



REPTL
REAL ESTATE, PROBATE
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SECTION OF THE STATE BAR OF TEXAS

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More Than You Want to Know About Notary Seals

Effective February 10th, the Secretary of State adopted [revised Rule §87.4](#) (located in Chapter 87 in Part 4 of Title 1 of [the Texas Administrative Code](#)). First, for those of you who've kept up with the recent notary seal saga, the rule specifically with the new requirement, effective January 1st, that a notary seal include the notary's identifying number. Here's what the rule provides:

§ 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

Why was this rule adopted? Well, for those of you who haven't been following the issue, here's the backstory.

I've been actively involved with REPTL for about fifteen years. **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 last year that requires the Secretary of State to issue an identifying number to each notary who is commissioned or recommissioned on or after January 1st. That office has already been issuing identifying numbers to notaries for over twenty years without any statutory requirement. The bill also requires notary seals to include the identifying number on or after January 1st. The legislative history is clear that the requirement that the seal include the identifying number was intended to apply only to notaries who are commissioned or recommissioned on or after January 1st. Existing notaries weren't supposed to have to do anything (like getting a new seal) until they were recommissioned.

But while that intent is clear from statements made during hearings on the bill, that's not quite what the statute says. The changes made by the bill go into effect January 1st, 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

requirement that the Secretary of State issue identifying numbers is clearly limited to newly-commissioned or recommissioned notaries. But that language was unnecessary since each notary during the past 20-years already has an identifying number. And the language deferring the requirement that the Secretary of State issue identifying numbers doesn't refer to the requirement that notary seals include the identifying number.

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 in October that the safest course of action was for existing notaries to replace their notary seals with ones that include their identifying numbers. We still recommend that as the safest course of action. 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](#). But we all know that there are some (perhaps a majority of) notaries who either won't get the message or won't fork over the \$20-\$30 for a new seal.

Back to the Revised Rule

Subsection (b) makes clear that the revised notary seal requirement only applies to notaries initially commissioned or recommissioned on or after January 1st. Or at least it makes clear that that's the Secretary of State's position.

Subsection (c) of the rule addresses two concerns. First, while we've recommended that existing notaries get new seals with their identifying numbers, what if it turns out that a court decides (as the Secretary of State's office has) that the identifying number requirement doesn't apply to them until they're recommissioned. We don't want that court to invalidate those seals just because the notary voluntarily included additional information in the seal that wasn't 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** was required to include an identifying number in their seal. We don't want problems with those notarizations either.

So good luck with your notary seals, and let's hope there's never a reason for me to write about this again!

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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 (since 1986), a Fellow of the American College of Trust and Estate Counsel (since 1994), 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 (2004-2008), past Chair of REPTL's Estate and Trust Legislative Affairs Committee (2008-2013), and past Chair of REPTL's Trust Code Committee (2004-2008). 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).