

**Overview of changes resulting from
Washington's
Uniform Power of Attorney Act
and
Uniform Law on Notarial Acts**

WLTA Fall Education Seminars - 2017

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Overview of changes resulting from Washington's Uniform Power of Attorney Act

RCW 11.125

ENGROSSED SUBSTITUTE SENATE BILL 5635

Chapter 209, Laws of 2016

Effective Date 1/1/2017

New Definitions:

Principal = grantor

Agent = attorney-in-fact

A POA is still not durable unless expressly stated otherwise.

*NOTE: Some other states have different laws granting automatic durability. Know which state's laws apply!
Most states have variations on this "Uniform" law.*

NEW PROVISION FOR WITNESSES

The principal's signature must be either:

- (a) acknowledged before a notary public, or
- (b) attested by two or more competent witnesses by subscribing their names to the POA while in the presence of the principal and at the principal's direction or request. (BUT not by care providers for the principal, and not by anyone related by blood, marriage, or domestic partnership)

A signature on a POA is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

CHANGE IN "TERMINATION"

An action is filed for the dissolution or annulment of the marriage of the agent and principal or legal separation UNLESS the POA provides otherwise.

(Prior law: terminated only on entry of a decree.)

Note: A POA "terminated" by filing a petition is reinstated upon dismissal by both parties or upon withdrawal of the Petition.

AGENT'S "DUTIES" TO THE PRINCIPAL

As imposed by statute, an agent shall always act:

- Within principal's reasonable expectations, if known, or in principal's best interest
- In good faith
- Only within scope of authority granted in POA

Except as provided in the POA, an agent shall:

- Act loyally for the principal's benefit;
- Not create a conflict of interest that impairs impartiality
- Act with the care, competence, and diligence
- Preserve the principal's estate plan, if consistent with principal's best interest

AGENT'S POWERS: INCORPORATION BY REFERENCE TO STATUTE

I grant my agent and any successor agent general authority to act for me with respect to *the following subjects as defined in the Uniform Power of Attorney Act, RCW 11.____*:

(INITIAL each subject you want to include.)

(...) Real Property

(...) Tangible Personal Property

(...) Governing an Entity or Entity Ownership Interest

(...) Estates, Trusts, and Other Beneficial Interests

(...) Claims and Litigation

(...) Gifts

(...) (statute will list several others)

(...) All Preceding Subjects

AGENT'S POWERS:

General authority for real property:

- Sell, exchange, convey [*for market value, not gift or partial gift*]
- Buy, lease, encumber, mortgage, subdivide
- Release, assign or satisfy a mortgage [*for appropriate consideration*]
- Participate in reorganization of an entity owning title [*but not change the equity of the principal or estate planning.*]

LIMITATIONS - ACTIONS REQUIRING A SPECIFIC GRANT OF AUTHORITY

Powers requiring an express grant in the POA:

- ❑ Create, amend, revoke, or terminate an inter vivos trust;
- ❑ Make a gift; *[but subject to statutory limitations]*
- ❑ Create or change rights of survivorship;
- ❑ Create or change a beneficiary designation;
- ❑ Delegate authority granted under the POA to anyone other than a co-agent;
- ❑ *Exercise fiduciary powers that the principal has authority to delegate;*
- ❑ Disclaim property.



LIMITATIONS ON GIFTS:

General authority to make a gift is very limited:

Amount not to exceed the annual dollar limits of the federal gift tax exclusion under IRC 26 U.S.C. 2503(b). *[NOTE: Only \$14,000 in 2017]*

Must be consistent with the principal's known objectives or with the principal's best interest

LIMITATIONS - ACTS REQUIRING A SPECIFIC GRANT OF AUTHORITY

Unless POA otherwise provides:

If agent is not an ancestor, spouse, or descendant of the principal, the agent cannot do the following unless POA expressly grants powers:

- Grant to or create in the agent, or in anyone to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.



WE ARE ENTITLED TO REQUEST:

Agent's certification under penalty of perjury:

- Principal is living
- Principal: competent now and/or when POA was executed
- Person appearing is the agent named in the POA
- Events allowing a successor agent authority have occurred
- POA has become effective and/or has not been rescinded.

An English translation, if in a different language.

CAUTION: *Timely review necessary - translation or opinion are required to be provided at the principal's expense only if requested within 7 business days after the POA is presented.*

TIME LIMITS TO ACCEPT A POA

A person shall either accept a POA or request a certification or translation within 7 business days after presentation of the POA;

If a certification or translation was requested, you shall accept the POA within 5 business days after receipt;

**** You may not require an additional or different POA for authority granted in the POA.*

**** You cannot reject a POA based on its age!)*

MUST YOU ACCEPT A POA?

Statute imposes liability for refusal to accept an acknowledged POA!

BUT a person is not required to accept a POA if:

(1) not otherwise required to engage in a transaction with the principal;

(2) in good faith believes that the POA is not valid or that agent does not have the authority to perform the act requested.

Generally a title/escrow company is not "required to engage in a transaction with the principal."



DOCUMENT EXECUTION BY CO-AGENTS

Co-agents must act jointly unless otherwise stated.

A co-agent can delegate their power or a portion of their power to another co-agent.

Overview of changes resulting from Washington's Revised Uniform Law on Notarial Acts

SUBSTITUTE SENATE BILL 5081

Chapter 281, Laws of 2017

EFFECTIVE DATE: 7/1/2018

NEW AND REVISED DEFINITIONS:

Record [*noun - a document, electronic or tangible/paper*]: information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in human perceivable form.

Electronic records notary public: specially commissioned to perform a notarial act with respect to electronic records.

Official stamp:

- A physical image affixed or embossed on a tangible record; or
- An electronic image attached to or logically associated with an electronic record.

Stamping device:

- A physical device affixing to or embossing on paper; or
- An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.

SATISFACTORY EVIDENCE OF IDENTITY:

A passport, driver's license, or government-issued nondriver ID card, **current**, or ***expired not more than three years***; or

Other government ID, current, or *expired not more than three years*, containing the **signature** **OR** a **photograph**, *and which is satisfactory to the notary*; or

By a verification on oath or affirmation of a credible witness

- personally appearing, *and*
- personally known to the notary, *and*
- who provides satisfactory evidence of his/her identity.

SIGNATURE IF INDIVIDUAL UNABLE TO SIGN

NEW OPTION: An individual physically unable to sign a record may direct an *individual other than the notary* to sign the individual's name on the record.

- The notary shall insert "*signature affixed by (name of other individual) at the direction of (name of individual)*" or words of similar import.

Existing RCW 64.08.100: Still allows orally directing the notary public to sign the person's name on his or her behalf. The notary must add a statement that the signature was obtained under the authority of this section.



NOTARIAL ACT UNDER AUTHORITY OF A FEDERALLY RECOGNIZED INDIAN TRIBE

Same effect as a WA notary, if performed in the tribe's jurisdiction by:

- (a) A notary public of the tribe;
- (b) A judge, clerk, or deputy clerk of a court of the tribe; or
- (c) Any other individual authorized by the law of the tribe.



CERTIFICATE OF NOTARIAL ACT ON AN *ELECTRONIC RECORD*

- The official stamp of an “electronic records notary public” must be attached to or logically associated with the certificate.
 - A notary may not affix the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed.
- The certificate must be affixed to, or logically associated with, the electronic record.
- If the director has established standards for attaching, affixing, or logically associating the certificate, the process must conform to the standards.



DEFINITION OF ACKNOWLEDGMENT:

A declaration by an individual in the presence of a notarial officer stating that the individual has:

- ❑ signed
- ❑ of the individual's free will
- ❑ for the purpose stated

And, if signed in a representative capacity,

- ❑ he or she signed with proper authority, and
- ❑ signed it as the act of the individual or entity identified.



NEW SHORT FORM CERTIFICATE

For an acknowledgment in an **individual** capacity:

State of

County of

This record was acknowledged before me on __ (date) by
__(name(s) of individuals).

.....

(Signature of notary public)

(Stamp)

.....

(Title of office)

My commission expires: (date)

NEW SHORT FORM CERTIFICATE

For an acknowledgment in a **representative** capacity:

State of

County of

This record was acknowledged before me on __ (date) by
__(name(s) of individuals) as __ (type of authority, such as officer
or trustee) of __ (name of party on behalf of whom record was
executed).

.....

(Signature of notary public)

(Stamp)

.....

(Title of office)

My commission expires: (date)



STAMPING DEVICE

- A notary public is responsible for the security of the stamping device and may not allow another individual to use it.
- The seal or stamp should be kept in a locked and secured area, under the direct and exclusive control of the notary public.
- If lost or stolen, the notary public (or the personal representative or guardian) shall promptly notify the department.
- Any replacement device must contain a variance from the lost or stolen seal or stamp.
- Upon expiration or termination of the notary's commission, or upon death or adjudication of incompetency the stamping device must be disabled by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable.



JOURNAL REQUIREMENTS

A notary public shall

- Maintain a journal which chronicles all notarial acts performed.
- Retain it for ten years after the last notarial act chronicled.
- Destroy it upon completion of the ten-year period.
- Maintain only one tangible/paper journal at a time, whether notarial acts are performed on paper or electronic records.
- The journal must be a permanent, bound register with numbered pages.
- An “electronic records notary public” may also maintain an electronic format journal, which can be kept concurrently with the tangible journal.
- The electronic journal must be in a permanent, tamper-evident electronic format complying with the rules of the director



JOURNAL ENTRIES

A journal entry must be made contemporaneously with the notarial act and contain:

- The date and time of the notarial act;
- A description of the record/document, if any, and type of notarial act;
- The full name and address of each individual for whom the notarial act is performed; and
- Any additional information as required by the director in rule.



JOURNAL REQUIREMENTS

The journal:

- Shall be kept in a locked and secured area
- Shall be under the exclusive control of the notary public.
- Failure to secure the journal may be cause for the director to take administrative action against the notary public's commission.
- If a journal is lost or stolen, the notary public must promptly notify the department.

On resignation, or revocation or suspension of a notary's commission, the notary public shall retain the journal for the required 10 year period *and* inform the department where the journal is located.

(A notary public who is a licensed Washington attorney is subject to some different requirements.)



ELECTRONIC RECORD NOTARIZATION: “ELECTRONIC RECORDS NOTARY PUBLIC” REQUIREMENTS

A notary public may not perform electronic notarial acts unless the notary public holds a commission as an **“electronic records notary public”**.

- Before an electronic records notary public's initial notarial act with respect to an electronic record, the notary public shall notify the department that he or she will be performing notarial acts with respect to electronic records and identify the technology the electronic records notary public intends to use.
- The notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records that meet the new standards.



ELECTRONIC RECORD NOTARIZATION: “ELECTRONIC RECORDS NOTARY PUBLIC” REQUIREMENTS

- A notary public cannot be required to perform a notarial act with respect to an electronic record with a technology the notary public has not selected.
- The director shall establish standards for approval of technology.
- The “electronic records notary public” application process and fees will be set by the director.
- An “electronic records notary public” commission may take the form of an endorsement to the notary public commission if deemed appropriate by the director.



COMMISSION AS NOTARY PUBLIC — CHANGES TO QUALIFICATIONS

- Must be a citizen or permanent legal resident of the United States;
- Notary's surety bond amount to be established by the director in rule. (previously \$10,000)
- An “electronic records notary public” commission may take the form of an endorsement to the notary public commission if deemed appropriate by the director.



GROUND TO DENY, REFUSE TO RENEW, REVOKE, SUSPEND, OR CONDITION COMMISSION OF NOTARY PUBLIC

- Failure to comply with this chapter;
- A fraudulent, dishonest, or deceitful misstatement or omission in the application;
- A conviction of a felony or crime involving fraud, dishonesty, or deceit;
- A finding against, or admission of liability based on fraud, dishonesty, or deceit;
- Failure to discharge any duty required of a notary public;
- Use of false or misleading advertising, or representing the notary public has a duty, right, or privilege he/she does not have;
- Violation of a rule of the director;
- Revocation, suspension, or conditioning of a notary commission in another state;
- Failure to maintain the required bond.



PROHIBITED ACTS

- Assisting in drafting legal records, giving legal advice, or otherwise practicing law;
- Use of "notario" or "notario publico" (other than by a licensed Washington attorney or a limited license legal technician).
- Assisting another person in selecting the appropriate notarization certificate form (other than by a licensed attorney or a limited license legal technician).
- Withhold access to or possession of an original record submitted for notarization, except as otherwise allowed by law.
- Retain copies or electronic images of documents notarized (except attorneys in certain instances)
- Engage in false or deceptive advertising.



ADVERTISING NOTARY SERVICES

Any advertisement of notarial services, whether orally or in a record, including broadcast media, print media, and the internet, shall include the following statement, or an alternate statement authorized or required by the director, prominently and in each language used in the advertisement or representation:

"I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities."

If the form of advertisement or representation is not broadcast media, print media, or the internet and does not permit inclusion of the statement because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.



RULES ARE TO BE ESTABLISHED

The director may adopt rules necessary to implement this chapter.

- In adopting, amending, or repealing rules about notarial acts with respect to electronic records, the director shall consider standards, practices, and customs of other jurisdictions that substantially enact this chapter.



NOTARY PUBLIC COMMISSIONS CURRENTLY IN EFFECT

- Existing commissions continue until date of expiration, but not as an “**electronic records notary public**” without application and appointment.
- A notary public acting after the effective date shall comply with this chapter.



DATABASE OF NOTARIES PUBLIC

The director shall maintain an electronic database of notaries public:

- To verify the authority of a notary public to perform notarial acts; and
- To indicate whether a notary public has notified the director the notary public will be performing notarial acts on electronic records.