



183 Wind Chime Court, Suite 203, Raleigh, NC 27615
919.459.2081

Notary Basics

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PROPERTY RECORDS INDUSTRY ASSOCIATION

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Executive Summary

Notarization forms the bedrock of trust in public land records and real estate transactions, serving as an impartial verification of document execution that dates to ancient civilizations. This paper describes the basics of all notarial acts and seeks to answer key questions and dispel misconceptions surrounding traditional, in-person notarial acts as they relate to land records and recordable documents. A subsequent paper on technology-based notarization will follow.

Why Notarize Recordable Documents?

Notaries public provide an essential function to the public land records industry. Most documents are required by statute to be notarized in order to be accepted for recording. The practice of using a trusted third party to certify that certain formalities of document execution have taken place between individuals dates to early civilization and has carried forward to modern times.

There are several assurances that the notarial act adds to the signing of documents, whether the act occurs on paper or with technology, including:

- Independent witness. The notary, as an officer commissioned by the state, acts as an impartial witness to the execution of the document.
- Positive identification. The notary verifies the signer's identity prior to execution.
- Awareness. The notary assesses whether the signer appears to be of sound mind at the time of notarization and understands that they are about to sign a specific document.
- Voluntary act. The notary affirms whether the signer is voluntarily entering into the obligations created in the document.
- Prima facie evidence. The Federal Rules of Evidence Rule 902(8) establishes that properly acknowledged documents are “self-authenticating¹” and can be presented as evidence in a legal proceeding without additional corroboration. This “face-value” status provides the foundational assurance that facilitates confidence in the transaction. Relying parties are able to accept a notarized document as authentic with a high degree of confidence.

¹ Self-authenticating refers to something that proves its own validity or authenticity without requiring external confirmation or evidence.

What Are the Essential Elements of a Notarial Act?

Although state laws may vary, a notarial act for paper or electronic documents typically includes the following:

- Personal appearance before the notary. The signer must directly interact with the notary at the time of the act, either in the same physical room or by other technology-based means where authorized by the laws of the notary's commissioning state.
- Positive identification. The notary requires the signer to prove by personal knowledge or satisfactory evidence that he or she is the individual named in the document.
- Oath or Acknowledgment. The signer makes an oath, which may be prescribed by state statute, in which they swear under penalty of law that the contents of the document are true to the best of their knowledge. For an acknowledgment, the signer declares that the signature on the document is their signature and that they signed the document voluntarily.
- Signature event by the parties appearing. The parties who need to sign the document appear before the notary to sign (or personally appear to acknowledge an earlier signature).
- Properly completed notarial certificate. The notary completes the notarial certificate with the facts of the notarization, including the date, venue, names of the parties, and other items prescribed by state law. Some states also require a typed name under the notary signature.
- Signature event by the notary. The notary certifies the events of the notarial act by signing the notarial certificate.
- Stamp or seal. The notary affixes an official stamp or seal, which conveys essential commission information about the notary, to the notarial certificate. This is required by statute in most states and is common practice elsewhere.

What Is the Value of Notarization?

Notarization imparts value to document transactions by:

- Strengthening trust between parties. Notarization provides assurances between transacting and relying parties of the genuineness of signatures without further proof or evidence.
- Increasing fraud resistance. The notarial act can be an effective fraud preventative. The service of notaries public may reduce litigation involving real property transactions.
- Ensuring recordability. Notarization is a required formality for most documents that will be submitted to a recorder for entry into public records.

- Establishing document authenticity. As noted previously, notarization provides documents with *prima facie* evidence. The constructive notice that recording provides is enhanced by the level of presumed authenticity of notarized documents in the public record. This presumption of genuineness allows recorders and relying parties who examine these documents to have confidence that the formalities of notarization have occurred and the requirements of the notarial act have been met.

On Document Reliability:

Traditionally, for paper documents to be recorded, the notary's ink signature, along with seal or stamp where required, must be affixed to the document to provide physical, visible proof that the formalities of notarization occurred. However, once the paper document leaves the presence of the notary, the notary has no control over document alteration.

On Non-Repudiation:

Many parties rely on the veracity of the documents in a real estate transaction. In addition to the seller and buyer, lenders, title companies, and investors all must have confidence in the transaction documentation. That confidence comes in part from the fact that multiple stakeholders are involved in completing the transaction. A real estate agent, an appraiser, a lender, a home inspector, a title examiner, a closing agent, a recorder, and a notary all have essential roles in the transaction.

There are several elements of the notarial act that enable trust in the document.

Journal/Recordkeeping
Personal Appearance
Willingness and Mental Competence of Signing Parties
Impartiality
Adherence to State Laws, Regulations, and Standards
Proper Execution of Notarial Certificate

- Journal/Recordkeeping
 - Purpose: Maintains a permanent, chronological record of notarial acts.
 - Details Logged: Verifies date, time, type of act, names and addresses of signers, document type, method of identification, and, in some states, signatures, thumbprints, or other identifying elements.
 - Why It Builds Trust: Provides an auditable trail in case of disputes or fraud investigations. It also deters misconduct by creating accountability.
- Personal Appearance
 - Requirement: Physical presence, in person, of the signer before the notary.

- Methods: Government-issued photo ID, the oaths of credible witnesses, or a notary's personal knowledge of the signer (except in California).
- Why It Builds Trust: Signer is confirmed to be who they claim to be, reducing the risk of impersonation and forgery.
- Willingness and Mental Competence of Signing Parties
 - Assessment: Notary ensures the signer is acting voluntarily and understands the purpose and content of the document.
 - Indicators: Coherent responses, absence of coercion, and signs of mental clarity.
 - Why It Builds Trust: Signer's intent is deemed to be clear and reflected in the document, protecting against undue influence or exploitation.
- Impartiality
 - Obligation: Notaries remain neutral and avoid conflicts of interest.
 - Prohibited Actions: Notarizing when the notary has a direct financial or beneficial interest in the transaction.
 - Why It Builds Trust: Notary's role is reinforced as an unbiased third party, enhancing the credibility of notarization.
- Adherence to State Laws, Regulations, and Standards
 - Compliance: Notaries follow their jurisdiction's laws and regulations, including training, commissioning, bonding (if required), reporting (in Louisiana), and reappointment requirements.
 - Why It Builds Trust: Legal compliance ensures the validity of notarized documents across jurisdictions.
- Proper Execution of Notarial Certificate
 - May include, depending on jurisdiction: Type of notarial act, date, names of the parties, signatures, notary's title, commission number, commission expiration date, and seal/stamp.
 - Why It Builds Trust: *Prima facie* evidence that the notary performed all required duties of a properly executed certificate.

On Validation and Verification:

- Document Validation: Any expectation for recorders to examine documents for validity, beyond statutory recording requirements, exposes the recording jurisdiction to additional risk. Instead, recorders should trust that documents presented for recording have been executed with due diligence by notaries who have met the responsibilities under their state law. Recorders are not expected to confirm or verify the sufficiency of out-of-state notary acknowledgments.
- Notary Verification: Traditionally, recorders have not been responsible for verifying the commission of the notary prior to recording a document. While discussions are underway about expanding recorders' capabilities to verify a notary's commission as a safeguard against recording potentially fraudulent documents – and although

technological solutions exist – no state has enacted such a requirement as of the date of this publication.

Misconceptions of Notarization

Several common misconceptions exist about notarization.

- Misconception: Notarization ensures the truthfulness or accuracy of a document's content.

Truth: It's not the notary public's duty or role to determine if a deed to the Brooklyn Bridge actually conveys the Bridge. Rather, a notarial act is a trusted way to confirm who the signing parties are and that they understand and agree to what they are signing.

- Misconception: A notary public's signature and stamp/seal make a document legal in every respect.

Truth: Notarization cannot transform a legally invalid document into a valid one. Notarization allows parties to rely on the document and the signature process, providing some procedural safeguards against identity, deed, and elder fraud. Transacting and relying parties must verify that all legal requirements of a document are met before submitting it for notarization.

- Misconception: Notaries review the documents they notarize to confirm they are legally sufficient or to provide legal advice.

Truth: Most notaries commissioned in the United States² lack the legal training and authority to ensure that notarized documents are legally valid. They are also prohibited from giving legal advice regarding the contents or effect of the documents being executed.

- Misconception: A notary public's signature and stamp/seal on a document proves the notary's commission is current and valid.

Truth: A notary public's commission could be expired, suspended, revoked, or even fabricated by a bad actor committing deed fraud. Furthermore, for most documents executed within the United States, parties relying on notarized documents (including

² There are, however, exceptions in states like Louisiana or when the notary has other legal certifications or training as provided by law.

recorders) have no legal duty to confirm that the notary's commission is valid at the time of the notarial act. However, for documents intended for use internationally, an apostille or authenticating certificate may be required. The apostille or authenticating certificate, issued by the notary's competent or commissioning authority, verifies the notary's authority to act and the validity of their commission.³

- Misconception: Notaries proofread the documents they notarize.

Truth: Notaries should proofread the notarial certificate affixed to the document to ensure it is accurate, but they don't always do so. Fortunately, minor clerical errors in a notarial certificate may not totally invalidate a document. Many states have curative statutes⁴, providing that a notarization may indeed be valid despite slight errors.

- Misconception: Notarial acts must always comply with the laws of the jurisdiction where a document will be recorded.

Truth: Notarial acts generally must comply with the laws of the state where the notary performs them. U.S. states and jurisdictions regulate the individuals who perform notarial acts and the way those acts are performed within their borders, not the states and jurisdictions where a document will be recorded.

Conclusion

Notarization remains a cornerstone of the public recording system and a vital safeguard in maintaining the integrity of real property transactions. By serving as impartial witnesses and affirming the identity, awareness, and willingness of signers, notaries create the foundation of trust upon which the reliability of recorded documents depends. Their acts impart authenticity, confer *prima facie* evidentiary status, and strengthen the enforceability of documents in legal proceedings.

The notarial act does not create or impose additional legal responsibilities on the notary, such as verifying the truth or legality of a document's content, ensuring documents are legally sufficient, and providing legal advice.

³ An apostille is a certificate issued by competent authorities of contracting parties, including the United States, to the 1961 Hague Apostille Convention. A generic authenticating certificate is typically issued by notary public commissioning authorities to countries not a party to the 1961 Hague Apostille Convention.

⁴ An erroneous statement of the date that the notary's commission expires shall not affect the sufficiency, validity, or enforceability of the notarial certificate or the related record if the notary is, in fact, lawfully commissioned at the time of the notarial act. This section applies to notarial acts whenever performed. (See, for example, N.C. Gen. Stat. 10B-67).

Notarization persists not merely as a statutory requirement, but as a critical public function that supports commerce, aids in the protection of property rights, and upholds the rule of law.