

MINNESOTA SECRETARY OF STATE

NOTARY STUDY GROUP



PRELIMINARY

FINDINGS AND RECOMMENDATIONS

MAY 2008

May 2008

Minnesota Secretary of State
Notary Public Study Group
Preliminary Findings and Recommendations

The Minnesota Secretary of State organized a Notary Public Study Group to examine Minnesota's statutes regulating notarial acts and to develop recommendations on potential changes the Minnesota Legislature should consider making to our laws. In addition, he asked that the group consider areas they felt the National Conference of Commissioners on Uniform State Laws (NCCUSL) should examine in developing the model notary public law which is currently under consideration by that group.

The Notary Public Study Group included representatives from a variety of organizations including state and local government representatives, the judiciary, legal and banking/mortgage interests, notaries public organizations and other groups who provide or rely on notarial services. The Study Group met six times and identified a wide variety of issues which they wanted to consider. They then agreed upon recommendations amending Minnesota statutes and, in addition, compiled a list of issues which they felt should be examined by NCCUSL in their deliberations.

In addition, to their recommendations to the Legislature and NCCUSL, the study group examined many other issues and suggestions from members and others which were not included as recommendations and which the Study Group members did not feel should be implemented at this time.

The following is a summary of the Study Group's Findings and Recommendations:

Recommendations to the Minnesota Legislature

1. Require that the name used on the notarial stamp, jurat and the signature be identical.
2. Establish that a certificate of a notarial act is sufficient if it is in English and meets the other requirements of the law.
3. Allow all qualified persons from adjoining states to serve as notaries public in Minnesota if they designate a specific MN county for filing a copy of their notary certificate.
4. Authorize a criminal background check as part of the notary application process.
5. Provide that a notarial stamp and journal are the personal property of the notary and exempt from execution.
6. Provide that the information on the notary stamp may be affixed electronically if it is logically and securely affixed or associated with the electronic document being notarized.
7. Provide specific processes for accommodation of persons with physical limitations which impair their ability to physically or electronically sign a document.
8. Set a cap of \$5 on notarial acts.
9. Provide a fee and format for counties to use in authenticating a notarial act.
10. Provide specific directions for ex-officio notaries in completing a jurat/certification including the use of a stamp similar to a notaries public stamp.
11. Move the collection of the \$80 state recording fee from the county to the secretary of state.

Recommendations to the National Conference of Commissioners on
Uniform State Laws

1. Define the basic procedures and processes for e-notarization but do not provide specific technology requirements.
2. Develop a list of acceptable methods for identification of the signer/oath taker.
3. Define the basic information which should be contained in a journal and examine what should be public and what needs to be private in order to protect against identity theft.
4. Address the use of electronic journals and also examine how to deal with multiple entries when a particular type of activity takes place in large volumes such as might happen in a law firm or mortgage company.
5. Provide procedures for the disposition of journals and the length of time they must be maintained by the notary or his or her estate.
6. Consider defining penalties for the unlawful use or possession of the notary's records or equipment and the destruction, defacement or concealment of notarial records.
7. Define and clarify notarial infractions such as engaging in the practice of law without a license, notarizing documents with blank spaces, incomplete jurats, etc.
Provide some direction on prohibited acts but do not make the list exclusive, instead use language such as "including, but not limited to".
8. Provide direction on the status of a notary if they move to another state and no longer meet the qualifications to serve as a notary in the state they are commissioned in.
9. Discuss the specifications for the stamp and what should be included on it. Provide for a stamp for notaries public and one for ex-officio notaries or other notarial officers.
10. Address the disposition of the physical and electronic stamp/seal and any need for equipment security requirements.

Issues that were considered, but not recommended for change

1. Provide specific requirements and procedures for the electronic notarization process.
2. Require notaries public to keep and maintain an official journal.
3. Require a mandatory background check for all notary public applicants.
4. Require mandatory training for all notaries public.
5. Require a bond be obtained by a notary public as part of the application process.
6. Eliminate the recording of notary certificates in the county.
7. Eliminate a set fee or cap for notarial acts.

The Study Group will circulate these Preliminary Findings and Recommendations for comment from the public and interested parties. They will reconvene in November 2008 to make changes or additional recommendations based upon the solicited comments and suggestions. The Bill will be recommended for re-introduction during the 2009 Session.

Respectfully Submitted
Minnesota Notary Public Study Group
May 2008