that their signatures were freely made. Whether the document is on paper or in electronic form, the notary's essential function is the same: to identify the signers as the individuals they claim to be and to execute the notarial act according to law.

Notaries provide an important service in the processing of land records and other documents. In real property transactions, the predominant notarial act is the acknowledgment: a declaration by an individual in the notary's presence that the individual freely executed a document for the purposes stated therein.² In an acknowledgment, the notary certifies that the document signer was properly identified and made this declaration of intent. The notary's signed certificate is *prima facie* evidence of the validity of the notarial act—evidence which, unless rebutted, would be sufficient to prove the signer's intent.

Because the enforceability of a recorded document may be affected by the quality of its acknowledgment, the significance of a proper notarization cannot be overstated.

Recorders often rely upon the presence of an acknowledgment on the document.³ In most jurisdictions, that acknowledgment is a prerequisite to recordation. Other parties rely on the acknowledgment as proof of the signer's voluntary intent. Deficiencies in the acknowledgment itself (including but not limited to: omission of the notary's signature or seal; illegibility of the notary's seal; improper form or execution of the acknowledgment; omission of dates, signatures or names; or the misspelling of names) cause significant numbers of documents to be rejected.

*PRIA encourages specific standards for notaries who handle recordable documents
and for commissioning authorities who appoint, oversee and discipline notaries.*

¹ While most notaries are appointed or commissioned at the State level, there are instances of either appointment by a political subdivision of the State (such as a County) or a limitation on power imposed on the notary which may restrict that notary's authority to a County or smaller jurisdiction.

² We define "document" as it is defined in the Uniform Real Property Electronic Recording Act, which in turn was derived from the definition of "record" in Section 2(13) of the Uniform Electronic Transactions Act (UETA): "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." In selecting the defined term "document" for use throughout this paper, we decided not to use the UETA's defined term of "record" since the term "record" has a different meaning in real estate recording law and practice than it has in the UETA. If the term "record" were used generally in this paper, it might lead to confusion and misinterpretation. In this paper, for example, depending on syntax, the term "record" and its variations can have several meanings, all of which deal with document storage and not the information itself.

³ In the United States, land document recording may take place at the State, City, Town, County, Borough, or Parish level. Depending on the jurisdiction, the Office of the Recorder may also be known as Recorder of Deeds, Registrar-General, Register of Deeds, Registrar of Deeds, Registrar of Titles, Deeds Registry, Auditor, or Deeds Office. In some states, the recording function is part of the county clerk's responsibilities. Throughout this paper, the term utilized for this role will simply be "Recorder."

The Property Records Industry Association (PRIA) recognizes that the successful administration of a secure and reliable land records system depends upon quickly, efficiently and cost-effectively making the records available to the public. Recorders achieve this by reducing document rejection and facilitating their offices' automated processing of documents.

To assist Recorders, PRIA encourages specific standards —the “best practices” described here— for notaries who handle recordable documents and for commissioning authorities who appoint, oversee and discipline notaries. These best practices address aspects of notarial practice that support the aim of facilitating the efficient recordation of paper and electronic documents.

Uniform state laws would be helpful to the property records industry.

PRIA also strongly encourages statutory support of notarial principles and practices that ensure the integrity of the real property conveyance process, such as those presented in the Revised Uniform Law on Notarial Acts (RULONA) approved by the Uniform Law Commission (ULC) in July 2010.⁴

Timely adoption of uniform state laws regarding notarial acts (whether paper or electronic) would be helpful to the property records industry. Independent of statutes and regulations, PRIA and its alliance partners have adopted a data standard to help facilitate consistency in the communication of the data elements that are contained in electronic documents, including the notarial acknowledgments.

PRIA recommends the best practices in the next two sections to:

- Expedite processing of recordable documents;
- Encourage consistency, accuracy and completeness of notarial certificates;
- Ensure readability of documents and the signatures, dates and notarial seals placed on them;
- Reduce rejections of documents submitted for recording.

Best Practices for Notaries Public

These best practices for notaries public are intended to provide practical instruction in the execution of the notarial act. They are the same for paper and electronically notarized and recorded documents. These practices should be promoted by property records industry participants and should be included in any program of notary education.

1. PRIA recommends that any separate notarial form (i.e. one not part of a recordable document) should:
 - a) be the same size as the pages of the document;
 - b) be attached at the same point(s) and in the same manner as the pages of the document;

⁴ <http://www.law.upenn.edu/bll/archives/ulc/ulona/2010final.pdf> last successfully accessed September 15, 2011.

- c) immediately follow – not precede – the signature page of the document; and
- d) be capable of photographic, mechanical, or electronic reproduction.

Comment: *The intent of this best practice is to expedite the processing of standard size pages. A variation would not necessarily cause a document to be rejected unless there is a local requirement governing page size which has been violated.*

2. PRIA recommends that a notary completing the acknowledgment wording on a recordable document should:
 - a) fill in or draw a line through every blank space, or remainder of a blank space, to prevent unauthorized insertions in the notary form;
 - b) make a selection for every option presented, including “is/are,” “I/we,” “he/she/they,” “party(ies),” “_he_” and the like;
 - c) ensure that the name of any signer is correctly written, with no misspelling;
 - d) ensure that the venue notation is accurate;
 - e) affix a notarial seal that accurately reflects the particulars of the notary’s current, unexpired commission.⁵

Comment: *The intent of this best practice is to encourage consistency, accuracy and completeness, thereby reducing rejections. A variation would not necessarily cause a document to be rejected.*

3. PRIA recommends that a notary affixing an official seal of office on the notarial form of a recordable document should:
 - a) use a dark color ink suitable for imaging;⁶
 - b) use a dark, preferably blue, ink for signatures and initials, to distinguish an original document from a copy;
 - c) render photographically reproducible any embossing seal affixed to the document;
 - d) avoid printing over any text, writing or signature;
 - e) affix a second, legible seal impression, if any portion of the first impression is faint or unreadable;
 - f) not attempt to correct, update or make legible any seal impression;
 - g) not use correction fluid, tape or masking material on the form of acknowledgment.

Comment: *The intent of this best practice is to ensure the readability of documents and the signatures, dates, and notarial seals placed on them. A variation would not necessarily cause a document to be rejected.*

4. PRIA recommends not making corrections to already printed recordable documents but rather redrawing/reprinting the documents or consulting with legal counsel for proper

⁵ The phrase “notarial seal” is not intended to require the use of a traditional seal on electronic documents. Rather, the term as used here is synonymous with the term “Official Stamp” in Section 17 of the Revised Uniform Law on Notarial Acts (RULONA) in that the information on the seal or stamp must be capable of being copied together with the document to which it is affixed or attached or with which it is logically associated.

⁶ Various states specify the ink color to be used: AZ - "Dark" Ink; DE – Black; FL – Black; IL – Black; KS – Black; MA – Black; MO – Black; MT- only Black or Blue; OR – Black; TN - Ink color other than Black or Yellow; UT - Purple

remedies under state laws. However, if corrections are made to an otherwise recordable document,

- a. the signer should initial all corrections made in the text of the document, and
- b. the notary should initial all corrections made in the text of the notarial certificate or should attach a corrected notarial certificate to the document.

Best Practices for Commissioning Authorities

PRIA recognizes that notary laws vary widely. PRIA recommends these best practices based on laws, regulations or recommendations that are common to commissioning authorities:

1. PRIA encourages commissioning authorities to properly screen applicants for evidence of conduct inconsistent with the office of notary public.

Comment: *The applicant qualifications for notarial commissioning differ among the jurisdictions. For example, there is little to no background screening of notary applicants. A few jurisdictions require fingerprinting, some jurisdictions require criminal history record checks, and other jurisdictions require only a statement by the applicant that he or she has no criminal history.*

2. PRIA supports the keeping of an accurate record of each notarial act the notary performs, as an evidentiary tool that protects the notary and assists law enforcement in prosecuting cases of fraud.

Comment: *Virtually all jurisdictions strongly encourage the consistent maintenance of a complete, accurate notarial journal or register, even when it is not required by law or regulation. In states where no notarial register or journal is required, notaries routinely engaged in real estate transactions may fulfill this practice by adequately documenting the real estate file retained by the notary or the notary's employer.*

3. PRIA supports the traditional combination of physical presence and proper identification of the document signer as the best method to ensure the integrity of the notarial act.⁷

Comment: *Notaries must take reasonable steps to provide assurance of the integrity of the notarial acts they perform to persons who rely on the property records system. Notaries do this by always executing the duties and responsibilities of office in accordance with the laws and regulations that govern the jurisdiction in which the notary is empowered to act.*

The personal appearance and proper identification of the individual who is making a statement or executing a document has always been the cardinal rule of all notarial work. By requiring the physical presence and proper identification of an individual at the time of the notarial act, the notary may be satisfied that the individual is the person he or she claims to

⁷ In March 2011, the Commonwealth of Virginia enacted laws that defined the satisfactory evidence of a signer's identity to include evidence obtained via audio and visual technology. The laws take effect in 2012.

be, that the individual is competent to participate in the notarial act, and that the individual is acting knowingly and voluntarily.

4. PRIA promotes education and testing as a best practice that increases notaries' awareness, professionalism and ethical conduct and reduces the costly errors that delay or deny the efficient recordation of notarized documents. PRIA specifically recommends the inclusion of instructional content that will increase the recordability of documents.

Comment: *PRIA recognizes that a notary's duty to follow state laws and serve the public must be supported by instruction and guidance. Virtually all jurisdictions strongly encourage notarial education, even when it is not required by law or regulation.*

In jurisdictions where education and testing is not required, it is incumbent upon notaries to educate themselves in the duties and responsibilities of their office.

Instructional content should include topics such as: (1) making sure a seal image affixed to a paper document is complete and legible and what to do and not do if it is not; (2) making sure the acknowledgment certificate has been completed in full; (3) making sure the acknowledgment does not include misspelled names of signers; (4) making sure the venue of the certificate is accurate; and (5) making sure that the commission expiration date noted in the seal has not expired. Instructional content from the Recorder's perspective might include a discussion of what Recorders do with the documents that notaries handle, with emphasis on practices or habits that can cause problems after the notary has finished the notarization.

Whether motivated by statutory, regulatory or administrative requirements, or simply by the conscientious desire to perform their duties properly, notaries must acquire and maintain the necessary technical and practical knowledge.

5. PRIA supports the bonding of notaries, insofar as the bond offers a measure of protection to the general public.

Comment: *Although approximately one third of jurisdictions require notaries to be bonded, the amount of the bond varies.⁸*

6. PRIA supports statutes and regulations that enable the appointing or commissioning authority to punish or remove from office any notary whose actions show incompetence or violate standards of honesty, integrity, and trust.

Comment: *Most jurisdictions have enacted in statute the grounds for sanctioning, disciplining, suspending, or revoking the commissions of notaries who act improperly or fail to carry out the duties and responsibilities of their office. Property records industry participants need to understand these requirements, know what is expected of the notary in the proper performance of his or her duties, and work with the commissioning authority to identify and remove fraudulent, dishonest, or deceitful notaries.*

⁸ As of this writing, bond amounts vary from \$500 to \$25,000.

Electronic Recording

When PRIA first published a document dealing with notarial practices, electronic recording systems were only implemented in a handful of jurisdictions and were viewed by many as being very experimental. There were numerous questions regarding the practical impact of emerging legislation such as the Uniform Electronic Transactions Act (UETA) and the Electronic Signatures in Global and National Commerce Act (ESIGN) on the recording process.

Today, eRecording systems are viewed as mainstream. A substantial portion of the U.S. population lives in counties that accept some model of electronic recording. The publication of the Uniform Real Property Electronic Recording Act (URPERA) by the Uniform Law Commission (ULC) has helped address many of the legal concerns that existed in the early 2000s.

The most common model of eRecording in use as of this writing is what PRIA defines as “Model 2.”⁹ These recordings are usually based on a paper document with wet-ink signatures, including the notary signature, that are then scanned by the submitter. The scanned image is transmitted to the Recorder’s office along with indexing data that is formatted in an XML file based on one of the PRIA eRecording XML standards.

Reliance on wet-ink signatures stymies the goal of a fully electronic document that can be transmitted from the submitter’s system to the Recorder’s system without the interim steps of conversion to paper and then back to electronic form.

In RULONA, the ULC has endeavored to address the outstanding concerns regarding notarization of electronic documents. Section 19 of RULONA simply requires notaries to utilize a tamper-evident signature technology and to inform the commissioning office in their jurisdiction regarding what technology they have chosen. If a jurisdiction has adopted specific rules regarding technology standards for electronic notarial signatures, notaries must select a technology that conforms to those rules.

As jurisdictions adopt it, RULONA should alleviate concerns regarding notarization of fully electronic documents and allow submitters and Recorders to make the transition to “Model 3” electronic recording with confidence that such systems can meet necessary legal standards.

PRIA maintains that the fundamental role of the notary as an impartial witness of a signing event is equally relevant in electronic documents as it has been in paper documents. The notary plays an important role in establishing trust in recordable documents.

Conclusion

Notaries provide an important service in the processing of land records and other documents. Recorders often rely upon the presence of a notarial acknowledgment on the document. In most

⁹ “The Models of eRecording – A Continuum of Electronic Recording – Updated” PRIA Technology Committee, Business Requirements Workgroup, adopted by the PRIA Board July 14, 2009.

jurisdictions, that acknowledgment is a prerequisite to recordation. Whether the document is on paper or in electronic form, the notary's and Recorder's essential functions are the same.

To assist Recorders, PRIA encourages specific standards —the “best practices” described here— for notaries who handle recordable documents and for commissioning authorities who appoint, oversee and discipline notaries. PRIA also strongly encourages statutory support of notarial principles and practices that ensure the integrity of the real property conveyance process.