



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

**2008 Sunset Review:
Colorado Notaries Public Act**

October 15, 2008





Executive Director's Office
D. Rico Munn
Executive Director

Bill Ritter, Jr.
Governor

October 15, 2008

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 mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Notaries Public Act. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2009 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), 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 Colorado Secretary of State and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

D. Rico Munn
Executive Director





Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

2008 Sunset Review: Colorado Notaries Public Act

Summary

What Is Regulated?

Notaries are individuals commissioned by the Colorado Secretary of State (Secretary) through the Department of State (DOS) to take acknowledgements, administer oaths and affirmations, and certify copies of original documents.

Why Is It Regulated?

Notaries act as independent, disinterested third party witnesses to the documents they notarize.

Who Is Regulated?

In fiscal year 07-08, there were 107,763 active Notary commissions.

How Is It Regulated?

To receive a commission as a Notary, an applicant must: read the Notaries Public Act (Act); be lawfully present in the United States; be a Colorado resident over the age of 18; never have been convicted of a felony; not been convicted of a misdemeanor involving dishonesty within the previous five years; be able to read and write the English language; and never had a commission as a Notary revoked. Notaries can have their commissions revoked if they violate the Act or the rules promulgated thereunder.

What Does It Cost?

The fiscal year 07-08 expenditure to oversee this program was \$469,984 and there were 5.0 full-time equivalent employees associated with this program. In 2008, the cost to receive a new, four-year commission was \$10.

What Disciplinary Activity Is There?

In fiscal year 06-07, disciplinary proceedings consisted of:

- Complaints Filed 149
- Revocations 0
- Resignations 109

Where Do I Get the Full Report?

The full sunset review can be found on the internet at: www.dora.state.co.us/opr/oprpublications.htm.

Key Recommendations

Continue Notaries Public Act for nine years, until 2018.

Notaries enable Coloradans to participate in interstate and international transactions by acting as disinterested, third party witnesses to the signing of various documents. Notaries do not actually verify the identity of the person signing a particular document. Rather, they ensure that the name on the document matches the name on a recognized form of identification and that the photograph on the identification matches the physical appearance of the signer. Since all 50 states, all U.S. territories, and most nations of the world recognize and require notarizations, it would be a disservice to Coloradans to sunset this program.

Expand the disciplinary tools available to the DOS to include letters of admonition and suspensions.

Currently, the only disciplinary tool available under the Act is the revocation of a Notary commission. Not all violations warrant such extreme action. Further, many people are Notaries due to conditions of employment. Revocation of a commission, in essence, can mean the end of a Notary's career. As a result, the DOS, like other regulatory authorities, should be able to impose lesser forms of discipline when warranted.

Require Notaries to make a journal entry for each notarial act performed.

Journal entries typically include the type and date of the notarial act performed, the name and signature of the person whose act was notarized, and the type of document notarized. Currently, journal entries are only required for transactions that involve the transfer of real property, and even then, certain exemptions apply. Journal entries should be required for all notarial acts because they help to deter fraud, and, at the very least, help to ensure that the Notary takes the proper measures to ensure that the person signing the pertinent document is who he or she claims to be.

Major Contacts Made During This Review

American Society of Notaries
Colorado Association of Mortgage Brokers
Colorado Association of Mortgage Lenders
Colorado Association of Realtors
Colorado County Clerks Association
Land Title Association of Colorado
National Notary Association
Office of the Colorado Secretary of State
U.S. Notary Association

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- 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;
- 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;
- 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;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- 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;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- 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;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at §24-34-104, C.R.S.

Types of Regulation

Regulation, when appropriate, can serve as a bulwark of consumer protection. Regulatory programs can be designed to impact individual professionals, businesses or both.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

Regulation, then, has many positive and potentially negative consequences.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

As regulatory programs relate to businesses, they can enhance public protection, promote stability and preserve profitability. But they can also reduce competition and place administrative burdens on the regulated businesses.

Regulatory programs that address businesses can involve certain capital, bookkeeping and other recordkeeping requirements that are meant to ensure financial solvency and responsibility, as well as accountability. Initially, these requirements may serve as barriers to entry, thereby limiting competition. On an ongoing basis, the cost of complying with these requirements may lead to greater administrative costs for the regulated entity, which costs are ultimately passed on to consumers.

Many programs that regulate businesses involve examinations and audits of finances and other records, which are intended to ensure that the relevant businesses continue to comply with these initial requirements. Although intended to enhance public protection, these measures, too, involve costs of compliance.

Similarly, many regulated businesses may be subject to physical inspections to ensure compliance with health and safety standards.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. To facilitate input from interested parties, anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.

The regulatory functions of the Colorado Secretary of State (Secretary), relating to Article 55 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2009, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the Secretary and the Department of State (DOS) pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of Notaries Public should be continued for the protection of the public and to evaluate the performance of the Secretary and staff of the DOS. During this review, the Secretary and the DOS must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

Methodology

As part of this review, DORA staff interviewed DOS staff, officials with national professional associations and state and national industry associations, attended a Notary training seminar; and reviewed DOS records, including complaint and disciplinary actions, Colorado statutes, the Secretary's rules, and the laws of other states.

Profile of the Profession

A Notary Public, or Notary, is an individual authorized by the state, through a commission, to among other things, officially witness signatures on documents (often referred to as “acknowledgements”), administer oaths and affirmations, and certify copies of original documents. In short, a Notary is an impartial, third party witness.

To memorialize the performance of a notarial act, the Notary must complete a notarial certificate. The notarial certificate must include:²

- When the notarization took place – the date of the notarial act;
- What the notarial act was – acknowledgment, oath, affirmation or preparation of a certified copy; and
- Who the Notary is, which is accomplished by affixing the Notary’s seal (either embossed or rubber-stamp), indicating the date on which the Notary’s commission expires and the Notary signing the document.

Specimens of various types of notarial certificates can be found in Appendix A, on page 29 of this sunset report.

An acknowledgment is a signed statement by the Notary that the signer (sometimes referred to as the client, or the principal) personally appeared before the Notary, was positively identified by the Notary, and is the person who signed the document.³

To perform an acknowledgment, the Notary need only:⁴

- Identify the client as the document signer;
- Assess the client’s basic competence and understanding of the document;
- Be satisfied that the client is not under duress or being coerced to make the acknowledgment; and
- Complete the notarial certificate.

Oaths and affirmations are similar to one another in that both acts require the client to audibly swear or affirm that something is true. Oaths typically involve the invocation of a deity, whereas affirmations do not. For example, when administering an oath, the Notary may say, “Do you swear that the statements in this document are true, so help you God?” whereas in an affirmation, the Notary may say, “Do you affirm that the statements in this document are true?” An affirmation is equivalent to an oath and is equally binding.

An oath or affirmation is memorialized in the form of a jurat, which is a signed statement by the Notary confirming that the client personally appeared before the Notary, signed the document in the presence of the Notary and took an oath or affirmation administered by the Notary.⁵

² *Notary Handbook*, Colorado Secretary of State, July 5, 2007, pp. 14-16.

³ *Notary Handbook*, Colorado Secretary of State, July 5, 2007, p. 4.

⁴ *Notary Handbook*, Colorado Secretary of State, July 5, 2007, pp. 8-10.

⁵ *Notary Handbook*, Colorado Secretary of State, July 5, 2007, p. 5.

To administer an oath or affirmation, the Notary need only:⁶

- Hear the client affirm or swear to the document and to his or her identity as the document signer;
- See the client sign the document; and
- Complete the notarial certificate.

Notaries can also make certified copies. In most cases, a certified copy is as acceptable as the original of the document involved. Importantly, a Notary can only certify a copy of an original document. A copy of a copy cannot be certified by a Notary. For example, since most individuals have only copies (albeit, certified copies) of their birth certificates or marriage certificates, a Notary cannot certify a copy of such.

To make a certified copy, the Notary need only:⁷

- See the original document;
- Have a special, written request for the certified copy,
- Have two copies of the original document, one to certify and one for the Notary to retain;
- Ensure that the copies are true, complete and exact copies of the original; and
- Complete the notarial certificate.

Whereas the notarial certificates for acknowledgments, oaths and affirmations must be preprinted on the documents being Notarized, such is not the case for certified copies. In the case of certified copies, the Notary must add the notarial certificate himself or herself.

In Colorado, the Secretary of State (Secretary) commissions Notaries through the staff at the DOS. While some states require pre-commission education, passage of an examination, or both, Colorado requires neither.

To become a Colorado-commissioned Notary, one need only read the Notaries Public Act, satisfy certain, minimal requirements, and submit a complete application to the DOS.

Importantly, Notaries are commissioned; they are not licensed. As a result, Notaries are, in essence, public servants when they notarize documents. Therefore, they are responsible to the State of Colorado for these acts, not to their employers or supervisors.

⁶ *Notary Handbook*, Colorado Secretary of State, July 5, 2007, p. 7.

⁷ *Notary Handbook*, Colorado Secretary of State, July 5, 2007, pp. 12-13.

History of Regulation

The Colorado Territory began regulating Notaries in 1861.⁸ The original Notaries Public Act (Act), among other things, authorized the Governor to appoint Notaries, required Notaries to keep journals and post bonds, and authorized many of the same functions they perform today. By 1963, the Secretary had become the appointing authority.⁹

In 1969, the General Assembly adopted the Uniform Recognition of Acknowledgments Act (Acknowledgements Act).¹⁰ The Acknowledgements Act provided for the recognition of notarial acts performed in other jurisdictions to be recognized in Colorado.

In 1981, the Act was repealed and reenacted by Senate Bill 81-213. Through House Bill 83-1160 and House Bill 84-1073, the requirement that a Notary's address appear in various notarial certificates was repealed.

In 1991, the Act underwent its first sunset review, which resulted in the passage of Senate Bill 92-011. Among the changes made in 1992 was the repeal of the requirement that Notaries maintain surety bonds. Additionally, the bill added provisions requiring that a Notary commission be denied to any Notary who has previously had a commission revoked and directing the Secretary to revoke the commission of any Notary who notarizes a blank document.

The Act was again reviewed in 1997, resulting in House Bill 98-1043 (HB 1043). Among other things, HB 1043 created the Notary Administration Cash Fund and repealed the requirement that a Notary's correspondence with the Secretary be conducted by certified mail.

Senate Bill 98-076 more clearly defined many of the powers and limitations of commissioned Notaries and clarified what information must be recorded in a Notary's journal.

House Bill 02-1088 mandated that the Secretary revoke the commission of any Notary who is found to have knowingly used false or misleading advertising as to the scope of authority of a Notary, and required that all non-English advertising for notarial services clearly state that the Notary is not authorized to practice law, unless the individual Notary is a licensed attorney in Colorado.

The General Assembly first authorized electronic notarizations in House Bill 02-1119, by amending several provisions of Colorado law, including the Act.

⁸ *Territorial Laws of Colorado*, First Session (1861), p. 43.

⁹ § 96-1-1, C.R.S. (1963).

¹⁰ § 96-2-1, *et seq.*, C.R.S. (1968 & 1969 Supp.).

In 2004, the General Assembly revisited the issue of Notaries and the unauthorized practice of law with the passage of House Bill 04-127, which, among other things, expressly prohibited the use of the terms “*notario*” and “*notario publico*.” Through House Bill 04-1300, the General Assembly replaced the requirement that a commissioned Notary be a registered elector of the State of Colorado with a requirement that a commissioned Notary be a resident of Colorado.

Finally, in 2005, Colorado became the first state to authorize pictorial notarizations, which is a process whereby a Notary authenticates a photograph, with the passage of House Bill 05-1136.

Legal Framework

The regulation of Notaries and notarial acts is contained in two Parts of the Colorado Revised Statutes (C.R.S.). Part 1, the Notaries Public Act (Act)¹¹ regulates Notaries. Part 2, the Uniform Recognition of Acknowledgments Act (Acknowledgments Act)¹² provides for the recognition of notarial acts performed outside of Colorado for use in Colorado.

Pursuant to the Act, every Notary who is commissioned is empowered to:¹³

- Take acknowledgements and other unsworn statements, and attest documents and electronic records;
- Administer oaths and affirmations;
- Give certificates or other statements as to a notarial act performed by such notary, such as certifying that a copy of a document is a true copy of another document;
- Take depositions, affidavits, verifications, and other sworn testimony or statements;
- Perform any other act that is recognized or otherwise given effect under the law, rules, or regulations of another jurisdiction, including the United States, provided such other law, rule or regulation authorizes a Notary in this state to perform such an act;
- Perform any other act authorized by law or rule; and
- Present and give notice of dishonor and protest notes and other negotiable instruments as provided in the Uniform Credit Code.

All such acts must occur in the physical presence of the Notary.¹⁴

In addition, the Act specifically authorizes and directs the Secretary of State (Secretary) to promulgate rules regarding, electronic¹⁵ and pictorial¹⁶ notarizations. Importantly, the Secretary administers the Act through the staff of the Department of State (DOS).

Given certain, enumerated circumstances, a Notary may certify as to the subscription or signature of an individual when it appears that such individual has a physical limitation that restricts such individual's ability to sign by writing or making a mark.¹⁷

¹¹ § 12-55-101, C.R.S.

¹² § 12-55-201, C.R.S.

¹³ § 12-55-110(1), C.R.S.

¹⁴ § 12-55-110(4)(a), C.R.S.

¹⁵ § 12-55-106.5, C.R.S.

¹⁶ § 12-55-106.7, C.R.S.

¹⁷ § 12-55-110.5(1), C.R.S.

A Notary must not notarize a document in which the Notary has a disqualifying interest. A disqualifying interest is one under which the Notary would receive any advantage, right, title, interest, cash or property, or which involves naming the Notary, individually, as a party to the underlying transaction.¹⁸

To notarize a document, the Notary must sign his or her official signature on the notarial certificate.¹⁹ Under or near the signature, the Notary must stamp or emboss the Notary's official seal, which must contain the outline of the seal, the name of the Notary and the words, "STATE OF COLORADO" and "NOTARY PUBLIC."²⁰ Importantly, the seal must not be applied in a manner that will render illegible or incapable of photographic reproduction any of the printed marks or writing.²¹ The Notary must notify the DOS if the Notary ever loses or misplaces the Notary's seal.²²

Finally, the Notary must write or stamp on each notarized document the words "my commission expires" followed by the actual expiration date of the commission.²³

To perform electronic notarizations, a Notary must inform the DOS that he or she intends to perform electronic notarizations.²⁴ The DOS will then issue to the Notary a series of unique document authentication numbers (DANs), which the Notary attaches to each electronic document that the Notary notarizes electronically.²⁵ The DAN may be verified with the DOS, thereby providing assurance that the notarization is valid.

In most other respects, an electronic notarization is similar to any other notarization in that the Notary's name and the words "NOTARY PUBLIC," "STATE OF COLORADO," and "my commission expires" followed by the expiration date, must appear on the document.²⁶

To become a Notary, a candidate must:²⁷

- Be at least 18 years old;
- Read and write the English language;
- Provide the DOS with the applicant's business and residential addresses and telephone numbers;
- Confirm that the candidate has never had a commission as a Notary revoked;
- Confirm that the candidate has never been convicted of a felony;
- Confirm that the candidate has not, in the previous five years, been convicted of a misdemeanor involving dishonesty; and
- Provide the DOS with a handwritten sample of the applicant's official signature.

¹⁸ § 12-55-110(2), C.R.S.

¹⁹ § 12-55-112(1), C.R.S.

²⁰ § 12-55-112(2), C.R.S.

²¹ § 12-55-112(4), C.R.S.

²² § 12-55-113, C.R.S.

²³ § 12-55-112(3), C.R.S.

²⁴ 8 CCR 1505-11-2.1

²⁵ 8 CCR 1505-11-2.4(a)

²⁶ 8 CCR 1505-11-2.4(b)

²⁷ §§ 12-55-104(1) and (2), C.R.S.

Finally, each applicant must affirm to the DOS that the applicant has read the Act and that the applicant will perform all notarial acts in conformance with the Act.²⁸

All Notary commissions are valid for four years,²⁹ and to be recommissioned, the Notary must follow all of the steps for, and comply with all of the requirements of, initial commissioning.³⁰

The DOS must deny an application for, or revoke any active commission of any Notary who, among other things:³¹

- Has been convicted of any felony or, within the immediately previous five years, a misdemeanor involving dishonesty;
- Fails to exercise the powers or perform the duties of a Notary;
- Knowingly uses false or misleading advertising in which the Notary represents that he or she has powers, duties, rights or privileges that he or she does not possess;
- Engages in the unauthorized practice of law; or
- Notarizes any blank document.

Once a Notary's commission has been revoked, that individual is barred from applying for and receiving any future commissions as such.³²

Advertising in a language other than English by a Notary who is not an attorney must clearly state that the Notary is not an attorney³³ and must contain a list of permissible fees.³⁴ Fees may not exceed \$5.00, or \$10.00 for electronic notarizations.³⁵

For every notarial act affecting the title to real property, the Notary must record such act in a journal³⁶ unless the Notary's firm or employer retains the original or a copy of the document in the employer's regular course of business.³⁷

²⁸ §§ 12-55-104(2) and 12-55-105, C.R.S.

²⁹ § 12-55-103, C.R.S.

³⁰ § 12-55-108, C.R.S.

³¹ § 12-55-107(1), C.R.S.

³² § 12-55-107(4), C.R.S.

³³ § 12-55-110.3(1), C.R.S.

³⁴ § 12-55-110.3(2), C.R.S.

³⁵ § 12-55-121, C.R.S.

³⁶ § 12-55-111(1), C.R.S.

³⁷ § 12-55-111(3), C.R.S.

Journal entries should contain:³⁸

- The type and date of the notarial act;
- The title or type of document or proceeding that was notarized;
- The name, signature and address of each person whose oath, affirmation, acknowledgment, affidavit, declaration, deposition, protest, verification or other statement is taken; and
- Any other information the Notary considers appropriate to record.

The journal is a public document. As such, it must be returned to the DOS upon the death of the Notary,³⁹ or upon the Notary's desire to cease being a Notary.⁴⁰ The Notary must report the loss or theft of a journal to the DOS within 30 days of such an occurrence.⁴¹

Finally, the Acknowledgements Act provides for the recognition of notarial acts performed outside of Colorado for use in Colorado. In general, such acts will be recognized in Colorado when performed by:⁴²

- A Notary authorized to perform notarial acts in the place in which the act is performed;
- A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;
- An officer of the U.S. Foreign Service, a consular agent, or any other person authorized by the U.S. Department of State to perform notarial acts in the place in which the act is performed;
- A commissioned officer in active service with the U.S. armed forces, any other person authorized by the U.S. armed forces to perform notarial acts if the notarial act is performed for a merchant seaman of the U.S., a member of the U.S. armed forces or any other person serving with or accompanying the U.S. armed forces, or any of their dependents; or
- Any other person authorized to perform notarial acts in the place in which the act is performed.

³⁸ § 12-55-111(2), C.R.S.

³⁹ § 12-55-115(1), C.R.S.

⁴⁰ § 12-55-115(2), C.R.S.

⁴¹ § 12-55-113, C.R.S.

⁴² § 12-55-203, C.R.S.

Program Description and Administration

The Notary program is administered by the Secretary of State (Secretary) through the Department of State's (DOS) Licensing Division, which comprises five programs:

- Notaries;
- Bingo;
- Charitable Solicitations;
- Administrative Rules; and
- Address Confidentiality.

In fiscal year 06-07, the Notary program was staffed by 4.2 full-time equivalent (FTE) employees. Table 1 provides program expenditure and staffing information for the fiscal years indicated.

Table 1
Agency Fiscal Information

Fiscal Year	Total Program Expenditure	FTE
02-03	\$335,761	2.8
03-04	\$161,269	2.8
04-05	\$266,632	1.6
05-06	\$392,391	3.5
06-07	\$233,324	4.2

Staff of the DOS attributes the fluctuations in expenditures and FTE to periodic changes in the way funds and FTE were allocated among the Licensing Division's five programs. DOS management continuously adjusted FTE among the five programs to ensure adequate coverage of each. This necessitated reallocating certain employees to certain functions in certain programs during different time periods. Additionally, the DOS used multiple temporary employees throughout this period. As a result, the number of FTE actually working for the Notary program changed from year to year. Similarly, due to the use of temporary employees, expenditures were made that are not reflected in the number of FTE.

The substantial increase in expenditures in fiscal year 05-06, and the subsequent decrease in fiscal year 06-07, can be attributed to the implementation of a new, on-line licensing system in that year.

The 4.2 FTE allocated to the Notary program in fiscal year 06-07 consisted of five individuals in the following positions:

Administrative Assistant (1.0 FTE Administrative Assistant II) – this individual supports the Notary program by receiving, opening, validating and distributing incoming mail; scanning Notary applications and related documents into various DOS computer databases, and assisting the Front Desk Receptionist as needed.

Front Desk Receptionist (1.0 FTE Administrative Assistant III) – this individual provides service to all walk-in customers requesting expedited authentication of notarized documents, authenticates notarized documents received by mail, and answers incoming phone calls.

Workflow Manager (1.0 FTE Program Assistant I) – this individual is responsible for processing Notary applications, renewals, name changes and requests for contact information. This individual also presents notary training classes.

Program Manager (1.0 FTE General Professional III) – this individual is responsible for the day-to-day operations of the Notary program.

Acting Director (0.2 FTE General Professional III) – this individual processes and prosecutes violations involving Notaries.

Commissioning

In order to receive a commission as a Notary, an individual need only submit an application to the DOS. Application forms are available on-line, and require the applicant to attest that he or she:

- Has read the Act;
- Will faithfully perform all notarial acts in conformance with the Act;
- Is a citizen of, a permanent resident of, or lawfully present in the United States;⁴³
- Is a Colorado resident over the age of 18;
- Has never been convicted of a felony;
- Has not been, within the previous five years, convicted of a misdemeanor involving dishonesty;
- Is able to read and write the English language; and
- Has never had a commission as a Notary revoked.

⁴³ In addition to this attestation, the applicant must also either provide in person, or provide a clear, readable copy of one of the following: Colorado Driver's License, Colorado ID Card, valid Military/Common Access Card, Native American Tribal ID Card with photo, or a valid I-551 Resident Alien or Permanent Residency Card that is verified using the Systematic Alien Verification for Entitlements Program.

The application must be signed by the applicant and notarized. The fee for a Notary commission is \$10.

Commissions are valid for four years and the process for reappointment is identical to the process for initial appointment.

As Table 2 illustrates, the number of commissioned Notaries has slowly, but steadily, increased over the course of the five-year period indicated.

Table 2
Commissioning Information

Number of Commissions			
Fiscal Year	New Appointments	Reappointments	Total Active
02-03	13,838	12,795	100,362
03-04	13,175	13,877	104,113
04-05	13,112	14,682	107,624
05-06	13,052	15,263	109,552
06-07	12,183	15,503	110,339

The DOS receives approximately 2,000 applications each month, and roughly 25 percent of them are rejected for one or more of the following reasons:⁴⁴

- A copy of the required identification is not provided;
- The signatures on the application and the identification do not match;
- The form is incomplete; and
- The address does not match the address on file (reappointments only).

Training

Although neither the Act nor the rules promulgated thereunder require a Notary to obtain any kind of training prior to receiving a commission, the DOS has offered free, voluntary training since 2005.

⁴⁴ "Notary Law" presentation prepared by Colorado Secretary of State, June 4, 2008, p. 5.

Table 3 illustrates the number of trainings offered by the DOS between fiscal years 05-06 and 07-08, as well as the total number of attendees for each year.

**Table 3
Voluntary Training Session Information**

Fiscal Year	In-Office Trainings		Out-of-Office Trainings		Totals	
	Total Number of Trainings	Total Number of Attendees	Total Number of Trainings	Total Number of Attendees	Total Number of Trainings – In-Office and Out-of-Office	Total Number of Attendees – In-Office and Out-of-Office
05-06	10	206	8	165	18	371
06-07	12	280	8	116	20	396
07-08	12	487	24	686	36	1,173
Total	34	973	40	967	74	1,940

The DOS offers the free training sessions at the DOS offices in downtown Denver about once each month. It is typical for between 20 and 25 individuals to attend each of these training sessions.

In addition, upon request, the DOS will provide trainings outside of the office. The number of these trainings remained constant during the first two fiscal years, but increased dramatically in fiscal year 07-08. DOS staff speculates that this increase can be attributed to at least two factors: word of mouth and better publicity. Staff speculates that as more trainings are offered, more people hear of them and become aware of their availability and, thus, request them. Staff further speculates that its own increased efforts to make people aware of the trainings, such as in correspondence and in verbal interactions with Notaries, have resulted in an increase in the number of requests for such.

Training sessions typically last two hours, depending on the number and types of questions asked by attendees. The topics covered include:

- How to apply to become a Notary;
- Notary powers and responsibilities;
- Notarial certificates;
- Oaths and affirmations;
- Acknowledgments;
- Copy certifications;
- Authentications;
- Acceptable forms of identification;
- Best practices;
- Notary seals;

-
- Notary journals;
 - Prohibited acts;
 - Consequences of violating the Act;
 - Notarizing foreign language documents; and
 - Electronic notarizations.

Complaints/Disciplinary Actions

When a person thinks that a Notary has violated the Act, he or she can file a complaint against the Notary with the DOS.

However, until very recently, the DOS has not tracked the number or nature of such complaints. This practice changed somewhat in fiscal year 06-07, when the DOS received 149 complaints against Notaries. Although the DOS still does not track, and therefore cannot report on, the nature of those complaints, DOS staff estimates that approximately half of these complaints involved the notarization of documents outside the physical presence of the signer.

It is worth noting that the 1997 Sunset Review of Notaries encountered similar recordkeeping deficiencies and that report recommended that the DOS develop a system to track the number and nature of complaints it receives.

Regardless, according to DOS staff, as of February 2008, a new computer system will enable the DOS to accomplish this important, government accountability and performance measure.

When a complaint is received, the DOS sends the Notary a letter informing the Notary that a complaint has been filed and giving the Notary an opportunity to respond to the complaint.

Depending on the merits of the case, the DOS may dismiss the complaint or launch a more formal investigation.

If the DOS finds that the Notary willfully violated the Act, or that the violation constitutes a serious type of violation (i.e., something more serious than a recordkeeping error), the DOS may offer the Notary the opportunity to:

- Proceed to a hearing to revoke the Notary's commission;
- Resign the Notary's commission; or
- Accept a suspension for a period of time.

Recall that the only disciplinary tool available to the DOS under the Act is revocation. As a result, a suspension is possible only when the Notary agrees.

During the course of this review, a representative of the Department of Regulatory Agencies reviewed 16 Notary complaint files. This review discovered that the periods of suspension tend to vary based on the nature of the violation. Additionally, many suspensions also require the Notary to attend a training session prior to reactivation.

As of this writing, DOS staff was working on developing a matrix which would provide guidance as to when revocation would be sought and when lesser disciplinary options would be offered to the subject Notary.

In general, this draft matrix makes a distinction between deliberate and willful conduct on the one hand, and non-deliberate and non-willful conduct on the other, as well as the severity of the violation.

For example, the DOS will generally seek revocation if any of the following occurred as the result of deliberate or willful conduct:

- Notarizing outside the presence of the signer;
- Failing to keep a journal for real estate transactions; or
- Engaging in the unauthorized practice of law.

With these types of violations, the DOS assumes that the conduct was deliberate, unless the evidence shows otherwise.

For less severe violations, the DOS will likely seek a suspension and some training, unless it appears that the conduct was deliberate and willful. Some examples of these types of violations include:

- Using an improper notarial certificate;
- Notarizing a document with blank spaces;
- Having a disqualifying interest;
- Failing to affix the Notary seal; and
- Notarizing one's own signature.

If revocation is pursued, regardless of the reasons, all such proceedings are subject to the Administrative Procedure Act and are heard by an administrative law judge.

Table 4 illustrates, for the period indicated, the number of Notary commissions revoked, as well as the number of commissions resigned by Notaries.

Table 4
Commission Revocations and Resignations

Type of Action	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Revocation	0	1	1	4	0
Resignation	87	107	87	98	109
Total Actions	87	108	88	102	109

Additionally, the figures reported in Table 4 for resignations include those commissions that were resigned in order to avoid revocation, as well as those that were resigned for other reasons (i.e., the person no longer wanted to be a Notary, the person moved out of state, etc.). As a result, the number of resignations paints a somewhat inaccurate picture as to the number of disciplinary actions taken against Notaries.

Analysis and Recommendations

Recommendation 1 – Continue the Notaries Public Act for nine years, until 2018.

The first sunset criterion asks whether regulation is necessary to protect the public health, safety and welfare. With respect to Notaries, clearly the public health and safety are not at issue, but the public welfare is.

Notaries ostensibly provide a valuable service to Coloradans – they portend to verify the identity of those signing documents, taking oaths and making affirmations. But in doing so, they may create a false sense of security.

The original intent of having a document notarized was to provide an independent, disinterested third-party witness to the signing of a document so as to prevent one of the parties from later claiming that he or she did not actually sign the document. In this modern era of identity theft and rampant fraud, this goal has, perhaps, never been more important.

However, a Notary does not verify the identity of the person signing a particular document. Rather, the Notary verifies that the person signing has a driver's license, or some other form of identification, bearing the photo of the person signing and that the name on the identification matches the name on the document. Given the relative ease with which forged or fake forms of identification can be obtained today, there is a genuine fear that the role of the Notary merely creates a false sense of security.

Regardless, all 50 states, all U.S. territories and most nations recognize, and somehow regulate, Notaries, regardless of the title under which such individuals may work.

Notarizations are required on multitudes of documents, ranging from real estate transactions to adoptions.

In the end, it would be a disservice to Coloradans to cease the regulation of Notaries because doing so would make it inordinately difficult for Coloradans to participate in many interstate and international transactions. For this reason alone, the General Assembly should continue the Notaries Public Act (Act).

Additionally, during the course of this sunset review, the Department of Regulatory Agencies (DORA) considered a number of options that were presented by various parties, but upon which no recommendations are made.

First, some believe that the state should require Notaries to be trained. The focus of such mandatory training, proponents argue, should cover how to identify forged or faked forms of identification in order to help prevent identity theft, as well as training on basic notarial acts.

Mandatory training to detect identity theft would be impractical for several reasons. Even law enforcement can have a difficult time keeping up with the myriad forms of identification promulgated by multiple jurisdictions across the nation.

Further, with over 100,000 Colorado-commissioned Notaries, the amount of time it would take to train all of them would render the training moot by the time the training had ended. Similar problems would likely be encountered with web-based training – the training would require continual updating.

Neither should mandatory training on basic notarial acts be pursued. The Department of State (DOS) produces a *Notary Handbook* that is remarkably comprehensive in addressing the duties and obligations of Notaries with respect to the various notarial acts authorized by the Act. This authoritative resource is available on the DOS website and covers all of the same issues that are covered in the voluntary training offered by the DOS staff, and which a representative of DORA attended.

Additionally, there is insufficient data, such as types or number of complaints received, to justify mandatory training for over 100,000 Notaries.

Next, some parties suggested that DORA recommend requiring Notaries to make journal entries for each notarial act performed, and that the journal entries include the thumbprints of the people signing. While the journal entry requirement is explored further in Recommendation 3 of this sunset report, the thumbprint requirement was rejected.

On the surface, a thumbprint seems to be a relatively simple solution to a complex issue. A thumbprint is unique to the individual. If a signor were to present a false name and a forged form of identification, the thumbprint could still reveal the signor's true identity.

However, as multiple regulatory programs have learned in recent years, even individuals who have been trained in the art of taking a fingerprint do not always obtain readable prints. Smudges can easily render a fingerprint, and thus a thumbprint, unreadable and useless. Those committed to perpetrating fraud, the very individuals such a requirement would be intended to deter, would know this and immediately render the system moot.

In the end, there does not appear to be an easy solution to the dilemma of notarizations creating a false sense of security. While the current system affords some protection and requires the best form of due diligence currently practicable, it is not possible to conclude that the regulation of Notaries protects the public welfare. However, indirect protection may be afforded and regulation of Notaries enables Coloradans to more efficiently participate in interstate and international transactions.

For these reasons, the General Assembly should continue the regulation of Notaries for nine years, until 2018. Nine years is an appropriate length of time given the nature of the recommendations contained in this sunset report.

Recommendation 2 – Expand the disciplinary tools available under the Act to include letters of admonition and suspensions.

In the event that a Notary violates a provision of the Act, or the rules promulgated thereunder, the disciplinary tools available to the Secretary of State (Secretary), who administers the Act through the DOS, are limited to the denial of an appointment, the denial of a reappointment, or the revocation of the Notary's commission.⁴⁵ Further, the statute authorizing even these limited tools states that the DOS "shall" do such in the event of a violation;⁴⁶ the DOS has no discretion in the matter.

While this limited authority seems overly harsh upon first examination, it makes a modicum of sense given the relatively simplistic nature of most notarial acts – check the driver's license of the person signing to ensure that he or she is who he or she purports to be. If a Notary cannot perform this simple act, then perhaps the Notary should not be notarizing documents.

Additionally, for many Notaries, holding a commission as such is simply an adjunct to their other job duties and responsibilities. For example, many legal secretaries are Notaries so that they can notarize legal documents requiring a notarization. Very few, if any, perform only notarial acts for a living.

From this perspective, then, it also appears rational that if such a Notary were to, for example, notarize a document containing blank spaces, or a document that was signed outside of the Notary's presence, then perhaps such a person should not be a Notary. Likely, the livelihood of such an individual would not be in jeopardy.

However, there are certain occupations in which holding a Notary commission is an essential requirement. Such individuals include real estate closing agents. These individuals are typically employed by, or contracted by, real estate title companies and they facilitate the closings of real estate transactions. Their job duties include far more than simply notarizing the relevant documents, but if they were not commissioned Notaries, then a commissioned Notary would also have to be present in the room during the closing.

As a result, if such an individual were to lose his or her commission, it would very likely also result in a job loss. A title company would rather pay one person to perform all functions of a real estate closing, than have to pay two people.

An actual case provides some illumination. In this case, a Notary worked as a real estate closing agent for a title company. Subsequent to each closing, it was this title company's policy to digitize all relevant documents for safekeeping.

⁴⁵ § 12-55-107(1), C.R.S.

⁴⁶ § 12-55-107(1), C.R.S.

This policy also helped the respective Notaries comply with the statutory requirement that a record be maintained of all notarial acts involving the transfer of real property. A Notary is essentially exempt from this requirement, provided the Notary's employer maintains a copy of the notarized documents in the employer's regular course of business.

However, in this case, the relevant documents were either not digitized or if they were, they were misfiled and not retrievable. When a problem arose with the transaction, the Notary, not the employer, was found to have violated the Act.

The only legal option available to the DOS was to revoke the Notary's commission, even though the Notary did nothing wrong. As a result, not only would the Notary lose the commission, but also the job.

In practice, the DOS has adopted a more reasonable approach, but one that does not meet the technical parameters of the Act. In practice, the DOS seeks revocation only in those circumstances in which it appears that the Notary in question willfully violates the Act.

In all other situations, such as the one just described, in which the DOS finds a violation, the Notary is typically given an option of stipulating to a brief period of suspension, which often includes a training component; voluntary surrender of the commission; or revocation. In most circumstances, the Notary stipulates to the suspension.

However, the State Auditor found this practice questionable in its 2008 Audit Report.⁴⁷ Technically, the State Auditor's point is valid, but it does not necessarily serve the public interest.

This scenario justifies the expansion of the disciplinary tools available to the DOS. Virtually every other regulatory program in Colorado allows the regulatory authority some latitude in discipline under the theory that the punishment should fit the crime.

As a result, the DOS should be authorized to issue letters of admonition, to involuntarily suspend a commission, as well as revoke a commission.

A letter of admonition is, essentially, a formal censure. It is the lowest form of formal discipline, but does not impact the ability to continue to practice.

This broader spectrum will better serve Coloradans, the DOS and commissioned Notaries. Notaries will be on notice that, while the DOS may not necessarily revoke a commission, other disciplinary options are available which could impact the ability of the Notary to work. As a result, fewer violations may occur.

⁴⁷ Colorado Office of the State Auditor, Department of State – Licensing and Elections Divisions, Oversight of Charitable Solicitations, Lobbyists and Notaries Public: Performance Audit, May 2008, p. 34.

For these reasons, the General Assembly should expand the disciplinary options available to the DOS to include letters of admonition and suspensions.

Recommendation 3 – Require Notaries to make a journal entry for each notarial act performed.

Section 12-55-111(1), Colorado Revised Statutes (C.R.S.), states,

Every notary public shall keep a journal of every acknowledgement taken by such notary to an instrument affecting the title to real property . . .

The statute goes on to provide that such a journal entry may include:⁴⁸

- The type and date of the notarial act;
- The title or type of document or proceeding that was notarized, and the date of such document or proceeding;
- The name of each person whose oath, affirmation, acknowledgement, affidavit, declaration, deposition, protest, verification or other statement is taken;
- The signature and address of each person whose act was notarized;
- The signature, name and address of each witness to the notarization; and
- Any other information the Notary considers appropriate.

The sole exemption to this requirement occurs when the original or a copy of the document is retained by the Notary’s employer.⁴⁹

In other words, a Notary need not make a journal entry unless the transaction involves real estate, and even then, a journal entry is not required so long as the Notary’s employer retains an original or a copy of the notarized document.

Journal entries can help to deter fraud, or at the very least, help to ensure that the Notary takes the proper measures to ensure that the person signing the pertinent document is who he or she claims to be.

A recent article endorsed the essence of this Recommendation 3:

Law enforcement agencies increasingly are looking to Notaries to preserve a written record of their work in case a notarization transaction ever comes under legal scrutiny . . . By requiring Notaries to identify signers based on satisfactory evidence and recording that information, investigators have a written record and a place to start if they need to find a signer.⁵⁰

⁴⁸ § 12-55-111(2), C.R.S.

⁴⁹ § 12-55-111(3), C.R.S.

⁵⁰ Michael Mink, “Preserving the Truth: Why Recordkeeping is So Critical,” *The National Notary* (May 2008), p. 39.

Additionally, however, it must be remembered that Notaries hold commissions, issued by the DOS on behalf of the State of Colorado, not licenses. A commission denotes a certain level of official sanction. In other words, a commissioned Notary can almost be thought of as a *quasi* state official,⁵¹ whereas a licensee is authorized by the state to engage in a certain practice.

As such, when a Notary notarizes a document, he or she is actually serving the state, more than the individuals involved in the transaction.

This concept is confirmed by the use of the terms “appointment” and “commission” throughout the Act. It is further confirmed by the requirement that a Notary’s journal and seal be delivered to the DOS upon revocation of the commission,⁵² resignation of the commission⁵³ or upon the Notary’s death.⁵⁴ Additionally, the Act places limitations on how much a Notary may charge the public for notarial services.⁵⁵ All of this implies that the journal and the seal are, in fact, the property of the state and that since a notarial act is an act by a *quasi* state official, regulating of the prices charged for such acts is a legitimate exercise of state power.

However, Notaries are not required to record all notarial acts. As *quasi* officials of the state, they should be.

Journal entries serve multiple purposes. First, a journal entry represents a memorialization of an official act of the state. Such acts should be somehow recorded and memorialized in the event they are ever questioned or need to be defended.

Similarly, a journal helps the Notary to defend having notarized a particular document. Typically, notarial acts are challenged, if at all, many months, or even years, after the act actually occurred. It is impractical to expect an individual Notary to recall the circumstances involved in a particular transaction. However, a journal entry can serve as evidence of what occurred.

Additionally, a journal entry could serve the signer in that there would be a record of the transaction.

Finally, this is not a novel concept. While 30 states recommend that their Notaries keep journals, at least 15 require a journal entry for certain acts.

This requirement would, in essence, amount to the codification of best practices, and will serve to protect the public, as well as the Notary.

⁵¹ 58 Am.Jur.2d, Notaries § 2; 66 CJS, Notaries § 2.

⁵² § 12-55-107(3), C.R.S.

⁵³ § 12-55-115(2), C.R.S.

⁵⁴ § 12-55-115(1), C.R.S.

⁵⁵ § 12-55-121, C.R.S.

For these reasons, Notaries should be required to make a journal entry for each notarial act performed. Further, the DOS should be authorized to promulgate rules more specifically outlining what elements of an entry should be required.

Recommendation 4 – Clarify what constitutes a disqualifying interest.

A Notary may not notarize any document in which the Notary has a disqualifying interest. The Act defines a disqualifying interest in a transaction if the Notary:⁵⁶

- 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 authorized by the Act; or
- Is named individually, as a party to the transaction.

Some, including the DOS staff, maintain that this definition is too vague. Such critics point to language in the Model Notary Act, which includes the same two elements as the Act, but goes on to include those transactions in which the Notary is:⁵⁷

- A spouse, domestic partner, ancestor, descendant, or sibling of the principal, including in-law, step or half relatives; and
- An attorney who has prepared, explained, or recommended to the principal the document that is to be notarized.

These seem like reasonable clarifications and could serve to avoid confusion for Notaries who are asked by, for example, relatives to notarize wills in which they have no direct interest, but, due to circumstances beyond anyone's control or ability to predict, become beneficiaries of such instruments.

Therefore, the General Assembly should clarify what constitutes a disqualifying interest under the Act to more closely align with the definition in the Model Notary Act.

Recommendation 5 – Repeal the authority to notarize notices of dishonor and presentment.

Among a Notary's authorized powers is the power to,

present and give notice of dishonor and protest notes and other negotiable instruments as provided in Part 5 of Article 3 of Title 4, C.R.S., or the corresponding laws of another jurisdiction.⁵⁸

⁵⁶ § 12-55-110(2), C.R.S.

⁵⁷ Model Notary Act § 5-2(a).

⁵⁸ § 12-55-110(1)(f), C.R.S.

Part 5 of Article 3 of Title 4, C.R.S., is part of the Uniform Commercial Code (UCC). In essence, then, this provision of the Act requires a Notary to understand the intricacies of the UCC. Such is an act typically reserved for licensed attorneys.

This is problematic for at least two reasons. First, nothing in any Notary training, whether voluntary or required, could prepare a Notary for such a task. Second, Notaries are specifically prohibited from engaging in the practice of law unless properly licensed to do so.

Finally, even the DOS staff is unclear of the role a Notary has to play in the case of a presentment and dishonor, which, very generally, entails the presentation of a note or negotiable instrument for payment, which payment is subsequently withheld or dishonored.

Because this power is vague, well beyond the competency of an ordinary Notary, and may constitute the practice of law, the General Assembly should repeal it.

Recommendation 6 – Repeal the authority to notarize photographs.

Among a Notary’s authorized powers is the power to,

transmit encrypted, authenticated photographs of individuals for use by motor vehicle offices, credit card companies, and other entities requiring an authenticated photograph of an individual.⁵⁹

This same statutory provision directs the DOS to promulgate rules “necessary to establish standards, procedures, practices, forms, and records relating” to this power.⁶⁰ This has not been done.

The original purpose of this provision, which was enacted in 2005, was to enable Notaries to authenticate photographs that could then be sent to the Colorado Department of Revenue (DOR) to obtain driver’s licenses.

However, the DOR and motor vehicle offices across the state now require, largely as a result of legislation passed in the 2006 Special Session of the General Assembly, identification much more substantive than a photograph authenticated by a Notary. In short, no one uses notarized photographs.

It could be argued that no one uses them because the DOS has not promulgated the rules necessary to implement this provision. It can just as easily be argued, however, that the DOS has not promulgated the rules because there has been no demand for this type of notarial service.

Finally, Colorado is the only state to have such a provision.

⁵⁹ § 12-55-106.7, C.R.S.

⁶⁰ § 12-55-106.7, C.R.S.

Since no one uses this type of notarial service, and is not likely to need to do so in the foreseeable future, the General Assembly should repeal this provision.

Administrative Recommendation 1 – Implement a system for complaint tracking and recordkeeping.

Prior to February 2008, the DOS did not track the number or nature of complaints received pertaining to Notaries. This is problematic for several reasons.

First, tracking such information constitutes a basic governmental accountability measure. How can the General Assembly, voters and taxpayers determine the validity of government programs without knowing what those programs are doing?

Second, several issues arose during the course of this review for which such statistics could have provided justification, but absent the data, the recommendations could not be justified. Examples of such issues include:

- Requiring Notaries to complete a training course, pass an examination, or both;
- Requiring criminal history background checks of Notaries;
- Requiring Notaries to post surety bonds or to maintain errors and omissions insurance; and
- Imposing liability on employers that force Notaries to commit violations.

Without complaint data, justification for such recommendations could not be formulated.

Granted, a manual sifting of complaint files is possible, and such was conducted on a limited scale as part of this sunset review. A review of those limited files did not provide justification for recommendations on the enumerated issues.

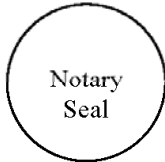
Finally, this is not the first time the DOS has been called to task on this issue with respect to Notaries. In DORA's 1997 sunset review of the same program, a similar administrative recommendation was made, and apparently, ignored.

Thankfully, the DOS implemented a new computer system in February 2008, which should rectify this situation. Regardless, this Administrative Recommendation 1 is included in this sunset report to ensure that this information is maintained.

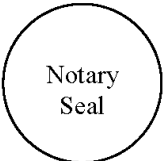
Appendix A – Specimens of Notarial Certificates

The following specimens of notarial certificates appear in the *Notary Handbook*, prepared by the Colorado Secretary of State, July 5, 2007.

(1) For an affirmation:

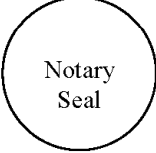
Subscribed and affirmed before me in the county of _____, State of Colorado, this _____ day of _____, 20__.	
	<hr style="border: 0; border-top: 1px solid black; width: 100%;"/> (Notary's official signature)
	<hr style="border: 0; border-top: 1px solid black; width: 100%;"/> (Commission expiration date)

(2) For an oath:

Subscribed and sworn to before me in the county of _____, State of Colorado, this _____ day of _____, 20__.	
	<hr style="border: 0; border-top: 1px solid black; width: 100%;"/> (Notary's official signature)
	<hr style="border: 0; border-top: 1px solid black; width: 100%;"/> (Commission expiration date)

(3) For a certification of a photocopy of a document:

State of Colorado, 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.

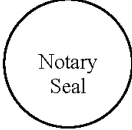
 _____
(Notary's official signature)

(Commission expiration date)

(4) Acknowledgement Formats:

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


State of Colorado
County of _____
The foregoing instrument was acknowledged before me this (date) by
(name of person acknowledging).

 _____
(Notary's official signature)

(Commission expiration date)

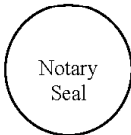
(b) For a corporation:

State of Colorado
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.

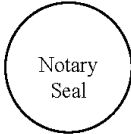
 _____
(Notary's official signature)

(Commission expiration date)

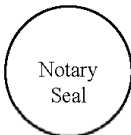
(c) For a partnership:

State of Colorado 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.	_____ (Notary's official signature)
	_____ (Commission expiration date)

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

State of Colorado 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).	_____ (Notary's official signature)
	_____ (Commission expiration date)

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

State of Colorado County of _____ The foregoing instrument was acknowledged before me this (date) by (name and title of position).	_____ (Notary's official signature)
	_____ (Commission expiration date)