

Notarizing Documents: Outside of Washington & on the Internet

**WLTA 2016 Education Seminar
Spokane, September 24, 2016**

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Agenda

- **NOTARIZING DOCUMENTS**
 - **WASHINGTON LAW – BASIC PRINCIPLES**
 - **POLICY LIABILITY**
 - **OTHER STATES**
 - **FEDERAL**
 - **FOREIGN**
 - **INTERNET**



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Washington – Basic Principles

RCW 42.44.080 Standards for Notarial Acts.

(1) In taking an acknowledgment, a notary public must determine and certify, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary public and making the acknowledgment is the person whose true signature is on the document.

- Identification
- Personal appearance
- Signature verification



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Policy Coverage

Covered Risk – From the 2006 ALTA Owner’s and Loan policies:

2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from

(a) A defect in the Title caused by

(i) forgery, . . . incompetency, incapacity, or impersonation;

. . .

(iii) a document affecting Title not properly . . . executed, . . . acknowledged, [or] notarized[.]



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Policy Coverage (continued)

Covered Risk – From the 2013 Homeowner's policy:

6. Your Title is defective. Some of these defects are:

...

c. A document upon which Your Title is based is invalid because it was not properly signed [or] acknowledged[.]



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RCW 42.44.130 Notarial acts by officials of other jurisdictions.

(1) A notarial act has the same effect under the law of this state as if performed by a notary public of this state, if performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

- (a) A notary public of that jurisdiction;**
- (b) A judge, clerk, or deputy clerk of a court of that jurisdiction; or**
- (c) Any other person authorized by the law of that jurisdiction to perform notarial acts.**



How do you know if someone is “[a] notary public of that jurisdiction”?

You can take their word (or stamp) for it, or you can verify.



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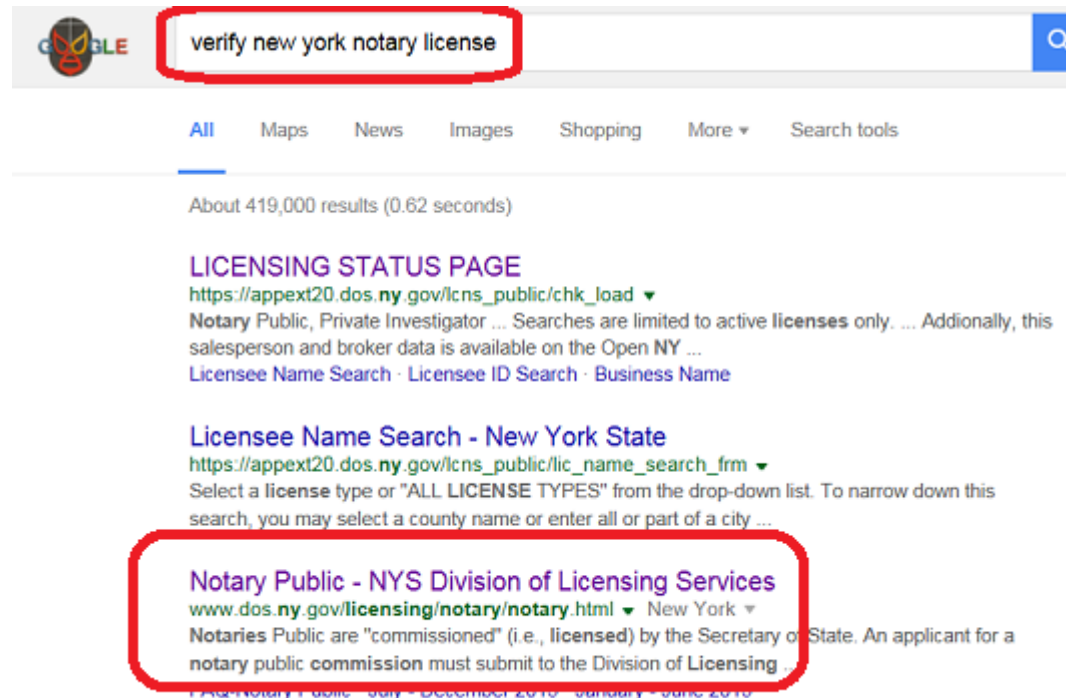
In the offices they choose to regulate notaries, the states are all over the map.

- **Alaska – Office of the Lieutenant Governor, Alaska Public Notary Office**
- **California – Secretary of State**
- **Florida – Department of State, Division of Corporations**
- **New York – Department of State, Division of Licensing Services**
- **Oregon – Secretary of State**



Just Google: verify [state] notary license

Example:



The screenshot shows a Google search interface. The search bar contains the text "verify new york notary license", which is highlighted with a red box. Below the search bar, the search results are displayed. The first result is titled "LICENSING STATUS PAGE" and includes the URL "https://appext20.dos.ny.gov/lcns_public/chk_load". The second result is titled "Licensee Name Search - New York State" and includes the URL "https://appext20.dos.ny.gov/lcns_public/lic_name_search_frm". The third result is titled "Notary Public - NYS Division of Licensing Services" and includes the URL "www.dos.ny.gov/licensing/notary/notary.html". This third result is highlighted with a red box. The search results also show "About 419,000 results (0.62 seconds)" and navigation options like "All", "Maps", "News", "Images", "Shopping", "More", and "Search tools".



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How about accepting notarization by:

(b) A judge, clerk, or deputy clerk of a court of that jurisdiction; or

(c) Any other person authorized by the law of that jurisdiction to perform notarial acts.

Why would you want to?

For (b) – there is no central registration

For (c) – who is going to do the research into the law of Louisiana, for example?



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RCW 42.44.140 Notarial acts by federal authorities.

(1) A notarial act has the same effect under the law of this state as if performed by a notary public of this state if performed by any of the following persons under authority granted by the law of the United States:

(a) A judge, clerk, or deputy clerk of a court;

(b) A commissioned officer in active service with the military forces of the United States;

...

(d) Any other person authorized by federal law to perform notarial acts.



(a) A judge, clerk, or deputy clerk of a court;

Good luck

(b) A commissioned officer in active service with the military forces of the United States;

Will only work for military personnel and retirees and their dependents

(d) Any other person authorized by federal law to perform notarial acts.

Main authority we see is 10 USC § 1044a, identifying persons who can notarize documents for persons entitled to military legal assistance.

Other than when your customer is in the military, why would you want to have a document acknowledged under federal law?



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Preliminary question:

Will a lender involved in the transaction accept a document notarized outside the United States?



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By American personnel under US law

Military

Consular

Foreign notaries acting under foreign law



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Abroad – Federal Authorities

RCW 42.44.140 Notarial acts by federal authorities.

(1) A notarial act has the same effect under the law of this state as if performed by a notary public of this state if performed by any of the following persons under authority granted by the law of the United States:

. . .

(b) A commissioned officer in active service with the military forces of the United States;

(c) An officer of the foreign service or consular agent of the United States;

(d) Any other person authorized by federal law to perform notarial acts.



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Abroad – US Military

RCW 42.44.140 Notarial acts by federal authorities.

(b) A commissioned officer in active service with the military forces of the United States;

...

(d) Any other person authorized by federal law to perform notarial acts.

Typically for military personnel, retirees, and their dependents under 10 USC § 1044a



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RCW 42.44.140 Notarial acts by federal authorities.

(c) An officer of the foreign service or consular agent of the United States[.]

Great, if it can be accomplished.



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In the United Kingdom, only three options are at:

- **US Embassy, London**
- **US Consulate, Edinburgh**
- **US Consulate, Belfast**

And try getting an appointment



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Abroad - US Diplomatic

C

September 2016

U.S. EMBASSY, LONDON
24 Grosvenor Square
London
W1K 6AH

NOTARIAL and OTHER SERVICES Appointment

Please click the underline or hyperlink date below.

September ▼ 2016 ▼

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	



Date already passed or not yet open for appointments

Appointment Date Fully Booked

Appointment Date Available



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Abroad - US Diplomatic

D

October 2016

U.S. EMBASSY, LONDON
24 Grosvenor Square
London
W1K 6AH

NOTARIAL and OTHER SERVICES Appointment

Please click the underline or hyperlink date below.

October ▼ 2016 ▼

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19 Available (1)	20 Available (5)	21	22
23	24	25	26	27	28	29
30	31					



Date already passed or not yet open for appointments

Appointment Date Fully Booked

Appointment Date Available



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RCW 42.44.150 Notarial acts by foreign authorities.

(1) A notarial act has the same effect under the law of this state as if performed by a notary public of this state if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

- (a) A notary public or notary;**
- (b) A judge, clerk, or deputy clerk of a court of record; or**
- (c) Any other person authorized by the law of that jurisdiction to perform notarial acts.**



How to identify persons in foreign countries who can perform notarial acts?

- (a) A notary public or notary;**
- (b) A judge, clerk, or deputy clerk of a court of record; or**
- (c) Any other person authorized by the law of that jurisdiction to perform notarial acts.**

In many countries, attorneys are the main parties performing notarial acts.

Examples: Canada, Germany, Phillippines



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Verifying you have the right person performing the notarial act is a two step process.

- Figuring out who can notarize documents in that country
- Confirming that the notary proffered is a legitimate notary

If your company has someone who will do this for you, great.

Otherwise, you must either:

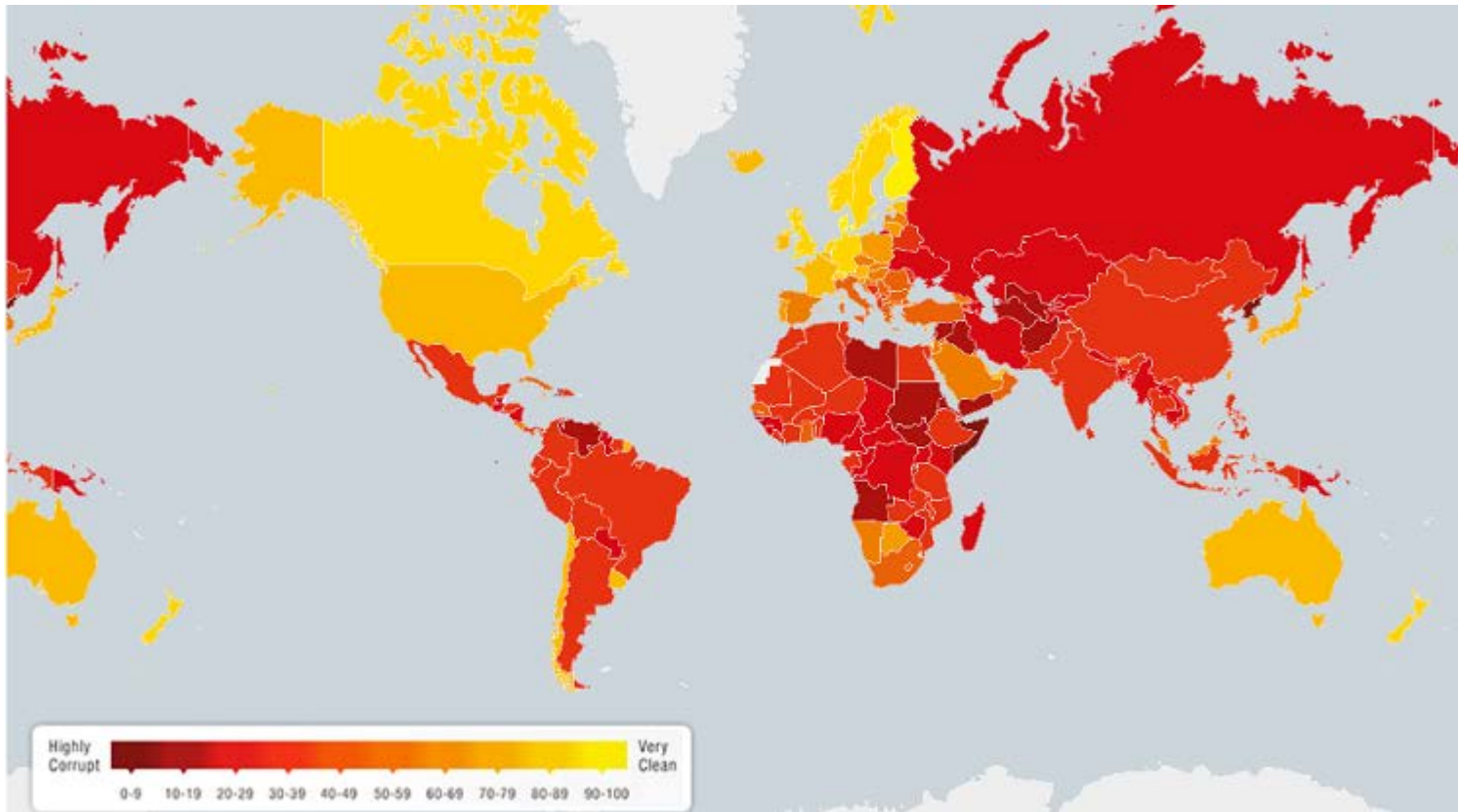
- Sleuth it out on your own (Wikipedia, Google, etc.)
- Rely upon accepted verification (consular, apostille)



Abroad – Foreign Notary

D

How comfortable are you be responsible to verify a specific notary in a particular country?



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Abroad – Foreign Notary

E

If you are going to verify on your own, don't just look in official sources. Google the notary's name.

STATE OF NAYARIT, MEXICO,
Washington)
COUNTY OF BAHIA DE BANDERAS
Snohomish)

I certify that I know or have satisfactory evidence that _____ is/are the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: Feb / 05 / 2016

Notary Public in and for the State of Washington
Residing at:
My appointment expires:



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By consumers, for consumers...



Don't let them get away with it!® Let the truth be known!™



Company Name or I

Review Latest Re

Total Visits since 1998: 8,964,282,440 Estimated money Consumers saved since 1998: \$15,687,494,270.79 Reports filed: 2,0

Update a Report	Programs & Services	Help & FAQs	Consumer Resources	Verified Business Directory	Legal Directory	Consumers Say Thank You	In the Media	Ripoff Report Investigates
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Report: #1173097

Complaint Review: JOSE LUIS REYES VAZQUEZ
Notary 31 Nuevo Vallarta Nayarit



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A word to the wise from the WLTA Examiner's Manual, Acknowledgments and Notaries Public:

Section 5.2.2 Foreign (Outside the United States)

TITLE COMMENT

In other situations, caution should be exercised when accepting acknowledgments. Guidelines for such situation are generally set by each title company.

Generally, the most reliable sources of document acknowledgments taken in foreign countries are officials in United States consular offices, or where an apostille is included.



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Foreign Notary – Consular Verification

RCW 42.44.150 Notarial acts by foreign authorities.

(3) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, is prima facie evidence of the authenticity or validity of the notarial act set forth in the certificate.

But if your customers can get an appointment at the embassy or consulate in the first place, why make them go to a foreign notary, too?



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RCW 42.44.150 Notarial acts by foreign authorities.

(2) An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the designated office.

What the heck is an apostille?

Or, as Wikipedia says:

Not to be confused with Apostle (messenger, esp. Christian); or an apostil, meaning a marginal note or gloss.



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The apostille itself is a stamp or printed form consisting of 10 numbered standard fields. On the top is the text **APOSTILLE**, under which the text **Convention de La Haye du 5 octobre 1961** (French for Hague Convention of 5 October 1961) is placed. This title must be written in French for the Apostille to be valid (article 4 of the Convention). In the numbered fields the following information is added (may be in official language of the authority which issues it or in a second language):

...

From Wikipedia – Apostille Convention



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1. Country ... [e.g. Hong Kong, China]

This public document

2. has been signed by [e.g. Henry Cho]

3. acting in the capacity of [e.g. Notary Public]

4. bears the seal/stamp of [e.g. High Court of Hong Kong]

Certified

5. at [e.g. Hong Kong]

6. the ... [e.g. 16 April 2014]

7. by ... [e.g. the governor of the special administrative district of Hong Kong, China]

8. No ... [e.g. 2536218517]

9. Seal/stamp ... {of the authority giving the apostille}

10. Signature



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Foreign Notary – Apostille

D

Wikipedia

Certifying Authority:


Governor of
County of Hordaland

Fylkesmannen
Hordaland

APOSTILLE
(Convention de La Haye du 5 octobre 1961)

- Country: Norway
- This public document has been signed by Per Nordstrand
- acting in the capacity of notary public
- bears the seal/stamp of Høstevoll
Notarius Publicus in _____

Certified

- at Bergen
- the 28.04.2004
- by the Governor of the County of Hordaland
- NO 838/2004
- Seal/stamp: 
- Signature: Jan Erik Oksnes



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HCCH – Hague Conference on Private International Law

Norway - Competent Authority (Art. 6)

Designated Competent Authority(ies):

1. The County Governors
2. Royal Norwegian Ministry of Foreign Affairs

Contact details:

Address:

[County Governors \(Fylkesmannen\)](#)

[Click here to access the contact detail.](#)



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Some countries where available:

- Australia
- European Union – all countries, even the United Kingdom
- Japan
- Mexico

Some countries where not available:

- Canada
- China (except Hong Kong & Macao)
- South Korea
- Philippines



Montana – Remote Notary

Starting October 1, 2015 – Remote notarization authorized via real-time, two-way audio-video communication – web cam

- **Identification: signer personally known to notary, or identified by credible witness**
 - **Documentary evidence to identify signer is NOT OK**
- **Location of notary - Montana**
- **Signer is legal resident of Montana (except proxy marriage)**
- **Transaction type (only four authorized)**
 - **Real property located in Montana**

Because of location limitation, not likely to encounter.



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- **Electronic notarization vs. Remote notarization**
- **Permits Virginia notaries to perform notarial acts via live-feed videoconference**
- **No requirement that signer be in Virginia**
- **No requirement that seal disclose remote notarization process used**
- **Look for “Electronic Notary Public” in the notary’s seal**



Code of Virginia § 47.1-13 Jurisdiction; powers outside the Commonwealth

...

B. Any notary commissioned pursuant to this title may likewise perform notarial acts outside the Commonwealth, where such notarial acts are performed in accordance with this chapter.

...

D. An electronic notarial act performed in accordance with this chapter shall be deemed to have been performed within the Commonwealth and is governed by Virginia law.



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What to do?

Where an “Electronic Notary Seal” has been used, ask notary if remote notary procedures were also used.

Follow your underwriter’s guidelines.



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Remote Notary – It's Coming

From letter to National Association of Secretaries of State Remote Notarization Task Force jointly submitted by Freddie Mac and Fannie Mae, June 9, 2016:

The GSEs strongly support the removal of barriers to electronic notarization, not only electronic notarization in the physical presence of the notary, but also remote electronic notarization, whereby the requirement for the “personal appearance” or the “presence” of the signer is satisfied via a live audio and video connection. In seeking to make the execution of mortgage closing documents more convenient for borrowers, the GSEs believe that the application of technology to the notary process enables the opportunity to provide a more flexible and convenient borrower experience, while improving the assurance, authentication, security, and documentation of notarial acts.



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Resources

- **WLTA Examiner's Manual: Acknowledgments & Notaries Public**

<http://washingtonlandtitle.com/wp-content/uploads/2014/08/Acknowledgments-Notaries-Public---WLTA---2008.pdf>

- **The ABCs of Apostilles** <http://www.hcch.net/upload/abc12e.pdf>

- **HCCH Members (Hague Conference participating countries)** http://www.hcch.net/index_en.php?act=states.listing

- **Wikipedia – Apostille Convention**

https://en.wikipedia.org/wiki/Apostille_Convention



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Conclusion

Questions?



Thank you for your time and participation today!



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