

To: Pat Fry
From: Gail Hillebrand
Re: Revised Uniform Law on Notarial Acts
Date: September 22, 2009

Thanks for soliciting my input on the text of the Uniform Law on Notarial Acts.
The draft appears to be very well crafted. I have a few suggestions.

1. **Section 17's bases for suspension should include a violation of the Act.** The draft quite properly makes the use of false or misleading advertising and any violation of rules or regulations of the commissioning officer or agency bases for a suspension. However, it would be helpful if section 17(a)(7) also provided that a violation "of this Act" is an independent basis for suspension. This would more clearly make all of violations of section 18, including those unrelated to advertising, bases for suspension.
2. **Section 18 should cover advertising in English.** It would be helpful to remove the parenthetical that suggests that some states might restrict the disclaimer about provision of legal advice, including concerning immigration, solely to advertisements of notarial services in a language other than English. While notario advertising has been directed primarily at populations whose first language is Spanish, a notary public might solicit those clients using advertising in either English or Spanish, depending on the placement of the ad and whether the target population is the recent immigrant, a family member, or someone else who might make a referral. The thrust of the disclaimer, that the notary is not an attorney, cannot give advice on legal matters including immigration, and cannot draft legal documents could generally be helpful to persons who speak English or another language.
3. **Section 18 should ban the retaining of original documents by the notary.** I suggest that section 18 be augmented with a new subsection to specifically address the taking and retaining of original documents by the notary. As you may know, this is a practice that has exacerbated the issues of notario fraud. The new subsection could read quite simply: (d) a notary public may

not retain any original documents provided by an individual who has sought notary services. Nothing in this subsection prevents the retention of documents in connection with the performance of services under a license to practice law or another licensed profession in this state.” The reference to other licensed professions is suggested because of the possibility that a person be both a notary public and the CPA, and have a need to retain documents under the other license.

4. Section 18's application to websites and other forms of advertising. I agree with the suggestion made by the National Consumer Law Center that the disclaimer required by Section 18 should be included in all forms of advertising, including print, radio, television and Web advertising. I think the language in section 18 currently covers all forms of advertising, although it might be helpful for the commentary to make this point. To ensure that websites are covered, the language could be amended to add “or offers” after “advertises” so that it would read in relevant part: “in any manner advertises or offers notarial services.”

5. Section 18 should be made stronger with specific prohibitions similar to those of the Colorado law. I agree with the suggestion made by the National Consumer Law Center, building on the Colorado law requirement, that the uniform notary act contain an additional set of prohibitions such as: (e) a notary public shall not: 1) represent or advertise himself or herself as an immigration consultant or an expert on immigration matters; 2) solicit or accept compensation to prepare documents for or otherwise represent the interests of another in any judicial or administrative proceeding, including a proceeding relating to immigration to the U.S., U.S. citizenship, or related matters; or 3) use the phrase "notario" or "notario publico" to advertise the services of a notary public, whether by sign, pamphlet, stationery, or other written communication or by radio, TV or other nonwritten communication. Nothing in this subsection prevents the practices described in subsections 1) and 2) by a person licensed to practice law in this state when providing services under that license.”

6. Return vs. destruction of a physical notarial stamp. In the event of the notary's death, Section 11 requires that the executor destroy or render unusable the notary's stamp, and return the journal. For those stamping devices that are physical, rather than an electronic mark, why not require the executor to return any physical stamping device along with the journal?

7. Effect of local regulations describing electronic formats. Sections 10, 13, 19 and 20 all refer to the commissioning officer or agency making choices about acceptable electronic processes

by regulation. Is it expected that the agencies will cooperate on a standard set of regulations addressing the electronic format issues? Since the Act calls for a notarization from one state to be honored as effective elsewhere, a state that adopts weak regulations for an issue such as measuring whether technology is “tamper-evident” will be choosing a standard that can have effects outside of that state.

I appreciate the opportunity to comment on the excellent work of your committee to date.