



Notary Public News

Office of the Lt. Governor

In Utah, Notaries Public are commissioned to a four year period. Utah law also requires a person to take and pass a test in order to qualify to become a notary public; however, there are no requirements to continue notary self-education. This can pose a problem to notaries who are rarely asked to complete a notarization, or in contrast, it can pose a problem to seasoned notaries who are unaware of changes in the law.

It is the Lieutenant Governor's responsibility to commission notaries, but it is also the duty of this office to make sure notaries stay up to date on general procedures regarding notarizing documents and any changes in the law. As a notary, you face complicated situations and tough decisions that baffle even the most seasoned notary. Our office is here to point you in the right direction. Here are a few examples of notarizations gone wrong, and how to avoid making the same mistakes:

1. Notarizing a document when the signer(s) is/are not present.

Recently a notary was asked by her manager to notarize a document for his son and ex-daughter in law, who were not present. The document had been allegedly signed by both participants regarding a custody arrangement. The manager instructed the notary that both signers willingly signed and that it just needed a notarization (he even had a copy of the signer's IDs). The notary complied with the manager's request. After a complaint was filed to our office, and in light of evidence that neither signer was present as her notarial certificate had stated, the notary's commission was revoked. This notary could also potentially face criminal/civil penalties.

This revocation could have been avoided had the notary asked her manager to make sure both signers appeared before her. It is understandable that a subordinate would want to acquiesce to his or her manager's request; however, we urge each notary to use their integrity as a notary to uphold the law regardless of the circumstances.

2. Leaving out notarial language or using defective language.

These are the most common mistakes made by notaries. Just stamping and signing the document does not correctly record the actions taken by a notary in witnessing a signature, or certifying a copy.

Examples of this occur when documents are filed in a court of law without the notarial certificate which correctly and completely records the action the notary took in witnessing a signature, and therefore the courts either reject these documents or render them invalid.

Courts have similarly invalidated mortgages as a result of defective notarial acts. In a Massachusetts case, for instance, the acknowledgment contained a space followed by a comma where the names of the debtors should have been inserted, and the court concluded that because the certificate of acknowledgment omitted the names of the parties who executed and acknowledged the mortgages, the documents were materially defective and non-recordable.

If there is no notarial language in a document, it is your duty as a notary to add it. After consulting with the signer on which notarial act best describes the situation, simply write the language on the document or print it out and attach it. Make sure you aren't leaving any blanks in pre-printed notarial language as well.

3. Power of Attorney (POA)

Sometimes individuals seek notarizations on important documents for someone they have a power of attorney (POA) for. This can be confusing if the requestor does not have the actual POA, or even if they did, how would a notary be able to distinguish its validity? Since a notary is not required to prove the POA is real, the burden of proof lies on the signer, and the notarial certificate produced should reflect that.

A notary was recently suspended for not complying with the requirements of notarizing a signature for someone claiming to have a power of attorney for the person he was signing on behalf. "Douglas Smith" came to the notary stating he had a power of attorney for "John Doe." After witnessing Mr. Smith sign the document the notary used a Jurat that stated: *Subscribed and sworn to before me on this 5th day of January 2018, by John Doe.* Did the notary actually place John Doe under oath and witness his signature as the Jurat states? No, John Doe wasn't there. The notary witnessed Mr. Smith sign John Doe's name and then stated in the Jurat that John Doe was present and signed under oath.

This constituted a materially false certificate. The notary should have used notarial language that placed Mr. Smith as the signer on behalf of Mr. Doe. Here is an example of the language the notary should have used:

*State of Utah
County of Salt Lake*

On this 5th day of January, in the year 2018 personally appeared before me Douglas Smith, who being by me duly sworn/affirmed, did say that he is the attorney-in-fact of John Doe, and that said instrument was signed on behalf of said John Doe, and Douglas Smith acknowledged to me that he as such attorney-in-fact executed the same.

As you can see the notary clearly states that Mr. Smith signed and swore under oath or affirmation that he has a POA for John Doe and has the ability to sign on behalf of John Doe. This notarial language would be sufficient evidence that the notary did not witness John Doe sign, but instead stated Mr. Smith acknowledged under penalty of perjury that he was able to sign on behalf of John Doe.