

## **Mobile Notaries and Real Estate Transactions**

### ***An Advisory from the Minnesota Department of Commerce***

#### **What Is a Mobile Notary?**

“Mobile Notary” is not a term recognized under Minnesota law. Rather, it is a term of art used in the title insurance and real estate closing industries. In these industries, “mobile notaries” are notaries public typically hired as independent contractors on a case-by-case basis by title insurance companies, real estate closing companies, real estate signing companies and similar businesses. They meet with mortgage borrowers (or the buyers or sellers of residential real estate) to obtain signatures on various documents needed to complete the closing of a real estate-related transaction.

#### **What Mobile Notaries May Do**

A properly commissioned notary public is vested with certain powers and responsibilities that are more fully described in Chapters 357, 358 and 359 of the Minnesota Statutes. See Minn. Stat. §§ [357.17](#), [358.41 to 358.50](#) and [359.01 to 359.12](#).

#### **What Mobile Notaries Should Not Do**

The Minnesota Department of Commerce recently conducted an audit of the services provided by people who advertised and identified themselves as “mobile notaries” in Minnesota. Based on the audit results, the Department learned that many mobile notaries are engaged in activities that exceed the scope of their notary commission and/or require a real estate closing agent license.

Therefore, the Commerce Department is cautioning notaries public that the following are some activities that may require a real estate closing license:

- Obtaining or charging fees to obtain signatures on documents that do not require notarization and which are purely real estate closing documents, including HUD-1 Settlement Statements and notices of loan rescission rights. *Compare* Minn. Stat. §§ [357.17](#), [359.04](#) and [82.55, subd. 4](#).
- Receiving or taking temporary possession of funds paid by the borrower to fund and close the transaction. *Compare* Minn. Stat. §§ [359.04](#) and [82.55, subd. 4 and 26](#).
- Providing any explanation to the borrowers (or buyers or sellers) about the various documents that are being signed. *Compare* Minn. Stat. §§ [359.04](#) and [82.55, subd. 4](#).

- Charging fees for services that are not contemplated or authorized by [Minn. Stat. § 357.17](#). For example, the Commerce Department survey found that mobile notaries routinely charge fees for travel and for printing documents.

### **What This Means for You as a Mobile Notary**

While it is within the authorized power of a commissioned notary public to take and certify acknowledgments of deeds and mortgages, they may be exceeding the scope of their notary commissions and engaging in unlicensed activities as real estate closing agents by providing services incident to the sale or loan of residential real estate. *Compare* Minn. Stat. §§ [359.04](#) and [82.55, subd. 4](#).

Subject to limited exceptions, persons acting as real estate closing agents in Minnesota must first obtain a real estate closing agent license. *See* Minn. Stat. § [82.641](#).

The Minnesota Department of Commerce has ***not*** taken the position that all mobile notaries must be licensed real estate closing agents. Some mobile notaries are limiting their services and fees to those authorized by law and/or are exempt from the licensing requirement based on Minn. Stat. § [82.641, subd. 6](#).

However, the Commerce Department cautions mobile notaries that they should not provide services or charge fees that exceed the scope of their notary commission and/or constitute activities requiring a real estate closing agent license unless they first obtain a real estate closing agent license from the Department of Commerce.