



By Lisa A. Tyler
National Escrow Administrator

It is important to understand the FNTG Family of Companies has established policies and procedures in response to issues or challenges the industry is facing. One of those policies is our Document Execution Guidelines. It is imperative as a title insurance company we take steps to protect our insured from fraud and forgery. Therefore, documents which we rely on for insurability must be notarized in strict adherence with our underwriting requirements. The story "CAUTIONARY tale" is a reminder to all employees to comply with the Company's policies and procedures at all times. There was no reward in this story. Instead it illustrates how learning all of the Company's policies and procedures can result in a happy ending.

Being commissioned as a notary is an honor and responsibility. Each commissioned notary is personally liable for knowing the statutes and rules which govern the acts of the notary public.

As a result, last year we provided twelve helpful articles to assist commissioned notaries in fulfilling their duties. Each article was followed by a poll question. Read the answers to each in the article entitled "NOTARY know how poll questions"

Have you ever received a call from a check cashing center asking you to verify whether a check is a valid check? Read "THEY just won't quit" to find out why it is important to take their call.

Continuing with our series on the topic of "PROPER document execution for recording and insuring," in this edition we will discuss when a borrower desires to sign their loan documents with their lender. SPOILER ALERT: A borrower signing closing documents in the presence of an employee of the funding lender is completely acceptable. Read "SIGNING with a lender" for more detailed information.

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Rusty and Penny Keys were selling one of their homes in Oregon. They currently reside in Canada, although they are U.S. Citizens. In anticipation of closing, their escrow officer set up an appointment with a Company approved mobile notary to meet them just across the border in Seattle, to sign and acknowledge their closing documents.

The seller's plans changed. They were unable to travel to Seattle for signing because they had very sick kids at home. Mr. Keys asked his escrow officer if they could simply go to their bank to sign in front of a notary public there in Canada. The escrow officer agreed and overnighted the closing documents to the Keys at their home in Canada, so they could take them to their bank for acknowledgment.

As part of the closing package the escrow officer included a return label so the sellers could send the originals directly back to her. However, the originals were not returned to the escrow office. Instead, the documents were returned to a notary who works at an investment firm just down the street from the escrow branch in Oregon.

The listing agent's assistant picked up the documents from the notary and delivered them to the escrow branch. When the escrow officer received the documents, she noticed that the notary had notarized the documents two days earlier, on May 3, 2017. This did not seem possible, so the escrow officer decided to track the package using the tracking number still attached to the shipping envelope.

The escrow officer discovered the package left Canada on May 3, 2017. She knew something was wrong. According to the tracking information the package was delivered to the notary on May 5, 2017. The notary even signed for the package. How could the Keys have appeared in front of the notary two days earlier if she had not even received the package yet? The escrow officer escalated the situation to her manager.

The manager reviewed the tracking information and compared the sellers' signatures to the signatures on the deed of trust they signed when they purchased the property. The signature by Mrs. Keys on the deed of trust looked nothing like the signature on the recently executed deed.

The manager discovered the office never had any direct contact with Mrs. Keys — only her husband. They were given a cell phone number for Mrs. Keys but every time they called, it went straight to voice mail. It looked all too suspicious and appeared the Keys did not personally appear in front of the notary.

The manager took the time to review the Company's underwriting policies with the escrow officer. She pointed out to the escrow officer the manner in which the documents were acknowledged did not comply with Company policy. For this reason alone, despite their other suspicions, the documents would have to be re-executed.

The escrow officer and manager contacted Mr. Keys, and explained to him the documents had to be re-executed. The documents would have to be notarized by a notary from Bancserv here in the states.

The escrow officer and manager provided detailed instructions to Mr. Keys, stating both he and his wife must appear in front of the notary, and they each must provide an original, government issued identification which included their picture, personal description and signature on it to the notary.

An appointment was set for the Keys to sign with a mobile notary through Bancserv. Both Mr. and Mrs. Keys appeared in front of the notary. They were properly identified by the notary.

The documents were executed and the transaction successfully closed. As an added measure, the escrow officer and her manager compared Mrs. Keys' signature on the newly executed deed and found it did match her signature on the deed of trust in the chain of title.

MORAL OF THE STORY

Know the Company's policies and procedures and be sure to adhere to them. In this example, it is possible the policy avoided a potential claim of forgery. If unsure about the proper steps to take, do not hesitate to contact the National Escrow Administration team at settlement@fnf.com for further guidance.

This article was provided by contributing author, Diana Hoffman.



**TELL US HOW YOU
STOPPED
FRAUD**

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NOTARY *know how poll questions*

We provided helpful tips for commissioned notaries each month beginning in January 2017, followed by poll questions. Below are the correct responses to each question.

1. True or False: Anyone can ask to view all pages and entries of a notary's journal of notarial acts at any time.

The correct answer is **False!** A person may request in writing to view a particular journal entry but not the entire journal.

2. A notary is protected from personal liability through their:
- Surety bond
 - Errors & omissions insurance
 - Commission
 - Homeowner's insurance

The correct answer is **b. Errors & omissions insurance.** A surety bond may pay damages up to the amount of the bond for losses caused by a notary's actions, but it does not afford the notary any protection. In fact, the surety company may have grounds to pursue the notary for reimbursement. Only errors and omissions insurance will protect the notary personally.

3. A notary must place the signer under oath when the notarial certificate is a:
- Acknowledgment
 - Certification
 - Jurat
 - Apostille

The correct answer is **c. Jurat.** A notary must place the signer under oath when the document states it must be subscribed and sworn to, the notary certificate is a jurat and not an acknowledgment.

4. If the signer is blind the notary must:
- Place the signers hand on the signature line
 - Consult their state rules and regulations
 - Read the document to the signer
 - Refuse to acknowledge their signature

And the correct answer is **b. Consult their state rules and regulations.** Most states notary laws require two witnesses to a seeing impaired person's mark, but not all. It is the commissioned notary's responsibility to know the laws that govern his/her state.

5. True or False: The Company does not recommend commissioned notaries keep a journal of all their notarial acts.

The correct answer is **False!** Regardless of whether the state requires it or not, the Company always recommends a commissioned notary keep a journal of their notarial acts.

6. If the signer speaks another language than the notary the notary should:
- Require someone interpret for them
 - Decline to acknowledge their signature
 - Trust the real estate agent or loan officer explained everything to the signer and acknowledge their signature.

In Arizona, **a. Require someone interpret for them** is the correct answer. In Arizona, the law allows the notary to communicate through an interpreter which is unique. In other states, **b. Decline to acknowledge their signature** because the law requires the notary be able to communicate directly with the signer.

7. In all instances a signer must personally _____ in front of a notary prior to acknowledging the signer's signature.

If you answered **appear** you would be correct. The physical presence of the signer before the notary is required for a valid acknowledgment.

8. In lieu of specific guidelines from a commissioned notary's state, an identification presented to a notary should:
- Be government issued
 - Contain a photograph of the signer
 - Contain a physical description of the signer
 - Be current
 - Have a signature for comparison purposes

All of the answers are correct. Positive identification of the signer is the core function of the notary public.

9. True or False: The Company can override notary rules and regulations by requiring a notary to accept an identification which may not be acceptable to the state.

The answer is **False.** A notary should always comply with the rules and regulations of his/her state regulator in order to protect the notary commission.

10. A notary public is a public official who acts as the unbiased, third party _____ to the identity and signature of the person who comes before the notary for a specific purpose.

If you typed the answer **witness**, you would be 100% correct! A notary should not be a party to the overall transaction related to the documents they are notarizing.

11. A commissioned notary should never:
- Allow someone to borrow their notary seal
 - Allow someone to borrow their journal of notarial acts
 - Acknowledge the signature of someone who is personally known to the notary
 - Acknowledge a document which has blanks in it

The correct answers are **a. Allow someone to borrow their notary seal; b. Allow someone to borrow their journal of notarial acts; and d. Acknowledge a document which has blanks in it.**

12. A _____ is required to protect the public from any mistakes or wrong doing of the commissioned notary.

If you typed, **surety bond** as your answer you would be correct! A surety bond protects the public, not the commissioned notary.

Thank you for participating throughout the year. We look forward to seeing your answers to the "PROPER document execution for recording and insuring" poll questions this year.

THEY just won't quit

Check cashing centers offer people an alternative to traditional banking methods. They serve a certain clientele who typically have reasons they cannot deal with banks, such as credit issues or problems with a previous bank account. People who cannot provide proper documentation to open a bank account utilize check cashing facilities.

Check cashing facilities cash checks after taking a percentage of the check in exchange for providing the service. They serve a purpose for the portion of the population who need their services. Unfortunately, some people utilize a check cashing center in an effort to get away with fraud.

A woman went into a check cashing center to cash this check:



The check cashing center was suspicious right away. At first glance, they felt the check was not legitimate. They took the check and a copy of the payee's driver's license, and instructed her to come back the next day for her cash.

SIGNING with a lender

From time-to-time borrowers and lenders want to conduct the signing of the loan documents in the funding lender's office. That is a perfectly acceptable practice as long as the notary is an employee of the funding lender and not the mortgage broker or other correspondent lender.



The check cashing center did an internet search for Ticor Title Company and found contact information for Carrie Haynes, San Diego County Escrow Administrator. They called her to verify the check.

Carrie did everything right. She took their call, asked them to send her a copy of the check and verified the check was not a valid issue. The check cashing center thanked Carrie for her time and that was it.

This is an example of just one of many scams involving fraudulent checks using one of our Companies names or bank accounts. Any time a check cashing center calls to verify a check, always take their call and ask them to send a copy of the check. In most instances, just like this one, simply looking at the check identifies it as an obvious fake.

This article was provided by contributing author, Diana Hoffman.



To prove the person acting as the notary is an employee of the funding lender, they need to provide the settlement agent with a business card, email, letter or statement to that affect. The proof has to be maintained in the closing file to prove the file was closed by an employee of the insured lender.