ABOUT THIS ISSUE
Our new full color issue contains a recap of the 2016 convention highlights and a new series entitled Notary2Notary.

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PRESIDENT’S PERSPECTIVE

NEW YEAR, NEW OPPORTUNITIES

I, like many, see the New Year as a new beginning; a chance to renew my efforts to grow personally and professionally, and improve my relationships with others.

As I begin my third term as President of the Louisiana Notary Association, I see many opportunities to build upon the association’s successes of the past few years. We have several great assets at our disposal – an experienced Board of Directors, a loyal membership, an outstanding lobbying group – all dedicated to taking our association to the next level. This year, my primary goal will be to focus on the “big picture” and work to better leverage these assets so that the LNA can move forward and expand its reputation as the premier professional organization of Louisiana Notaries Public.

As part of this push to maximize the LNA’s resources, I am excited to announce the following changes to LNA’s committee assignments for 2016:

- Membership – Sharon Toups and Amanda Vaussine, Co-Chairs
- Publications – Karen Dunn and Lisa McCoy, Co-Chairs
- Education – Lisa McCoy and Luke Morris, Co-Chairs
- Legal Research – Theresa Martin and Pam Alonso, Co-Chairs
- Convention – Lisa McCoy and Pam Alonso, Co-Chairs

These members are strongly committed to our organization and are very excited to serve in their new roles. This year I chose to appoint co-chairpersons for each committee because I believe it will promote a sense of teamwork and provide an opportunity to share responsibilities and not put so much work on one individual. Further, I have tasked each committee to reach out into our organization and recruit at least one volunteer who is currently not serving in any capacity. I am strongly committed to expanding our base of volunteers; committees are the perfect opportunity for members to lend their talents and get a chance to work with the LNA’s leadership.

In addition to the new committee assignments, I have decided to spin off management of our Shop Talks into its own committee. I am pleased to announce that Lisa Nassour, Shop Talk Coordinator in Lafayette, has agreed to chair this committee. Lisa, along with the Shop Talk coordinators around the state (who will be members of this committee), will be tasked with improving Shop Talk attendance and developing plans to expand the LNA’s reach into areas of the state currently underserved. We have a strong group of Shop Talk coordinators, and, by structuring a committee around them, I feel we can best utilize their talents and create a sense of community that is all important in maintaining our member base.

The LNA has many other plans on tap for 2016, including our Biennial Customary Fee Survey (launching this spring), another overhaul of our website (late summer, early fall), our Annual Meeting and Convention (fall) and an improved Notary2Notary messaging platform (late summer, early fall). In the meantime look for more online surveys, more Members Only benefits, more educational offerings and more opportunities to volunteer. Stay tuned to LNA.org and your monthly Association News for more information.

I am very excited about serving as your President in 2016, and I am looking forward to the support from our members to make our plans a reality. Best of luck in the New Year, and hope to see you soon!

Darryl P. LeJeune

LNA President
2016 is expected to be a busy year for notary issues in Louisiana. In addition to the beginning of new, four-year terms for legislators and statewide elected officials, notaries have a number of issues to consider. The Louisiana Bar Association has established a notary committee charged to “review current notarial law and legislation to ensure they provide adequate protection to the public.” Possible items to be addressed include an increase in notary fees to support access to justice initiatives, and the administrative committee recommends ways attorneys can effectively compete against notaries. The LSBA committee is due to release its findings in the first part of 2016.

Discussions continue about a possible continuing education requirement for non-attorney notaries. How many hours would be required, the likely cost of continuing education, and the administrative framework around any continuing education requirement are all items that would need to be resolved before a requirement is put into place.

Pursuant to Concurrent House Resolution 218, the Louisiana Law Institute has been tasked to study the need for electronic notary law. This resolution cites the enactment of a Virginia law on this matter that required real time signal transmission and maintenance of the recording. The report from the Law Institute is not due until February 2017.

The LNA has agreed to hold a Notary Day at the Legislature during the 2016 legislative session. This will be an excellent opportunity for notaries to educate lawmakers about their work in communities throughout the state. The LNA will provide additional details on this event as they are available.
DIVORCE PLEADINGS, TO DO OR NOT TO DO?
By Lisa McCoy

We all know that notaries are not authorized to practice law. La. R.S. 27:212 (B) specifically removes the prohibitions for notaries from “performing any act necessary or incidental to the exercise of power and functions of the office of notary public…” Therefore, notaries need to be familiar with the laws surrounding the functions we perform. But in no way does this statute extend the power of giving legal advice or opinions as a notary. We should not give legal advice at any time. When asked a question that would appear to require legal advice, it is our obligation to advise our customer that we are prohibited from giving legal advice. As notaries, we should also refrain from preparing documents that would give the slightest appearance of practicing law.

Over the past years, more and more individuals have called upon this notary to “help” write their uncontested divorce “papers.” Other notaries have also asked advice about “filling in” and notarizing these forms for their clients. As notaries, we want to help our clients as much as possible, but we do not want to jeopardize our notary commission by the unauthorized practice of law.

La. R.S. 35:2 lists the general powers of the notary and included in this statute is the wording “To receive wills, make protests, matrimonial contracts, conveyances, and generally, all contracts and instruments of writing.” La. R.S. 37:212 defines the practice of law which includes the preparation of pleadings. Therefore, notaries are NOT given the power to prepare legal pleadings.

This seems to be clear cut, but with anything, there is some gray area. Around the state, some Clerk of Court’s offices have fill in the blank divorce pleadings or sample documents, for the individual to draft their pleadings from should they wish to file for divorce in proper person.

It was one notary’s opinion that filling in the blanks does not constitute preparing a pleading and felt this was a general power of the notary and that there would be no problem with notarizing the form after filling in the information. This notary strongly disagrees. It is my opinion that once we begin filling in the blanks, we open ourselves up to giving legal advice. Some of these pleadings have complicated wording and once the customer asks “what does this mean” and we respond, we have given legal advice. I also believe that even filling in the blanks constitutes preparation of legal pleadings. While we did not complete the entire pleading, we did prepare part of the pleading. And let’s not lose sight of the fact that these fill in the blank forms are legal pleadings. They will be filed in a court of law for the purpose of obtaining a divorce. One notary’s opinion was that these are not real pleadings since they are fill in the blank forms. Black’s Law Dictionary defines a pleading as “A formal document in which a party to a legal proceeding sets forth or responds to allegations, claims, denials or defenses” and “a system of defining and narrowing the issues in a lawsuit whereby the parties file formal documents alleging their respective positions.” If it is a document, fill in the blank or not, filed with the Court in a legal proceeding, i.e. divorce proceedings, it is a legal pleading.

As for the sample documents distributed by the Clerk’s offices, a notary suggested that we are just providing typing services for the client if we prepare the document with the client’s information. Again, I disagree. These sample forms give suggestions for completing the information, not verbatim instructions. In order for us to type the document, we must gather information from the client and again will be placed in the position of answering legal questions or giving opinions. Typing a document is one way of preparing a document. Notaries are not to prepare legal pleadings.

There are also liabilities to think about when filling in the blanks or providing a typing service. You are a professional notary. The general public expects you to have knowledge of the content of the documents you notarize. They rely on you to steer them in the right direction. What is going to
Louisiana Notary Association

2015 Annual Meeting & Convention

A Treasure Chest of Knowledge
A treasure chest of knowledge was presented to the attendees at the Louisiana Notary Association’s 2015 Annual Meeting and Convention, held on October 16 and 17, 2015 at the Airport-Hilton in Kenner, Louisiana.

The convention featured a full weekend of education and opportunities for notaries from across the state to network and share their knowledge and experience. Pre-convention classes were offered on Mortgage Closings and Successful Vehicle Transfers. Classes during convention included Mandates, General Notarial Law, Small Successions, Updates to Mortgage Closings, Successful Vehicle Transfers II, LLC and Operating Agreements, Testamentary Clauses, Notary2Notary, Forms, Tools of the Trade, and Trusts, as well as Contractual Agreements.

The convention also featured a Friday night poolside party for notaries to network with other notaries from across the state. This was a great opportunity to meet fellow notaries and get to know their area of expertise. Networking with other notaries is one of the great benefits of the LNA.

The Awards Dinner, a Saturday night convention tradition, featured an evening of saluting our members for the contributions they made this year to the Louisiana Notary Association. Before and after the dinner, we had networking opportunities for all who attended.

Guest speakers for the weekend luncheons included Secretary of State Tom Schedler, Cynthia Cotten, Secretary of State Notary Division, LNA Lobbyist Scott Kirkpatrick, and Jennifer Washington from CNA Insurance. Carla Bonaventure, Commercial Division Administrator from the Secretary of State’s office also attended convention to learn more about our organization and educational opportunities.

The Louisiana Notary Association would like to thank all of the instructors and volunteers who made this convention such a success. Special thanks to our guest speakers for taking the time out of their busy schedules to speak at our event—you always come through for us!

We express our gratitude to all of our corporate sponsors who donated items for our door prizes. These sponsors are very valuable to our organization.

We would also like to thank all of the notaries and their guests who attended our convention—we do it all for you. Look for upcoming information on our 2016 Convention. We hope to see you there!

VOLUNTEERS NEEDED

Would you like to use your skills to help the LNA with its various projects? Go to LNA.org and complete a member involvement form!
NOTARY2NOTARY
That Old Fashioned Party Line
A Series Featuring Notary2Notary Questions

We are adding a new series to Signed and Sealed, called “Notary2Notary.” Each edition of Signed and Sealed will cover some of the questions asked on the Notary2Notary Forum. The questions will be listed and an explanation will follow. If you have not already done so, sign up for Notary2Notary now. You can email the LNA office at office@lna.org and request to be added. You will receive an email invitation to join and there you will fill in your user information.

QUESTION
Are there any mobile notaries in the Prairieville area interested in picking up a new client? Message me and I will give you the contact information. Thanks

COMMENT
As you can see from this post, Notary2Notary is a great way to enhance your business. This is not the only request for notaries needed in a specific area. Sometimes the request is for a one time job and other times it is like this one. If you get in a bind, post your need for help. Someone will usually get right back with you. This is a great networking tool offered by LNA.

QUESTION
There were several posts pertaining to price gouging.

COMMENT:
It is possible that some may construe the discussion of pricing as collusion and price fixing, therefore it is prohibited on this forum. The LNA will be sending a survey to members to complete. Once the surveys are completed and returned, an average price in the different geographic areas will be published. Remember, we set our own prices. A notary should charge what is reasonable and customary for the area in which he works and the time expended. Please respond to the survey regarding pricing. The more input we have, the better results we can produce.

At one time in Texas, a notary could only charge $5.00 per customer, per visit, regardless of the number of documents the notary witnessed. I don’t know about you, but I could not keep my doors open at that rate. It would not be in our best interest to have someone, say the State, set our pricing. So let’s not post pricing on this forum. If you get in a bind and just don’t know what to charge, contact a notary in your area and see what they think would be reasonable and customary.
Every Louisiana lawyer knows that our legal system is different from the other 49 states. One distinctly different aspect of our legal system is the power afforded to notaries public.

The Louisiana Supreme Court described the significance of our notaries in 1877:

High and important functions are entrusted to notaries; they are invested with grave and extensive duties; they are charged with the solemn preparation of the authentic evidence of our transactions, of last wills, of those titles which pass from one generation to another. Their responsibility is as high as their trust... 

A notary was present when LaSalle claimed Louisiana for France in 1682.

In 1712, Sieur Madefisse was appointed the first notary in Louisiana. Madefisse was not an attorney but a "simple soldier." In fact, at that time most of the judges were non-lawyers, including those on the Superior Council, their highest court, as lawyers were few and far between. When Louisiana became part of the United States in 1803, "swarms" of common-law attorneys appeared. But the civil-law traditions of France and Spain were so entrenched in Louisiana by then that Thomas Jefferson's attempts to convert Louisiana to the common-law system failed. One of those civil law traditions was non-attorney notaries public with the authority to perform acts that would be considered practicing law in the rest of the United States.

As of July 15, 2015, 57 percent of Louisiana’s notaries were attorneys and 43 percent were not. All Louisiana notaries, including those with no law degree, have the power to prepare and execute wills, trusts, donations, matrimonial and prenuptial agreements, acts of sale, mortgages, acts of adoption, affidavits of small succession, provisional custody agreements, contracts, partitions and many other important documents. They are also authorized to administer oaths, to swear in deponents, to verify interrogatories and other pleadings, and to certify true copies. Despite this great authority, only a high school education or its equivalent is required for non-attorney notaries, and the consumer is protected by only a $10,000 bond or an errors-and-omissions policy with $10,000 limits.

A Louisiana notary is required to be a resident citizen or alien; be at least 18; read, write, speak, and be "sufficiently knowledgeable of the English language"; be mentally sound; have no unpardoned felony on his record; and be of "good moral character, integrity, and sober habits." If a citizen, he must also be a registered voter in the parish where he resides.

If not an attorney, the notary applicant must pass a rigorous examination administered statewide by the Louisiana Secretary of State. The majority of the applicants fail the exam on the first try. Since 2005, the passage rate has ranged from 2 percent to 24 percent.

Non-attorney notaries commissioned before 2005 may not have taken such a rigorous exam. Written exams have been required since 1964. From 1964 to June 2005, exams were administered by a three-member examination committee on a parish-by-parish basis. Although some parishes, including East Baton Rouge, Orleans and Caddo, were known for the rigor of their exams, others were much more lax. The jurisdiction of a non-attorney notary commissioned before the statewide exam took effect is generally limited to the parish where he resides and any adjacent parishes with statutory reciprocity, though he may also seek a commission in one other parish where he has an office. Any notary with limited jurisdiction can obtain statewide jurisdiction by passing the statewide exam.

Although attorneys are exempt from the exam and bond requirements, one does not automatically become a notary when admitted to the Louisiana bar. The application form is available online on the Louisiana Secretary of State’s website. Even though attorneys and non-attorney notaries who have passed the
statewide exam have statewide jurisdiction, every notary is commissioned in his or her parish of residence. Notaries, including attorneys, who move to a different parish, must recommission in the new parish to retain their commissions. The notary has a 60-day grace period after moving to apply for the new commission. The notary must also retain registered voter status; the commission becomes invalid if the notary is purged from the voting rolls.

Professor John Henry Merryman listed the three principal functions of a civil-law notary as (1) drafting important legal documents; (2) authenticating instruments; and (3) acting "as a kind of public record office." As discussed above, Louisiana notaries are empowered to draft many important legal documents. The second function, authenticating instruments, is a hallmark of the civil-law notary's power. An authentic act is full proof of the act's contents. Merryman more fully describes the evidentiary effect of an authentic act, as follows: "[I]t conclusively establishes that the instrument itself is genuine and that what it recites accurately represents what the parties said and what the notary saw and heard. This stands in stark contrast to the effect of a common-law notary's signature, which merely evidences that the signature is genuine.

The third function of archivist has largely been assumed by the clerks of court. However, Louisiana notaries are still required to make "a careful record . . . in record books to be kept for that purpose" of "all acts of sale, exchange, donation, and mortgage of immovable property passed before them, together with all resolutions, powers of attorney, and other documents annexed to or made part of the acts." Although notaries have expansive powers, non attorney notaries must be careful not to cross the line from notarial practice to legal practice. Louisiana Revised Statutes 37:212 defines the practice of law to include the "drawing or . . . assisting in the drawing . . . of a paper, document, or instrument affecting or relating to secular rights." Louisiana Revised Statutes 35:2(b) empowers notaries to "make . . . matrimonial contracts, conveyances, and generally, all contracts and instruments of writing." So under Louisiana statutory law, attorneys can "draw" documents and notaries can "make" them, but nothing in the jurisprudence distinguishes these two verbs.

The definition of practicing law in Revised Statutes 37:212 also includes "advising or counseling of another as to secular law." "Making" legal documents is difficult without exercising legal judgment, and having discussions with the constituent could be considered giving legal advice. The official Louisiana notary study guide gives this bit of advice:

[T]he [non-attorney] notary should refrain from offering opinions or advice on the meaning or interpretation of the law, even if asked. In every case, the notary should advise the constituent that a notary is neither able nor authorized to offer legal advice and that no legal documents should be prepared or executed by the notary or anyone else where there is the slightest question of interpretation of the legal consequences of the act.

Louisiana attorneys who are notaries should ensure that they and any non-attorney notaries under their supervision are complying with all statutory requirements, including being commissioned in the proper parish and maintaining a record book or journal for acts involving immovable property. Attorney notaries should also make certain that any non-attorney notaries they supervise are not crossing the line into unauthorized legal practice.

Louisiana's unique grant of expansive powers to notaries has served us well for over three centuries. The authority granted to non-attorney notaries has given the average citizen the ability "to control his own business and to settle his own affairs, without the expense of an attorney—when he understands the law and knows what he wants to do but doesn't know how to put it into proper form." However, more education and a higher bond or insurance limits for non-attorney notaries should be required in today's more complex society.

(Continued on page 11)
happen when they are no longer amicable? They will bring the other party back to court declaring that the notary told me to do this, but this is not how it was suppose to be. 
What happens when the parties return to court for increased child support? Will you, as the notary be called upon to explain how you determined the amount of child support to fill in the blank? I would bet that your liability then? Do you want to pay to raise the kids? Do you want your commission revoked noted, “Not everyone is qualified and capable of being architects or veterinarians. Similarly, not everyone should be allowed to be notaries and to affect important financial and other transactions.” Michael L. Closen & R. Jason Richards, Notaries Public—Lost in Cyberspace, or Key Business Professionals of the Future?, 15 J. Marshall Computer & Info. L. 703, 757 (1997).

(Continued from page 4)
Would you like to serve as a committee member? Just email office@lna.org

Positions open on the following committees:

- Education
- Finance
- Printing & Procurement
- Convention
- Membership
- Legislation
- Publications & Media
- Legal Research
- Shop Talk
ACROSS

3 MANDATE REQUIRED TO DONATE AN IMMOVABLE FOR ANOTHER
5 CONFERS AUTHORITY TO A PERSON
8 COMMONLY ACCEPTED FEMALE VERSION OF TUTOR
9 CAN BE GRANTED BY THE COURT; APPOINTED GUARDIAN OVER CHILDREN
10 COURT APPOINTED GUARDIAN OF A MAJOR
13 AUTHORITY DOCUMENT USED BY LLC
14 GIVES AUTHORITY TO CONTRACT TO MINOR

15 CUSTODY GRANTED BY MANDATE

DOWN

1 AUTHORITY OF ONE PERSON TO REPRESENT ANOTHER IN LEGAL RELATIONS
2 MANDATE GRANTING POWERS OF ADMINISTRATION
4 PERSON OF MAJORITY DECLARED INCAPABLE
6 CERTIFICATE OF ___________
7 USED BY THE CORPORATION
11 UNILATERAL JURIDICAL ACT

Answer key on page 14
SHOP TALK

Don’t forget to check your Association News or LNA.org for the latest information on Shop Talks in your area. We would also like to thank Luke Morris for starting an online Shop Talk. We currently have shop talks in Baton Rouge, Houma, New Orleans, Lafayette, and Lake Charles.

LNA members are invited to join the regional Shop Talk meetings to discuss hot topics, hear from topic experts, and network with your peers. Let us know what topics you would like to have at your local shop talk. Contact us at editor@lna.org. We look forward to your input. REMEMBER, Shop Talks are for you.
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