

I Swear, Agents as Notaries

Your man on the legal corner is quite concerned and has been for some time that agents who are also notaries are not paying attention to the requirements imposed by that office.

A notary acts as an official, unbiased witness to the identity and signature of the person who comes before the notary for a specific purpose. The person may be taking an oath, giving oral or written testimony or signing or acknowledging his or her signature on a legal document. In each case, the notary attests that certain formalities have been observed. The key function is to be certain that the person appearing before the notary is who that person claims to be. A notary who fails to perform notarial acts in accordance with the law may be sued for damages caused by their official misconduct or prosecuted criminally. The employer of a notary may also be liable for the notary's misconduct under certain conditions.

The most common mistake I think agents make when acting as a notary is to not require the act be done in their presence. A notary must have the person sign or acknowledge a pre-existing signature in the notary's presence. That bears not just underlining but repeating: the act must be done in the notary's presence. It is not permissible for you to notarize a signature that was not signed before you even if you are super-duper-absolutely-positively-cross-your-heart sure (the highest legal standard there is, of course) the person you think signed actually signed. So, for example, it is not appropriate for you to notarize a client's signature that was signed in California but not notarized there even if the client tells you over the phone that the signature is genuine. There may soon come a day when "in one's presence" will incorporate video conferencing or Internet cameras, but for now, at least in Virginia, they do not.

Another common mistake is that agent/notaries fail to require identification of someone who is not personally known to them. You may not take a person's word that they are who they say they are, and you may not take a third party's word that someone is who he or she says they are. That is simply not appropriate. Additionally, if a document or acknowledgement calls for the person to be under oath (uses the words affidavit or oath or sworn and subscribed) then you must swear the person in. Frankly, my experience has been that most notaries, not just agent notaries, frequently ignore this requirement. I realize that it can be embarrassing to ask someone to raise his or her right hand and swear to tell the truth, etc. but you must do so. Lastly, to resolve one common misconception, Virginia law does not require a notary to own a seal or use a seal on any document although lenders frequently want them.

Legal Corner

Please feel free to email the author at bdlytle@lytlelaw.com if you have any questions about this article or have a topic to suggest for a future article.