

NEW RULES APPLICABLE TO NOTARIES PUBLIC

Amy L. Fracassini
Davis, Malm & D'Agostine, P.C.

On May 15, 2004, new rules for notaries public went into effect in Massachusetts. If you are a notary, or if your company has personnel who are notaries, you should be aware of these new rules.

Here are some of the highlights.

I. SEAL/STAMP REQUIREMENT.

- A. All notaries must have a seal or a stamp with the following:
- (1) the notary's name exactly as set forth in the commission;
 - (2) the words "notary public", "Commonwealth of Massachusetts" or "Massachusetts", and "my commission expires on [commission expiration date]", or "commission expires on [commission expiration date]", or "commission expires [commission expiration date]"; and
 - (3) a facsimile of the great seal of the Commonwealth of Massachusetts.
 - (4) seals that use ink must use black ink.
- B. A notary may use either a stamp or seal with the information set forth above, or a stamp and seal that together include all the information.

II. JOURNAL REQUIREMENT.

- A. All notaries (except for notaries who are attorneys or employed by an attorney) must maintain one (not more than one) notary journal that is a permanently bound book with numbered pages that creates and preserves a chronological record of notarizations performed. With respect to notaries who are attorneys or employed by an attorney, a journal is not required but is recommended.

Upon notarizing any document a notary must record the following in the journal:

- (1) the date and time of the notarial act, proceeding or transaction;
- (2) the type of notarial act (for example, an acknowledgement, jurat or signature witnessing);

- (3) the type, title, or a description of the document, transaction or proceeding (if multiple documents are signed by the same Principal during a transaction or during a single date, only one journal entry is required);
- (4) the signature, printed name and address of each principal and witness signing the document, or involved in the transaction or proceeding;
- (5) a description of the satisfactory evidence of identity of each person including:
 - (i) reference to the type of identification produced by the person, including the issuing agency, its serial or identification number, and its date of issuance or expiration (for example, a driver's license, passport, or social security card);
 - (ii) if the source of identification is a social security number, instead of writing in the social security number, enter "social security number" or "SSN";
 - (iii) or reference that the notary identified the individual on the oath or affirmation of a credible witness, or based on the notary public's personal knowledge of the individual;
- (6) the fee, if any, charged; and
- (7) the address where the notarization was performed.

The notary journal is subject to inspection, under certain circumstances, by law enforcement officers, by Court order, and by the Governor's office.

III. PROHIBITED ACTS:

A notary cannot perform a notarial act if:

- (1) the person who appears before the notary (the "Principal") is not in the presence of the notary;
- (2) the notary does not have proof of the Principal's identity as provided for above;
- (3) the Principal has a demeanor that causes the notary to have a compelling doubt that the Principal knows the consequences of the transaction or the document to be notarized;
- (4) the notary believes that the Principal is not acting of his or her own free will;

- (5) the notary is a party to the document, or is named in the document that is to be notarized, (except that a notary may notarize a document if (i) the notary is only named in the document as a recipient of notices relating to the document, or (ii) the notary is licensed as an attorney in Massachusetts and is named in the document as an executor, trustee or in a fiduciary capacity; employees of such attorney may also perform such notarial acts concerning the document);
- (6) the notary will receive any payment or other consideration in excess of the permissible fees set forth in section 41 of chapter 262 of the General Laws of Massachusetts, or if the notary has a financial interest in the subject matter of the document. However, an attorney or an employee of such attorney is entitled to receive a legal fee for professional legal services rendered in connection with the document);
- (7) the notary is related (this includes a domestic partner of the notary) to the person whose signature is being notarized, witnessed or acknowledged, except where such persons witness a will or other legal document prepared by the notary who is an attorney licensed in Massachusetts; or
- (8) the document to be notarized is not completed or is blank except as provided in the Executive Order.

Please refer to the Executive Order for other prohibited acts.

A notary cannot use the term “*notario*” or “*notario publico*” or any equivalent non-English term in any business card, advertisement, notice or sign.

IV. NEW FORMS FOR ACKNOWLEDGEMENTS, WITNESSING A SIGNATURE AND CERTIFYING A COPY OF A DOCUMENT:

Note that the form of the acknowledgement, jurat, and certifications have changed, and that each of the forms now require that the form of identification used by the Notary be identified in the acknowledgement, jurat or certification. You may use the following formats, or a format substantially similar to the following:

A. Acknowledgements:

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, [for example, a Massachusetts driver’s license] to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

(as partner for _____, a partnership)
(as _____ for _____, a corporation)
(as attorney in fact for _____, the principal)
(as _____ for _____, (a) (the) _____)

_____ (official signature and seal of notary)

B. Jurats:

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his) (her) knowledge and belief.

_____ (official signature and seal of notary)

C. Witnessing a Signature:

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document in my presence.

_____ (official signature and seal of notary)

D. Certifying a Copy:

On this ____ day of _____, 20__, I certify that the (preceding) (following) (attached) document is a true, exact, complete, and unaltered copy made by me of _____ (description of the document), presented to me by _____.

_____ (official signature and seal of notary)

This Davis Malm Business Client Alert is a summary of the highlights of the new rules; for a more detailed summary of changes governing notaries public see the [Executive Order, "Standards of Conduct for Notaries Public,"](#) or contact Amy L. Fracassini at fracassini@davismalm.com if you have questions.