

Virginia Association of Notaries

Notary News



April, 2024

Issue 2

Update to Bills Processing Through the Virginia General Assembly As They Pertain To Notaries Public

PLEASE NOTE – THE BILLS BELOW ARE NOW COMPLETE IN THE 2023-24 GENERAL ASSEMBLY. FINAL STATUSES ARE LISTED – PLEASE WATCH FOR THE NEW VA NOTARY HANDBOOK DUE OUT IN JULY 2024.

HB 1372 – The content of this particular Bill was:

- 1) Clearly define Knowledge Based Authentication (KBA)
- 2) Clarify that a single Credible Witness may be used for e-notarizations. This definition made the modification that for a remote online notarization, the single Credible Witness does NOT need to be known to the Notary, but they must pass KBA
- 3) Clearly defined how the notarial certificate should be presented for an on-line notarization

This Bill was modified before being presented to the House to leave the language regarding Antecedent Proofing as an acceptable form of ID Verification.

STATUS as of March 4, 2024 03/04/24 Senate: Passed Senate (39-Y 0-N)

HB 986 – The content of this Bill was:

- 1) To increase the allowable fee per traditional stamp from five dollars (\$5.00) to ten dollars (\$10.00)

STATUS as of February 27, 2024:

- 02/26/24 Senate: Passed Senate (40-Y 0-N)
- Still needs to be implemented – watch for an update to the VA Notary Handbook

HB 1013- The content of this Bill was:

- 1) To allow for electronic signatures on non testamentary estate planning documents – Allowing electronic notarization, electronic signatures and remote witnessing authorized.

STATUS as of 2/16/24: House: Passed over until 2025 Session

HB 210 – The content of this Bill was:

- 1) eWill bill; formally authorizes electronic notarial acknowledgment as method for executing an advance directive and requires notarization for an eWill, including a self-proving eWill.

STATUS as of February 27, 2024 Failed in the Senate 20-19

*Want to keep an eye out for potential legislation effecting you?
See this link to create an account for notifications:
<https://lis.virginia.gov>*

*Want to send your opinion to your Delegate or Senator? Find out who they are here:
<https://whosmy.virginiageneralassembly.gov/>
Stay tuned for more results as we receive them!*

*And if you hear of News we missed – please don't hesitate to let us know!
You can send your News to marketing@virginianotaryassoc.org*



NOTARY KNOW-HOW

PROPER NOTARIZATION PROCEDURE - PERSONAL APPEARANCE

A Notary Public must require the signer to appear in person at the time of the notarization. It is imperative to determine:

1. If the signer is aware of what he/she is signing and competent
2. If the signer understands the content of the document being signed
3. If the signer is signing the document willingly and not being coerced and
4. To determine through proof of identification that the signer is who he/she is supposed to be.

Unless the Notary is an Electronic Notary, he/she may not perform a notarial act by telephone, email, teleconference or any other telecommunication equipment. In the situation of a telephone hearing, the Notary and the witness must be in the same room

Competency, Awareness and Willingness of a Signer

The signer may be visually or physically impaired, elderly, a medical patient or even a minor. When dealing with a visually impaired signer, it would be best to read the document to the signer to be sure he/she knows exactly what the document is and what is included. In all cases, it would be helpful to explain your role in the notarization process to make the signer feel at ease with your presence and handling of the document.

To determine if the signer is competent and understands what it is he/she is signing is to ask questions that will indicate the degree of both. Those questions can be:

- What is your birth month (or birth year)?
- Who is the current president?
- What kind of document are you signing?
- What will the document do?



- Do you wish to sign this document?
- Have you read or do you wish for me to read the document to you so that you are certain of what you are signing? (Especially for visually impaired or minor signers.)

A Notary must be aware of the surroundings and the demeanor of the signer and of other people present during the notarization. Is the signer acting at all worried, frightened or concerned about signing the document? Are the others in the room subtly pressuring the signer or coercing him/her in any way?

If anything seems out of place, the best practice is to refuse to notarize the document. Simply explain that you do not feel that you can legally proceed with the process due to a question in the willingness or competency of the signer. Note the details in your Notary journal. Should you proceed with the notarization knowing that the signer is not up to the task or allow yourself to be bullied into signing the document, you can be hurting the signer and leave yourself open to a potential lawsuit or even legal charges.

Medical patients need extra time and compassion. Keep in mind that the patient may be under the influence of a medication that could cause confusion. Check with the family or physician to be sure that the patient is able to understand and sign the document. If the patient does not have his/her identification at the time of signing the document, there will be a need for using Credible Witness(es). A patient advocate may be able to do the job.

Taking an Acknowledgment or Administering an Oath/Affirmation

The signer must personally appear in front of the Notary to acknowledge that he/she signed the document and understands the content. The Notary must perform the verbal part of the acknowledgment to be valid. The Notary simply asks, "Do you acknowledge that you signed the document voluntarily and for the purposes stated therein?" The signer must verbally answer, not shake or nod his/her head.

In the case of a Jurat, before allowing the signer to place his/her signature on the document, the Notary Public must administer an oath or affirmation.

Oath: "Do you swear under the penalty of perjury that the statements in this document are true and correct to the best of your knowledge and belief, so help you God?"

Affirmation: "Do you affirm and declare under the penalty of perjury that the statements in this document are true and correct to the best of your knowledge and belief?"

Note: Representative signers such as an attorney-in-fact can be used however, they cannot swear an oath in someone else's name only in their name.

Reference: Code of Virginia, Sections of the Code of Virginia Pertaining to Notaries Public dated 05/21/2021

Section 47.1-2, Definitions, "Acknowledgement"

Section 55-118.3 What person taking acknowledgment shall certify

Section 55-118.4 When form of certificate of acknowledgment accepted

Section 55-118-5 Meaning of "acknowledged before me" Section 55-118.6 Statutory short forms of acknowledgement



NOTARY TIPS

ACKNOWLEDGMENT OR JURAT?

One of the most common questions is what the difference is between the acknowledgment and the jurat. It's best to notate this somewhere in your reference material as it does come up quite often:

An Acknowledgment is a declaration by the signer that the document and signature on the document is genuine and that it was executed voluntarily. The signer **MUST** be present to make the acknowledgment to the Notary Public and to make it possible for the Notary to determine if the signer is alert, competent and understands the information contained in the document. He/she must also provide proper identification in order to have the document notarized.

Use this statement and note it and the response in your journal:

"Do you acknowledge that you signed this document voluntarily and for the purposes stated within?"

A Jurat is used on an affidavit and is used for the purpose of having the signer swear to or affirm that the contents of the document is true. The jurat certificate has the wording: "Subscribed and sworn to (affirmed) before me....." Jurats may not be signed prior to meeting with the Notary. Personal appearance is mandatory in order to perform this notarial act. Before the signer makes his/her signature on the document, the Notary Public must administer the oath or affirmation by having the signer raise his/her right hand and state aloud his response to the oath/affirmation. Proper identification must be provided to the Notary.

Note: If there is no certificate on the document presented for notarization and it is unclear as to whether it should be a jurat or an acknowledgement, the Notary Public CANNOT advise the correct certificate to be used. If the signer does not know which is required, he/she should contact the entity receiving the document for a decision.

MEDALLION SIGNATURE GUARANTEE

A Medallion Signature Guarantee represents an assurance by a financial institute that the signature on the transaction is genuine, allowing the financial institution to accept liability for any forgery. It is used mainly for a customer's transfer or sale of securities.

The Medallion Stamp Service is **NOT** a notarial act. In fact, a Notary must not accept this request. Medallion Signature Guarantees must be performed by a specially assigned bank employee.

BIRTH, MARRIAGE AND DEATH CERTIFICATES

Just a reminder: if someone asks you to certify a copy of a birth, marriage or death certificate or to somehow produce one of these due to loss of their original, DO NOT DO IT! These requests should be sent to the Bureau of Vital Statistics. Let the person who is making such a request know that there is now an online service.



SPECIAL REPORT

SCAMS: A FOUR-PART REPORT

Part 1: Scams You Don't See Coming

Access to Electronic Devices

You may not be aware of it unless you have identity theft monitoring. However, you notice issues with your device that you just assume is slow internet speed or other cyber issues. These issues may be signs that you have been hacked:

- Your battery is draining faster than normal.
- Your device is moving at a slower rate than normal.
- You notice applications installed without your knowledge.
- You are receiving persistent pop-ups.
- You are receiving requests for access to permissions that have nothing to do with the functionality of the application.
- You notice spelling or grammar errors, vague information or lack of details concerning the app.

The Check Washing Scam

Thieves have stolen paper checks from mailboxes (postal boxes as well). They then wash the checks with chemicals but they keep the signature. They erase the amount and the payee line so that they can write in a name and amount of their choosing. In addition to this horrible act, with the new technology, there are thieves who can take a photo of the stolen check, upload it to their computer and use software to alter the information on the check to suit their purpose. These photos look like the real thing and some have been able to deposit them to their bank account in person, not just using a mobile banking app.

The Charity Scam

When donating to a charitable organization, you must be careful not to fall victim to a charity scam. Use of forged pamphlets and other items or a web address that looks like the real thing but has a very subtle difference allows scammers to take advantage of good-hearted people. Check to see that your charity is legitimate through the IRS website using charity navigator. This will let you know if they are a 501(c)3 non-profit charity organization. Also, if the method of payment for the donation is to be made via gift card or cryptocurrency, don't do it.

Deed Theft

This new type of scam is gaining popularity among scammers. Thieves will forge a change to your home deed by putting it in their name(s) then apply for a home equity line of credit for which you will now be responsible. They can get the equity out of your home and walk away leaving you with more debt. There are those who take forged deeds to change ownership so that they can sell your home out from under you.

Notes:

- (1) *The U.S. Government will never request money via wire transfer, cryptocurrency or gift/prepaid cards.*
- (2) *Medicare does NOT cover the genetic test and the covid test and medical equipment that these crooks offer are NOT covered either. Additionally, Medicare will NOT call to enroll you in any Medicare plan.*

If you find that you are a victim of deed theft, contact your lender, change your passwords for your mortgage, credit card accounts, bank and other financial accounts; then file a claim with the FTC. In addition, contact one of the three credit reporting bureaus to report the incident and obtain a copy of your report to document the activity. Take your documentation, proof of address and your ID to your local police department to further report the incident.

Report a scam to the FBI Internet Crime Complaint Center at www.ic3.gov. You will need to provide the name of the contact, method of contact and address where the scammer requested money to be sent.

In the next issue: What You Should and Should Not Do



QUARTERLY QUOTE

"Leadership is communicating to people their worth and potential so clearly that they are inspired to see it in themselves." – Stephen R. Covey



DID YOU KNOW.....

- ❖ The last person to sign the Declaration of Independence was Thomas McKean, a Notary Public.
- ❖ In order for Pete Rose, a major league baseball player, to appear on a Wheaties box, the cereal company required him to sign and swear in front of a Notary Public that he had eaten the cereal since he was a child.

ATTENTION VAN MEMBERS

VAN is looking for members to volunteer for positions on various committees and for seats on the Board of Directors. We would love to have you join us in our endeavors as we grow. If you would like to be a part of our team, please email us at membership@vanotaryassoc.org.

