

# 1997 SUNSET REVIEW

## *Notaries Public*



Submitted by the  
Colorado Department of  
Regulatory Agencies  
Office of Policy & Research

# STATE OF COLORADO

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Roy Romer  
Governor

October 15, 1997

Members of the Colorado General Assembly  
c/o The Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the regulation of Notaries Public. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 1998 Legislative Committees of Reference. The report is submitted pursuant to Section 24-34-104 (8)(a), of the Colorado Revised Statutes, which states in part:

*"The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section..."*

*The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination . . ."*

The report discusses the question of whether there is a need for the regulation provided under article 55 of title 12, C.R.S. The report also discusses the effectiveness of the division and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia  
Executive Director

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# *EXECUTIVE SUMMARY*

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The Department of Regulatory Agencies (DORA) has concluded its 1997 Sunset Review of the commissioning of notaries public by the Department of State (DOS). DORA found there is little real protection to the public offered by this program. However, it is a necessary function to facilitate interstate commerce. DORA explored the possibility of deregulating the commissioning of notaries. However, professionals using notary services were opposed to this option. In evaluating the operation of the DOS against the Sunset Evaluation Criteria in §24-34-104 (9)(b), C.R.S., DORA found several areas where statutory changes are necessary to remove impediments, or enhance the DOS' ability to operate in the public interest. The report contains four statutory and one administrative recommendations.

Each recommendation is followed by a brief summary and an expanded discussion of the analysis and issues surrounding the recommendation. A single discussion section is used when several recommendations concern a single topic area. The recommendation section begins on page 15 of the report.

The first recommendation is to continue the issuing of notary commissions by the DOS. The real purpose of the notary seal is to facilitate private transactions. The only state requirement for a notary seal is for transactions involving real estate. In conducting the review, attempts were made to identify organizations that may be interested in administering the notary program. No private organization expressed an interest, in fact they indicated opposition to the entire concept of deregulation.

The second recommendation is to create a separate cash fund for the notary program and assess fees to fund the program. The DOS is not authorized to create separate funds for some of the programs administered by the DOS. This results in a commingling of funds and cross subsidization of certain programs. The state will be better served by clear identification of the expenses of individual programs.

This report makes recommendations to implement pre-licensure education for notaries. Currently no education or experience is required to become a notary. A simple examination process to ensure a minimal understanding of the Notary Act should be required. If the state is going to continue to be involved in the regulation of notaries public, the regulation should be meaningful.

## *Executive Summary*

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The last recommendation is to clarify the disciplinary authority of the Department of State over violations of the Notary Act. The Administrative Procedure Act allows program administrators to initiate investigations on their own motion. The Notary Act does not clearly give this authority to the Department of State. The recommendation is to provide this ability to the Department of State.

The administrative recommendation is to improve the recordkeeping methods of the DOS. Information regarding complaints, investigations, and enforcement actions are not compiled. Information of this type is available only by name or case number.

## **BACKGROUND**

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### **The Sunset Process**

The commissioning of notaries public under the Notaries Public Act, §12-55-101 et seq., C.R.S., is scheduled to terminate on July 1, 1998 unless continued by the General Assembly pursuant to §24-34-104, C.R.S. The purpose of the sunset report is to evaluate the performance of the Department of State (DOS), based on the statutory evaluation criteria which are attached as Appendix A of this report. The central question this report seeks to answer is whether the continuation of this program is necessary and beneficial to the public health, safety, and welfare of the people of Colorado, and whether, if the function is continued, statutory or regulatory changes are necessary to improve agency operations and to enhance the public interest.

This review included interviews with notaries public, staff of the Department of State, as well as representatives of the legal profession, the real estate profession, and professional associations. Pertinent Colorado statutes were reviewed.

### **Background**

A notary public is generally defined as an individual or officer who is authorized to attest to the genuineness of deeds or written instruments in order to render them available as evidence. A notary public commissioned in Colorado is empowered to take acknowledgments, administer oaths and affirmations, certify that a copy of a document is a true copy of another document, and take depositions. Notaries public are required by law to keep a journal of every acknowledgment taken to an instrument affecting the title to real property. A notary public who has a disqualifying interest in a transaction, such as the receipt of benefit from the transaction, is not permitted by law to perform a notarial act in connection with the transaction.

## **History of Notaries Public**

The origin of notaries public can be traced back to ancient Rome. Due to the low literacy rate, there arose a need for trusted individuals, notaries, to write out important documents, such as contracts and wills, and retain them. Since most lay persons were unable to write or sign their name, they instead used a metal or clay disk engraved with their coat of arms impressed upon hot wax. A document formalized in this fashion, when prepared by a notary, was considered authentic in Rome, meaning that the document was valid.

As the Roman Empire grew, so did the volume of documents needing production and reproduction. Notaries adopted the disk and hot wax method of attesting a document. A ribbon was passed through two holes in the document and the seal on hot wax joined the two ends. This guaranteed that the document was in its original form if the seal was not broken and is the most likely origin of the seal that most states require notaries to possess today.

By 805 A.D., the acts of notaries had become so vital that Charlemagne ordered each bishop, abbot, and count to have a notary. Land grants were even drawn and witnessed by notaries. This common law history formed the basis of notary law in England which was later used by the United States.

In early Colonial times, election or appointment were the initial methods of becoming a notary. Some of the first notaries were appointed by the President of the United States. This soon became too cumbersome and state legislatures eventually took control of the appointments and supervision of notaries, which were usually delegated to the Secretary of State. In Colorado, the Secretary of State has responsibility for regulating notaries public.

Over the course of history, the powers of notaries have changed dramatically. In Rome, notaries served as scribes and legal advisors in the preparation of documents. With increased literacy and the growth in the number of lawyers, the powers of the notary have gradually diminished through time. Today, notarial functions are primarily ministerial rather than judicial. Notaries today may take acknowledgments, administer oaths and affirmations, certify that a copy of a document is a true copy of another document, and take depositions.

# COLORADO REGULATION OF NOTARIES PUBLIC

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## Statutory Review

Colorado law provides for the commissioning of notaries public in article 55 of title 12, known as the Notaries Public Act ("Act"). The Act is divided into two parts: Part 1, general provisions for notaries public, and Part 2, provisions establishing uniform recognition of acknowledgments. The Act was significantly amended in 1981. The Secretary of State believes that the changes made at that time have improved the statutes greatly.

The last Sunset Review was conducted in 1991. The major recommendation implemented at that time was eliminating the bonding requirement for notaries public, which was highly controversial at the time. The 1991 Sunset Review documented that the bond was rarely used by consumers and the bond fees represented millions of dollars of unnecessary expense by notaries. This review found no harm to consumers from the lack of a bond and confirms a significant reduction in expenses for notaries.

## Part 1 - General Provisions

The Act defines terms that are key to understanding the statute: notarial acts, notarization, and notary are all defined in §12-55-102, C.R.S. The most important of these definitions is "notarial acts". Administering oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents exemplify some official acts of notaries public.

Section 103 of the Act empowers the Secretary of State to appoint and commission notaries public. A commission is effective for four years and notaries must reapply for a new commission. Sections 104 and 105 of the Act establish the requirements for an individual to be commissioned as a notary public in Colorado. The applicant must:

1. Be a qualified elector of Colorado at the time of appointment.
2. Be able to read and write the English language.
3. Provide a business and residence address in Colorado.



## *Chapter 2 - Colorado Regulation of Notaries Public*

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4. State that his or her commission as a notary public has never been revoked.
5. State that he or she has not been convicted of a felony.
6. Provide a handwriting sample of his or her signature.
7. Make and sign an affirmation to perform notarial acts in compliance with the law and affirming that he or she has read the notary law.

The Act empowers the Secretary of State to deny an application or revoke a notary public commission. Section 12-55-107, C.R.S., establishes seven grounds for denial or revocation. A commission can be denied or revoked if the notary or applicant:

- Submits an application for commission and appointment which contains substantial and material misstatement or omission of fact;
- Is convicted of official misconduct under the provisions of Part 1 of the Act or any felony;
- Fails to exercise the powers or perform the duties of a notary public in accordance with Part 1 of the Act;
- Knowingly uses false or misleading advertising in which he represents that he has powers, duties, rights, or privileges that he does not possess by law;
- Is found by a court of this state to have engaged in the unauthorized practice of law;
- Ceases to fulfill the requirements applicable to his most recent appointment; and
- Notarizes any blank document.

This section also requires that the Secretary of State comply with the provisions of the state's Administrative Procedure Act when proceeding to revoke a commission. Under §12-55-107(4), C.R.S., any person who has a notary commission revoked by the Secretary of State is eligible to reapply for commission and appointment seven years after the date of the revocation.

The Secretary of State is authorized to issue a certificate of authority to notaries public. Such certificate is used to identify the individual as a notary public and show the date of expiration of the commission. §12-55-109, C.R.S.

Section 12-55-110, C.R.S., establishes the powers and limitations of the notary public. Every notary public is empowered to take acknowledgments, administer oaths and affirmations, certify that a copy of a document is a true copy of another document, take depositions, and perform any other act permitted by law.

All notaries public are required to keep a journal of every acknowledgment taken by them to an instrument affecting the title to real property. Section 121 sets notary fees at a maximum of \$2.00 for each acknowledgment, unless otherwise provided by law.

## **Part 2- Uniform Recognition of Acknowledgments**

Part 2 of the Act is known as the Uniform Recognition of Acknowledgments Act (URAA). As the title implies, the URAA speaks to acknowledgments of documents.

Section 12-55-203, C.R.S., establishes that documents may be notarized outside of Colorado by certain persons. Notarial acts may be performed by notaries public in other states, judges, clerks, United States foreign service offices or other authorized officers of the United States Department of State and authorized personnel of the armed forces.

Section 204 of the URAA concerns the authentication of authority to perform notarial acts of the above persons. Generally, if the notarized document contains the seal of the authorized person or the title, rank, and signature, or serial number of the person, the document will be deemed properly acknowledged.

Section 205 requires that the notary certify that the person acknowledged that he or she executed the instrument and that the notary had satisfactory evidence that the person was the person described in the document and the one who executed the document.

## *Chapter 2 - Colorado Regulation of Notaries Public*

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Assuming that a document is acknowledged by a person cited in §12-55-203, C.R.S., the form of the acknowledgment is established by section 206. It is a fairly lenient standard: in a form prescribed by Colorado statute, or in a form prescribed by law or regulation in the state of origin (where the document was notarized) or contains the phrase "acknowledged before me" or words substantially equivalent.

The phrase "acknowledged before me" is an important component of a notarized document and section 207 of the URAA defines the meaning of that phrase. "Acknowledged before me" on a notarized document conveys three meanings:

1. The person acknowledging appeared before the person taking the acknowledgment.
2. He/she acknowledges that he/she executed the instrument.
3. If a natural person, he/she acknowledges that he/she executed the instrument for the purpose stated in the instrument.

Other provisions of section 207 address acknowledgment by corporate officers, attorneys in fact, public officers and trustees.

Section 12-55-208, C.R.S., establishes the forms of acknowledgment. Forms are given for acknowledgments by various entities including natural person and corporate officers. Notarial acts performed before July 1, 1969 are not held to the standard established by the present statute, they are exempted by section 209 of the URAA.

Section 210 establishes that the URAA is to be interpreted so that it dovetails with the interpretation of all other states that enact the URAA .

Section 12-55-211, C.R.S., permits the use of a rubber stamp with facsimile of the seal whenever a seal is required by law or regulation.

## SUNSET ANALYSIS

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The use of notarized documents has a long history. As previously mentioned, notaries served a vital function in ancient societies with largely illiterate populations. In modern times, the use of notaries serves as some assurance that a signature on a legal document is indeed the signature of the individual in question.

This would seem to be a vital function because of the vast distances that important legal transactions span in our society. Notaries frequently acknowledge signatures allowing parties to purchase property, or grant a power of attorney, for transactions occurring in other states, or even other countries. In some cases, a short walk to a bank in Colorado could allow a consumer to purchase a vacation home in Florida.

Every state has provisions for the appointment of notaries. The standards, fees, and term of appointment vary widely. The functions a notary is allowed to perform also vary from state to state. For example, three states (Florida, North Carolina, and Maine) allow notaries to solemnize marriages. This practice is a carryover from the days when notaries were elected or appointed by governors. The responsibilities and duties of notaries in Colorado are commensurate with those in most other states, these responsibilities primarily being taking acknowledgments and certifying copies.

Primary responsibilities of the Department of State, under the direction of the Secretary of State, for the notary program include: notary commission issuance, authentication of notary authority, notary record maintenance, and complaint investigation and enforcement. The Department of State also offers an educational training program for prospective and active notaries.

### **Commissioning:**

The application for a notary public commission is obtained from the office of the Department of State. The application contains the following sections:

**Notary Act** - a copy of the Notary Act (§12-55-101, et seq., C.R.S), identifies the responsibilities of a notary public.

**Notary Applicant's Affirmation** - the applicant must affirm under penalty of perjury that he or she has read the notary law and will perform their duties in accordance with the law.

**Notary Applicant's Statement Of Qualifications** - the applicant must sign a statement that he or she meets the requirements to be a notary public. The applicant must:

- be a qualified Colorado elector,
- have never been convicted of a felony,
- be able to read and write the English language,
- identify if he or she ever had notary commission revoked and date of revocation, and
- accurately identify business and residence addresses and telephone numbers.

There are approximately 82,000 commissioned notaries in Colorado. The Department of State's office estimates that approximately half of the notaries renew their commission prior to its expiration. Information received from the Department of State indicates that the number of notaries has remained fairly stable since the last sunset review. The following table demonstrates the original applications and renewals as reported by the Department of State.

**Notary Filings**

<b>Year</b>	<b>Number of original filings</b>	<b>Number of renewals</b>	<b>Number of active commissions at year-end</b>
1993	18,077	40,000 - 45,000*	80,000 - 90,000*
1994	19,865	40,000 - 45,000*	80,000 - 90,000*
1995	19,276	40,000 - 45,000*	80,000 - 90,000*
1996	20,123	40,000 - 45,000*	80,000 - 90,000*

\* Estimates provided by Department of State, actual figures not available.

When viewed in light of the weight placed on notarized documents in legal proceedings, the qualifications to become a notary in Colorado are fairly lax. However, relatively few states have strict standards for notary appointments. Thirteen states require some type of written examination, two require criminal background checks, and Puerto Rico allows only attorneys to become notaries. The fee to become a notary ranges from a low of \$3.00 for a four year term in Michigan, to a high of \$78.00 for a four year term in Delaware. Louisiana charges \$35.00 for a lifetime appointment.

Terms of notaries vary from a low of one year, to lifetime appointments in some jurisdictions. Colorado law provides for four year commissions. The \$10.00 fee for the commission is set by the Secretary of State. Just over half the states require notaries to post a bond when they are appointed. The bonds range from a low of \$500 in several states to a high of \$15,000 in Puerto Rico. The Colorado General Assembly found little public benefit from the bond and eliminated it during the 1992 session.

The fees notaries are allowed to charge range from a low of 20 cents for certain functions in Kentucky to no statutory fee limits in seven states. Colorado statutes currently allow notaries to charge \$2.00 for any notarial function. A bill in the 1995 session, SB 95-82, would have increased the allowable fee to \$5.00. The bill was not passed.

The Department of State maintains a data base of information related to notaries. Notaries are required to report address and name changes to the Department of State. Notaries must also report losses of seals or journals. The following table details information provided by the Department of State on data base changes processed:

**Changes**

1991	2,002
1992	2,022
1993	3,570
1994	4,901
1995	4,699
1996	4,958

**Authentications:**

Many transactions involving foreign governments (foreign adoptions for example) require that notarized documents be authenticated. This involves the appointing authority verifying that the commissioned notary is in good standing and authorized to perform the function requiring authentication.

The Department of State reports that authentications have steadily increased since the last sunset review. Authentications can only be obtained through the Department of State office in Denver. Authentications are processed by mail for a \$2.00 fee. The DOS has established an express service for a \$15 fee, authentications are completed while the client waits in this situation. The table below details authentication information provided by the Department of State.

**Authentications**

1991	5,101
1992	6,978
1993	7,298
1994	8,653
1995	10,914
1996	7,651 (estimate)

**Complaints:**

Individuals may file a complaint with the Department of State if they believe a notary has acted improperly in performing a notarial function. The Department of State complaint process requires that complaints be in writing, and notarized, or sworn before a representative of the Department of State.

Upon receipt of a complaint, the Department of State makes a determination as to the possible violation contained in the complaint. If the action alleged in the complaint appears to be a violation, the DOS sends a letter to the notary requesting a response to the complaint. The responding notary may admit wrong doing and voluntarily surrender the notary commission or deny the allegations.

If the notary denies the allegations, the Department of State contacts the complaining party to determine if there is an interest in pursuing a hearing. All hearings are conducted by the Secretary of State in accordance with the Administrative Procedure Act. Prior to a hearing, the Department of State will invite the notary to a pre-hearing conference. If possible, a stipulation is agreed upon. Most stipulations involve the notary voluntarily surrendering the commission for an agreed upon period of time.

The Secretary of State does not have the ability to suspend notary commissions, issue letters of admonition or fine notaries who violate the Notary Act. The Secretary of State may, after a hearing in accordance with the Administrative Procedure Act, revoke a commission. By statute, the notary may not reapply for a commission for a period of seven years.

The sunset review found that the Department of State did not keep detailed records of complaints or disciplinary actions against notaries. While certain violations of the Notary Act are classified as misdemeanors, there is no information available from the Department of State regarding convictions under these provisions. There was no indication during the review that the Department of State worked with local law enforcement or state regulatory agencies to determine if commissioned notaries were involved in disciplinary proceedings or investigations involving fraud. The following table details information related to disciplinary actions provided by the Department of State.

**Complaints**

Year	# Complaints	# Dismissed	Disciplinary Action*
1985	40	14	26
1991	26	11	15
1992	<i>less than 20</i>	Unknown	2-12
1993	<i>less than 20</i>	Unknown	2-12
1994	<i>less than 20</i>	Unknown	2-12
1995	<i>less than 20</i>	Unknown	2-12
1996	<i>less than 20</i>	Unknown	2-12

\* Disciplinary actions include voluntary resignation, revocation or settlement/stipulation. Detailed information was not available from the Department of State.

**Training programs:**

The Department of State offers a voluntary training program for notaries. The Department encourages prospective notaries to attend a training session prior to becoming commissioned. Sessions are free of charge and are available when interest warrants. Companies or organizations that have three or more notaries or applicants interested in a training session can request a session be held at their location.

Department of State staff interviewed for this report indicate a correlation between a decline in the number of notary complaints and the implementation of the training program. This correlation could not be independently verified.

The budget narrative for the Department of State 1995/96 fiscal year indicated that evaluations of notary workshops and seminars would be taken to determine the effectiveness and efficiency of the program. Formal evaluations and ratings were discontinued shortly after the previous sunset review in 1991.



## BUDGETARY REVIEW

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The regulatory functions of the Secretary of State related to notaries is located in the Licensing Section of the Office of the Department of State. According to budgetary documents and interviews with Department of State staff, there are 2.8 full time employees (FTE) devoted to the regulation of notaries. This includes a 0.5 supervising administrator, 1.8 FTE clerical support staff, and 0.5 FTE for investigations.

The responsibilities for the Licensing Section include regulatory activities for bingo and raffles, charitable solicitation, rules filings, registration of lobbyists, and credit service bond filing programs. The Licensing Section also investigates complaints against any of the occupations or business activities regulated by the section. The budget process for the Department of State does not separate revenue and expenses for the various programs.

The fees for notary commissions, and other services performed by the Department of State related to the notary program, are established by comparing fees in comparable states. Fees charged are not related to the expense of operating the program. Given the simplicity of the commission process, and the fact that there are very few complaints and even fewer hearings, the fee for a notary commission may be excessive for the value received. However, the Department of State apparently uses the fees collected by the notary program to subsidize other activities of the Department of State. These activities most notably include the elections functions of the Department of State, and other programs that do not generate sufficient revenue to cover their associated expenses.

The budget narrative for the Department of State includes effectiveness/efficiency and workload measures for the notary program. However, documentation on how these measures are evaluated by the Department were not available for review. Two separate requests for detailed information were made to the Department of State. However, neither request received a response.

## RECOMMENDATIONS

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### **Recommendation 1: Continue the Regulation of Notaries Public.**

Summary: The commissioning of notaries provides little protection to the public. However, the notary seal has a long tradition of significance that is difficult to overcome. Elimination of notaries public would cause considerable concern among the clients and professionals that regularly use notary services.

Discussion: The actual protection to consumers afforded by notarial acts is questionable. In fact, it can be argued that in some cases, public misunderstanding of what a notary is attesting to when a document is notarized has led to public harm. A notary cannot attest to the accuracy of information contained in a document, only that the person signing the document has presented valid identification.

As our society moves into the information age, more and more legal transactions will be conducted by electronic means. The National Association of Notaries is attempting to address this by developing electronic notary functions. However, the importance of notarized documents is diminishing rapidly.

Illinois recently introduced legislation to eliminate the commissioning of notaries. The legal and real estate professions lobbied heavily to retain this ancient practice. The claims of these professions is that the verification of information by an independent third party is essential for legal transactions, particularly those involving interstate commerce and real property.

The requirements for notaries are fairly simple, there have not been a significant number of public complaints, and the primary customers of the service are regulated professionals. Notarization is required by law for real estate transactions. Other notary requirements are based on tradition or policy. The legal, real estate, and title insurance professions all maintain that notaries provide necessary accountability on documents prepared for these industries.

This review considered a variety of options to deregulate the commissioning of notaries and let the private sector create a verification process. The securities industry has a privatized signature verification process known as the Medallion Signature Guarantee. This verification is required on a variety of security related documents. The program is completely administered by the industry through a contract with a national banking clearinghouse. The requirements to become a Medallion Guarantor are extremely onerous, because of the large amount of funds involved in transactions. However, opponents of deregulation argue that such a system would not be practical for more routine transactions.

While there is a national association for notaries, the Colorado chapter ceased operations several years ago. Therefore, regulation by the trade association may not be practical. The Colorado Bar Association was approached during the last sunset review about assuming a regulatory role with notaries and declined. Inquiries were made to the Title Insurance Association and the Colorado Realtors Association as to the possibility of creating an industry administered signature verification program. Both associations indicated that they do not believe they could create such a program.

### **Recommendation 2: Create a separate cash fund for notaries public.**

**Summary:** Currently, all revenues and expenses for the regulation of notaries public are commingled in the Licensing Section of the Department of State. There is no specific accountability for fees or expenses that can be specifically attributed to the program under review.

**Discussion:** The commissioning of notaries public and occupational licensing programs have similar public protection functions. The Department of State is required to establish fees for the commissioning of notaries, as are regulatory programs for occupational licenses. However, most licensing programs are required to establish fees based on the cost to regulate the specific profession or occupation.

In order to establish fees, separate expenses for the program must be specifically identified and tracked. Revenue estimates must be calculated and monitored over a period of time. The advantages of this option are twofold:

1. The General Assembly can obtain realistic costs associated with particular programs, a necessary tool for formulating public policy.

2. Another advantage is imposing justifiable fees on the regulated community. The absence of a fair and impartial fee setting protocol gives rise to the possibility of arbitrary fee setting to subsidize other programs.

Subsidization may be required for necessary programs that do not generate sufficient revenues. However, the determination of which programs are necessary and the level of subsidization should be made by the General Assembly through the budget process. Without isolating revenues and expenses by program, the General Assembly is lacking the information necessary for sound public policy decisions.

**Recommendation 3: Require successful completion of a pre-licensure examination as a requirement for obtaining a notary commission.**

Summary: Colorado has very low standards for obtaining a notary commission. For a function that is as vital as its proponents claim it is, it makes sense to establish minimum standards to obtain a commission.

Discussion: Becoming a notary in Colorado, as in several states, is basically a registration process, the least restrictive form of government regulation. The requirements for an individual to be commissioned as a notary public in Colorado are:

1. Be a qualified elector of Colorado at the time of appointment;
2. Be able to read and write the English language;
3. Provide business and residence address in Colorado;
4. State that his or her commission as a notary public has never been revoked;
5. State that he or she has not been convicted of a felony;
6. Provide a handwriting sample of his or her signature; and
7. Make and sign an affirmation to perform notarial acts in compliance with the law and affirming that he or she has read the notary law.

While the notary signs a statement that he or she will comply with the notary law, no effort is made to ensure the notary understands the law. The Secretary of State's Office has recently implemented a voluntary training program for commissioned notaries. Anecdotal information from the Office indicates a reduction in complaints since the program was implemented. A simple, open book examination prior to being granted a commission or a renewal would serve to ensure that notaries have at least read the Notary Act and have some understanding of the notary law.

### **Recommendation 4: Improve the complaint and disciplinary process for notaries.**

**Summary:** The complaint and disciplinary process for notaries is cumbersome and inefficient. Enforcement is lax, calling into question the effectiveness of the regulation of notaries in protecting the public.

**Discussion:** The Notary Act requires the Secretary of State to investigate sworn complaints. The interpretation of this by the Department of State staff has been to require complaints to be notarized. Many notaries charge a two dollar fee for notarizations. In effect, the current process requires an injured party to pay a fee to notify a regulatory authority of an action that violates state law.

The General Assembly removed the requirement that information contained in an application for a state occupational or professional license be notarized in HB 83-1123. It does not seem consistent with the philosophy of the General Assembly to require complaints about state regulated occupations to be notarized. Indeed, no other regulatory authority contacted for this report has such a requirement.

The Notary Act requires the Secretary of State to conduct disciplinary hearings in accordance with the Administrative Procedure Act. The Secretary of State does not have the option of delegating this process to a qualified hearing officer. Most regulatory programs recognize that the disciplinary process is but one small part of the responsibilities of managing a regulatory process. In recognition of this, the organic statutes provide for the option of delegating disciplinary hearings. This allows the regulatory manager to concentrate on public policy issues related to the program.

The statute does not clearly allow the Secretary of State to investigate violations without a sworn complaint. A recent situation involving a confidence man forging a homeowners signature on a "quit claim" for a deed of trust on property he was renting, then trying to sell the property is an example of a notary escaping consequences because of the limited enforcement authority of the Secretary of State.

The confidence man faces prosecution for fraud. However the notary who improperly acknowledged the homeowners signature is not facing the loss of the notary commission. The Department of State staff have indicated that unless a consumer files a complaint, they cannot initiate disciplinary action. If the state is going to continue to regulate notaries, the regulatory body must have the flexibility to investigate improper activities on its own motion.

**Administrative Recommendation: Improve record keeping in the Department of State's office.**

Summary: Information on complaint and disciplinary data is not compiled by the Department of State's office.

Discussion: Most regulatory agencies consider information about complaints and disciplinary actions to be a matter of public record. Some, such as the Division of Insurance, go as far as to publish complaint data about the entities they regulate to educate consumers.

A call to the Licensing Section of the Department of State will result in verification of the validity of a notary's commission. However, information about complaints and disciplinary actions are not available, except on an individual basis.

Calls to the District Attorney's Council and the Attorney General's Office indicate that few charges, if any, are filed against notaries. Since violations of the Notary Act are misdemeanors, they are unlikely to be prosecuted except as part of a larger, more complex case. In most situations, the consumer is more interested in pursuing action against an individual who committed a more serious crime than a minor charge against a notary who improperly, or negligently, notarized a document.

# *APPENDICES*

## **Sunset Statutory Evaluation Criteria**

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.



## Statute

**12-55-101. Short title.** *This part 1 shall be known and may be cited as the "Notaries Public Act".*

**12-55-102. Definitions.** As used in this part 1, unless the context otherwise requires:

(1) "Notarial acts" means those acts which the laws and regulations of this state authorize notaries public to perform including, but not limited to, administering oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.

(2) "Notarization" means the performance of a notarial act.

(3) "Notary" or "notary public" means any individual appointed and commissioned to perform notarial acts.

**12-55-103. Appointment - terms.** Upon application pursuant to this part 1, the secretary of state may appoint and commission individuals as notaries public for a term of four years, unless said commission is revoked as provided in section 12-55-107. An applicant who has been denied appointment and commission may appeal such decision pursuant to article 4 of title 24, C.R.S. The secretary of state shall promptly notify the applicant in writing of such denial.

**12-55-104. Application.** (1) Every applicant for appointment and commission as a notary public shall complete an application form furnished by the secretary of state to be filed with the secretary of state, stating:

(a) If he is a citizen of the United States, that he is a qualified elector of this state at the time of his appointment;

(b) That he is able to read and write the English language;

(c) The addresses and telephone numbers of his business and residence in this state;

(d) That his commission as a notary public has never been revoked; (e) That he has not been convicted of a felony.

2) The application shall include a handwritten sample of the applicant's official signature, which contains the applicant's legal name, and the affirmation as provided in section 12-55-105.

**12-55-105. Applicant's affirmation.** Every applicant for appointment and commission as a notary public shall take the following affirmation in the presence of a person qualified to administer an affirmation in this state:

"I, (name of applicant) solemnly affirm, under the penalty of perjury in the second degree, as defined in section 18-8-503, Colorado Revised Statutes, that I have carefully read the notary law of this state, and, if appointed and commissioned as a notary public, I will faithfully perform, to the best of my ability, all notarial acts in conformance with the law.

(signature of applicant)

Subscribed and affirmed before me this day of , 19 .

(official signature and seal of person qualified to administer affirmation)."

**12-55-106. Bond.** (Repealed)

**12-55-107. Revocation of commission.** (1) The secretary of state may deny the application of any person for appointment or reappointment, or revoke the commission of any notary public during his term of appointment if the notary public:

(a) Submits an application for commission and appointment which contains substantial and material misstatement or omission of fact;

(b) Is convicted of official misconduct under the provisions of this part 1 or any felony;

(c) Fails to exercise the powers or perform the duties of a notary public in accordance with this part 1;

(d) Knowingly uses false or misleading advertising in which he represents that he has powers, duties, rights, or privileges that he does not possess by law;

(e) Is found by a court of this state to have engaged in the unauthorized practice of law;

(f) Ceases to fulfill the requirements applicable to his most recent appointment.

(g) Notarizes any blank document.

(2) A notary's commission may be revoked under the provisions of this part 1 only if action is taken pursuant to article 4 of title 24, C.R.S.

(3) After a notary public receives notice from the secretary of state that his commission has been revoked, and unless such revocation has been enjoined, such notary shall immediately send by certified mail or have delivered to the secretary of state his journal of notarial acts, all other papers and copies relating to his notarial acts, and his official seal.

(4) A person whose notary commission has been revoked pursuant to the provisions of this part 1 may subsequently apply for commission and appointment as a notary after seven years have elapsed from the date of such revocation.

**12-55-108. Reappointment - failure to be reappointed.** Every notary public, before or at the expiration of such notary's commission, may submit an application for reappointment by submitting the same information and documents as required by sections 12-55-104 and 12-55-105 for the initial application. The secretary of state shall then determine whether the person shall be reappointed as a notary public. If the secretary of state determines such notary shall not be reappointed, the applicant may appeal such determination pursuant to article 4 of title 24, C.R.S.

**12-55-109. Certificate of appointment - recording.** (1) The secretary of state is authorized to issue a certificate of authority qualifying said person as a notary public. The certificate shall also state the date of expiration of the commission and any other fact concerning such notary public which is required by the laws of this state.

(2) A notary public may record his certificate of authority in any county of this state and, after such recording, the county clerk and recorder of such county may issue a certificate that such person is a notary public, the date of expiration of his commission, and any other fact concerning such notary public which is required by the laws of this state.

(3) A notary public may exhibit to the judge or clerk of any court of record his certificate of authority, and the said judge or clerk may thereupon issue a certificate that such person is a notary public, the date of expiration of his commission, and any other fact concerning such notary public which is required by the laws of this state.

**12-55-110. Powers and limitations.** (1) Every notary public is empowered to:

- (a) Take acknowledgments;
- (b) Administer oaths and affirmations;
- (c) Certify that a copy of a document is a true copy of another document;
- (d) Take depositions; and
- (e) Perform any other act permitted by law.

(2) A notary public who has a disqualifying interest in a transaction may not legally perform any notarial act in connection with such transaction. For the purposes of this section, a notary public has a disqualifying interest in a transaction in connection with which notarial services are requested if he:

(a) May receive directly, and as a proximate result of the notarization, any advantage, right, title, interest, cash, or property exceeding in value the sum of any fee properly received in accordance with this part 1; or

(b) Is named, individually, as a party to the transaction.

(3) In no case shall a notary public notarize any blank document.

**12-55-111. Journal.** Every notary public shall keep a journal of every acknowledgment taken by him to an instrument affecting the title to real property and, if required, give a certified copy of or a certificate as to any such journal or any of his acts, upon payment of his fee therefor.

**12-55-112. Official signature - rubber stamp seal - seal embosser.**

(1) At the time of notarization, a notary public shall sign his official signature on every notary acknowledgment.

(2) Under or near his official signature on every notary acknowledgment, a notary public shall rubber stamp or emboss clearly and legibly his official seal. The official notary seal shall contain only the outline of the seal, the name of the notary, exactly as he writes his official signature, the words "STATE OF COLORADO", and the words "NOTARY PUBLIC".

(3) Under or near his official signature on every notary acknowledgment, a notary public shall write or stamp "my commission expires (commission expiration date)".

(4) Every notary public may provide, keep, and use a seal embosser engraved to show his name and the words "NOTARY PUBLIC" and "STATE OF COLORADO". The indentations made by the seal embosser shall not be applied on the notary acknowledgment or document to be notarized in a manner that will render illegible or incapable of photographic reproduction any of the printed marks or writing.

(5) The illegibility of any of the information required by this section does not affect the validity of a transaction.

**12-55-113. Lost journal or official seal.** Every notary public shall send by certified mail or have delivered notice to the secretary of state within thirty days after he loses or misplaces his journal of notarial acts or official seal. The fee payable to the secretary of state for recording notice of a lost journal or seal shall be determined and collected pursuant to section 24-21-104 (3), C.R.S.

**12-55-114. Change of name or address.** (1) Every notary public shall send by certified mail or have delivered notice to the secretary of state within thirty days after he changes the address of his business or residence in this state. The fee payable to the secretary of state for recording notice of change of address shall be determined and collected pursuant to section 24-21-104 (3), C.R.S.

(2) Every notary public shall send by certified mail or have delivered notice to the secretary of state within thirty days after he changes his name, including with the notification a sample of his handwritten official signature which contains his surname and at least the initial of his first name. The fee payable to the secretary of state for recording notice of change of notary's name shall be determined and collected pursuant to section 24-21-104 (3), C.R.S.

**12-55-115. Death - resignation - removal from state.** (1) If a notary public dies during the term of his appointment, his heirs or personal representative, as soon as reasonably possible after the notary's death, shall send by certified mail or have delivered to the secretary of state the deceased notary's journal of notarial acts and his seal, if available.

(2) If a notary public no longer desires to be a notary public or has ceased to have a business or residence address in this state, he shall send by certified mail or have delivered to the secretary of state a letter of resignation, his journal of notarial acts, and all other papers and copies relating to his notarial acts, including his seal. His commission shall thereafter cease to be in effect.

**12-55-116. Official misconduct by a notary public - liability of notary or surety.** (1) A notary public who knowingly and willfully violates the duties imposed by this part 1 commits official misconduct and is guilty of a class 2 misdemeanor.

(2) A notary public and the surety or sureties on his bond are liable to the persons involved for all damages proximately caused by the notary's official misconduct.

(3) Nothing in this article shall be construed to deny a notary public the right to obtain a surety bond or insurance on a voluntary basis to provide coverage for liability.

**12-55-117. Willful impersonation.** Any person who acts as, or otherwise willfully impersonates, a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a class 2 misdemeanor.

**12-55-118. Wrongful possession of journal or seal.** Any person who unlawfully possesses and uses a notary's journal, an official seal, or any papers or copies relating to notarial acts is guilty of a class 3 misdemeanor.

**12-55-119. Affirmation procedures - form.** If an affirmation is to be administered by the notary public in writing, the person taking the affirmation shall sign his name thereto, and the notary public shall write or print under the text of the affirmation the fact that the document has been subscribed and affirmed, or sworn to before me in the county of \_\_\_\_\_, state of Colorado,  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
(official signature, seal, and commission expiration date of notary).

**12-55-120. Certified facsimiles of documents - procedure and form.** (1) A notary public may certify a facsimile of a document if the original of the document is exhibited to him, together with a signed written request stating that:

(a) A certified copy or facsimile of the document cannot be obtained from the office of any clerk and recorder of public documents or custodian of documents in this state; and

(b) The production of a facsimile, preparation of a copy, or certification of a copy of the document does not violate any state or federal law.

(2) The certification of a facsimile shall be substantially in the following form:  
"State of \_\_\_\_\_, County (or City) of \_\_\_\_\_, I, (name of notary) \_\_\_\_\_, a Notary Public in and for said state, do certify that on \_\_\_\_\_ (date) \_\_\_\_\_, I carefully compared with the original the attached facsimile of \_\_\_\_\_ (type of document) \_\_\_\_\_ and the facsimile I now hold in my possession. They are complete, full, true, and exact facsimiles of the document they purport to reproduce.

(official signature, official seal, and commission expiration date of notary)."

**12-55-121. Fees.** The fees of notaries public may be, but shall not exceed, two dollars for each acknowledgment, except as otherwise provided by law.

**12-55-122. Applicability.** This part 1 shall apply to all applications, both new and for reappointment, submitted to the office of secretary of state on or after July 1, 1981. Nothing in this part 1 shall be construed to revoke any notary public commission existing on July 1, 1981.

**12-55-123. Repeal of article.** This article is repealed, effective July 1, 1998. Prior to such repeal, the appointment function of the secretary of state shall be reviewed as provided for in section 24-34-104, C.R.S.

**12-55-201. Short title.** This part 2 shall be known and may be cited as the "Uniform Recognition of Acknowledgments Act".

**12-55-202. Definitions.** As used in this part 2, unless the context otherwise requires:

(1) "Notarial acts" means acts which the laws and regulations of this state authorize notaries public of this state to perform, including, but not limited to, the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.

**12-55-203. Recognition of notarial acts performed outside this state.** (1) Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments, in addition to any other person authorized by the laws and regulations of this state:

(a) A notary public authorized to perform notarial acts in the place in which the act is performed;

(b) A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;

(c) An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States department of state to perform notarial acts in the place in which the act is performed;

(d) A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: A merchant seaman of the United States, a member of the armed forces of the United States, or any other person serving with or accompanying the armed forces of the United States; or

(e) Any other person authorized to perform notarial acts in the place in which the act is performed.

**12-55-204. Authentication of authority of officer.** (1) If the notarial act is performed by any of the persons described in section 12-55-203 (1) (a) to (1) (d), other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank, or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his authority is not required.

(2) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if:

(a) Either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act;

(b) The official seal of the person performing the notarial act is affixed to the document; or

(c) The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

(3) If the notarial act is performed by a person other than one described in subsections (1) and (2) of this section, there is sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.

(4) The signature and title of the person performing the act are prima facie evidence that he is a person with the designated title and that the signature is genuine.

**12-55-205. Certificate of person taking acknowledgment.** (1) The person taking an acknowledgment shall certify that:

(a) The person acknowledging appeared before him and acknowledged he executed the instrument; and

(b) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

**12-55-206. Recognition of certificate of acknowledgment.** (1) The form of a certificate of acknowledgment used by a person whose authority is recognized under section 12-55-203 shall be accepted in this state if:

(a) The certificate is in a form prescribed by the laws or regulations of this state; or

(b) The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or

(c) The certificate contains the words "acknowledged before me", or their substantial equivalent.

**12-55-207. Certificate of acknowledgment.** (1) "Acknowledged before me" means:

(a) That the person acknowledging appeared before the person taking the acknowledgment; and

(b) That he acknowledged he executed the instrument; and

(c) That, in the case of:

(I) A natural person, he executed the instrument for the purposes therein stated;

(II) A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated;

(III) A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated;

(IV) A person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated;

(V) A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated; and

(d) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

**12-55-208. Short forms of acknowledgment.** (1) The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law of this state. The forms shall be known as "Statutory Short Forms of Acknowledgment" and may be referred to by that name. The authorization of the following forms does not preclude the use of other forms:

(a) For an individual acting in his own right:

"State of .....

County of .....

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).

(signature of person taking acknowledgment)

(title or rank)

(serial number, if any)";

(b) For a corporation:

"State of .....

County of .....

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation, corporation, on behalf of the corporation.

(signature of person taking acknowledgment)

(title or rank)

(serial number, if any)";

(c) For a partnership:

"State of .....

County of .....

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(signature of person taking acknowledgment)

(title or rank)

(serial number, if any)";

(d) For an individual acting as principal by an attorney in fact:

"State of .....

County of .....



The foregoing instrument was acknowledged before me this (date) by (name of attorney-in-fact) as attorney in fact on behalf of (name of principal).

(signature of person taking acknowledgment)

(title or rank)

(serial number, if any)";

(e) By any public officer, trustee, or personal representative:

"State of .....

County of .....

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(signature of person taking acknowledgment)

(title or rank)

(serial number, if any)".

**12-55-209. Acknowledgments not affected by this part 2.** A notarial act performed prior to July 1, 1969, is not affected by this part 2. This part 2 provides an additional method of proving notarial acts. Nothing in this part 2 diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of this state.

**12-55-210. Uniformity of interpretation.** This part 2 shall be so interpreted as to make uniform the laws of those states which enact it.

**12-55-211. Seals.** Whenever any law, rule, or regulation requires the use of a seal, it shall be sufficient that a rubber stamp with a facsimile affixed thereon of the seal required to be used is placed or stamped upon the document requiring the seal with indelible ink.