



# REPTL

REAL ESTATE, PROBATE  
& TRUST LAW  
SECTION OF THE STATE BAR OF TEXAS

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## Is Anyone in Your Office a Notary? (Last Update – We Hope!)

Earlier today, the Secretary of State published proposed rules relating to notaries in [the Texas Register](#).

### The Proposed Rule

First, for those of you who've kept up with this saga, the Secretary of State's [Proposed Rule § 87.4](#) deals specifically with the notary seal/identifying number issue, and provides as follows:

#### § 87.4. Notary Seal.

(a) The name on the notary seal must match the name, as stated on the application, under which the notary public is commissioned and performs all notarial acts.

(b) For all applicants commissioned or recommissioned on or after January 1, 2016, the notary seal must contain the identifying number issued by the secretary of state.

(c) For notaries who were commissioned or recommissioned prior to January 1, 2016, the seal of such notaries is not required to contain the identifying number issued by the secretary of state until the notary is recommissioned in accordance with the procedures specified in § 406.011, Texas Government Code, and § 87.7 of this title (relating to Renewal of Commission). The seal of notaries who were commissioned or recommissioned prior to January 1, 2016 may, however, contain the identifying number issued by the secretary of state prior to the notary being recommissioned in accordance with the procedures specified in § 406.011, Texas Government Code, and § 87.7 of this title (relating to Renewal of Commission).

### Background

For those of you who haven't been following this issue, here's some background.

I've been involved in REPTL work for about fifteen years now. **Never** have I seen any issue generate as much commotion as this notary seal issue. Word got around fast, and I've lost track of the number of organizations that asked permission to reprint that information. With the help of some of them, we've gotten some attention.

We first told you about [HB 1683](#) towards the end of October. It's a bill enacted earlier this year that requires the Secretary of State to issue an identifying number to each notary who is commissioned or recommissioned on or after January 1<sup>st</sup> (that office has actually been issuing identifying numbers to notaries for over twenty years without any statutory requirement). The bill also requires notary seals to include that identifying number on or after January 1<sup>st</sup>. The legislative history is clear that only notaries who are commissioned or recommissioned on or after January 1<sup>st</sup> are supposed to be required to use a seal with their identifying number. Existing notaries weren't supposed to have to do anything (like getting a new seal) until they're recommissioned.

But while the intent is clear from the hearings on the bill, that's not quite what the statute says. The changes made by the bill go into effect January 1<sup>st</sup>, and there's nothing in the actual language of the bill that says the notary seal change is limited to newly-commissioned or recommissioned notaries.

The Secretary of State's office understood the intent and made clear from the get-go that they wouldn't require existing notaries to get new seals until their commissions are renewed. But what if a third party challenges the validity of an acknowledgement or jurat based on the lack of a valid seal? "Old" Texas cases hold that if a notarial officer affixes an incorrect seal, it's equivalent to no seal at all. That could have serious repercussions.

We advised that the safest course of action was to replace your notary seal with one that includes your identifying number by January 1<sup>st</sup>. You can find your identifying number on your commission, or search for it (or any other notary's number, for that matter) on the Secretary of State's [Notary Search page](#).

### Back to the Proposed Rule

Subsection (c) of the proposed rule addresses two concerns. First, we've recommended that existing notaries get new seals with their identifying numbers by January 1<sup>st</sup>. But if it turns out that the identifying number requirement doesn't apply to them until they're recommissioned, we don't want that advice to inadvertently invalidate those seals just because the notary voluntarily adds the identifying number to the seal before it's required.

Second, I expect there are many existing notaries who heeded my advice and obtained a new seal right away. Some of them may even have started using them prior to the end of 2015 when **nobody** is required to include an identifying number on their seal. We don't want problems with those notarizations either.

Comments on or questions about the proposed revisions may be submitted in writing to: Briana Godbey, Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697 or [bgodbey@sos.texas.gov](mailto:bgodbey@sos.texas.gov). Comments must be received no later than thirty days from today (*i.e.*, by January 17<sup>th</sup>). The Secretary of State can adopt the proposed rule anytime after the comment period, to take effect 20 days following adoption.

While the new rule is comforting, it's still a rule, not a statute. We are considering a technical correction when the legislature next convenes in a little over a year to put this problem to rest once and for all. In the meantime, it likely remains the prudent course of action to **replace existing notary seals with ones that include the notary's identifying number**.

While I **hope** this will be my last update on this issue, **if** there are changes to Proposed Rule § 87.4 when it is adopted, we'll let you know.

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*Bill Pargaman has been a partner with Saunders, Norval, Pargaman & Atkins, LLP, since July of 2012 after spending the first three decades of his career with Brown McCarroll, L.L.P. (now Husch Blackwell LLP). He is a 1981 graduate of the University of Texas School of Law (with honors), Board Certified in Estate Planning and Probate Law by the Texas Board of Legal Specialization, a Fellow of the American College of Trust and Estate Counsel, Chair of the Real Estate, Probate, and Trust Law Section of the State Bar of Texas (2015-16), a past member of REPTL's Council, past Chair of REPTL's Estate and Trust Legislative Affairs Committee, and past Chair of REPTL's Trust Code Committee. He has been recognized in "Best Lawyers in America" (since 2003), "Texas Super Lawyers" (Texas Monthly, since 2003), and "The Best Lawyers in Austin" (Austin Monthly, since 2002).*