

CHAPTER 3

INDEPENDENT NOTARIES VS. EMPLOYEE NOTARIES

Chapter Objective:

This section will distinguish between these two important types of notaries. Students will be able to understand their expected roles and obligations as a notary regardless of what category they find themselves.

In general, we can list notaries under two different categories with respect to his or her business status: 1) the **independent notary public** who operates as a business and 2) the notary public who is an **employee** notarizing documents for the purposes of their employer.

The Independent Notary Public

Notaries who have received their commissions through personal voluntary efforts and are providing services to the general public outside of an employer are considered independent notaries. Most independent notaries work for themselves by advertising their services to the public or to other companies such as title companies or loan signing agencies. If you plan to offer your services as a loan signer or mobile notary to other companies or agencies, you will find the listing of companies in the back of this book to be quite valuable. Contact each one of these companies and register your geographical area of service with them¹.

A very important distinction regarding independent notaries from a notary who is an employee is that as a public servant, you are required to perform notary functions for anyone who requests the service, is willing and able to pay for the service (when applicable) and for whom there is proper identification. This does not mean that you have to travel or accept notary assignments during odd hours while you would not normally provide services, but if you operate out of an office and someone comes in requiring notarial services, you must notarize their document assuming there is no legal reason for not doing so. This law is intended to require you as the notary to remain unbiased and function as a public servant for anyone requiring your services.

Employees

If you have obtained your commission at the request of an employer, or have been have a job which may require you to perform notary functions, you fall into the second category of notaries and there are a few rules that differ from independent notaries. First of all, however, remember that the notary commission belongs to you, the employee, regardless of who paid for the application, examination or bond.

The employer may, upon agreement with the notary, limit the duties of employed notaries during the course of employment to performing notary services for transactions directly associated with the business purposes of the employer. You will, of course, notice the important difference here between a notary who is an independent contractor and an employee. As an independent notary, you may not pick and choose who you notarize documents for, but the employer, upon agreement made with the notary, may indeed limit an employee's notarial functions. In any case, since the notary commission

belongs to you whether or not you are an employee, you may act as an independent notary on your own time.

All notaries **must obtain a seal** and keep an official record of every notary act performed in an approved **Journal of Notarial Records**. **Failure to obtain a notary seal or properly maintain a journal can be cause for the Secretary of State to suspend or revoke the notary's commission.** The notary journal and seal must be kept in a locked and secured area when not in use. If the notary who is an employee wishes to notarize documents outside of regular business hours, **the same** journal must be used as the notary may only use one journal at a time regardless of what they are notarizing

Another important consideration regarding notaries who are employees is that a notary who received his or her commission as an employee at the expense of the employer may, upon agreement with the employer, be required to submit fees charged for notarial services back to the employer. This is usually up to negotiation between you and your employer; **however, if a notary public is an employee of a school or government office and was appointed at the request and expense of their employer and notarizes documents specifically for that employer, any fees charged must be remitted back to that employer.** Of course, any fees from documents you notarize outside of the employer's control may be kept by you.

Important note regarding conflict of interest

You will remember that a notary may not notarize any document for which he or she has a direct beneficial or financial interest. Many notaries are employed by mortgage companies, real estate companies or insurance companies, contractors and so on and notarizing documents for their company might be incorrectly viewed as having a financial interest in the document. Notary legislation specifically says that with respect to financial transactions, **a notary acting in the capacity of an attorney, agent, employee, insurer, escrow or lender has NO beneficial interest in the transaction and may notarize the document so long as they are not a principal to the document or an executor (signer) on the document.**

However, with respect to real-estate documents, any notary who is named individually as **a grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor or lessee** to a transaction is determined to have a beneficial or financial interest in the document and may **NOT** notarize that document.

One final note regarding employees

When the notary who has obtained their commission as an employee leaves the employer, he or she is to keep their notary seal and journals. The employer may not demand that either the notary seal or the journal be returned to them or left on their premises after termination of employment. Remember that the commission is yours and the seal and journal is your personal property which you must retain and control at all times. If your employer wishes to have copies of the notary journal records pertaining to the business, the notary must supervise the process of copying.

If, during the course of your commission, your place of business changes, you will need to notify the Secretary of State by certified mail within 30 days of your new business address. You will not need to re-file your oath or bond if your place of business

is in a different county, although you may elect to do so and has 30 days to obtain a new notary seal for the new county.

As an employee, if your position is terminated or you resign prior to the expiration date of your commission, your commission does not automatically expire unless you are commissioned on behalf of the state, city, county, or public school districts, or on behalf of a military reservation. If this is the case, you must resign your commission when you terminate employment. If you elect to resign your commission after changing employment, you must notify the Secretary of State in writing and turn in all notary journals to the county clerk's office within 30 days.

¹If you want to notarize documents as a loan signer, you may want to become certified by taking a loan-signing seminar as most companies or agencies have a preference in using certified loan signers. Most signing companies have their own certification testing which you will need to pass before they will send you on an assignment, so take advantage of as many as you can. While it is not a legal requirement to become certified, doing so will improve your marketability not to mention your personal continuing education as a professional notary.

You may be interested in becoming a Certified Loan Signer with the Association of Professional Notaries and Certified Signing Agents which is an association formed by notaryclasses.com to provide the needed educational requirements and experience for inexperienced notaries. You may also be interested in the home-study course called [How to be a Wildly Successful Loan Signing Agent](#) written by *Bergstrom, Elliott and Jones, 2004*. (See www.notaryclasses.com to order).

Chapter Summary

INDEPENDENT NOTARIES VS. EMPLOYEE NOTARIES

1. Notaries who provide notary services on their own rather than through an employer are often referred to as independent notaries. These notaries must notarize a document for **anyone** who properly requests their services, able to present proper identification and is willing and able to pay for the services. This does not mean a notary is required to travel in order to fulfill a notary request.
2. Notaries who are notarizing documents in the capacity of an **employee** for the purposes of the employer may, upon arrangement with the employer, have their notarial services **limited** to the purposes of the employer during their hours of employment. This is based on an agreement with the employer as some employers may allow their notary employees to notarize documents for the public as well as for their business.
3. Notaries who are employees may negotiate with their employer the remittance of notary fees to the employer, except that notaries who are **employees of a public school or the government and have obtained their commissions upon the requirement of their employer, and who have had their commissioning fees and other associated fees paid for by their employer, must remit** any fees charged for notary services back to their employer.

4. All notaries **must obtain a seal** and keep an official record of every notary act performed in an approved **Journal of Notarial Records**. The notary journal and seal must be kept in a locked and secured area when not in use. If the notary wishes to notarize documents outside of regular business hours, **the same** journal must be used as the notary may only use one journal at a time regardless of what they are notarizing. **Failure to obtain a notary seal or properly maintain a journal can be cause for the Secretary of State to suspend or revoke the notary's commission.**
5. Notaries personally **own their commission, notary seal and bond** regardless of who paid for them. However, notaries are responsible to pay for their own filing fees when filing their oath and bond.
6. Notaries who are employees may still notarize documents for the public outside of their employment hours.
7. A notary may **not** turn over notarial journals or seals to their employers upon termination of their employment. If the employer wants a copy of the journal, the notary must supervise during the copying process taking care to copy only the journal entries relevant to the employer's business.
8. Should the employee notary elect to retain his or her commission after changing employment, **a change of business address must be filed with the Secretary of State by certified mail**. If the county of employment changes, they will not need to file a new oath and bond for that county unless they choose to do so. If the notary does decide to file a new oath and bond in a different county, then, the notary has 30 days to purchase another seal indicating the new county since this is where the current oath and bond will be filed. If the notary elects to resign his or her commission after changing employment, he or she must notify the Secretary of State in writing and turn in all notary journals to the **county clerk's** office within **30** days.
9. Notaries who received their commission specifically at the request and for an employer may retain their commission upon termination of their employment except for the following categories:
 - Notaries commissioned on behalf of the city, county, state, public school districts or on behalf of a military reservation **MUST** resign their commissions when they terminate their employment.
10. With respect to **a financial transaction**, a notary, acting in the capacity of an attorney, agent, employee, insurer, escrow or lender for the person having a direct beneficial or financial interest in the document has **NO beneficial interest in the transaction and may notarize** the document.

11. With respect to **real-estate transactions only**, a notary who is named individually as a **grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor or lessee** to the transaction is determined to have a beneficial or financial interest in the document and may **NOT** notarize that document.

Check your knowledge

1. Notaries who have been commissioned for the purposes of an employer's business function may have their notary duties _____ to the employer's business transactions during his or her period of the employment day.
2. Notaries who have terminated their position with an employer who paid the necessary fees for the notary's commission, shall not _____ their journal or seal to their employer. Notaries must supervise any copies of journal entries made and must file a change of business address with the Secretary of State. They will not be required to re-file their bond or change their county with the County Clerk unless they choose to do so.
3. Notaries who are notarizing documents as employees of a school or government office must _____ any fees when notarizing documents directly associated with the employer.
4. Notaries who have had their commission paid for by their employer are still _____ to notarize documents for the public outside of normal working hours. An agreement may be made between the notary and the employer regarding the disposition of notary fees.
5. With respect to a financial transaction, notaries who are acting in the capacity of an attorney, agent, employee, insurer, escrow or lender does _____ have a beneficial interest in the transaction and _____ notarize the document assuming that the notary is not named as a principal within the document.
6. With respect to real-estate transactions, a notary who is a grantor, _____, mortgagor, _____, trustor, _____, beneficiary, vendor, _____, lessor or _____ to the transaction is determined to have a beneficial or financial interest in the document and may _____ notarize that document.

Answers: 1. limited, 2.relinquish 3. remit 4.allowed 5.not; may 6. grantee, mortgagee, trustee, vendee, lessee; not