Notary Law Institute

Presents

The Basics of Identification
Welcome to the Basics of Identification. We commend you for wanting to understand what is required to properly identify your document signer. "Your job as a notary public is a very serious one, essential to the operations of business, the judicial system, and many other important arenas.”

The purpose of this primer is to explain the basic requirements necessary to identify someone beyond a “reasonable doubt”. This is one of the critical steps in the actual process. Without identification the rest of the process is meaningless.

Let’s begin this section with a discussion of the overall system of identification available here in the United States. Our ability to prove our identity is something to which most of us rarely give much thought. We are a free society, unaccustomed to having to produce identification papers at a moment's notice. Those who have resided or traveled in totalitarian countries recognize how one’s very life may hinge on the immediate presentation of their identification documents to authorities in those countries. In that environment, it is the government regime that determines and ratifies one's identity.

The American system of individual identification is a stark contrast to that of other societies. No free American is required to bear ID, and there is no central source for uniform identification. The identification we as Americans obtain is typically procured voluntarily in connection with some higher objective.

Our identification documents are secondary to other pursuits in life. Yet, so much depends on them. For business and government to mitigate against exposure to risk that individuals may be impostors, heavy reliance is placed on the identification card the individual presents. While a driver’s license certifies that the bearer of the card is licensed to drive, it provides little or no assurance that the person featured thereon is who he claims to be. We take it on the reasonable expectation that somehow the driver's license was issued by the government only after a reasonable screening of the applicant's true identity.

Notaries Duty of Care in Identifying Document Signers

America's notaries face formidable challenges in identifying document signers because of our open society. Every person is free to document his or her identity in any
manner he or she wishes, or even not at all. Yet, at one time or another, nearly every person has need of a notarization. Fortunately, there are procedures and standards of care a notary may invoke to ensure protection from risk of personal liability in notarizing for the public, with its sundry methods of identification.

The bedrock of American notary law is the principle in tort of reasonable care. Reasonable care is the standard by which notaries and their official conduct are judged. It is born out of the necessity to provide ordinary people, untrained in the law or sciences, a means of protection against liability for the public services they provide to their communities as notaries. The standards of reasonable care serve as parameters by which a notary can gauge whether her official notarial conduct is protected. A notary is expected to act reasonably, as would any reasonable and prudent person in like circumstances, in the performance of every notarial procedure. The notary is liable to all persons who suffer injury as the proximate result of the notary's breach of her duty of care.

The notary's responsibility to reasonably verify the identity of every person for whom she notarizes is profound. It is the cornerstone of the notarial act by which a notarized signature is reasonably verified not to be a forgery. A notary who takes this duty lightly does so at her very grave peril.

The notary performs this function of signer identification as a fiduciary of the public. The notary is expected to perform with integrity and diligence. It is not enough to simply follow what other notaries customarily do, especially if the business and notarial habits of others are negligent.

"We believe that the manifest intent of the legislature in requiring a notary public to execute a certificate of acknowledgment is to provide protection against the recording of false instruments. The sine qua non of this statutory requirement is the involvement of the notary, a public officer, in a position of public trust....If the notary conspires with a forger, or fails to require the personal appearance of the acknowledger, or is negligent in ascertaining the identity of the acknowledger, the statutory scheme is frustrated...In taking acknowledgments a notary properly
discharges his duty only when the persons acknowledging execution personally appear and the notary has satisfactory evidence, based either on his personal knowledge or on the oath or affirmation of a credible witness, that the acknowledgers are who they say they are and did what they said they did."


The Uniform Acknowledgment Act and the Uniform Law on Notary Acts clearly indicate that document signers must personally appear before the notary. This is for the express purpose of enabling the notary to verify the signer's identity and that the signature to be notarized is genuinely that of its maker. However, only the Uniform Law on Notary Acts adequately prescribes standards for signer identification. Section 2 of the Uniform Law on Notary Acts provides:

In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person (i) is personally known to the notarial officer; (ii) is identified upon the oath or affirmation of a credible witness personally known to the notarial officer or (iii) is identified on the basis of identification documents.

The Model Notary Act, revised in September 2002, applies a more stringent standard for signer identification. The Model Act clearly and forcefully emphasizes the unmistakable requisite for signer identification in its definitions of Acknowledgment and Jurat. It states that “a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence...” is personally before the notary."

The Notary Public Code of Professional Responsibility asserts the imperative for thorough signer identification. "The notary shall carefully identify each signer through either personal knowledge, or at least one reliable identification document bearing a
photograph, or the sworn word of a credible witness.”

**Notary's Personal Knowledge of Identity**

A notary’s **personal knowledge** of a signer’s true identity constitutes the strongest form of signer identification. In the notarial certificate, this form of signer identification is often phrased "personally known to me to be the person whose name is subscribed" thereto. One individual’s claim to personally know another defies refutation. It is premised on a substantial level of acquaintance "derived from association with the 'person] in relation to other people, as establishes [his] identity with at least reasonable certainty" (Black's Law Dictionary).

Personal knowledge of another’s identity cannot be based on the representations of other people. Moreover, identity cannot be based on assumption or conjecture. Identity must be based upon a chain of circumstances surrounding the person that, in its totality, would lead one to believe the person is who he claims to be. Within that chain of circumstances, some affirmative evidence of the person's identity must manifest itself

"The phrase 'personally acquainted with' in...a certificate means a knowledge independent and complete in itself, and existing without other information, and it imports more than a slight or superficial knowledge."

— Anderson v. Aronsohn, 184 P. 12, 15-16 (Cal. 1919).

A number of states have laudably enacted concepts from the Model Notary Act that provide within their notary codes definition to the element of personal knowledge. The notary code of Oregon provides, for example, that "personally known means familiarity with a person resulting from interactions with that person over a period of time sufficient to eliminate every reasonable doubt that the person has the identity claimed" Every detail within the framework of personal knowledge calls for the notary's subjective assessment of the facts and circumstances. Appropriately so, a notary's determination of personal knowledge is rooted in the exercise of reasonable care. If a notary is personally acquainted with an individual over a substantial period of time and has interacted substantively with that person, the notary's common sense and instinct
might lead her to reasonably believe the person is who he claims to be. This would occur naturally out of the absence of anything contradicting the person's representations as to who he is.

**Credible or Identifying Witnesses**

Credible, or identifying, witnesses are vital to the successful performance of notarizations for millions of people at any given moment. Identifying witnesses constitute satisfactory evidence of a person's identity before a notary and are often the only means by which a signer may be identified for a notarization. Vast portions of the American population are without identification cards or documents, as they either have no need for any, or they are momentarily without ID.

Credible witnesses are utilized to attest to the notary the true identity of the document's signer. As articulated in the notary statutes of several states, the notary identifies the person "upon the oath or affirmation of a credible witness personally known to the notarial officer." The state codes also specify that the witness must know the document signer.

In every use of a credible witness by a notary, there must be the fulfillment of three requisites, which will constitute an "unbroken chain of personal knowledge":

1. *The notary must personally know the identifying witness*;
2. *The identifying witness must personally know the document signer*; and
3. *The identifying witness must attest under oath to the notary as to the witness’ personal acquaintance with the document signer."

A notary is entitled to rely on the affirmation of someone she/he knows personally regarding the identity of what may be a complete stranger. The notary's personal knowledge of identity runs to the credible witness. In turn, the witness' personal knowledge runs to the document signer for whom the notarization is being performed. The notary's reliance on the words of the credible witness is secured by the administration of an oath or affirmation to the witness.

A notary can administer an oath or affirmation to a credible witness with simple phrasing such as, "do you swear or affirm that this is Jane Doe and that you know her
personally?” Notaries are rarely, if ever, trained on the laws and procedures for oaths and affirmations. They are prone to shy away from having to administer oaths and affirmations, as many may regard it as pretentious or "overkill." A prudent notary and employer of notaries will discuss the procedures for administrations of oaths with colleagues and clients, and thereby ease some of this discomfort of the responsibility.

The notary's reasonable care in using a credible witness to identify a signer's identity requires utmost objectivity on the notary's part. The notary must personally know the identifying witness to the same degree, if not higher, as if the notary were notarizing for the witness on the basis of personal knowledge. The notary's acquaintance with the witness is the premise by which she determines a signer is who he claims to be. This is quite different from notarizing for the individual a notary knows personally. The bar for measuring personal knowledge of the credible witness's identity is by necessity higher.

Unlike the notarization for a person the notary knows personally, an identifying witness must be known to the notary as having a reputation for integrity. The witness must manifest no inclinations towards deceit, and must be known as one who esteems integrity and manifests it by his example. The witness must be cognizant of his sober responsibility under penalties of perjury for attesting to the identity of another person. And, the witness should be impartial and free of any interest in the transaction.

The Notary Public Code of Professional Responsibility (National Notary Association) provides, "the notary shall disqualify any person from serving as an identifying witness if that individual is named in or affected by the document signed by the principals.”

The employment of credible witnesses by notaries to identify document signers is superior to the notary's reliance on the signer's ID documents. The entire concept of the credible or identifying witness is founded upon the high trust our system of law places in one's personal knowledge.

A notary's employer or supervisor is generally affected by the execution of documents within his workplace and, according to the Notary Public Code of Professional Responsibility, is disqualified from attesting to the identities of his employee's clients. A
cosigner personally known to the notary is disqualified from attesting to the other signer's identity under this standard as well. These disqualifications ironically leave the notary with no other choice but to rely on the inferior form of identity verification: ID cards and papers.

**Satisfactory Evidence of Identity**

Both the Uniform Law on Notary Acts and the Model Notary Act refer to the notary's reliance on *satisfactory evidence* to identify signers. The Model Act goes further by defining the term "satisfactory evidence" in the context of notarial services. Only a dozen states have followed suit in their statutes.

Satisfactory evidence is a user-friendly legal term because it is simple and rather self-explanatory. Satisfactory evidence is sometimes called "sufficient evidence", or that "amount of proof which ordinarily satisfies an unprejudiced mind." In relying on satisfactory evidence, the correct question for the notary is not whether it is possible that the document signer is an impostor, but whether there is sufficient probability the signer is who he claims to be. This important standard is not unlike the legal axiom that an accused person is presumed innocent until proven guilty. Although the document signer bears the burden of proof as to his true identity, there should never be a presumption of attempted false identity on the signer's part unless the notary reveals such falsity through the signer's presentation of satisfactory evidence.

**Identification Cards and Documents**

Identification documents serve as perhaps the most commonly used means for identifying document signers. The most commonly used form of ID seems to be the driver's license. It is universally viewed as the most reliable form of ID because the state government issues it. It contains a photograph and other pertinent information about the bearer. The assumption is that the states invoke substantial procedures to verify the license applicant's true identity as a condition precedent to its issuance. The states and their citizens have a lot at stake over this process. So, if it is good enough for the state, then it is supposedly good enough for a notarization.

The problem with ID cards for notarial purposes is complex. There is no clearly
articulated universal standard for classifying an ID as valid, adequate, reliable or credible. Moreover, the strength and reliability of a person's ID usually depends on the purpose for which it is designed. In applying for a U.S. passport, the standard for valid identification of the applicant is manifestly higher than it is for admission of a teenager into an "R" rated movie. A notary's standard for acceptable signer ID will be considerably different than that of an employee's ID to pass into a secured area of his high-tech company.

The appropriate standard by which a notary should examine a signer's ID card is unchanged from over the generations. The standard of reasonable care, regardless of changes to notary statutes, always applies. Although the known volumes of counterfeit ID that circulates in our country is alarming, there is a tendency for some to assume that the notary may be incapable of adequately screening signer ID in such an environment. Critics argue that the likelihood is too great that a signer's ID may look authentic, but really be counterfeit.

Therefore, the reasoning goes the notary's scope of discretion in accepting and examining a signer's ID must be restricted in order to save the notary and the public from signature fraud.

The notary statutes of a number of states impose stringent limitation on what constitutes satisfactory evidence in the form of identification cards or papers. Of particular concern are the requirements in many states that a signer's ID be current," and be issued from a state or federal government entity.

The Model Notary Act advocates,

"Satisfactory evidence of identity' means identification of an individual based on: (i) at least 2 current documents, one issued by a federal or state government with the individual's photograph, signature, and physical description, and the other by an institution, business entity, or federal or state government with at least the individual's signature..."

Many states require that a signer's ID be "valid," without defining what constitutes "validity." That is left to the notary's sense of reasonable care and to the context in which the signer produces ID to the notary. Many have speculated that "valid" means "current." Others have added to that by asserting that valid also means "official." Neither speculation is very helpful to the notary or to the public in general.

The experience in a number of states exemplifies the problems created by unduly restricting the types of ID a notary may accept from a document signer. While it may appear reasonable to require that the ID be current, it is not necessarily logical. This means, for example, that a signer's state-issued driver's license that was current yesterday was valid for the notary to verify the signer's identity yesterday. But today, the driver's license is expired and is no longer a valid basis for the signer to identify himself to the notary. The owner of the driver's license hasn't expired in bodily terms; only his privilege to drive has.

Millions of Americans are not licensed to drive and they possess no government-issued ID. Unduly restrictive statutory provisions such as those mentioned exclude millions from obtaining a notarization of their signatures, unless they personally know the notary or are accompanied by a credible witness the notary personally knows. The unfortunate obstacles these strictures create is made worse by states that require the signer to produce two forms of ID cards.

The recommended standard for identification by documentation comes from the Model Notary Act of 2002 section 2-17 stating that the notary require:

"...at least one current document issued by a federal, state, or tribal government agency bearing the photographic image of the individual’s face and signature and a physical description of the individual, though a properly stamped passport with out the physical description is acceptable.

The act further notes that nothing prohibits a notary from asking for additional proof of identity if the item(s) presented by the principal raise questions as to their authenticity or are otherwise suspect. Indeed notaries are obligated to satisfy themselves that the evidence presented positively proves the principal’s identity.

**Conclusion**
The truest shield of protection against signature fraud is the notary public that faithfully exercises genuine reasonable care with skill and prudence. Attempts to pave over this time-honored standard with overbearing legislation disserves the public for whom such efforts were intended to protect.

The notary's exercise of reasonable care in verifying a signer's identity is the optimal assurance of signature authenticity. It always has been, and it most likely always will be. But in summary the following rules of thumb apply:

1) **A notary's personal knowledge of a signer’s true identity constitutes the strongest form of signer identification**

2) **Credible, or identifying, witnesses are vital to the successful performance of notarizations for millions of people at any given moment. Credible witnesses constitute satisfactory evidence of a person's identity before a notary and are often the only means by which a signer may be identified for a notarization.** The notary must personally know the credible witness and the credible witness must personally know the signer. The credible witness also must attest under oath that they know the signer is the person that they claim to be.

3) **Follow the standard required by your state statutes or the recommendation of the Model Notary Act of 2002 requiring one (1) document (preferably issued by a federal, state, or tribal government) with the individual's photograph, signature, and physical description.**

If you have any questions please call us @ 800-722-8708 or post a question on line at www.notarylaw.com.

**The Notary Law Institute**