

Secretary Marshall sent out this op-ed column to the state's media this month on the important issue of notary fraud.

Reprinted with permission from the N. C. Department of Secretary of State's Employee's Newsletter "The Pay-Stub", April 2011.

## Could it Happen Here?

The April 3 episode of CBS 60 Minutes news show featured an important story titled, "Mortgage Paperwork Mess: Next Housing Shock?" That story by Scott Pelley was an eye-opening analysis of the current situation regarding mortgage foreclosures. The 60 Minutes story documented multiple cases of fraudulent misrepresentation, fraudulent documentation, forgery, and false notarization.

And it left the North Carolina viewer asking 'Could it happen here?'

The 60 Minutes story detailed how a Georgia-based company hired individuals to process lending documents for \$10 an hour and had those employees signing at times, over 300 documents *an hour signing in someone else's name*. One interviewed employee admitted the name he was signing was NOT that of a bank vice president and that he used the name for signing paperwork for five to six different banks all on the same day, and that he had no personal knowledge about the paperwork he was signing - all of this meaning the documentation and the signatures were a sham!

All of the actions described above are wrong. All should be punishable either civilly or criminally. It should be against the law to "bogus up" documents for convenience sake. It is *illegal* in North Carolina, especially the forgeries and the false notarizations. In North Carolina, notaries are commissioned by the state and are "officers" of the state. North Carolina has the nation's most developed law on notaries, all within the North Carolina Department of the Secretary of State.

North Carolina requires a six hour class and every applicant must pass a test in order to be commissioned as a notary public, so the more than 150,000 notaries in this state know the law. This instruction is primarily conducted through the North Carolina

Community College system. Instructors are trained and tested by the Department of the Secretary of State. North Carolina requires notaries to have access to a Notary Public Guidebook, printed by the UNC School of Government, that sets the "Do's and Don'ts" of notarization.

Why all this effort to create a strong notary public? Because a notarized document is given a higher level of legal status and acceptance in the United States and abroad. A notary acknowledgement has legal significance!

As I often tell notary instructors, "In North Carolina, notary is a zero-tolerance activity. You must do it correctly." Just ask the husband of a notary public in Charlotte who was recently charged with twenty felony counts of acting as a notary without being commissioned after he allegedly forged his wife's name and used her notary acknowledgement on car titles at his auto sales business. He was also arrested for motor vehicle title fraud and his wife lost her notary commission for failing to protect the exclusive use of her notary seal.

In many states, the maximum penalty is only revocation of commission, and in some states, there are no specific notary penalties, but rather just basic criminal law concepts such as forgery or fraud. In Georgia, notary misconduct is handled by the individual county Superior Court Clerk, who has the authority to award commissions, investigate complaints, and revoke commissions. Georgia has neither a notary course nor exam. One would hope the notary who affixed a false notary over a forged signature on a fraudulent document would know better, but without education, exam, a guidebook, or fear of committing specific notary crimes, perhaps not. In the 60 Minutes story one

employee said she knew she was notarizing bogus documents but gave the camera a "so what" look.

North Carolina faced a challenge to eliminate its "personal appearance" requirement in our notary law several years ago. Then, we did not fully understand the origins of that challenge. Now, in hindsight, we have seen the rise of a "document mill" industry that has gotten lenders in trouble and traumatized homeowners. At that time, we had no idea what was driving the effort to eliminate "personal appearance," but we knew North Carolina businesses did not need to undermine basic document integrity to be successful. Now, the picture is clearer.

Fortunately, North Carolina never did succumb to the "fast and easier" argument. We remained true to the original purpose of notarization - accurate identification of the document signer. It is true that loan defaults do occur for a variety of reasons, and the rule of law affords due process to those borrowers. Due process can also help to make sure the correct property or the correct party or the lender who actually owns the loan is identified. Protecting notary law and its personal appearance requirement goes a long way to avoiding identity fraud.

So, to answer the question 'Could it happen here?' It is unlikely, but if such document scams did pop up here, they would not last for long, because there would be *serious consequences* thanks to our tough notary public laws.

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