

NNA Editorials

Notarization, Not LPOAs

In an industry as dynamic as mortgage banking, lenders are constantly looking for a competitive edge. Online closing systems are being heralded as the way to make the mortgage process more convenient ... and much less expensive. But online systems have a major weakness: they require borrowers to sign a limited power of attorney (LPOA) authorizing settlement firms to sign the loan documents on their behalf.

An LPOA is an open door to the same kinds of unscrupulous operators who were behind the predatory abuses exposed by the subprime mortgage market — abuses that may ultimately cost consumers hundreds of billions of dollars (See story on Page 1). With LPOAs, consumers are on the hook for whatever terms are accepted on their behalf, even if shady mortgage brokers hike interest rates or fees.

While streamlining the closing process is laudable, the companies behind the online systems have gone too far.

All across the country, thousands of times a day, Notary Signing Agents meet with borrowers to collect and notarize signatures on mortgage documents. This simple act protects the security and integrity of the closing process because borrowers know they sign the effective terms. Online closings eliminate that protection.

Ironically, lenders looking for a streamlined closing system already have one that is safer, easier and more efficient. It is electronic notarization. A loan closing using eNotarization can be completed in one step — instead of the multiple steps of an online closing — and NSAs will be right in the middle of it, ensuring each transaction is done securely, professionally and with little or no chance that things will go wrong.

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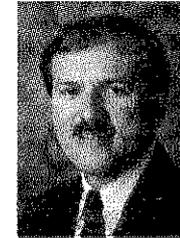
As the use of electronic documents spreads in business and government, it has become necessary to re-examine the way these transactions are conducted and recorded. Businesses, consumers and recording officials alike are eager to take advantage of the benefits of paperless transactions, which include reduced costs, faster turnaround and more efficient recording.

Thanks to a model statute created in 2004, a number of states have established standards for accepting electronic recordable

Commentary

Lawyers Worst Violators Of Law: Part I

By **MICHAEL L. CLOSEN**
Law Professor Emeritus



As a Notary and an attorney, I am especially sorry to report that lawyers as a group are the worst violators of Notary laws and sound notarial practices. This conclusion is particularly disturbing because lawyers are bound not only by the laws that govern all Notaries, but also by their special code of ethics, to obey Notary statutes and to serve their clients and to protect client interests.

Yet, virtually every time attorneys violate Notary laws, they do so while in the representation of their clients, and thereby breach their professional ethics, disregard their clients' interests, and jeopardize their legal cases. Even worse, lawyers often draw unknowing people in to

assist in the attorneys' unlawful Notary schemes, thus placing those persons at risk of civil and criminal penalties.

Even though notarization is fundamentally important to countless legal matters (such as real estate transactions, affidavits, election petitions, depositions, court filings, automobile titles, and many other commercial and governmental documents), lawyers receive no training in Notary law while in law school. There are virtually no courses currently in law schools which cover, even in part, Notary law. While studying for the various state bar examinations, new attorneys receive no training in Notary

law, because no state tests on this in its bar examination. Thereafter, during their years of law practice, attorneys receive no continuing education programs on Notary law from any local, state or national bar organizations.

It does seem somewhat arrogant of so many lawyers to think that individual attorneys either will be self-taught about Notary law or will grasp the nuances of Notary law simply by osmosis. More incredibly, many lawyers, knowing almost nothing about Notary law and sound

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Professor Michael L. Clozen is one of the nation's preeminent legal scholars and authorities in the field of notarization. He is Professor Emeritus at The John Marshall Law School in Chicago, Illinois.

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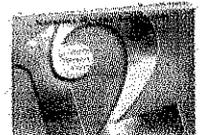
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- How to determine what is acceptable identification
- Why you should scan a document



astronomical considering that the U.S. mortgage industry generates tens of millions of documents every year.

The program uniquely ties the Notary to each electronically notarized document via a state-maintained URL. Anyone who receives the document can use the URL to check the Notary's current commission status. The recipient also can use the free site — www.ensvalidate.org — to verify whether the Notary's digital certificate is valid.

Such simple security measures can instantly establish the authenticity of the notarized document — whether the document is electronic or paper.

All participants in the program have high hopes that these practices will help prevent fraud due to stolen Notary seals and other criminal acts.

Nationally, eNotarization is catching on with some of the largest financial institutions. Stewart Title, an international real estate information and transaction management company, is using this system in its Arizona offices as part of the pilot program.

"The eNotary process is important and very unique," said Tim Anderson, Stewart's vice president of eMortgage systems. "It's the next wave for the mortgage industry."

For the Arizona program, the NNA created a unique ENS that conforms to the state's legal requirements.

Lawyers Don't Get The Law

Continued from page 7

notarial practice, become Notaries themselves and/or supervise and direct paralegals, law clerks and legal assistants who are Notaries.

Hundreds of attorneys have been caught violating Notary laws and have been sanctioned for their misconduct, as is documented by the published case reports of lawyer discipline authorities such as courts and bar organizations. But, for every violation that is detected,

Electronic notarization is 'the next wave for the mortgage industry.'

certainly thousands go unnoticed, meaning that there is an epidemic of notarial wrongdoing among lawyers. Some case reports show that some attorneys have each committed hundreds of the same Notary law violations. And, lawyers have committed just about every possible Notary law violation.

The second and concluding part of this article will appear in the February 2008 NOTARY BULLETIN. — The Editors

eNotary data, said NNA eNotarization Vice President Dr. Richard J. Hansberger.

The White Paper details the registry's key functions, including real-time verification of a Notary's authority to perform eNotarizations; its innovative framework to help state officials manage their Notaries' electronic credentials, and its secure system to register and track Notaries performing eNotarizations.

The paper also details the Registry's credentials through SISAC — the Mortgage Bankers Association's Secure Identity Services Accreditation Corporation — and explains how those credentials help ensure

a Notary Public and hasn't been altered."

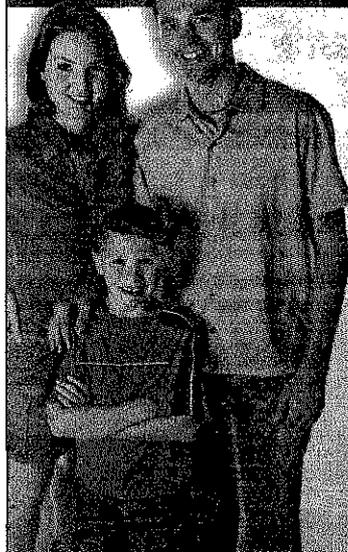
The paper also outlines different methods a Notary's electronic credentials can be validated quickly and reliably.

The White Paper will be distributed via eMail to business and government leaders, and will be posted on NationalNotary.org, Hansberger said.

"We expect the paper to become an invaluable reference to help organizations all over the country understand how electronic notarization can make their transactions easier and more secure," Hansberger said.

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Commentary

Lawyers Worst Violators Of Law: Part II

By **MICHAEL L. CLOSEN**
Law Professor Emeritus

The first part of this article appeared in the December 2007 NOTARY BULLETIN. — The Editors

A review of state Bar Association disciplinary proceedings shows that attorneys not only regularly violate Notary laws; they also knowingly make false representations to recorders, judges, arbitrators and others.

Attorneys who are not Notaries have pilfered Notary seals and falsified notarizations. Attorneys have forged their clients' signatures and sometimes the signatures of non-clients on documents and then had those forged signatures notarized by Notaries (of course, without the purported signers person-



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ing before
the Notaries).
Attorney-
Notaries have
notarized
client signa-
tures when

their clients did not personal-
ly appear (sometimes after
forging the clients' signa-
tures). Attorney-Notaries have
failed to administer required
oral oaths or affirmations for
jurat notarizations. Attorney-
Notaries have back-dated
documents and the notariza-
tions of signatures appearing
thereon. And the list goes on.

Believe it or not, things
become worse. Almost
always, the documents
involved in the above exam-
ples of attorney wrongdoing
are later filed for public
recording or filed as part of
legal proceedings, lawsuits

and arbitrations.

Things often get still worse.
Frequently, lawyers cannot
succeed in their notarial
wrongdoing without assis-
tance, so they recruit inno-
cent people to help them.
Sometimes, attorneys involve
their own clients by asking
their cooperation to carry out
the notarial misdeeds — such
as seeking client consent to
sign and notarize clients'
names, or to back-date docu-
ments and notarizations
thereon. More often, attor-
neys order their subordinates
(paralegals, law clerks, legal

See CLOSEN, page 15

*Professor Michael L. Clozen is one of the nation's preemi-
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electronic notarization throughout the United States.

Charles Epperson, director of eBusiness for Stewart Information Services Corp., said historically there has been resistance to eBusiness processes in the real estate and lending communities because of concerns about the lack of information regarding how different laws affect their ability to implement new ways of doing business.

But in a slow market

the game. Stewart has always had a history of being a pioneer in technology with the goal of making it more convenient for customers to do business with us."

Stewart has rolled out its SureClose and eClosing Room products in Tampa and Central Florida, and hopes to expand to all 50 states within a year. Additionally, Stewart and associates like Prime Processors Inc. are encouraging Notaries to become

Liz Adams, an eNotary based in Orlando, says the benefits of going electronic are tremendous.

"I knew eNotarization was the next plausible step and I wanted to make sure I was on the forefront of that," she said. "I come from a computer background, so I see a lot of potential there for the Notary."

Among the benefits of electronic notarization, Adams cites increased security, speed and fewer mistakes in

as the basics of electronic notarization. For more information, please visit www.nationalnotary.org.

Among its provisions, the new law:



Permits documents (except copy certifications) to be electronically notarized.



Applies existing standards and restrictions for paper notarizations to eNotarizations.



Authorizes the Department of State to adopt rules to ensure the security, reliability and uniformity of signatures and seals.



Requires Notaries to use an electronic signature that is: unique to the Notary, capable of independent verification, retained under the Notary's sole control, and attached or logically associated with the electronic document in a manner that produces evidence of alteration to the electronic document.

Source: NNA Research Center

Closen: Law Violations, Part II

Continued from page 7

assistants, and junior lawyers) to engage in Notary law violations — such as forging signatures to be notarized, notarizing for absent signers, back-dating documents, and so on. Sometimes, attorneys ask law firm staff or other lawyers to assist in notarial misconduct. Involving others in illegal notarial practices places those other persons at risk of civil and criminal penalties.

Although the legal community is aware of the problem of widespread and serious ethical and statutory violations by attorneys, it continues largely to ignore the epidemic of notarial wrongdoing by attorneys. There have been no articles about the subject in the professional publications (except for a few written by me and my legal assistants). There have been no programs about this subject at the meetings of the bar associations. The law schools have not widely adopted course coverage of the subject of Notary law in response to the problem.

The only organization attempting to address the problem of notarial misconduct by attorneys seems to be the NNA. The NNA published an extensive legal casebook appropriate for teaching Notary law to law students and lawyers, but only two law schools offered Notary law courses using that book for very brief periods. For the last decade, the NNA has offered seminars for lawyers and paralegals on Notary law and practice at its annual conferences, but attendance by lawyers has been quite small. Be assured, however, the NNA will continue its efforts to educate attorneys about Notary law and practice because this matter is too serious to be ignored.

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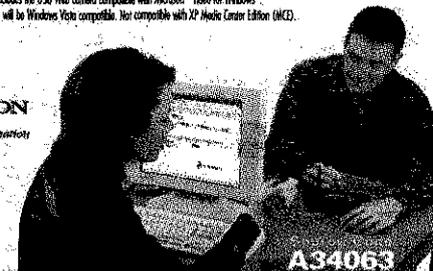
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*Electronic notarization processes, procedures and systems are not yet established in every state.
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