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OFFICE OF CHIEF COUNSEL

October 31, 2018

Martha H. Brown, Assistant Counsel  
Office of Chief Counsel, Department of State  
401 North Street Room 306  
Harrisburg PA 17120

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IRRC  
2018 NOV - 6 P 4:40

Re: Reference No. 16-59 (Revised Uniform Law on Notarial Acts)

Dear Ms. Brown:

The PA Bankers Association is grateful for the opportunity to submit comments on the department's proposed notary public regulations published in the *PA Bulletin* on September 1, 2018. PA Bankers represents approximately 125 financial institutions operating in the Commonwealth from the smallest to the largest. It is our understanding that financial institutions are among the largest employers of notaries, hence our interest in your proposal.

We have identified several potential issues of concern:

- 1) The new notary public fee schedule in § 161.2 has removed the fees previously established for executing affidavits and taking depositions. It also does not contain any additional fees to reflect costs associated with electronic records and signatures.
- 2) In § 167.47 (c), personal appearance requires that "the notary public and the individual for whom a notarial act is being performed shall be able to see, hear, communicate with and give identification documents to each other without the use of electronic devices." As drafted, it is not clear how this rule affects persons with speech, hearing or vision disabilities and whether it prohibits the use of electronic devices to mitigate disabilities.
- 3) If communication occurs through use of an interpreter, § 167.50 requires the interpreter must be in the physical presence of the notary and the person with whom the notary communicating. This may make it difficult to obtain translation services.
- 4) A notary public is prohibited by § 167.52 from performing a notarial act with respect to a document containing blank spaces "when either of the following circumstances exist: (1) The missing information has not been entered into a blank space. (2) The signature of an individual signing the record is not present, unless the individual is signing in the presence of the notary public." This rule does not, however, prohibit notarizing a document when "n.a." is written in or a line is drawn through any blank spaces or if a document contains additional signature lines and it is clear the notarization does not apply to the blank signature lines.

The authorization to include a blank signature line if it is clear the notarization does not apply to the signature line should be expanded to apply to other types of blank lines. For example, the regulation should not prohibit the notarization the grantor's signature on a deed in lieu of foreclosure if the name of the grantee is blank, but the grantor authorizes the mortgagee to designate the name of the grantee and complete the conveyance by delivering the deed to the grantee at a later time.

The regulation should also clarify what is meant by the apparent authorization to include blank lines in a document being notarized if "the individual is signing in the presence of the notary public." If construed literally, it appears to authorize blank lines of any type, rather than only blank signature lines, if a document is signed in the presence of a notary. Assuming this is not the intent and the authorization is revised to refer only to blank signature lines, it would still be unclear whether this simply means that any blank signature line must be filled in before the notarial certificate or seal is attached to the document, or whether some broader type of conduct is authorized. For example, is the provision intended to allow a document to be notarized if a person who later signs the document outside of the presence of the notary was present when the notary certificate was affixed to the document, or signs the document at a later time in the presence of the same or another notary?

5) When a notary works for an organization, § 167.53 provides that an agreement between the notary and an employer may allow fees to be paid to or received by the organization "for the increased compensation of the notary." As drafted, this rule appears to be inconsistent with 57 Pa.C.S. § 329.1(d) which provides that fees are the property of a notary unless otherwise mutually agreed upon by a notary and a notary's employer. The statute does not authorize the department to require that fees be used to increase a notary's compensation.

6) For attestations of signatures, § 167.64(c) requires that the document containing the signature being attested "shall be signed in the notary public's presence." This rule appears to make it impossible to attest to the validity of a signature on a previously signed document.

7) For the notarization of electronic documents and signatures, § 167.81 requires the notary to obtain prior approval of the Department of State and identify the specific "electronic solution provider" the notary will be using and § 167.82 requires that the department must approve each electronic solution provider. These requirements may restrict and discourage the use of new technologies. It is also unclear whether the department has the resources to approve each new technology proposed in a timely manner. A better approach is to (1) require the notary to designate the provider and the technology to be used to sign or notarize documents electronically; (2) require any technology to be consistent with any standards the department may specify; and (3) provide that the provider and the technology may be used unless the department within a specified period of time disapproves the provider or the technology, or at a later time issues an order for good cause suspending or revoking authorization to use a specific provider or technology.

8) It appears that if an association such as PA Bankers wishes to offer training programs for notaries, the requirements and fees to become an approved training provider in Subchapter I seem to be fairly burdensome.

9) Pursuant to 57 Pa.C.S. § 325(d)(1)(ii), if a notary public advertises or represents that the notary public offers notarial services, whether orally or in a record, the notary must include in the advertising or representation statement that "I am not an attorney licensed to practice law in this Commonwealth. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities," or "an alternate statement authorized or required by the department." Because the standard disclosure statement is not well suited for financial institutions that offer notary services, § 167.117 of the proposed rules should be revised to also the use of language similar to the following: "Notaries made available to provide services to the public by [name of business or organization] are not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities." It should also be clarified that this disclaimer is not required if a notary is an attorney authorized to practice law in the Commonwealth.

PA Bankers would be glad to discuss these comments with you at your convenience. We look forward to hearing from you.

Sincerely,



J. Duncan Campbell III

President and Chief Executive Officer