

## REQUIRED ELEMENTS FOR A LAWFUL NOTARIZATION

In order to complete the notarial acts, notaries must first confirm that the following elements are present. If any of these elements are missing the notary cannot proceed:

### The document signer must be PHYSICALLY PRESENT before the notary.

An essential element of the notarial act is personal, face-to-face communication between the document signer and the notary. This is necessary for the notary to assess the signer's comprehension of the transaction and willingness to sign, to help ensure that neither coercion nor fraud are present, and to administer the required verbal ceremony. Physical presence of the signer is so important that notaries who fail to require it can be charged with a crime and punished.

### The signer must be PERSONALLY KNOWN to the notary or must produce SATISFACTORY EVIDENCE OF IDENTIFICATION.

One of the notary's main responsibilities is to determine, beyond all reasonable doubt, that the person who has come for a notarial act is the same person named in the document as the signer. The signer must either be personally known to the notary (regular interaction over time has given the notary a deep-seated belief in the person's identity); or the signer must present satisfactory evidence of identification, such as a state-issued driver's license. The documents that a notary may accept as satisfactory evidence of identification vary by state but all states allow a current driver's license. Some states also allow use of one or two credible witnesses to vouch for the identify of a signer, subject to the credible witness(es) ability to truthfully swear to a series of statements about the signer. \*(At this writing, California **prohibits** relying solely on personal knowledge – satisfactory evidence of identification **must** always be presented.)

### The notary must be presented with an ORIGINAL document.

An original document is one that is unsigned, or that was/is physically signed in "wet ink" by the document signer. For example, an unsigned document may be faxed and subsequently signed by the document signer. That faxed document, with its original wet-ink signature, is an original document. A document that was previously signed, then faxed, is **NOT** an original document. It displays a facsimile signature, not a signature stroked directly onto the paper in wet ink.

Remember that documents requiring an acknowledgment may already bear the signer's signature at the time of notarization, but the signature must clearly be the signer's "wet ink" signature. Documents requiring an oath must be signed in the notary's presence.

### The document presented for notarization must be COMPLETE.

The notary cannot perform a notarial act over a document that is missing pages, or that contains blanks that should be filled-in prior to the notarial act. If missing pages cannot be presented to the notary, or if the signer does not know how to deal with the blanks in the document, the notary cannot proceed. (**Note:** some blanks are clearly intended to

be filled-in later, such as “Office Use Only” blanks. These are acceptable at the time of notarization.)

**The DOCUMENT DATE must be the same day as the notarization or earlier, but NEVER later than the day of notarization.**

When the document to be notarized is a dated one, then it must be dated the same day as notarization or earlier. The purpose of notarization is so the formalities of document execution are conducted before a notary. (Execute: to perform what is necessary to give validity to something, for example *execute a deed*.) The notary then records the facts of the document execution in his/her notarial certificate (the part of the document that the notary signs and seals). Notarization is the final step in document execution, so it cannot occur before the document’s date. It is possible for a signer to present an undated document for notarization; i.e., a document that does not require a date or display a blank for a date to be filled-in. If the signer does not wish to date the document, the notary may proceed with notarization, but should carefully note in his/her recordbook that the notarial act was performed on an undated document.

**The document must display NOTARIAL LANGUAGE that clearly indicates the desired notarial act.**

This is the notary’s primary means of determining the required notarial act. Look at the notarial certificate. Check the format. Does it comply with your state law? You also want to look for the key words, sworn (or affirmed) or acknowledged. These words tell you which notarial act is required - whether you have to administer an oath (or affirmation) or take an acknowledgment. If the document signer insists on a notarial act but no act is clearly indicated on the document, the signer or other party involved with the document must choose the notarial act. The notary can explain the differences between the various acts, but cannot choose the act or he/she risks practicing law without a license.

**The notary must feel assured that THE SIGNER COMPREHENDS the underlying transaction and is PROCEEDING WILLINGLY.**

Notaries provide an invaluable service by assessing a signer’s comprehension and willingness. It is not uncommon for signers to execute a document under duress or coercion. Sometimes signers don’t really understand why they are executing a document. It’s up to the notary to recognize when a signer suffers from coercion, misgivings or inability to understand the transaction, and to stop the notarial act if necessary.

**The notary must/should complete a recordbook entry.**

Many states require the notary to keep a recordbook (also called a notary journal) of all notarial acts. States that do not require a notary to keep a record of his or her notarial acts strongly recommend that the notary keep a recordbook.

Keeping a notary recordbook is for your own protection and for the protection of the public and your employer. The recordbook entry should contain information about the signer including his or her original signature, the title and date of the document, the

notarial act performed, the method of identifying the signer, and any unusual circumstances associated with the notarization.

## Arizona Notary Commission Information

### **Recordbook/Journal Requirement - Recordbook Required**

**NOTE-** All records must be kept for 5 years from the date of notarization. All recordbooks/journals must be delivered by certified mail to the Secretary of State's Office within 3 months of death, revocation, resignation, or expiration of commission or the notary may assess a fee not less than \$50.00 nor more than \$500.00. In the case of death the notary's personal representative must deliver all recordbooks/journals.

### **Seal Requirement - Ink Stamp Required**

**NOTE-** Embossing seal may be used but ONLY in conjunction with ink stamp. Seal impression must be photographically reproducible. All notary stamps/seals must be delivered by certified mail to the Secretary of State's Office within 3 months of death, revocation, resignation, or expiration of commission or the notary may assess a fee not less than \$50.00 nor more than \$500.00. In the case of death the notary's personal representative must deliver all stamps/seals.

**Authorized Duties -** Administer oath/affirmation, take acknowledgments, take jurats, and certify copies.

### **Acceptable Forms of Identification-**

#### **Effective July 29, 2010:**

1. An unexpired driver license that is issued by a state or territory of the United States.
2. An unexpired passport that is issued by the United States Department of State.
3. An unexpired identification card that is issued by any branch of the United States Armed Forces.
4. Any other unexpired identification card that is issued by the United States government or a state or tribal government, that contains the individual's photograph, signature and physical description that contains the individual's height, weight, color of hair and color of eyes.
5. The oath or affirmation of a credible person who is personally known to the notary and who personally knows the individual.
6. The oath or affirmation of a credible person who personally knows the individual and who provides satisfactory evidence of identity pursuant to item 1, 2, 3, or 4 above.
7. Personal knowledge of the individual by the notary.

For purposes of a real estate conveyance or financing, IN ADDITION to the forms of satisfactory evidence of identity listed above, identity may be evidenced by one of the following:

1. A valid unexpired passport that is issued by a national government other than the United States government and that is accompanied by a valid unexpired visa or other documentation that is issued by the United States government and that is necessary to establish an individual's legal presence in the United States.
2. Any other valid unexpired identification that is deemed acceptable by the United States Department of Homeland Security to establish an individual's legal presence in the United States and that is accompanied with supporting documents as required by the United States Department of Homeland Security.

**Change of Name** - If you have a change of name, you may continue to use your surname until that commission expires. Sign your new name and below that signature, sign your surname name in which you were commissioned. You must notify the Secretary of State's Office within 30 days of the change.

**Change of Address** - If you have a change of address you must notify the Secretary of State's office within 30 days, BY CERTIFIED MAIL. The change is free of charge within 30 days of the address change and \$25.00 for any time past the 30 days. If you have moved to a new county from which you were originally commissioned in, you may continue to use the same stamp since your bond was filed in that county. You will be commissioned in the new county of residence upon your renewal.