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Notary Essentials
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Village Clerk

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IN NOTARIZING ... THE CLERK IS RIGHT!
MICHIGAN ASSOCIATION OF MUNICIPAL CLERKS
ANNUAL CONFERENCE
2013
WELCOME!!

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Deterring fraud is the Notary’s most important role.

• Fraud is any deception causing a person to unknowingly surrender money, property, rights or advantages without appropriate compensation.

• By performing duties lawfully, expertly and with the highest ethical standards, Notaries can detect or deter imposters and thereby prevent devastating financial losses for innocent persons.
Notary Public – A Position of Trust

* Must serve the public in a fair and unbiased manner.
* Must be particularly careful to avoid discrimination of any kind.
* Must not refuse to perform a notarial act without due cause.
* Must not discriminate charging or waiving of notarial fees.
* The Notary must act as an impartial witness.
* The Notary must not profit or gain from notarizing any document.
* The only gain from a notarization that a Notary is allowed is the state permitted fee for his or her services.
* The Notary should decline to notarize in any transaction that would call into question his or her impartiality.

5 Requirements For Every Notarization

1. Require The signer to personally appear at the time of notarization.

2. Identify the signer and screen for willingness and awareness.
3. Review the document for completeness and any obvious frauds.
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4. Complete the journal entry.

5. Complete, sign and affix the official seal to the certificate.

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Notary Seal

• The seal signifies that the Notary is a public officer commissioned in a particular state and provides information about the Notary, such as the county where the Notary's commission, bond and oath of office may be on file, as well as the commission number and expiration date.

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Types of Seals

• There are two main types of official seals, the modern inking stamp and the traditional embosser.
• The most common seal is a rubber inking stamp, which imprints a photographically reproducible image on the document. The embosser is a metal pincer-like device, which imprints an image in relief on a paper surface.

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Journals

- As a Notary you should:
  - Complete a separate entry for each notarization
  - Complete the journal entry at the time of the notarization
  - Record the following information in your journal:
    - Date and time of notarial act
    - Type of notarial act
    - Title or type of document
    - Document date

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Continuation of Journal

- Name and address of each signer and witness
- Method of identification
- Fee Charged
- Signature of each signer and witness
- Thumbprint for every notarization
- Other pertinent information

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Step 1: Personal Appearance

- Personal appearance means the Notary must see and communicate with each signer face to face.
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• The signer must appear in person at the time of notarization to be positively identified, and acknowledge that the provisions in the document are intended to take effect exactly as written.

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Step 2: Identifying and Screening the Signer

• **Personal knowledge** is having an acquaintance derived from association with the individual in relation to other people over a period of time.

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* Identification documents

Should be government-issued and contain the bearer’s recent photograph, as well as the individual’s signature and physical description.
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... driver’s license, non-driver ID, or passport.

Carefully observe identification for any discrepancies.

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Screening for willingness

Ensures that the signing appears to be a voluntary act, freely made, without duress or undue influence.

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Screening for awareness

• Ensures that the signer appears to understand the document. Notaries are only expected to make a layperson’s commonsense judgment about a signer’s awareness.
For both willingness and awareness

- If the Notary suspects that a signer is being coerced or pressured into signing or is unable to respond coherently to the Notary's basic questions, the Notary should refuse to perform the notarization.

Uncertain Competence?

*Sorry, No Can Do!

- A Notary has a duty to screen each signer for these qualities: identity, willingness and competence.
- Competence is the basic ability to understand what is going on around oneself so as to be able to handle one's own personal legal affairs.

A Notary is expected ..

- ... to make a layperson's common sense judgment about a signer's competence. To do this, the Notary must be able to talk with the signer.
- A signer must respond coherently to a Notary's questions. If a signer is unable to do so, then there is doubt about the person's competence and the Notary has no choice but to refuse to notarize.
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In addition -

- The signer must be able to make a signature or a mark, an “X” without assistance.
- If medication, weakness or other temporary cause has left the signer groggy and unable to make sense to the Notary, then the notarization must be postponed.

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The Notary may not act

- Based upon a relative’s or friend’s assurance about a signer’s intention, or upon their description of a situation’s urgency.
- Unless a Notary clearly sees that a signer is aware of what is going on and is a willing participant, that Notary can’t notarize.

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Notarization is important…Why??

- Notarizing a document gives trust a material form.
- It is the official certifying process that renders documents worthy of the public trust, and offers assurance that a document is authentic, that the signature is genuine,
important

• ...and that its signer acted willingly and intended the terms of the document to be in full force and effect.

• Exactly why Notaries are careful!

• Notarizations are more relevant and vital than ever!

Notarial Acts

• Each category has a specific purpose, but all share the common aim of facilitating commerce and law through a network of trust.
Acknowledgments

- The acknowledgment is typically performed on documents controlling or conveying ownership of assets. Such documents include real property deeds, powers of attorney and, in some cases, trusts and wills.

JURATS

- The jurat is typically performed on documents that are critical to the operation of our civil and criminal justice system. Such documents include affidavits and depositions.

For a jurat...

- The signer must appear in person at the time of notarization to sign the document, and to recite aloud an oath or affirmation promising that the statements in the document are true. (An oath is a solemn pledge to a supreme being, an affirmation is a solemn pledge on one’s personal honor.)
VERBAL WORDING FOR A JURAT

• “DO YOU SOLEMNLY AFFIRM THAT THE STATEMENTS IN THIS DOCUMENT ARE TRUE TO THE BEST OF YOUR KNOWLEDGE AND BELIEF?”

OATH OF OFFICE

Oaths and affirmations also may be executed without reference to a document. An example would be the oath of office given to a public official. In this case, the oath or affirmation is a notarial act in its own right. Most often, though, Notaries administer oaths and affirmations for jurats in connection with documents.

Notaries are not authorized to.....

Verify the authenticity of birth certificates, marriage licenses, or other “vital records”
Persons requesting certified copies of vital records should be directed to the agency that holds the original – typically, the Bureau of Vital Statistics or the county clerk where the birth, death or marriage occurred.

What Notarial Act Is Needed?

• Law prohibits Notaries from choosing the notarial act on a signer’s behalf, which is considered the unauthorized practice of law.

You can ...

• Check the pre-printed wording.
• If it is unclear or there is no certification area have the signer contact the issuing or receiving agency for instructions. They should then return at a later date with the wording on the document.
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Loose Certificates

• The Notary may use a so-called loose certificate in instances when certificate wording is not preprinted on the document or when the preprinted wording does not comply with state requirements.

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Not Attach a Certificate?
*Sorry, No Can Do!

• It is improper and unwise for a Notary to give another person an official signed and sealed notarial certificate and then to trust that individual to attach it to an intended document out of the Notary’s presence.

• Even if it is the Notary’s error that makes a corrected certificate necessary, the original notarized document must be returned so that the Notary may attach the corrected form and disposed of the incorrect form (or correct the original one).

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Though it may be inconvenient...

...to return the original document to the Notary, there is no other proper way to have a corrected certificate attached. Sending the Notary a fax or photocopy of the document is not good enough.
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Understand that no one but the Notary...

...may lawfully fill out, sign, seal and attach a notarial form. It would be very careless of the Notary to mail or hand over a completed certificate without personally attaching it to the intended document; if the form were then fraudulently placed on another document, the Notary would have little defense against personal responsibility for damages.

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FALSIFY A DATE?
Sorry, No Can Do!

- It is a criminal act for a public official such as a Notary to knowingly certify false information as true and correct.
- If you are asked to write a date other than today’s date — the actual date of notarization — on an official notarial form, then you may risk criminal prosecution.

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Society places great trust

- And faith in the truthfulness of facts in a Notary's certificate, since these facts can decide a lawsuit or result in the transfer of valuable property. That's why the penalties for untruthfulness by a Notary are so severe.
- Indeed, even though Notaries aren't required to read the documents they notarize, they are expected to withhold their services if they happen to know that a document contains a false date or any other deceptive information.
Certify An Object or Event?
*Sorry, No Can Do!

Notaries have limited powers. Basically, they may only certify that they have identified a document signer, and administered an oath.

Notaries are not authorized to certify objects.

They have no power to certify a design, drawing, artwork, plan, map, scorecard, ticket or photograph. They have no power to put a seal on a document in order to certify, validate or guarantee the information it contains or to make it look official.

In addition ... 

• ...Notaries have no power to certify that an event has occurred, such as the fact that a letter was mailed at a particular time.
Further, Notaries are specifically prohibited from using their title or seal to endorse or promote any product, service, contest or other commercial offering.
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MICHIGAN

• Each Notary Public Commission is for a 6-7 year period ending on the notary's birthday.

• Your notary commission is a statewide appointment. Once appointed, you may notarize anywhere within the State of Michigan.

• The Michigan Notary Public Act requires a notary to maintain all records of a notarial act for at least 5 years.

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MICHIGAN NOTARY PUBLIC ACT

• Act 238 of 2003

• Sec. 23 Before a notary public performs any notarial act, the notary public shall obtain and read a copy of all the current statutes of this state that regulate notarial acts.

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NATIONAL NOTARY ASSOCIATION

• www.NationalNotary.org

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