



## AMERICAN SOCIETY OF **NOTARIES**

### **Notaries at Loan Signings— Just What Are You Signing, and Why?**

It's a bit of a moving target—the constantly changing selection of forms and documents that notaries who double as signing agents encounter in loan document packets.

Generally, such forms are drafted solely from the point of view of the lender/title company, and are meant to address some factor that's been found to delay or even stop the processing and funding of loans.

While the lender/title company's need to implement problem-solving procedures or forms is understandable, we're disturbed by the fact that so many of these forms seem to burden the notary/signing agent with the lion's share of risk.

We're observing more tasks being given to the notary/signing agent, even ones that seem more appropriately handled by the lender/title company prior to the signing. Worse, notary/signing agents are themselves being asked to take various written oaths about those tasks, thus placing themselves directly BETWEEN lenders/title companies and liability that might arise over the tasks in question.

Is that really your role? No! You must, therefore, learn to carefully read the various forms you're asked to complete and sign, and decline to sign those that make you responsible in any way that exceeds good sense or reason.

Faced with just such an evaluation, a concerned member faxed us a copy of a "notary's affidavit" that has the notary swearing in writing that—among other things—the signer's photo ID was "original" and the signature on the signer's photo ID "matches" the signature(s) on the document requiring notarization. In the wake of identification verification procedures stemming from Section 326 of the Patriot Act, such "affidavits" are now quite common.

But WHOA! Why would anyone other than a fake ID expert or handwriting expert sign an oath containing such statements? Yet notary/signing agents do so all the time. We've seen varied wording of this clause in other documents; for example, the notary is asked to sign a statement that he/she examined the signer's photo ID and it "appeared to be genuine and the signature on the ID appeared to be the same as the document signer's." The language stating the ID and signature "appear" a certain way is reasonable. In our opinion, the language stating the ID is "genuine" and the signature "matches" is not.

Another trouble spot involves the signature line of forms that notary/signing agents are directed to sign. Always make sure the signature line accurately reflects your true identity or position. Do not sign on a

signature line designated for the “Closing Agent” or “Closing Officer/Attorney,” for example, even if it’s the only signature line on a form you’re supposed to complete. To do so would imply you have a position or expertise that you do not possess.

Other forms we’ve seen have the notary/signing agent swearing in writing that, “...in performing my duties as a notary public, I have complied with all applicable state and local laws.” A notary wouldn’t even be commissioned if he or she had not already vowed to practice lawfully—why must a redundant oath be taken? Does signing such a written oath create a problem for you if you make an honest mistake? How might your protections under an E&O policy be affected if you sign such a statement?

The bottom line is, you need to be your own best defense against assuming unnecessary liability in complex transactions such as a loan document signing. Carefully READ any statement you’re asked to sign regarding your actions as a notary or signing agent. IDENTIFY language that would confer expertise you don’t have. DISCUSS your concerns with the document preparer and, if you can’t agree on alternative language, DECLINE to sign the form or statement in question.

Finally, if you are a notary/signing agent who elects to sign the written oaths and related forms required by lender/title companies, DO NOT affix your official notary seal to your signed form, even if it appears you should. That would amount to notarizing your own signature (see the accompanying article, next page). If the oath you sign is followed by a jurat, YOU MUST have another notary administer the verbal ceremony for an oath to you, complete the jurat, and affix his or her seal. If the written oath or form is not followed by a jurat, simply sign if it is your intent to sign—your signature is sufficient to execute the written oath. •