

Study Committee on Revision of the Law on Notarial Acts
Stakeholders' Meeting
April 17, 2007 – Washington DC

Revised Notes

Attendance: Patricia Brumfield Fry, Chair of the National Conference of Commissioners on Uniform State Laws [NCCUSL] Study Committee on Revision of the Law on Notarial Acts, John Sebert, NCCUSL Executive Director, Dale Higer, Division Chair for Study Committee, Haley Haynes and Ozie Stallworth, both from Office of Secretary of State for North Carolina, representing National Association of Secretaries of State (NASS) and Notary Public Administrators (NPA), Daniel "Daz" Greenwood of MIT/civics.com, Joan Decker, City of Philadelphia Records, Lenore Marema, Surety & Fidelity Association of America, Marc L. Aronson, United States Notary Association [USNA], Bettie Johnson, Boone County Missouri Recorder of Deeds, representing IACREOT, David Ewan, New Jersey Land Title Association and Property Records Industry Association (PRIA), Kathy Sachs, Office of Secretary of State for Kansas and representing NASS and NPA, Kelly Romeo, American Land Title Association (ALTA), Bill Anderson, National Notary Association (NNA), L. H. Wilson, American Bankers Association, Carmelo D. Bramante, CDBConsultancy, representing PRIA, John L. Jones, ArionZoe Corp., representing ALTA. Participating via teleconference were Frank Daykin and Lawrence Klemin, NCCUSL Study Committee members, Carol Fischer, Bridget Guth and Brenda Rieke, each from Office of Secretary of State for Missouri, Tom Wrosch, Office of Secretary of State for Oregon, Rockne Clarke, County of Tuscarawas, Ohio, Martha Brown, Office of Governor's General Counsel, Harrisburg, Pennsylvania, Anita Brenneman, CNA Surety Co., Steve McDonald, Lancaster County Pennsylvania Recorder of Deeds, Mike Smith, Georgia Superior Court Clerks' Cooperative Authority, Timothy R. Poulin, Office of the Secretary of State of Maine, Thomas Wrosch, Office of the Secretary of State of Oregon, John Messing, representing the American Bar Association Section on Science and Technology, Kay Wrucke, Recorder of Martin County, Minnesota and Carol Foglesong, Assistant Comptroller, Records Administration Division, Orange County Comptroller's Office, Florida, jointly representing the National Association of County Recorders, Election Officials and Clerks.

The Chair introduced John Sebert, Executive Director of the National Conference of Commissioners on Uniform State Laws, who introduced NCCUSL to the participants and explained the function of the Study Committee and this Stakeholders' Meeting. After describing the procedure followed by NCCUSL when drafting proposed uniform laws, the Chair noted that the purpose of this Stakeholders' Meeting was to assist the Study Committee in determining what report to make to the NCCUSL leadership concerning the need for a uniform act governing notaries public, the scope of any such uniform act, and whether or not such an act would have a substantial likelihood of widespread enactment.

The Chair asked the participants first to turn to issues which have arisen relating to the laws governing notaries. Participants noted that resident aliens often need to use notaries for purposes governed by the law of other nations and that there is confusion concerning the role of notaries, both amongst officials of other nations and amongst resident aliens. There is a lack of understanding of the differing roles of notaries in civil law countries versus common law countries. With respect to domestic laws, it was noted that there are great differences from state to state concerning which acts are authorized, ranging from such standard acts as witnessing signatures or taking oaths to such things as calling town meetings or performing marriages. In all states, documents transferring interests in real property must be notarized; in some notarizations are required in connection with obtaining certificates of title for motor vehicles. Similarly, there are differences amongst the states regarding embossing seals, rubber-stamped images of seals, information to be contained within seals, etc. This causes confusion when officials of other states are asked to recognize notarial acts.

On behalf of the National Notary Association (NNA), Mr. Anderson advised that the organization had previously sent a letter to NCCUSL opposing revision of the Uniform Law on Notarial Acts (ULONA). That letter noted that the 1982 uniform act was designed to address matters related to interstate commerce and particularly cross-border recognition of notarial acts. It did not address additional issues such as the qualifications of notaries. In addition, NNA takes the position that the provisions of the federal Electronic Signatures in Global and National Commerce Act (E-Sign) and the Uniform Electronic Transactions Act (UETA) are sufficient to enable notaries to act with respect to electronic records. Finally, NNA believes that a two-class system of notarial acts, one for paper records and the other for electronic records, would be contrary to the purpose of ULONA, which was to further cross-border recognition of notarial acts.

Turning to the duties of notaries, it was remarked that some had proposed that notaries might identify signers and witness acts without requiring the presence of the individual before the notary. There was consensus that the fundamental act of notarizing signatures required, and should require, a personal appearance of the signer before the notary. Concerns were expressed regarding the notary's function of assuring that signatures are voluntary and knowing acts and several suggested that notaries should receive training concerning acceptable or reasonable means of identifying signers, including the use of online or machine resources.

Participants further noted issues concerning the obligation to keep journals and proper contents of journals, bonding requirements, discipline of commissioned notaries, penalties and/or remedies for improper acts, whether by notaries or by third parties masquerading as notaries, and with the provisions of the federal Real ID Act. Additional issues involved the ability to confirm the authority of notaries and recordkeeping obligations.

At the request of the Chair, and after a participant pointed out that there probably was general consensus concerning what issues existed, the participants were polled on their views concerning issues which needed to be addressed. This discussion identified the following areas:

Appointment, including

- Eligibility to serve

- Minimum standards

Training, including who should conduct the training and ability to outsource,

- Classes

- Testing

- Auditing of performance of duties

- Retesting

- Fees and appointment process

- Bonding

Commissioning requirements, including issuing seals or other tokens and oaths

Responsibilities of notaries, including

- Identification standards/practices

- Notarization of electronic records

- Journals and recordkeeping

- Formalities for notarial act

 - Standard forms for jurats, etc.

Ethical standards, including witnessing relatives' signatures and conflicts of interest

- Reasonable care standard

- Satisfactory evidence

- Disabled signers

- Accountability of notaries

- Fees

Role/responsibility of those relying on or confronting notarized signatures

Notarizing electronic records

- Responsibility of notary [securing integrity of record?]

- Biometrics

- Should there be special requirements/training before authority to notarize electronic records?

- Are issues/questions related to security or integrity of record or to signatures?

- Limits imposed by E-Sign and UETA

Miscellaneous over-arching issues or problem areas

- Lack of uniformity and resulting confusion

- Avoiding imposition of undue or unreasonable costs on parties relying on notarial acts, i.e. avoiding 'friction' to transactions

- Funding needs or shortfalls for public agencies

Turning to questions of enactability, issues to be addressed include the appropriate means of dealing with the impact of electronic technologies, the role of regulators and questions related to content of regulations, as well as questions concerning which issues are inherently local, and thus not suitable for uniform treatment. ~~With the exception of the representative of the National Notary Association, NNA pointed out that while it agreed with the statements made by many of the participants concerning the need for revision of the law governing notaries, most of those issues were outside the scope of ULONA. these present expressed a desire for uniform treatment. Daniel Greenwood questioned whether the timing was right for a uniform act, but opined that it was possible that the issues would have ripened by the time a project could be completed. Generally those participating expressed a desire for uniform treatment of the issues and points which had been raised.~~ When asked to identify those areas where local interests might outweigh any need for uniformity, participants pointed only to such things as fees and funding needs. They expressed a desire for uniformity even with respect to eligibility to serve and appointment standards. A desire was expressed for a statement of best practices for use by regulators as they create implementing regulations, and the thought was expressed that it might be appropriate, assuming a drafting process, for participants to work on best practices statement in tandem with any uniform drafting process. ~~It was~~ On the other hand, the American Bankers Association pointed out that projects with the greatest prospect of enactability are those with narrow, restrained scope. The ~~National Notary Association~~ NNA noted that an updated version of its model law is due for release later this year. Others disagreed with the NNA claim that a uniform law was not needed, asserting a strong preference for uniform treatment of the subject and a more comprehensive treatment than is found in ULONA.

Concerning the need for uniformity, participants noted the following factors as favoring uniform treatment:

- Existing flux in the laws governing notaries, representatives of US Notary Association pointing to more than five dozen bills pending in various states;

- Impact of the internet and electronic commerce and particularly of increasing volumes of interstate electronic commerce;

- Existence of vendors supplying notary equipment with scant oversight;

- Issues related to notarizing electronic records;

- Increased and increasing mobility raising cross-border issues and confusion;

- Issues relating to identity theft and the consequent need for assurances concerning the identity of parties to transactions;

- Real property fraud;

- Great diversity in state laws governing notaries and their actions.

It was noted that ULONA had been enacted in only 11 states. The statement was made that a failure to move forward with a drafting project constituted taking the position that the existing state of affairs, including the great diversity in state laws governing notaries, was sufficient. Others stated they believed that the law governing notaries is “broken” and that uniform treatment was desired and needed.

Several participants expressed a desire to see the overall issues relating to the law governing notaries addressed before issues relating to electronic records were resolved, at least one expressing concern that the electronic issues could take over and result in needed general reforms being left unattended. Others expressed their conviction that most issues related to electronic notarization would be resolved with the general reforms and the appropriate direction for any remaining issues would be obvious. Attention to those core principles would also enhance enactability. Representatives of the National Association of Secretaries of State expressed the opinion that they would support a drafting project, particularly if it was consistent with the standards it issued last year. The commercial need for cross-border uniformity and reduced “friction” in transactions also was repeated.