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THE NOTARY'S DUTY OF CARE FOR IDENTIFYING DOCUMENT SIGNERS

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I. INTRODUCTION

Since the dawn of human history, one's true identity has been integral to any degree of societal orderliness. Humans have always interacted with one another for personal interests and for the good of the community. Knowing with whom we interact assures a degree of security and safety. Sadly, Earth's earliest inhabitants had to learn quickly that not all people could be trusted. Knowing whom to deal with and whom to avoid has always been a prerequisite for self-preservation.

As ancient rudimentary systems of trade, commerce, and law evolved, ancient societies faced growing risks in dealing with unfamiliar people. On whom could they rely? How could one be certain a stranger was not an impostor, but was who he represented himself to be? The notaries of ancient Rome, for example, were very limited in the exercise of their authority.¹ There were no identity cards in ancient Rome, so the notary either had to personally know the signer or use witnesses who would attest to the signer's identity.²

Unless the parties knew each other personally, there was justified concern over the individual's true identity. Even then, scoundrels could pull off clever disguises. This Article will discuss

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2. Id.
the modern notary's duty to identify their signers. Section II of this Article begins with an ancient historical perspective regarding the problem of impostors. Section III discusses the modern problems of impostor signers faced by notaries today. Section IV provides methods to prevent impostors and other notary fraud. Finally, Section V proposes some suggestions of reasonable statutory controls of notarial services in an effort to reduce signature fraud as well as the problems notary publics currently face in verifying signers' identities.

II. IMPOSTERS IN ANCIENT TIMES

Perhaps the earliest recorded perpetration of a fraud by an impostor is recorded in the Book of Genesis of the Old Testament. The 27th chapter of Genesis speaks of the ancient prophet Isaac intending to confer upon his eldest son, Esau, a blessing or endowment. The elderly Isaac was blind. He asked Esau to hunt for venison, his favorite meat, for the important celebratory meal in preparation of the conveyance of the blessing. Rebekah, Isaac's wife, overheard this and conspired with the couple's other son, Jacob, to defraud Esau (Jacob's twin brother) and Isaac and thereby cause the blessing to be conveyed to Jacob under false pretenses.

Rebekah instructed Jacob to "go now to the flock, and fetch me from thence two good kids of the goats; and I will make them savoury meat for thy father, such as he loveth: And thou shalt bring it to thy father, that he may eat, and that he may bless thee before his death." Jacob was concerned that his blind elderly father would recognize him and not convey Esau's blessing to him. "And Jacob said to Rebekah his mother, Behold, Esau my brother is a hairy man, and I am a smooth man: My father peradventure will feel me, and I shall seem to him as a deceiver; and I shall bring a curse upon me, and not a blessing." The mother-son perpetrators conspired to conceal Jacob's true identity from his father by dressing Jacob in Esau's cloak and by covering Jacob's arms and hands with goat skins.

The fraudulent scheme worked as intended. Jacob went to his father saying, "[m]y father . . . here am I." Isaac asked, "who art thou my son?" Jacob replied, "I am Esau thy firstborn: I have

4. Id. at 27:1.
5. Id. at 27:3-4.
6. Id. at 27:5-10.
7. Id.
9. Id.
10. Id. at 27:12-16.
11. Id. at 27:18.
done according as thou badest me . . . .

Isaac said to Jacob, "[c]ome near, I pray thee, that I may feel thee, my son, whether thou be my very son Esau or not." Isaac approached his father so he could feel his hands and arms. Isaac declared, "[t]he voice is Jacob's voice, but the hands are the hands of Esau." Isaac "discerned him not, because his hands were hairy, as his brother Esau's hands." Isaac beckoned Jacob to come near him so he could kiss him. Isaac smelled the cloak of Esau that Jacob wore. Confirmation of Esau's identity by his blind elderly father was complete. On reliance on Jacob's charlatanic performance, Isaac unknowingly bestowed the all-important blessing upon Jacob instead of Esau.

Throughout the ages, it has been necessary for people to protect their transactions from charlatans. In more recent generations, society has relied on identification documents in disparate circumstances, ranging from admittance to foreign nations, to cashing a bank draft. Where warranted by circumstances, officials of high public trust authenticated certain promises and agreements. The stakes were too high to risk admitting impostors claiming privity to certain transactions. Hence, the venerated and historic office of the notary public has long served this vital need.

Then men learned to write, and it was found that cold letters remain after the fragile structures of memory have failed. So transfers began to be made in writing. But it would inevitably happen that A or B or C would sign a paper and thereafter say he did not sign it; and that D, E, or F would learn to forge another's name. So that, notwithstanding it had been at first thought that a written transfer would forever settle all disputes, it was found that a writing was only helpful, not always conclusive. So someone hit upon the idea of having the signature witnessed. From this it was but another step to having as such witness an officer under bond. The notary was that officer . . . .

The making of one's signature to an important document has long been an art form in many societies, even contemporaneously.

12. Id.
14. Id.
15. Id. at 27:21.
16. Id. at 27:33.
17. Id. at 27:26.
19. Id.
Handwriting experts say our signatures reveal our inner selves.\textsuperscript{22} The courts say our signatures bind us to the documents we sign. Signature-making is as ancient as human habitation on earth. It predates the invention of paper in China; signatures appear in prehistoric petroglyphs as nothing more than the petroglypher’s mark. Anciently, signatures were in the form of designs and symbols, similar to a rancher’s cattle brand designating his ownership of his livestock.

In the early centuries of this millennium, documents were ratified by \textit{signatorius annulus}, in the form of a ring, or signet ring. Drops of hot wax were placed on the document to which the signet ring was impressed, leaving the emblem of its owner in the cooled wax puddle. Usually, society’s highest officials held signet rings, and these marks constituted the official signature of the pious and important person who held them.\textsuperscript{23}

\section*{III. Imposters Today}

Arguably, the most important element in the notarization of a signature is the verification of the signer’s true identity.\textsuperscript{24} The notarization is performed singularly to authenticate the signature on a document.\textsuperscript{25} Having no effect or relevance to the content of the signer’s instrument, the notarization is a formal process prescribed statutorily to minimize the risk of an impostor’s forgery of a signature.

The office and function of the notary is indispensable in modern society.\textsuperscript{26} Were the notarial office eliminated, “some type of authenticating authority would need to be created in order for business to be transacted.”\textsuperscript{27} The notary public is essential in worldwide commerce to verify signatures and to identify their makers.\textsuperscript{28}

In any purposeful endeavor to embattle a foe, one must fully understand the foe in all of its attributes. The same applies to our vigilance against signature forgeries. The making of a forgery and the tools for identifying it are not complex. A signature forgery is almost always perpetrated by an impostor: The two indispensable procedures for unmasking the impostor are to require him to personally appear before a notary public, and to have his true

\begin{footnotes}
\item[23.] \textit{When is a Signature Not a Signature?}, THE NOTARY (Notary L. Inst., Salt Lake City, Utah), May-June 1997, at 4.
\item[24.] CLOSEN, \textit{supra} note 1, at 10-11.
\item[25.] HUMPHREY, \textit{supra} note 20, at 12.
\item[27.] \textit{Id.} (citing HUMPHREY, \textit{supra} note 20, at 9).
\item[28.] \textit{Id.} at 1021.
\end{footnotes}
identity verified within a standard of reasonable certainty.

A signature forgery is the making of another person’s signature, or the signature of non-existent person without authority, with the intent to deceive. A signature forgery consists of three requisites:

1. there must be the making of a signature that belongs to another or to a non-existent person;
2. it must be made without authority; and
3. it must be made with the intent to deceive.

A person’s signature has always represented profound significance, influence and value in every society and system of law. A signature to a transaction signifies the signer has read, understood, agreed to and committed himself to the contents, terms or obligations set forth in the instrument. The signature unmistakably and unambiguously represents the maker’s deliberateness. It is tangible evidence of the signer’s intent. When a person’s signature is made fraudulently by another, it constitutes a most serious criminal act.

The essential element for a forgery is the element of intent to defraud. Without this level of criminal intent, the forged signature remains simply a false representation of a lesser gravity.

In many workplaces across the country, it is not uncommon for the office assistant to sign the employer’s signature to routine matters. They might imitate the employer’s signature, or they might sign the employer’s name with a disclosure, “by Jane Doe.”

In the mid-eighteenth century, former President Thomas Jefferson invented a device by which he could draft three or four manuscripts simultaneously by writing with a master pen. As his hand moved the pen across the page forming words, a tie rod connected to other pens would follow the pattern of movement.

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29. BLACK’S LAW DICTIONARY 519 (3d ed. 1948).
30. See generally Moskal v. United States, 498 U.S. 103 (1990) (wrestling with the definitions of forgery and falsely made documents). Do federal forgery laws apply to documents with genuine signatures and false statements?
32. United States v. Yancy, 1995 WL 420036 (E.D. Pa.); See also Moskal, 498 U.S. at 116 (stating that the “fraudulent procurement and use of a signature or writing as an obligation when it is not so intended” constitutes forgery); Tucek v. Mueller, 511 N.W.2d. 832, 838-39 (1993) (stating that “[a] false notarization qualifies as a misrepresentation, the first element of fraud”). See generally CLOSEN, supra note 1, at 150-53 for further discussion.
33. Forgery Prevention, supra note 31, at 5.
creating identical replicas of the manuscript. While this ingenious device enabled expediency to certain written communication, it was also the forefather to automated signature making in high volumes.

Holders of high public office and leaders of large organizations are very commonly found to relegate their correspondence and signatures to a machine called an "autopen." The autopen, somewhat like the Jefferson device, follows a template that controls the movement of the ink pen on the document being signed. The signature it makes appears very similar to an original hand-made signature of the person it purports to represent.

Members of both houses of Congress and the Office of the President are known to use automated signature machines on their routine correspondence. Many of the public receiving correspondence signed in this manner reasonably believe that the letter actually passed through the hands of its powerful and prestigious signer. So impressive is it to receive a letter signed by a U.S. President or celebrated U.S. Senator that many recipients preserve it as a cherished keepsake, with the expectation that one day that autograph could prove relatively valuable. Sadly, unbeknownst to them, it is not the genuine signature of their venerated public figure. It is merely a replica made by an autopen.

Arguably, the automated signature is not a forgery. It is done with the authority of the person whose signature it represents. But, can it be genuinely stated that the automated signature is made with no intent to deceive? In reality, that is the entire objective for using the autopen: to induce the reader to believe that the writer personally signed the writing.

The owner of the autopen is in a public relations dilemma. He can ill-afford to offend his constituency by admitting he doesn’t have time to personally respond to his constituent’s problem, let alone personally opine to the ghost-written contents of the correspondence sent on his behalf by signing it.

The autopen is a clever solution to the pressures of unmanageably high volumes of correspondence that must be answered by the addressee. The autopen is not unlike the office assistant making her employer’s signature on a document. It is made under the employer’s authority and it is expedient. The recipient is successfully induced into believing these signatures

34. DUMAS MALONE, JEFFERSON, THE VIRGINIAN (1948).
36. Id.
37. Id.
38. Id.
are genuine and can be relied upon, even to his detriment.

While it is conceded that the use of the autopen and the employer's signature made by the office assistant arguably may not constitute signature forgeries, they are intentionally deceitful. Such signatures are false representations. They constitute a form of fraud.\footnote{39}

Deceit is one shade of color on the chromatic spectrum of fraud.\footnote{40} Unless a signature to a document is made by the person it purports to represent, it is a mere contrivance to mislead another to his detriment.

The justification for utilizing the autopen or the office assistant to sign our names to documents is understandable. What is not understandable is the wholesale absence of public discussion over the ethical use of these methods. The ethical, vicarious making of signatures for others requires full disclosure that the signature is not genuine, although it is authorized.

Ethical office assistants often sign their employer's name with the disclosure, "by Jane Doe." The automated signature could also be ethically affixed to a document if it were to include the disclosure, "authorized signature by mechanical means."

Ethical conduct and expediency are rarely compatible. When it comes to signature making, expediency often wins out and is vehemently defended when challenged on its ethical merits. The issues here are not complicated, but they nonetheless warrant thoughtful public consideration.

It is never sufficient, in notarial services, to merely assume the signer's claimed identity is genuine. To the contrary, such a cavalier attitude is a prescription for serious trouble.\footnote{41}

Verification of the signer's identity is arguably the most important step in performing a notarial act.\footnote{42} The genuineness or doubtfulness of the signature is verified; in many situations, the stakes can be high.

Much has been written concerning the notary's duty to verify a signer's identity, while abundant misguided information circulates among the community of America's notaries and their

\footnote{40. BLACK'S LAW DICTIONARY, supra note 29, at 526. Fraud is "[c]onduct which operates prejudicially on the rights or others, and is so intended; deception practiced to induce another to part with property, or surrender some legal right, and which accomplished the end desired." \textit{Id}. Deceit is "[a] species of fraud consisting in any false representation or contrivance whereby one person overreaches and misleads another to his hurt." \textit{Id.} at 335.}
\footnote{41. Independence Leasing Corp. v. Aquino, 506 N.Y.S.2d 1003, 1006-07 (Erie County 1986); see generally \textit{MODEL NOTARY ACT} § 6-101(a) (1948) (stating that a notary is liable for damages caused by "the notary's misconduct in performing a notarization").}
\footnote{42. CLOSEN, supra note 1, at 10-11.}
regulators. The most responsible approach to the relatively complex issue of notarial verification of signer identification is within the context of well-established legal principles that have proven their efficacy over many generations of time. Within this context, the notary and the regulator can find reasonable and balanced solutions to the innumerable challenges they face in our increasingly complex society that corruption has marred in many facets.

We live in a far from perfect society, and notarizations are scarcely the perfect device to combat document and signature fraud. However, if performed properly, the notarial act is extraordinarily effective.

IV. PREVENTION OF FRAUD THROUGH SIGNER IDENTIFICATION

A. Constat de persona

(Constat de persona, or proof as to the person, is surprisingly fragile. The ultimate, irrefutable identity of a person is rooted in but a few cherished sources. A person’s identity requires some sort of incorruptible “base line.” Moreover, one of the most cherished of American civil liberties is the person’s right to keep his identity private.45

Our identity baseline is the continuous personal acquaintance our parents and immediate family members have had with us since our births. Furthermore, our baseline lies in the scientifically-identified uniqueness of our fingerprints and, moreover, our DNA. We are positively identifiable by the personal knowledge of our parents from the moment of birth and by the uniqueness of our genetic codes. Anything else is inferior. Our families’ life-long personal knowledge of our identity and our unreplicatable DNA is relatively error-proof and most likely immune to corruption.

44. BLACK’S LAW DICTIONARY, supra note 29, at 268.
45. See Griswold v. Connecticut, 381 U.S. 479 (1965) (recognizing that the Bill of Rights creates “zones of privacy” for the individual). The “right to privacy” is actually a misnomer. Id. at 510 (Black, J., dissenting). It is more accurate to describe it as a right to autonomy. See id. at 484 (citing Boyd v. United States, 116 U.S. 616) (recognizing that the individual has an “indefeasible right of personal security, personal liberty, and private property . . .”). The individual’s right to privacy, or autonomy, evolved in the penumbras of the First, Third, Fourth, Fifth and Ninth Amendments. Id. The penumbra theory has been supplanted by the theory of substantive due process under the Due Process of Law clauses of the Fifth and Fourteenth Amendments. Id. at 492 (Black, J., dissenting); Eisenstadt v. Baird, 405 U.S. 438, 453-54 (1972); Carey v. Population Servs. Int’l, 431 U.S. 678, 684-85 (1977).
While many consider the birth certificate to be a wholly reliable determinator of our existence and true identity and, therefore, a valid identity baseline, it is rife with weakness. The only thing a birth certificate certifies is that an individual of particular gender, weight, height and race was born to the two parents identified. As a sheet of paper, it does not certify its bearer as the person described.

From the point of birth through adulthood, our verifications of birth are public record through birth certificates. However, our birth certificates hardly prove identity. They are but a piece of paper, the written contents of which are not absolute in their accuracy. Humans provide the information. Humans complete the forms. Humans make mistakes. And birth certificates are not immune from falsification or alteration.

Birth certificates are relatively easy to obtain, even under false pretenses. Remarkably, they are heavily relied upon for the issuance of U.S. passports and driver's licenses in most states.\textsuperscript{46} An impostor's acquisition of a valid birth certificate of a person of similar age, race and gender as themselves can be the catalyst to an undetected life under one or many aliases.

Our individual constat de persona is something to which most of us rarely give much thought. We are a free society, unaccustomed to having to produce identification papers at a moment's notice. Those who have resided or traveled in totalitarian countries recognize how one's very life may hinge on the immediate presentation of their identification documents to authorities in those countries.\textsuperscript{47} In that environment, it is the government regime that determines and ratifies one's identity. Although an infant may be named by his parents, his recognized identity must be ratified by the government through the issuance of official identification papers that he must bear throughout his life.

\textsuperscript{46} Department of State's Bureau of Consular Affairs, \textit{Applying for Your Passport the Easy Way} (visited June 21, 1999) <http://www.pueblo.gsa.gov/cic_text/travel/passports/passport.htm>. The U.S. State Department issues U.S. passports and has implemented an application system that is available to the public through most major U.S. Post Offices. \textit{Id}. The application must be accompanied by a previous U.S. passport or by an "original" birth certificate of the applicant, and the applicant must show the clerk a valid photo ID. \textit{Id}.

\textsuperscript{47} One of the most notable characteristics of pre-1989 life in the Soviet Union and its satellite states was the citizen's tightly restricted freedom of mobility. \textit{U.S. DEP'T OF STATE, 1990 HUMAN RIGHTS REPORT, UNION OF SOVIET SOCIALIST REPUBLICS} (Feb. 1, 1991). A visit across town without one's government issued ID could result in imprisonment. \textit{Id}. The Author resided in Brazil for two years in 1970 and 1971. \textit{Id}. One's continuous possession of government issued ID by every citizen and alien resident was the key to freedom of travel anywhere within the nation of Brazil.
The American system of individual identification is a stark contrast to those described above. No free American is required to bear ID, and there is no central source for uniform identification. The identification we as Americans obtain is typically procured voluntarily in connection with some higher objective. Perhaps our most commonly used ID is our driver's license; however, it is obtained not for identification purposes but for the privilege to drive. Employment or school IDs are issued for security reasons or for receiving special benefits reserved only for authorized persons.

Our identification documents are very much ancillary to other pursuits in life. Yet, so much depends on them. For business and government to mitigate against exposure to risk that individuals may be impostors, heavy reliance is placed on the identification card the individual presents. While a driver's license certifies that the bearer of the card is licensed to drive, it provides little or no assurance that the person featured thereon is who he claims to be. We take it on the reasonable expectation that somehow the driver's license was issued by the government only after a reasonable screening of the applicant's true identity. And, even a state's licensing process is often superficial because it depends almost entirely on the applicant's presentation of a birth certificate purportedly belonging to the applicant.

As discussed earlier, there is no irrefutable means to connect a birth certificate to the person it purports to represent. We can only accept it on reasonable good faith. Hence, in America we have no fail-safe system of personal identification in written form of any kind. This is abhorrent to many totalitarian regimes, which is why they have promulgated their own centralized system of national identification. An individual is who the regime says he is by virtue of his government-issued ID. This keeps society orderly and less threatening to the regime. Identifying document signers for notarizations in this environment would present little challenge.

B. The Duty to Exercise Reasonable Care

America's notaries face formidable challenges in identifying document signers because of our open society. Every person is free to document his or her identity in any manner he or she wishes, or even not at all. Yet, at one time or another, nearly every person has need of a notarization. Fortunately, there are procedures

48. Americans generally do not set out to obtain ID in the belief they ought to have it. Rather, we obtain our ID because it comes to us—for example, when our primary goal is something else—in the form of a driver's license to be legally able to drive, as student ID for a matriculated college student or as military ID for a new recruit.

49. Werner v. Werner, 526 P.2d 370, 375-76 (Wash. 1974). "The notarial seal is a mandatory legal prerequisite to the valid execution of many
and standards of care a notary may invoke to ensure protection from risk of personal liability in notarizing for the public, with its sundry methods of identification.50

The bedrock of American notary law is the principle in tort of reasonable care.51 Reasonable care is the standard by which notaries and their official conduct are judged. It is borne out of the necessity to provide ordinary people, untrained in the law or sciences, a means of protection against liability for the public services they provide to their communities as notaries. The standards of reasonable care serve as parameters by which a notary can gauge whether her official notarial conduct is protected. A notary is expected to act reasonably, as would any reasonable and prudent person in like circumstances, in the performance of every notarial procedure.52 The notary is liable to all persons who suffer injury as the proximate result of the notary's breach of her duty of care.53

The notary's responsibility to reasonably verify the identity of every person for whom she notarizes is profound. It is the cornerstone of the notarial act by which a notarized signature is reasonably verified not to be a forgery. A notary who takes this duty lightly does so at her very grave peril.54

The notary performs this function of signer identification as a fiduciary of the public.55 The notary is expected to perform with integrity and diligence.56 It is not enough to simply follow what

documents.” Id.

51. Id. at 737.
52. Id.
55. WESEL GILMER, JR., ANDERSON'S MANUAL FOR NOTARIES PUBLIC 283 (5th ed. 1976). A notary public owes a duty “to anyone who officially employs and who relies on his certificates . . . . [T]he real beneficiaries of the bond are the persons who may incur a loss as a proximate result of the notary's misconduct.” Id. “Both the notary and the sureties on his official bond are liable for any loss which is the proximate result of the failure to perform his duties.” Id.
56. Bruno, supra note 26, at 1022.
57. Wasson v. Connor, 54 Miss. 351, 352 (Miss. 1877).
The officer who takes an acknowledgment acts in a judicial character in determining whether the person representing himself to be, or represented by someone else to be, the grantor named in the conveyance, actually is the grantor. He determines further whether the person thus adjudged to be the grantor does actually and truly acknowledge before him that he executed the instrument.
other notaries customarily do, especially if the business and notarial habits of others are negligent. Conformity with the customs of the workplace or community does not equate with the standard of reasonable care. In fact, if material questions arise over the notary's proper verification of a signer's identity, the burden of proof by a preponderance of the evidence shifts to the notary to establish that reasonable care was exercised.

The Uniform Acknowledgment Act and the Uniform Law on Notary Acts clearly indicate that document signers must personally appear before the notary. This is for the express purpose of enabling the notary to verify the signer's identity and that the signature to be notarized is genuinely that of its maker. However, only the Uniform Law on Notary Acts adequately prescribes standards for signer identification. The Uniform Law on Notary Acts provides:

[i]n taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on

We believe that the manifest intent of the legislature in requiring a notary public to execute a certificate of acknowledgment is to provide protection against the recording of false instruments. The sine qua non of this statutory requirement is the involvement of the notary, a public officer, in a position of public trust. If the notary conspires with a forger, or fails to require the personal appearance of the acknowledger, or is negligent in ascertaining the identity of the acknowledger, the statutory scheme is frustrated. In taking acknowledgments a notary properly discharges his duty only when the persons acknowledging execution personally appear and the notary has satisfactory evidence, based either on his personal knowledge or on the oath or affirmation of a credible witness, that the acknowledgers are who they say they are and did what they said they did.

59. Id. at 537. "[I]f it is established that a notarized signature is forged, the burden of persuasion shifts to the notary to prove by a preponderance of the evidence that he exercised reasonable care in ascertaining the identity of the person." Id. "[J]ustification for shifting the burden of persuasion is the probability that the notary was negligent... and the strong public policy of ensuring the accuracy of notarial certifications." Id.
62. UNIFORM ACKNOWLEDGMENT ACT § 7; UNIFORM LAW ON NOTARIAL ACTS § 2.
63. UNIFORM LAW ON NOTARIAL ACTS § 2.
A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person (i) is personally known to the notarial officer, (ii) is identified upon the oath or affirmation of a credible witness personally known to the notarial officer or (iii) is identified on the basis of identification documents.\(^{64}\)

The Model Notary Act,\(^{65}\) promulgated by the National Notary Association, applies a more stringent standard for signer identification. The Model Act clearly and forcefully emphasizes the unmistakable requisite for signer identification in its definitions of Acknowledgment and Jurat.\(^{66}\) It states that "a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence . . ." is personally before the notary.

The Model Act further tightens the scope of discretion a notary may exercise in her assessment of the signer's identity. The Model Act defines personal knowledge of identity and satisfactory evidence of identity as follows:

"[p]ersonal knowledge of identity' means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed."\(^{68}\)

'Satisfactory evidence of identity' means identification of an individual based on: (i) at least 2 current documents, one issued by a federal or state government with the individual's photograph, signature, and physical description, and the other by an institution, business entity, or federal or state government with at least the individual's signature; or (ii) the oath or affirmation of a credible person who is personally known to the notary and who personally knows the individual.\(^{69}\)

The Notary Public Code of Professional Responsibility,\(^{70}\) also promulgated by the National Notary Association, asserts the imperative for thorough signer identification. "The notary shall carefully identify each signer through either personal knowledge, at least one reliable identification document bearing a photograph,
or the sworn word of a credible witness.\textsuperscript{71}

Many legal scholars lament the fact that most states provide little statutory clarity on the standards and procedures a notary should use to verify the signer's identity. The long-standing standard for a notary's verification of a signer's identity has been by the notary's personal acquaintance with the signer, or by satisfactory evidence.

Forty-one states and the District of Columbia statutorily require that either the notary personally know the signer, or that the notary identify the signer on the basis of satisfactory evidence of the signer's identity.\textsuperscript{72} Of these states, only twenty provide any definition or explanation in their statutes on what constitutes personal knowledge or satisfactory evidence.\textsuperscript{73} Nine states do this

\textsuperscript{71} Id. \textsuperscript{3}§ III-B-1. The identification a notary should require under the Model Notary Act is contradicted by the standard provided by the Notary Public Code of Professional Responsibility. The Model Act requires two current forms of ID, while the Code of Responsibility refers to only one. MODEL NOTARY ACT \textsuperscript{4}§ 1-105(11); NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY \textsuperscript{5}§ III-B-1. Both documents are promulgated by the National Notary Association.

\textsuperscript{72} Forty-one states have notary statutes that require signer identification by personal knowledge or satisfactory evidence. ALASKA ADMIN. CODE tit. 9, § 09.63.070 (1999); ARIZ. REV. STAT. ANN. § 33-503 (West 1999); ARK. CODE ANN. § 21-14-111 (Michie 1997); CAL. GOV. CODE § 8206 (West 1999); COLO. REV. STAT. § 12-55-110 (1998); CT. GEN. STAT. § 3-94a (1997); DEL. CODE ANN. tit. 29, § 4322 (1998); HAW. REV. STAT. § 502-42 (1999); IDAHO CODE § 55-707 (1998); 5 ILL. COMP. STAT. ANN. 312/6-102 (West 1999); IOWA CODE § 9E.9 (1997); KAN. STAT. ANN. § 53-503 (1997); KY. REV. STAT. ANN. § 423.150 (Michie 1998); ME. REV. STAT. ANN. tit. 4, § 955-B (West 1998); MD. CODE ANN., STATE GOV'T \textsuperscript{6}§ 19-105 (West 1998); MICH. STAT. ANN. § 26.607.2 (Law Co-op. 1998); MINN. STAT. § 358.42 (1998); MO. REV. STAT. § 442.210 (1999); MONT. CODE ANN. § 1-5-603 (1998); NEB. REV. STAT. ANN. § 64-203 (Michie 1998); NEV. REV. STAT. ANN. § 240.163 (Michie 1998); N.H. REV. STAT. ANN. § 456:6 (1999); N.Y. REAL PROP. LAW § 303 (McKinney 1999); N.C. GEN. STAT. § 10A-3 (1999); N.D. CENT. CODE § 47-19-20 (1999); OHIO REV. CODE ANN. § 147.53 (Banks-Baldwin 1998); OKLA. STAT. tit. 49, § 113 (1998); OR. REV. STAT. § 194.515 (1997); 21 PA. CONS. STAT. § 291.5 (1998); S.C. CODE ANN. § 26-3-40 (Law Co-op. 1998); TENN. CODE ANN. § 66-22-107 (1998); TEX. CIV. PRAC. & REM. CODE ANN. § 121.005 (West 1999); UTAH CODE ANN. § 46-1-2 (1998); VA. CODE ANN. § 55-118.3 (Michie 1999); WASH. REV. CODE ANN. § 42.44.080 (West 1999); W. VA. CODE § 39-1A-3 (1999); WIS. STAT. § 706.07 (1998); WYO. STAT. ANN. § 32-1-105 (Michie 1999).

\textsuperscript{73} Twenty states have statutes that define what constitutes personal knowledge and satisfactory evidence. ARIZ. REV. STAT. ANN. § 41-311 (West 1999); CAL. CIV. CODE § 1185 (West 1999); CONN. GEN. STAT. ANN. § 3-94a (West 1999); DEL. CODE ANN. tit. 29, § 4322 (1998); HAW. REV. STAT. § 502-42 (1999); IDAHO CODE § 55-707 (1998); 5 ILL. COMP. STAT. ANN. 312/6-102 (West 1999); KAN. STAT. ANN. § 53-503 (1998); MICH. COMP. LAWS ANN. § 565.262 (West 1999); MINN. STAT. § 358.42 (1998); MO. REV. STAT. § 442.210 (1999); MONT. CODE ANN. § 1-5-603 (1998); NEB. REV. STAT. § 64-203 (1998); NEV. REV. STAT. ANN. § 240.163 (Michie 1998); N.C. GEN. STAT. § 10A-3 (1999); OR. REV. STAT. § 194.515 (1997); 21 PA. CONS. STAT. § 291.5 (1998); TENN. CODE ANN. § 66-22-107 (1998); TEX. CIV. PRAC. & REM. CODE ANN. § 121.005 (West 1999); WASH. REV. CODE ANN. § 42.44.080 (West 1999); WIS. STAT. § 706.07 (1998); WYO. STAT. ANN. § 32-1-105 (Michie 1999).
in the form of a state-issued pamphlet of notary instructions rather than by statute.

The notary statutes of ten states do not even address the requirement that notaries must identify the signers for whom they notarize, although eight of these states have issued written policies obligating their notaries to identify signers.\textsuperscript{74}

\textbf{C. Personal Knowledge of Identity}

A notary's personal knowledge of a signer's true identity constitutes the strongest form of signer identification. In the notarial certificate, this form of signer identification is often phrased "personally known to me to be the person whose name is subscribed"\textsuperscript{75} thereto. One individual's claim to personally know another defies refutation. It is premised on a substantial level of acquaintance "derived from association with the [person] in relation to other people, as establishes [his] identity with at least reasonable certainty."\textsuperscript{76}

Personal knowledge of another's identity cannot be based on the representations of other people. Moreover, identity cannot be based on assumption or conjecture. Identity must be based upon a chain of circumstances surrounding the person that, in its totality, would lead one to believe the person is who he claims to be. Within that chain of circumstances, some affirmative evidence of the person's identity must manifest itself.\textsuperscript{77}

\textsuperscript{74} The notary statutes of the following states are silent on procedures or standards for identifying document signers: Indiana, Massachusetts, Mississippi (satisfactory evidence only), New Jersey, New Mexico, Rhode Island, South Dakota, Vermont, Alabama and Arkansas. Indiana, Massachusetts, Mississippi (satisfactory evidence only), New Jersey, New Mexico, Rhode Island, South Dakota and Vermont provide information in the form of a state-issued pamphlet. The states of Alabama and Louisiana do not provide their notaries with any requirements or procedures for identifying document signers by statute or by state-issued pamphlet of information. Section 3-3-89 of the Arkansas statute authorizes a notary to notarize a signature by merely recognizing that it appears familiar, even though its maker does not appear before the notary to acknowledge it. ARK. CODE ANN. § 21-14-11 (Michie 1997).

\textsuperscript{75} CAL. CIV. CODE § 1195 (West 1999).

\textsuperscript{76} BLACK'S LAW DICTIONARY, supra note 29, at 960 (defining personal knowledge as "a person's direct knowledge of anything, as distinguished from that which he learns by hearsay").

\textsuperscript{77} Anderson v. Aronsohn, 184 P. 12, 15-16 (Cal. 1919); see also Figuers v. Fly, 193 S.W. 117, 120 (1916) (stating that the phrase "personally acquainted with" in... a certificate means a knowledge independent and complete in itself, and existing without other information, and it imports more than a slight or superficial knowledge"). The Tennessee Notary Statute defines personal knowledge as "[f]or purposes of this chapter, 'know' or 'personally acquainted with' means having an acquaintance, derived from association..."
A number of states have laudably enacted concepts from the Model Notary Act that provide within their notary codes definition to the element of personal knowledge.\textsuperscript{78} The notary code of Oregon provides, for example, that "personally known means familiarity with a person resulting from interactions with that person over a period of time sufficient to eliminate every reasonable doubt that the person has the identity claimed."\textsuperscript{79} Every detail within the framework of personal knowledge calls for the notary's subjective assessment of the facts and circumstances. Appropriately so, a notary's determination of personal knowledge is rooted in the exercise of reasonable care.

If a notary is personally acquainted with an individual over a substantial period of time and has interacted substantively with that person, the notary's common sense and instinct might lead her to reasonably believe the person is who he claims to be. This would occur naturally out of the absence of anything contradicting the person's representations as to who he is.

Human history has never been without its impostors and aliases. In contemporary society, no American community is immune from having within its midst residents living under aliases for purposes of evading detection by law enforcement or for bizarre psychological deficiencies. The notary may know this person on a personal basis sufficient to qualify as adequate identity verification for notarial purposes. The fact that the notary's acquaintance with the person's alias is inconsequential. The notary's reliance on her experience with, and observation of, the person reasonably confirm for the notary that the person is whom he claims to be, his alias notwithstanding.

D. Satisfactory Evidence of Identity

Both The Uniform Law on Notary Acts and the Model Notary Act refer to the notary's reliance on satisfactory evidence to identify signers.\textsuperscript{80} The Model Act goes further by defining the term "satisfactory evidence" in the context of notarial services.\textsuperscript{81} Only twelve states have followed suit in their statutes.\textsuperscript{82}

\textsuperscript{78} ARIZ. REV. STAT. ANN. § 41-311 (West 1999); CONN. GEN. STAT. ANN. § 3-94A (West 1999); N.C. GEN. STAT. § 10A-3 (1999); OR. REV. STAT. § 194.515 (1998); UTAH CODE ANN. § 46-1-2 (1998).
\textsuperscript{79} OR. REV. STAT. § 194.515(7) (1997).
\textsuperscript{80} UNIFORM LAW ON NOTARIAL ACTS § 2(a), 14 U.L.A. 129 (1983); MODEL NOTARY ACT § 1-105(a) (1984).
\textsuperscript{81} MODEL NOTARY ACT § 1-105(11).
\textsuperscript{82} The notary statutes of twelve states provide definitions and standards to the acceptance of satisfactory evidence to verify a signer's identity: Arizona,
Satisfactory evidence is a user-friendly legal term because it is simple and rather self-explanatory. Satisfactory evidence is sometimes called "sufficient evidence," that "amount of proof which ordinarily satisfies an unprejudiced mind." In relying on satisfactory evidence, the correct question for the notary is not whether it is possible that the document signer is an impostor, but whether there is sufficient probability the signer is who he claims to be. This important standard is not unlike the legal axiom that an accused person is presumed innocent until proven guilty. Although the document signer bears the burden of proof as to his true identity, there should never be a presumption of attempted false identity on the signer's part unless the notary reveals such falsity through the presentation of satisfactory evidence.

The term "satisfactory evidence" often applies to two methods of signer identification: the use of a "credible witness" or an "identifying witness," and to the use of identification cards or papers. The phrase "credible witness" has a number of applications within the arena of the laws of evidence. The phrase "identifying witness" was coined for use in the recently promulgated Notary Public Code of Professional Conduct.

E. Credible or Identifying Witnesses

Eight states specifically prescribe the use of credible witnesses as a means of verifying a signer's identity. Credible, or
identifying, witnesses are vital to the successful performance of notarizations for millions of people at any given moment. Identifying witnesses constitute satisfactory evidence of a person's identity before a notary and are often the only means by which a signer may be identified for a notarization. Vast portions of the American population are without identification cards or documents, as they either have no need for any, or they are momentarily sans ID.

Credible witnesses are utilized to attest to the notary the true identity of the document's signer. As articulated in the notary statutes of several states, the notary identifies the person “upon the oath or affirmation of a credible witness personally known to the notarial officer.”\(^7\) In some instances, the state codes specify that the witness must also know the document signer. Arizona notary law, for example, requires “[t]he oath or affirmation of a credible person who is known to the notary and who knows the individual.”\(^8\)

In every use of an identifying witness by a notary, there must be the fulfillment of three requisites, which will constitute an "unbroken chain of personal knowledge":

1. The notary must personally know the identifying witness;
2. The identifying witness must personally know the document signer; and
3. The identifying witness must attest under oath to the notary as to the witness' personal acquaintance with the document signer.

A notary is entitled to detrimentally rely on the affirmation of someone she knows personally regarding the identity of a complete stranger. The notary's personal knowledge of identity runs to the credible witness. In turn, the witness' personal knowledge runs to the document signer for whom the notarization is being performed. The notary's reliance on the words of the identifying witness is

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\(^7\) IOWA CODE ANN. § 9E.9(6) (West 1999).  
\(^8\) ARIZ. REV. STAT. ANN. § 41-311(10)(b) (West 1999) (emphasis added).
secured by the administration of an oath or affirmation to the witness.⁸⁹

The use of a credible witness to identify document signers is not without inherent risks to the notary. The use of the witness is a substitution for requesting the document signer to produce valid identification. The actual identity of the signer is just as easily obfuscated by a derelict credible witness as it is by counterfeit identification.⁹⁰ However, if the notary performs her role correctly in using an identifying witness, the notary is relieved of liability upon the showing that the notary exercised reasonable care throughout the transaction.⁹¹

The notary’s reasonable care in using a credible witness to identify a signer’s identity requires utmost objectivity on the notary’s part. The notary must personally know the identifying witness to the same degree, if not higher, as if the notary were notarizing for the witness on the basis of personal knowledge. The notary’s acquaintance with the witness is the premise by which she determines a signer is who he claims to be. This is quite different from notarizing for the individual a notary knows personally. The bar for measuring personal knowledge of the credible witness’s identity is by necessity higher.

Unlike the notarization for a person the notary knows personally, an identifying witness must be known to the notary as having a reputation for integrity. The witness must manifest no inclinations towards deceit, and must be known as one who esteems integrity and manifests it by his example. The witness must be cognizant of his sober responsibility under penalties of perjury for attesting to the identity of another person. And, the witness should be impartial and free of any interest in the transaction.

The Notary Public Code of Professional Responsibility provides, “[t]he notary shall disqualify any person from serving as an identifying witness if that individual is named in or affected by

⁸⁹. A notary can administer an oath or affirmation to an identifying witness with simple phrasing such as, “do you swear or affirm that this is Jane Doe and that you know her personally?” Notaries are rarely, if ever, trained on the laws and procedures for oaths and affirmations. They are prone to shy away from having to administer oaths and affirmations, as many may regard it as pretentious or “overkill.” A prudent notary and employer of notaries will discuss the procedures for administrations of oaths with colleagues and clients, and thereby ameliorate some of this discomfort of the responsibility.


the document signed by the principal.\footnote{92} Perhaps one of the most vexing problems a notary faces in identifying document signers is the disqualification of the credible witness. Inasmuch as the identifying witness must be a person the notary knows well, the social awkwardness of having to disqualify that person can be daunting. The witness may very likely be the notary's employer or supervisor, leaving the notary with a perception of having to play a subservient role. The notary feels pressured into abusing the use of a credible witness for reasons of expediency or fraud.

Any responsible discussion on disqualifying conflicts of interest in the context of notarial services must consider a balanced overview. The primary objective for notarizing a signature is to mitigate against the risk that the document's signature is not genuine. The heart of that process is the reasonable verification of the signer's true identity. This may be through the attestation of a person the notary personally knows and believes to be credible.\footnote{93} The fact the identifying witness is a party to the transaction does not, in and of itself, denigrate the veracity of the witness' affirmation of the signer's identity. To the contrary, a witness who also happens to be a party to the transaction may truthfully and credibly verify the signer's identity. The objective is still fulfilled.

The issue argued by many is whether persons who have an interest in, or are parties to, transactions should be disqualified from serving as credible or identifying witnesses. While this is advocated in the Notary Public Code of Professional Responsibility,\footnote{94} the premise on which it is based may be inadequate.

The employment of credible witnesses by notaries to identify document signers is superior to the notary's reliance on the signer's ID documents. One's personal knowledge of the identity of another is the oldest and most venerated form of identification. It is irrefutable and enjoys profound evidentiary weight. The entire concept of the credible or identifying witness is founded upon the high trust our system of law places in one's personal knowledge.

A notary's employer or supervisor is generally affected by the execution of documents within his workplace and, according to the Notary Public Code of Professional Responsibility, is disqualified from attesting to the identities of his employee's clients.\footnote{95} A co-signer personally known to the notary is disqualified from attesting to the other signer's identity under this standard as

\footnotesize{92. NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY § III-D-4 (1998).
93. Id. § III-D-3.
94. Id. § III-D-4.
95. Id.
These disqualifications ironically leave the notary with no other choice but to rely on the inferior form of identity verification: ID cards and papers. The bar for disqualifying witnesses is set so low that the imagined problems this standard seeks to prevent could flourish by compelling notaries to rely on the weakest form of signer identification. In other words, the cure may be worse than the illness.

The primary evil in using interested persons as credible witnesses is that their conflict of interest creates a temptation to abuse their position and benefit themselves in some way. Conflicts of interest are ubiquitous in every facet of modern life, business, law and government. Very often the mandatory disqualification of the interested party accomplishes little good, and may even cause a degree of harm to the public or client. Therefore, the higher standard invoked among many professions and governmental bodies is to require full and timely disclosure of one's conflict of interest. The degrees of interest one may have can vary widely, thus necessitating the disqualification of the person in severe cases. In other instances, the mere candid disclosure of the person's interest serves notice to other parties relying on the transaction that they may wish to withdraw from the situation.

There is a more reasoned approach to credible witnesses who have an interest in the transaction. Notary statutes could require that the notarial certificate disclose the notary's reliance on the witness, even though the witness attests to the signer's identity as an interested party. By this approach, material information is disclosed from which reasonable minds may draw informed decisions.

It is ironic that while the whole premise of the valid use of credible identifying witnesses is the chain of personal knowledge between the notary, the witness and the document signer, several state statutes permit the use of two credible witnesses who are not personally known to the notary. The two unknown witnesses attest to the identity of a signer also unknown to the notary. The merit behind this approach is that it provides an alternative means for a signer to have a signature notarized, although he knows no notaries and possesses no ID.

The Florida notary code, for example, permits this manner of dual credible witnesses under limited circumstances. The witnesses must sign sworn affidavits that are notarized by the notary, the text of which fully discloses the nature of the parties'
relationships and how the notary identified the two witnesses.100

F. Identification Cards and Documents

Identification documents serve as perhaps the most commonly used means for identifying document signers. The most commonly used form of ID is the driver's license.101 It is universally viewed as the most reliable form of ID because the state government issues it. It contains a photograph and other pertinent information about the bearer. The assumption is that the states invoke substantial procedures to verify the license applicant's true identity as a condition precedent to its issuance. The states and their citizens have a lot at stake over this process. So, if it is good enough for the state, then it is supposedly good enough for a notarization.

There is no limit to the variety of identification cards in use across America. They originate everywhere: public schools, employment sites, the military, licenses to drive and memberships to clubs and co-ops. ID cards can even be purchased from retailers. There is no such thing as an "official ID." This characteristic of our society is a testimony in action to our individual liberties: the freedom to associate, the freedom to express ourselves and the freedom to live anonymously.102 There is no central source of identification cards, and there is no uniformity to their style, content or construction.

ID cards are easy to make for legitimate purposes and are easy to counterfeit for fraudulent purposes. But it must be clear in any discussion of this type that there is no need for centralized, uniform identification cards for the residents of this nation. However, the technology for such centralization is readily available. ID cards with microchips of data, often called "smart cards,"103 could be the only ID a person would ever need regardless of employment, university matriculation or licensure to drive a car or to practice dentistry.

The problem with ID cards for notarial purposes is complex. There is no clearly articulated universal standard for classifying an ID as valid, adequate, reliable or credible. Moreover, the

100. Id.
101. Based on informal surveys of notaries in attendance at notary training seminars conducted nationally by the Notary Law Institute, the evidence is convincing that the most commonly used ID by document signers is a driver's license.
102. See Griswold v. Connecticut, 381 U.A. 479, 479 (1965) (recognizing that the Bill of Rights creates a right to privacy).
strength and reliability of a person's ID usually depends on the purpose for which it is designed. In applying for a U.S. passport, the standard for valid identification of the applicant is manifestly higher than it is for admission of a teenager into an "R" rated movie. A notary's standard for acceptable signer ID will be considerably different than that of an employee's ID to pass into a secured area of his high-tech company.

There has been occasional public discussion over the perceived need for uniform ID, perhaps issued by the federal government. It is an appealingly simple solution for achieving uniformity, dependability and credibility, and for mitigating against the vast volumes of counterfeit ID circulating within American society. Needless to say, such discussion is the "political third rail," whereby any politician in advocacy thereof will suffer quick political death. More importantly, the idea of centralized federal ID, even on a volunteer basis, raises serious constitutional and public policy questions. The very concept abrogates our openness as a society and emasculates the human soul's divine right to freedom. No serious thinker could take the idea seriously. Sadly, however, there are those posing as advocates for the public's well-being who support a voluntary system of federally issued ID. Their reasoning is based on unsound principles and faulty analysis.


105. Kevin B. Williams, Policing 'Park'; Theaters Careful About Enforcing Film's R Rating, CHI. SUN TIMES, July 1, 1999, at 41.

106. The Minnesota League of Women Voters explains in a voter information brochure that unregistered voters may register at the voting polls if they produce two forms of ID, which may consist of: driver's license, passport, employment ID, post-graduate university ID or a recent utility bill. The League of Women Voters' Minnesota Education Fund, Voting and Election Information (last modified Apr. 17, 1999) <http://Freenet.Msp.Mn.US/ip/pol/iwvmn/voting/html#reg>.


108. Id.; To ID or Not to ID, supra note 107, at 5; Would National ID Threaten Privacy?, supra note 107, at 16-17.
The appropriate standard by which a notary should examine a signer's ID card is unchanged from over the generations. The standard of reasonable care, regardless of changes to notary statutes, always applies. Although the known volumes of counterfeit ID that circulate in our country is alarming, there is a tendency for some to assume that the notary may be incapable of adequately screening signer ID in such an environment. Critics argue that the likelihood is too great that a signer's ID may look authentic, but really be counterfeit. Therefore, the reasoning goes, the notary's scope of discretion in accepting and examining a signer's ID must be restricted in order to save the notary and the public from signature fraud.

It is a curious argument that notaries should not be permitted to decide what types of ID they will accept. The argument is even more peculiar where a person's valid ID comprises the important legal standard of “satisfactory evidence” on which the system of law and notaries has relied successfully for centuries.

The notary statutes of twelve states impose stringent limitations on what constitutes satisfactory evidence in the form of identification cards or papers. Of particular concern are the requirements that a signer's ID be “current,” and be issued from a state or federal government entity. The state of Texas provides, for example, that:

- an officer may accept, as satisfactory evidence of the identity of an acknowledging person, only:

  - the oath of a credible witness personally known to the officer; or

  - a current identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging person. (Emphasis added).

The State of Florida, on the other hand, permits the notary to identify the signer by:

- reasonable reliance on the presentation to the notary public of any one of the following forms of identification, if the document is current or has been issued within the past 5 years and bears a serial or other identifying number:

109. BLACK'S LAW DICTIONARY, supra note 29, at 1167.
110. ARIZ. REV. STAT. ANN. § 41-311 (West 1999); CAL. CIV. CODE § 1185 (West 1999); CONN. GEN. STAT. ANN. § 3-94A (West 1999); FLA. STAT. ANN. § 117.05 (West 1999); NEB. REV. STAT. § 64-205 (1998); NEV. REV. STAT. ANN. § 240.163 (Michie 1998); N.C. GEN. STAT. § 10A-3 (1999); OR. REV. STAT. § 194.515 (1998); TENN. CODE ANN. § 66-22-106 (1998); TEX. CIV. PRAC. & REM. CODE ANN. § 121.005 (West 1999); UTAH REV. CODE ANN. § 46-1-2 (1998); WASH. REV. CODE ANN. § 42.44.080 (West 1999).
111. TEX. CIV. PRAC. & REM. CODE ANN. § 121.005 (West 1999).
A Florida identification card or driver's license issued by the public agency authorized to issue driver's licenses;

A passport issued by the Department of State of the United States;

A passport is issued by a foreign government if the document is stamped by the United States Immigration and Naturalization Service;

A driver's license or an identification card issued by a public agency authorized to issue driver's licenses in a state other than Florida, a territory of the United States, or Canada or Mexico;

An identification card issued by any branch of the armed forces of the United States;

An inmate identification card issued on or after January 1, 1991, by the Florida Department of Corrections for an inmate who is in the custody of the department;

An inmate identification card issued by the United States Department of Justice, Bureau of Prisons, for an inmate who is in the custody of the department;

A sworn written statement from a sworn law enforcement officer that the forms of identification for an inmate in an institution of confinement were confiscated and that the person named in the document is the person whose signature is to be notarized; or

An identification card issued by the United States Immigration and Naturalization Service. 1

As indicated by the example provisions from the Texas and Florida notary codes, the signer's identification cards must be current and issued by state or federal government. The Model Notary Act advocates the same.

Satisfactory evidence of identity means identification of an individual based on: (i) at least 2 current documents, one issued by a federal or state government with the individual's photograph, signature, and physical description, and the other by an institution, business entity, or federal or state government with at least the individual's signature . . . . 2

Utah enacted, without benefit of public comment or input, the signer identification provisions of the Model Act in March 1998. The limitations and hardships these provisions placed on the public were so onerous and shocking that an outraged legal community demanded that the Utah notary clerk's department

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1. FLA. STAT. § 117.05(5) (amended 1999).
promulgate a repeal of the new strictures. Accordingly, it is being repealed during the current 1999 General Legislative Session of Utah.114

Many states require that a signer’s ID be “valid,” without defining what constitutes “validity.” That is left to the notary’s sense of reasonable care and to the context in which the signer produces ID to the notary. Many have speculated that “valid” means “current.” Others have added to that by asserting that valid also means “official.”115 Neither speculation is very helpful to the notary or to the public in general.

The Utah experience exemplifies the problems created by unduly restricting the types of ID a notary may accept from a document signer. While it may appear reasonable to require that the ID be current, it is not necessarily logical. This means, for example, that a signer’s state-issued driver’s license that was current yesterday was valid for the notary to verify the signer’s identity yesterday. But today, the driver’s license is expired and is no longer a valid basis for the signer to identify himself to the notary. The owner of the driver’s license hasn’t expired in bodily terms; only his privilege to drive has.

Millions of Americans are not licensed to drive and they possess no government-issued ID. Unduly restrictive statutory provisions such as those mentioned exclude millions from obtaining a notarization of their signatures, unless they personally know the notary or are accompanied by a credible witness the notary personally knows. The unfortunate obstacles these strictures create is exacerbated by states that require the signer to produce two forms of ID cards.

Unless a notary is free to accept any form of ID that reasonably verifies the signer’s identity, major population groups are unduly impeded in their personal and business transactions. The elderly and the youth of America are particularly vulnerable under these restrictions. Such impedance is literally self-defeating. Moreover, they contravene the very purpose of

114. Interview with Fran Fish, Utah Notary clerk (May 1999). Based on this telephone conversation, the strictures on forms of ID a notary could accept were unadvisedly introduced by the notary clerk and were enacted in a vacuum of public input, without consultation with anyone in the notary or legal communities. Id. This surprise provision of law fell under severe criticism from the legal community and has now been repealed only seven months after its enactment. Id.; Bills Passed By 1999 Utah Legislature, DESERT NEWS (Salt Lake City, Utah), Mar. 6, 1999, at B05.

providing ready access to notarial services in America.

Notaries are very hard-pressed to strictly comply with the statutory requirements for current ID, especially when it requires two forms. Most notarizations occur within the workplace as a service to the customer. Strict adherence to these strictures often causes the notary to appear overbearing and unreasonable to the client and to the notary’s employer. Too frequently, the notary finds no logical justification for strict compliance with the statute and begins a practice of cutting corners and shading the truth when it comes to identifying the document signer. It is often the sad consequence of poorly conceived or unreasonable legislation that it is soon disregarded by notaries and document signers, and the majority become scofflaws.

G. Overbearing Notary Laws May Be Self-Defeating

The fundamental purpose for notarizing signatures is to render a higher degree of security to transactions between people. If the notary laws of the various states erect too high a barrier between the public and the services of notaries, the public will either take their business elsewhere, or avoid notarizations wherever possible. However, this is a troubling prospect because so many transactions are required by law to be notarized, such as real estate conveyances and estate documents. It can hardly be said that overly restrictive identification standards are justified by the anticipated benefits they provide. To the contrary, remedies such as these are most often quite worse than the problems they were meant to prevent.

One of the more frequently discussed issues in notary literature in recent years concerns America’s growing problem with counterfeit and false identification cards and documents. The problem is real, but it overshadows other issues notaries face routinely when attempting to identify document signers.

Notaries struggle with having to notarize for people they do not know, who have no identification or any acquaintances that can serve as credible witnesses. Presently, notaries in this situation have no alternative but to refuse to notarize for the individual. It is even more frustrating when the signer has identification in forms that do not conform to the statutory requirements.

V. SUGGESTIONS FOR REASONABLENESS

The notary statutes of all fifty states should be amended to provide the notary with additional tools and better-defined

116. This conclusion is based on personal conversations the Author has had with notaries of various states over the past six months.
117. Forgery Prevention, supra note 31, at 5.
standards for signer identification. This would be particularly beneficial to document signers who are patients in hospitals and other long-term health care facilities, to the elderly and the youth, to incarcerated people, and to those who have had recent name changes due to changes in marital status.

Any statutory amendment addressing these situations should foremost contemplate the infinite variety of circumstances notaries face. A notary's exercise of reasonable care is society's optimal protection against signature fraud in every circumstance.118

The states should be encouraged to amend their notary statutes to:

(1) Provide language and definitional parameters that require the notary to exercise reasonable care in verifying a signer's identity.

(2) Authorize the notary to verify a signer's identity by reasonable means other than ID cards or identifying witnesses. This authority would apply only in situations where other information would reasonably corroborate the signer's identity, and where refusal to notarize based on the signer's lack of valid ID cards or inability to produce a qualified identifying witness would serve undue hardship on the document signer. A provision of this kind would enable notaries to verify identities of hospital and nursing home patients through patient ID wristbands or medical records. The elderly could be identified by medical prescription labels, utility bills or by senior citizen center records.119 Students in public schools could be identified by school enrollment records, while prison and jail inmates could be identified by inmate records or by the inmate's stamped name on his prison uniform.120 People who have recently changed their names through marriage or divorce could be spared from having to prove to the notary their recent change of marital status.

(3) Grant the notary broad discretion in examining and accepting signer identification cards and documents. Define the optimal standard a notary should seek, including a photograph of the signer, a signature of the signer, some description of the signer and some indication of the ID's source of origin. The notary should be required to reasonably examine the ID for indications that it is credible.

118. Discussions of the emerging "digital signature" and "cybernotary" technologies are giving justified attention to the applicable standards of care to be applied in protecting against false identities and signatures in digital form.


(4) Require the notary to fully disclose within the notarial certificates of acknowledgment and jurats how the signer was identified, be it by personal knowledge, by identifying witness (the name of whom is disclosed and accompanied by the witness' signature), or by identifying documents (the specifics of which are fully disclosed).

Notarial services and procedures are not exacting in nature or quality. They require considerable common sense and attention to the fundamentals. Most importantly, they require the notary to pass judgment on a number of issues. The most subjective issue is the verification of the signer's identity.

CONCLUSION

A person's true identity cannot be dispositively proven in written form. Even the attestation of a person's identity by an identifying witness is vulnerable to deceit and fraud. The truest shield of protection against signature fraud is the notary public that faithfully exercises genuine reasonable care with skill and prudence. Attempts to pave over this time-honored standard with overbearing legislation disserves the public for whom such efforts were intended to protect.

The notary's exercise of reasonable care in verifying a signer's identity is the optimal assurance of signature authenticity. It always has been, and it most likely always will be.