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MEMORANDUM

TO: ELEVENTH ANNUAL REAL ESTATE SYMPOSIUM ATTENDEES  
FROM: SHERYL K. SILBERSTEIN, ESQ.  
RE: NOTARY PUBLIC ACT  
DATE: May 4, 2004

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The State Legislature has passed, and the Governor has signed the Michigan Notary Public Act (the "Act"), which supersedes the prior notary laws (Act 238 of Public Acts of 2003). This is the most comprehensive change in notary laws in more than 150 years. The new law is effective April 1, 2004. The new law, among other changes, streamlines the application process and extends the length of new notary appointments. A summary of some of the changes and a comparison of some of the previous and new requirements are set forth on the attached Summary of Changes as provided by the Secretary of State.

There are other significant provisions in the Act, some of which are new. They include, in part, the following:

1. All notary seals and all notary blocks **must include the phrase** "acting in the county of". Until now, that was only required if the notary was acting outside his or her county of residence.

2. "A notary public shall not perform a notarial act on a record that contains a blank space."

3. If the notary public doesn't know the signer personally and doesn't rely on an oath or affirmation of a credible witness who personally knows both the notary and the witness, then the only acceptable ID is one with both a photo and a signature issued by a federal or state government.

4. "A notary public shall not certify or notarize that a document is either of the following (a) an original or (b) a copy of another record."

5. If a notary signs for a person whose ability to sign is limited by physical problems, starting in April the following must be inscribed beneath the signature:

"Signature affixed pursuant to section 33 of the Michigan notary public act."

6. The person signing the document being notarized must sign in the presence of the notary.

7. The notary's signature must be exactly as the name appears on his or her certificate of appointment.

8. The notary cannot notarize his or her own signature or perform a notarial act on any record he or she has executed. The notary **cannot** perform a notarial act for a spouse, domestic partner, descendant, or sibling, including an in-law, step, or half-relative.

9. The notary cannot perform any notarial act in connection with a transaction if the notary had a conflict of interest. A conflict of interest means either or both of the following:

a. the notary had a direct financial or beneficial interest in the transaction; or

b. the notary was named individually as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor, or lessee or as a party in some other capacity to the transaction.

These are just a few of the significant changes to the Act. The entire text of the Act can be found on the Legislative website at [www.michigan.legislature.org](http://www.michigan.legislature.org). If you would like additional information about the new Act and its application, please contact me, Sheryl Silberstein, at (248) 827-1887 or [sk@maddinhaus.com](mailto:sk@maddinhaus.com).

## Summary of Changes Michigan Notary Public Act (PA 238 of 2003)

**Effective Date: April 1, 2004**

House Bill 4938, signed into law as the Michigan Notary Public Act (PA 238 of 2003)\* marks the first comprehensive revision of Michigan's notary statute since 1846. The new law streamlines the application process by requiring the bond and oath before the application is submitted to the secretary of state; extends the length of new appointments by an additional two years; establishes statewide appointments (no need to reapply when moving within the state); revises fees; clarifies rules, responsibilities and restrictions; and creates new notary crimes, including sanctions for the notary's employer.

Under the new law, active Michigan notary publics retain their commissions and are not required to reapply until their commissions are about to expire. However beginning April 1, notaries must adhere to all the current laws including those regarding fees, restrictions and liability.

Listed below is a brief comparison of the previous and new requirements. For additional information, visit the Secretary of State Web site, [www.michigan.gov/sos](http://www.michigan.gov/sos).

	<u>Previous</u>	<u>New</u>
Length of Commission	4-5 years	6-7 years
Filing fee at clerk's office	\$1	\$10
Application fee at state level	\$3	\$10
Charge to customer for notary act	\$2	Up to \$10
County clerk fee for certification of notary varies	\$10	**
Replacement of commission/duplicate	\$1	\$10
Surety Bond amount	\$10,000	\$10,000
Surety Bond filing	<b>after</b> commission is issued	<b>before</b> commission is issued
Receipt of commission	at county clerk's office	direct via US mail
Relocation to another county	must cancel and reapply	register change of address only
Legislative endorsement	required	not required
Driver's license or state ID #	not required	required
U.S. citizenship or proof of legal presence	not required	required***
Background check	none	allowed
Notary education & training fund	none established	
Quarterly reports from county to state	required	not required
Employer liability misconduct	none	yes, with knowledge of
Notarize for immediate family member	allowed	not allowed
Advertise in foreign language	allowed	not allowed

\*to review the actual text of Public Act 238 of 2003, please visit the Legislative website at [www.michigan.legislature.org](http://www.michigan.legislature.org).

\*\*different in Wayne County

\*\*\*arrangements made for out-of-state residents ID