



# REPTL

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

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## Is Anyone in Your Office a Notary? (Updated December 3<sup>rd</sup>)

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 understands what the intent was, and they've made clear from the beginning that they won'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 identification number by January 1<sup>st</sup>. Your identification number is on your commission, but if you can't find your commission, you can search for your identification number (or any other notary's number, for that matter) on the Secretary of State's [Notary Search page](#).

Following our initial communication, we were put in touch with the Secretary of State's office again, and they're working on a proposed rule to address this issue. We believe that the rule will provide that:

- The seal of a notary who is commissioned or recommissioned on or after January 1<sup>st</sup> must contain the notary's identifying number.
- But the seal of a notary who was already commissioned or recommissioned before January 1<sup>st</sup> need not contain the notary's identifying number until that notary is recommissioned. (Those notaries may use a new seal with their identifying number if they wish, however.)

That second point 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 added the identifying number to the seal before it was

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 this year when **nobody** is required to include an identifying number on their seal. We don't want problems with those notarizations either.

While the new rule will be 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.**

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