MEMO

TO: Marc Aronson, USNA

FROM: Anita K. Brenneman, Notary Program Manager
CNA Surety, Sioux Falls, SD

DATE: January 3, 2008

SUBJECT: Minnesota Notary Law Revision Task Force

Thank you for giving me the opportunity to provide some input in regards to the task force's efforts.

Notaries are required, as a part of their oath of office, to post a bond in 30 states. These bonds vary in size from $500 to $15,000 with bond premiums, generally, in the range of $50 for the term of the notary's commission. Notary bonds protect citizens from acts of malfeasance, nonfeasance and misfeasance by the notary.

Historically, the surety industry has not seen a lot of claim activity on notary bonds but that has been changing in recent years. We are seeing significant claim activity in states such as California, Florida, Texas and Arizona but we are also seeing claim activity rising in many other states too. We suspect that part of the reason for low claim activity in some states has been due to the state not increasing the bond penalty to reflect the reality of the commercial activities that notary is engaged in. For example, some states still require bonds in the $500-$1000 range and many people would not file a claim because of the low amount. Much of the claim activity now involves real estate transactions where the notary notarized forged or un-signed documents, or did not properly ID the signer. Claim activity has also been rising on notarized Powers of Attorney, vehicle title transfers and adoption forms.

The rise in notary issues appears to be impacting Minnesota as well. The Minnesota Department of Commerce web-site shows enforcement actions taken against 35 notaries through November of last year. In comparison, in 2005 and 2006, only 31 notaries had enforcement actions taken against them in a two year period. Many of the cases involve notarizing documents that they didn't witness the signing of, not properly identifying the signer, improperly completing the notarization, or notarizing fraudulent signatures. While no one can say, with certainty, how many other faulty notarizations caused a financial loss; it could be assumed that there were additional situations which were not reported to the Department of Commerce because there was no possibility of financial recovery.

For a cost/benefit analysis: There are approximately 94,402 notaries in the state of Minnesota with a five year commission so 18,880 of those renew or are new each year. A $50 premium for a $15,000 bond would generate premium of $944,020 a year.

Without taking into consideration the commission paid to the insurance agent who issued the bond or the surety company's expenses relating to issuance of the bond, that premium would pay full losses on approximately 63 bonds a year. If the commission and expenses are estimated at 40%, the remaining premium would pay 38 full losses a year (roughly the number of notaries with enforcement actions against them last year.) While not all situations will lead to a full payment on the bond, this, hopefully, gives the task force an idea of what the bond can do to correct situations caused by a faulty notarization.

A bond requirement will help the notary recognize that there is a potential for monetary damages for failing to act properly. It will emphasize the seriousness of their role and that there can be monetary consequences for taking their responsibilities lightly. In addition, it gives those citizens who are injured by the actions of a notary a means of compensation for their injuries.

The majority of notaries obtain their commission in conjunction with a job. Their employer pays the costs because they either need the services of a notary on a frequent basis or they want to be able to offer notarizing as an additional service of their business. In many cases, the notary is not charging the allowable fees for each notarization at their employer's request. With the current allowable fee only being $1 per notarization, it would be difficult for an individual to recoup the costs associated with obtaining their commission if they were to apply for a commission on their own.

Without a formal bond requirement, a surety company would be unwilling to issue a bond because the statutes or promulgated rules provide the guidance for what the bond is to cover, the amount required, and how the bond will pay. A statutory requirement also creates awareness that all notaries are bonded so a person injured by a notary's actions is more likely to seek recovery for their loss. In addition, without a requirement to obtain a bond, very few notaries will purchase one. Colorado switched to an optional bond in 1993. Before the change, CNA Surety had over 24,000 Colorado notary bonds in force. Now, the company has less than 60 in force.

Notaries do make mistakes and consumers do suffer. The Notary Public bond is a low-cost (to the notary), easily available form of consumer protection.

If you have any questions or I can be of any other assistance, please do not hesitate to let me know.