

NOTARY NEWS

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This publication is created by notaries for notaries for the purpose of providing a free forum for the exchange of knowledge, opinions and expertise with others in the industry whether seasoned notaries or newly commissioned for the first time. **Notaries are encouraged to submit articles for upcoming editions.** Please submit articles of no more than 500 words to articles@notaryclasses.com. Articles selected for publication are reprinted from submissions and are exclusively the opinions of the author. The reader is encouraged to independently verify all information.

Calculating the 3-Day Right to Rescind

Sandy Bailey, (CA) Notary, CSA, Instructor

An integral part of the loan-signing package is the 3-Day Right to Cancel form. When money is borrowed against a primary place of residence, a 3-Day Right to Cancel must be extended to each owner of the property. It is often the loan-signing agent who is responsible for filling out the correct dates on the form. To determine the correct dates, the rescission period starts the day following the signing, and concludes at midnight of the third business day after the signing. When calculating the last day to cancel, do not count the transaction date (date of the signing). Start counting the first non-business day after the signing. Saturdays DO count as a business day. Non-business days are Sundays, and most legal holidays observed by banks and post offices. Four specific holidays are treated differently.

The Federal Truth In Lending Act has affected calculation of home loan rescission dates for four specific U.S. holidays when they fall on weekends.

The four holidays that fall on specific dates — New Year's Day (January 1), Independence Day (July 4), Veterans Day (November 11) and Christmas (December 25) require that notaries calculate rescission periods differently. According to the Federal Reserve Board, if one of these four holiday dates falls on a Saturday or Sunday, only the date of the holiday itself is excluded from the rescission period. If the holiday is observed on a Friday or Monday it is treated as a normal business day for rescission purposes. This applies even if banks or government offices are closed. This rule affects the four date-specific federal holidays only.

For example if July 4th falls on a Sunday. The banks and post offices will be closed on Monday. Since this is one of the date specific holidays, we are only concerned with that actual date the holiday falls on when we calculate the rescission period. If the documents are being signed on Friday July 2nd, the last day to rescind would be Tuesday July 6th. Start counting on Saturday, July 3rd (that is day 1). Sunday does not count AND it is the 4th of July. Monday, July 5th counts even though banks and post offices are closed (day 2). Tuesday July 6th is the 3rd day in the rescission period.

In summary Non-Business Days Are:

- Sundays
- January 1
- July 4
- November 11
- December 25
- Days Post offices and banks are closed when observing the following holidays
 - MLK Jr. Day
 - President's Day
 - Memorial Day
 - Labor Day
 - Columbus Day
 - Thanksgiving

Rescission calendars are an invaluable asset to your job. These calendars will list the last day to rescind next to the current day of the month. This takes all the guesswork out of entering the correct dates. You are still responsible for making sure the rescission calendar you are using is correct and follows the guidelines of your particular client.

Rescission calendars are available free at www.notaryclasses.com.

Mentally Capable or Signing of His or her Own "Free Will"?

Sandy Bailey, (CA) Notary, CSA, Instructor

One of the purposes of a notary is to prevent fraud. We do that by verifying identification of the signers and sometimes by putting the principal under oath or affirmation to insure that he/she is telling the truth regarding the contents of the document. But is it the Notary Public's duty to walk away from a notarization if the Notary feels that the principal is being coerced into signing the document, or if the principal seems to be mentally incompetent?

According to strict California Law, the answer to that question is a vague "no". Believe it or not, according to the California Secretary of State, these issues are not yet legislatively mandated. Regardless of what other publications suggest, a notary is not legally required to make a judgment regarding the mental competency of a document signer or determine if the signer is signing of his or her own free will. (Cont. pg. 3 Mentally...?)

Your First Notarization, What Do You Do First?

Terri Garner, (CA) Notary; CSA; Instructor

Now that you've filed your oath and bond, and you've got your seal, journal, fingerprint device, Jurat stamp and extra loose California All Purpose Acknowledgments standing by. You're ready to perform your first notary act.

Your first customer comes to you with a notarization request. What do you do first....? This is a dilemma that many notaries encounter during their first notarization. How can you make sure that you don't forget to check identification, fill in your journal, and complete the notarial certificate? Below I have listed the steps, which if you follow in order, will ensure that you perform the notary act completely, from start to finish.

1. Review the entire document that you have been requested to notarize for any blanks, see who has to sign, and to determine the type of notarization being requested. Once you are satisfied that the document is complete and has no blanks or is not obviously incomplete, continue to #2 (otherwise request the document presenter to complete the document, which must be without your assistance).
2. Request to see all signers' identification documents. Review identification to make sure that it complies with California Notarial Law. Must have all the elements required:
 - a. Has a photo
 - b. Physical Description
 - c. Signed
 - d. Has a serial number or other identification number (i.e., License Number)
 - e. Is either current OR has been issued within the last 5 years
3. Verify that the name(s) on the identification documents identifies the party's name(s) as printed on the document according to California Notarial Law Identification requirements. Such as the identification document can have more than what the party(ies) are signing but never less.
4. If the identification documentation is not acceptable, then you must request alternative identification, such as Credible Witnesses.
5. Now that you have reviewed the document and have verified identification, make your journal entry. You must make one complete entry for every signature that you are notarizing. If you have one document and two signers, you would make two complete entries, one for each signer. Be sure to include the required elements in your journal for each entry. Required elements are:
 - a. Date and time of notarization – Put the current date, look at your watch, indicate the time;
 - b. Name or Title of the Document that the signers are signing; or if no title ask the signers what does the document purport to do or an explanation of the document for entry into your journal;
 - c. Type of notarization for the document, Acknowledgment or Jurat;
 - d. Fees charge per entry, per signature;
 - e. Name of the signer as it appears on their identification documentation;
 - f. Indicate the type of Identification Documentation used, such as Driver's License, etc.;
 - g. Indicate the Serial Number of the Identification Documentation used, such as a Driver's License Number;
 - h. Indicate the Expiration Date or, if expired, the issue date of the Identification Document used;
 - i. The signers will sign your journal and provide a right thumbprint depending on the type of document that you are notarizing;
6. You have completed your journal, and you now know how much in notary fees you should collect. Let's move on.

(Cont. pg. 3 Your first...)

(Cont. pg 2 Your first...)

7. The signers should now be asked to sign the document as their names appear printed on the document, or how their names appear in the document, if their names are not printed below the lines where they sign. This signature may be different than what appears on their identification documentation.
8. If the notarization is a Jurat, give the signer(s) the oath. Remember, the oath/affirmation is very simple: "Do you swear or affirm that the contents within the document are true?"
9. The last thing you do is to complete the notarial certificate. Be sure to print the signer(s) name(s) as they appear on the document, NOT the way they appear on the identification document.

Share your brain!

Daniel Jones, (CA) Notary, CSA

According to all of you, The NOTARY NEWS Jan 2006 edition was a huge hit! Over 20,000 notaries, loan signing agents and other industry representatives read the January edition and we have no idea how many passed the word out to colleagues.

The purpose of this publication is to provide each other with a free notary and loan-signing support tool which is also free from any specific agendas. No matter if you are brand new to the field or a longtime loan signer, you can always learn something new, but perhaps even more importantly, you can share your knowledge and expertise with the rest of us. Help other notaries and loan signers in avoiding the same mistakes you made when you were new. Submit a short article for an upcoming edition to articles@notaryclasses.com.

This is our opportunity to learn something from you. Share your brain with us! That's right...we want to know something you already know. Do you have marketing tips? How about dealing with deadbeat signing agencies? What do you know about taxes? Do you have a loan signing experience or two which may help the rest of us avoid a similar circumstance?

Share your brain!

(Cont. pg. 1 Mentally...?)

Bottom line is, refusing to notarize a document based on your opinion of the signer's mental competence might lead to the filing of a complaint against you. Ultimately, you may be found guilty of failure to faithfully uphold the duties of the notary public. This violation could mean a charge of \$750 and possible suspension or revocation of the Notary Commission. So, what to do? If you do witness obvious coercion, you might suggest that you will continue the signing once the police are called in as witnesses. Regarding mental competency, remember that one of the purposes of an acknowledgment is that by virtue of his or her signature and request for notarization, the signer is expressing an underlying request that the contents within the document be executed. If you are concerned about the mental competency of a signer, you may consider whether or not this intent can be satisfactorily made, but again, you may be forced to defend your decision later. Regardless of your decision, you should always include your observations regarding the situation in the additional information column in your journal. (see next column)

(Cont. left column, Mentally...?)

Since the CA Secretary of State cannot find laws prohibiting the notary from notarizing in such circumstances, the comments you place in your journal could play a major role in a court case if they subpoena a copy of your journal entries for that transaction.

What If I Can't Find My Thumbprint Pad?

Sandy Bailey, (CA) Notary, CSA, Instructor

California notaries public are required to obtain a thumbprint of the executor of a document anytime the document is a Grant Deed, Warranty Deed, Quitclaim Deed, Deed of Trust, Mortgage or Security Agreement (remember to start with the right thumb, if they do not have a right thumb, go to the left thumb. If they do not have any thumbs get a print from any finger just make sure you note in your journal if you obtain a print other than the right thumb). But what happens if you are notarizing a document and after turning your briefcase inside out, you come to the conclusion that you left your thumbprint pad at your previous assignment or on your desktop?

Remember that a reason for not obtaining a thumbprint in your journal for a required document must be a physical one such as, "amputee", or "both hand in casts past the fingertips" etc.. A reason stated in your journal for not obtaining a thumbprint would never be "left my thumbprint pad at home". If one of the documents being notarized IS one of the aforementioned, you must decline to notarize the document if you cannot get a thumbprint from the principal(s) who executed the document if they were physically able to give you the print.

If you ever find yourself in this position here are some alternative suggestions for completing the thumbprint:

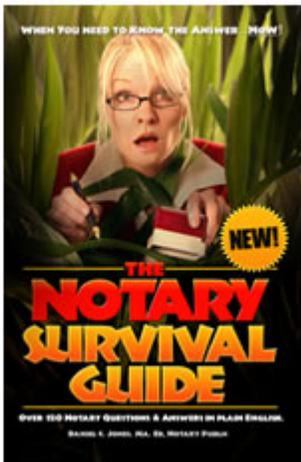
1. Open up your self-inking notary seal...the inkpadd that contains the ink will work perfectly although it will be difficult to wash off.
2. If you carry around a "traveling" seal, those seals will often have an inkpadd that you will use to stamp and press your seal to the paper.
3. Ask if there are any stamp pads around. Sometimes children or hobbyists will have stamp pads for rubber-stamping. Some businesses may have rubber stamps for various reasons too. Where there is a rubber stamp, there is probably an inkpadd. Use the inkpadd for thumbprints.

Remember if you are notarizing a Grant Deed, Warranty Deed, Quitclaim Deed, Deed of Trust, Mortgage or Security Agreement you MUST get a thumbprint from the principal if he/she is physically able to give one or you must decline to notarize. To avoid embarrassing, creative ploys to secure a thumbprint, carry around 3 or 4 thumbprint pads in your briefcase, or in your desk drawer.

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