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Lawyers Mutual Liability Insurance Company of North Carolina Founded by the North Carolina Bar Association in 1978

The contents of this newsletter are intended for general information purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. It is not the intent of this newsletter to establish a standard of due care for any particular situation. Rather, it is our intent to advise our policyholders to act in a manner that might well be above the standard of care in order to minimize a firm's malpractice risk.

The New and Improved 2006 Notary Act

Excerpted from an article by NANCY SHORT FERGUSON, Vice President and Senior State Counsel for Chicago Title Insurance Company, published in North Carolina Lawyers Weekly on August 14, 2006.



The Legislature, in the 2006 Short Session, passed the 2006 Notary Public Corrections Acts addressing a multitude of questions and unintended consequences created by the 2005 Notary Act. The 2006 Act clarifies the contents of notarial acts (G.S. 10B-40), streamlines the requirements for individualized notarial certificates (G.S. 10B-40(b), (c), (c1) and (d)) and simplifies the appropriate "safe harbor" notarial certificate forms for acknowledgment (G.S. 10B-41), oath or affirmation (G.S. 10B-43), verification or proof by witness (subscribing, G.S. 10B-42, or non-subscribing, G.S. 10B-42.1). The 2006 Act removed the requirements for stating in the certificate that the satisfactory evidence of identity was obtained or that the act was done voluntarily; however, these are conditions of the actual act of notarizing, even if not contained in the wording of the certificate. Most of the changes take effect on October 1, 2006

Nancy Short Ferguson

What has not changed

Personal appearance by the signer before the notary, verification of identity and either acknowledgment or oath or affirmation are still required. The notary is disqualified from performing a notarial act if the person appears to be entering into the act involuntarily, or under undue influence or duress, or if the notary is a grantee or beneficiary of the transaction. The notary is still required to clearly affix a legible official notarial seal, their official signature (as

commissioned) and their commission expiration date to a notarial certificate as authorized by the statute (discussed below). NC licensed attorneys are still exempt from the requirement of attending the 6-hour course or taking the examination for commissioning.

Exams, Commissioning & Re-Commissioning

A notary applicant is required to complete a 6-hour course of study, with an additional 3-hour course for those desiring to become electronic notaries. Commissions expire every 5 years, and existing noncompliant notarial seals are grandfathered until the notary's first re-commissioning after December 1, 2005. Effective October 1, 2006, existing notaries will not be required to have a high school diploma or the recommendation of an elected official. Effective July, 2006, notaries who have been continuously commissioned since July 10, 1991, and have never been disciplined by the Secretary of State, will not be required to take the examination.

The Notarial Signature and Seal

The notarial certificate must be completed by affixing the notarial seal and signature only after the principal or subscribing witness has signed, acknowledged (and, if required, sworn or affirmed) and the notarial signature and seal must be on the same page as the notarial certificate. Though the seal must be kept in a "secure location", the 2006 Acts removed the requirement that it be a "place accessible only by the notary."

Under the 2006 Acts, the notarial seal must contain all of the following: (1) Notary's name exactly as commissioned; (2) "Notary Public";

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Surviving Change

Are You Adaptable?



Carl Younger, President

“ Being successful as an attorney means we must continue to anticipate change. Learn from each change that you make...”

As my daughter departed for law school in Texas this year, I was forced again to consider the legal world she would encounter and what would make her a good or successful lawyer. Ginny’s passion should make her a good lawyer; however, to be successful, the challenge for her, like all 21st century attorneys, is how best to survive change.

Anticipate Change

Be alert for new and evolving areas of law that might lead you to new opportunities in your practice. Understand and appreciate that change will occur in your practice. Technology will not only modify the speed of handling information but also increase the access of many potential clients to other legal resources. For personal or economic reasons, you or other members of your firm may join other legal groups. Legislation (ie. consumer bankruptcy) or competition (ie. real estate) may decrease the attractiveness of your chosen practice area. Your city or town may expand, or contract, modifying your practice opportunities.

Consider Your Options

Having considered the particular types of changes that might occur, realistically evaluate the personal and financial benefits and risks of your current practice. Talk to other attorneys doing similar work in a similar location, especially through local or statewide bar associations. Read legal journals considering changes to your area of practice and what other attorneys are doing “to survive”. Evaluate your own interests to determine if they might lead to another growing practice area or even another community.

Make Needed Investments in Yourself

Whether you decide to stay (in your firm, town, or area of practice) or “move”, you will need to update your legal knowledge, capabilities, and client base. Again, legal publications, seminars, and associations help in

this process. Your change can be partial, adding a new area of expertise while continuing your older area of practice. Not making an investment unfortunately may lead to a feeling of being trapped in an area of practice that is no longer enjoyable or profitable.

Be Willing To Change

Lawyers are traditionally risk averse. All people, not just lawyers, resist change. Making a change may not be the best course of action based on a realistic consideration of your alternatives. However, if a change is needed and can be reasonably made, a delay in making a change may adversely affect your options. Appreciate your anxiety but recognize the costs of not making the change.

Plan Any Change

Whether you decide to add an area of practice, move your office, or join another firm, plan how your change will be made. Look at timing and income. Consider how the change will affect you and your family. Once made, realistically evaluate how the change is progressing at each step of the process. Be positive about yourself and the change that you are making.

Anticipate Change, Again

Being successful as an attorney means we must continue to anticipate change. Learn from each change that you make: what worked, what did not. What changes have newly occurred in your firm, your town, or your area of practice? Renew the process considering your options, any needed investments, and your willingness to make another change.

Lawyers Mutual itself attempts to anticipate and implement needed changes. However, we recognize that whatever change occurs, our continuing objective must always be to have the resources and expertise to serve you, today and tomorrow.

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(3) "County" or "Co." of commissioning; (4) "North Carolina" or "NC"; (5) Commission expiration date and (6) Perimeter border visible when impressed.

The notary must assure the identity of the person whose signature or oath they are notarizing, by one of the 3 statutory methods: (1) personal knowledge of identity, (2) satisfactory evidence of identity by federal, state or tribal photo identification, or (3) satisfactory evidence of identity by a credible witness personally known to both the notary and to the signer as honest, reliable and not a party to or beneficiary of the transaction.

Disqualification of the Notary

G.S. 10B-20(c) provides several reasons for disqualification of the notary to perform the notarial act or complete the notarial certificate, including (consistent with existing law) failure of the signer (or subscribing witness) to personally appear before the notary, inability to establish identity of the signer or lack of a credible witness who is personally known to the notary. Former disqualifications under G.S. 10B-20(c)(3) and (4) have been moved to G.S. 10B-40(a2)(2), such that the signer must "not appear in the judgment of the notary to be incompetent, lacking in understanding of the nature and consequences of the transaction . . . or acting involuntarily, under duress, or undue influence." If the notary is a party to or beneficiary of the transaction, in their individual or fiduciary capacity, they are disqualified from notarizing, with certain exceptions. The exceptions have been expanded to include not only deeds of trust in which the notary is trustee, but also documents on which the notary is a drafter, an addressee or a representative of or attorney for a party only.

Criminal Penalties

The notary is guilty of a Class 1

misdemeanor if the signer does not, in fact, personally appear before the notary, if the notary does not obtain satisfactory evidence of identity (if the signer is not personally known to the notary), or if their notarial certificate is false or is not in English. This increases to a Class 1 felony if the certificate is false or fraudulent or is executed with intent to commit fraud, if the notary is not commissioned at the time of the notarial act, or for anyone who obtains, uses, conceals, defaces or destroys seal or notarial records without authority. In addition, a third party aiding and abetting in the above is equally guilty of the criminal offense.

CALENDAR *Upcoming CLE Programs:*

Lawyers Mutual is proud to announce its CLE seminar schedule for Fall 2006:

September 8, 2006
Sheraton Imperial RTP

October 20, 2006
Hilton Greenville

November 3, 2006
Grove Park Inn

December 1, 2006
Charlotte Renaissance

Please visit our website at www.lmlnc.com for seminar details and registration forms.

New Initiatives For NCBA Health Plan

Members of the NCBA Health Plan will have 2 new plan options available for the coming plan year which begins October 1st. Both are High-Deductible Plans designed to be compatible with individual Health Savings Accounts. These accounts allow participants to contribute pre-tax dollars, which can accumulate from year to year to pay for qualifying medical expenses.

In addition, One Care Street is a new health assessment and coaching service available in the fall to all employees in the Plan. The program features a complete health assessment from which members will receive a personalized health action guide and

have access to health coaching services provided to assist in maximizing their health and well-being.

As the Health Benefit Trust approaches the conclusion of its fourth year, membership has grown to 3,903 employees and 7,513 lives, a 50% increase since its inception in 2002. With expanded plan options available to firms and a new health management tool, members of the NCBA plan have even greater opportunities to make more efficient use of their health plan dollars.

For information on the NCBA Health Benefit Trust, **contact Lawyers Insurance Agency, 800-662-8843.**



Risk Management Tip

When making a motion for extension of time pursuant to Rule 27 of the North Carolina Rules of Appellate Procedure, include a reason showing "good cause" for the extension. Otherwise, the Court may deny the motion.

UNDERSTANDING UNDERWRITING . . .



Q. If I am planning to retire or leave the state, is it necessary for me to purchase a Tail Policy or Extended Reporting Endorsement?

A. Yes, you should call the Underwriting Department to discuss the issue as the policy that you currently have in place is a Claims Made Policy and it is advisable that you consider a Tail Policy.

Q. How far in advance of my expiration date do I need to submit my application for reissue to allow for processing?

A. It is necessary to allow at least two weeks for everything to be processed. Please remember you do not have a grace period on your Claims Made Policy.

Call us at 1-800-662-8843, and we'll be happy to fax or mail you an application.

MISSION:

To meet the insurance needs of the legal profession at reasonable cost through innovative personal service and products.

VISION:

To be a leading provider of insurance and other services primarily to the legal profession

CORE VALUES:

Service: We provide efficient and quality service.
Stability: Here today. Here tomorrow.
Fairness: We will treat those we serve fairly.
Integrity: We operate with high ethical standards

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