



The Commission Connection

Tips, recommendations, and information for notaries,
from the Idaho Secretary of State

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Technology...

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Technology and the Notarial Process

The use of technology in business and commerce continues to grow rapidly. Every year, the United States engages in hundreds of billions of dollars in electronic transactions, and the amount increases annually. Companies and organizations continue to develop electronic means for the submission of documents, for processing documents, and for signing those documents. They develop goods and services centered on the concept of the paper-free workplace. These developers do so not only for the environmental benefits (such as saving trees), but also because technology removes many of the limitations that slow down business and commerce. Technology increases output, decreases work hours, and often simplifies processes for both employees and customers. However, one area of business and commerce is cautious in the application of technology – notarization.

The notarial process is in place to ensure a high degree of honesty and integrity for business and commerce. The legislatures throughout the United States empower notaries to be the front line defense against fraud and identity theft, and those legislatures expect notaries to be diligent. Though many companies are creating products that support electronic notarization, the various state legislatures are not as quick to follow suit, and for good reason – technology has not yet created a viable substitute for certain important aspects of the notarial process, such as personal appearance.



Personal appearance

Personal appearance may be the most important tenet of the notarization process. Furthermore, Idaho law requires notaries to practice this vital principle (Idaho Code, 51-117). Having the customer within close proximity affords the opportunity for the notary to exercise the required standards of care as detailed in Idaho Code, 51-111.

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Idaho Secretary of State
450 N. 4th Street
Boise, ID 83702
Ph. 208-332-2810

"As agents for the government, notaries fulfill a widespread need for document and signature authentications, without which commerce would be severely hindered." ~ Peter J. Van Alstyne, JD



Personal appearance...

“Personal appearance may be the most important tenet of the notarization process.”

Notarial duties...

“...it is the notary’s responsibility to ensure that the signer endorses the document willingly and freely.”

Technology and the Notarial Process (cont.)

Beyond the Idaho Code, the National Association of Secretaries of State (NASS) developed standards for electronic notarization. In those standards NASS states that ““physical appearance” and “appears before the notary” mean that the principal and the notary public are physically close enough to see, hear, communicate with, and give documents to each other without reliance on electronic devices such as telephones, computers, video cameras or facsimile machines,” (National Association of Secretaries of State, 2011, definitions, para. 10). Furthermore, the National Notary Association (NNA) emphasized the importance of personal appearance by making it a necessary notarial function in its Model Notary Act. These two prestigious bodies, NASS and the NNA, clearly consider personal appearance to be of vast importance.



Notarial duties

When it comes to personal appearance the notary has two important duties. The first duty is proper identification of the customer. Government I.D. cards, such as driver’s licenses, military identification cards, or state issued identification cards are the primary forms of identification, as they provide a picture of the customer. The signature on these cards can also be used to provide cursory comparison to the signature on the notarized document, as well.

Personal appearance provides the means for a notary to execute his or her second duty. Peter J. Van Alstyne, in his books *Notary Law, Procedures & Ethics* and *Van Alstyne’s Notary Public Encyclopedia*, states that it is the notary’s responsibility to ensure that the signer endorses the document willingly and freely. “This means that the signer understood what his document is, what it is intended to accomplish, and that the signer intended to be bound by the contents and terms of the document,” (Van Alstyne’s Notary Public Encyclopedia, 2001, p. 462). The Missouri Supreme Court also emphasized the importance of this duty in a prior ruling:

But it by no means follows that the certificate is a proper one if the execution of the instrument is not the free act and deed of the maker thereof to the knowledge of the notary and, we are of the opinion that, a certificate made where the notary knows that the instrument is not the free act and deed of the maker, is false and its making is a violation of his official duty. We think it is a clear breach of a notary’s official duties to so certify under such circumstances (State ex. rel. Nelson v. Hammett, 203 S.W.2d at 120, 240 Mo. App. 307 (1947)).

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“...the Idaho Code does not provide for electronic tools or any other electronic replacements for the notarization process.”

Technology and the Notarial Process (cont.)

Van Alstyne goes on to explain that the requisite standard of care for determining a signer’s willingness to freely sign a document is much lower than that of a professional mental assessment. A notary can not be expected to make such determinations. However, he makes clear that the notary’s standard of care can be met through conversation by asking simple questions about the document to be notarized (Notary Law, Procedures & Ethics, 1998). Not only will this give the notary a clue as to the signer’s mental capacity, but also, “If the signer is capable of articulating a simple response relevant to the question, one could reasonably believe the signer has at least the minimum requisite awareness of what the instrument is, is sufficient to execute a signature on the instrument for the purpose stated therein,” (Notary Law, Procedures & Ethics, 1998, p. 21).

Yes, technology provides many remarkable tools that assist business, commerce, and government agencies. Technology provides consumers with access to goods and services worldwide, while also offering simplicity and the benefits of saving time. However, technology still faces many hurdles. Along with most other state’s laws, the Idaho Code does not provide for electronic tools or any other electronic replacements for the notarization process. That is as it should be until technology can sufficiently replicate the personal appearance requirement (or until Idaho recognizes an electronic process that utilizes personal appearance), because a notary’s eyes and ears are almost as important as the notary’s signature and seal.

References

Van Alstyne, P. (1998). *Notary law, procedures & ethics*. Salt Lake City, UT: Notary Law Institute.
Van Alstyne, JD, P. (2001). *Van alstyne’s notary public encyclopedia*. Salt Lake City, UT: Wasatch Peaks Publishing.



HELP!

- Do you have any interesting notary stories or anecdotes?
- Do you have any questions that you and other notaries would like answers to?
- Are there any legal issues with notarization that you would like to make others aware of?
- Do you have any tips on making the notarization process easier?

If so we would like to include them in this newsletter. Please send anything you have to Debbie Farnsworth at dfarnsworth@sos.idaho.gov.