



# REPTL

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

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## Is Anyone in Your Office a Notary?

[HB 1683](#) is a bill enacted earlier this year relating to notaries that came to REPTL's attention at the end of August. The bill requires (1) the Secretary of State to issue an identifying number to each notary when a commission is issued or renewed, and (2) the notary's seal to include that identifying number. According to hearing testimony, the bill was brought to the legislature by the Harris County Clerk's office in an effort to reduce fraudulent title transfers.

The effective date of the bill is January 1, 2016, and the Secretary of State is only required to issue identifying numbers to notaries who apply for a commission or a reappointment on or after that date. It is clear from the hearings in both the House and Senate that neither the House author nor the Senate sponsor intended that existing notaries obtain new seals (with their identification numbers) until their commissions are renewed. It turns out that the Secretary of State has been issuing unique identification numbers to notaries for over 20 years, and while the intent is clear, the actual bill language does not defer the new seal requirement for existing notaries until renewal.

We have been in touch with the Secretary of State's office, and, consistent with the bill's "intent," that office will not require existing notaries to get new seals until their commissions are renewed. Our concern is that a third party might challenge the validity of an acknowledgement or jurat based on the lack of a seal. "Old" Texas cases hold that if a notarial officer affixes an incorrect seal, it's equivalent to no seal at all. On the probate side, that could mean, for example, that a will we all think is self-proved really isn't. I'm told that on the real estate side, Texas cases hold that a recorded deed with an acknowledgement that is technically defective may not constitute constructive notice of the deed to third parties for up to two years.

**The safest course of action is to replace your notary seal with one that includes your identification number by January 1<sup>st</sup>.** You can find your identification number 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](#).

In the meantime, we are investigating the possibility of asking an appropriate legislator to request an Attorney General opinion on the issue. According to [the Attorney General's website](#), while the ultimate determination of a law's applicability or meaning is left to the courts, "attorney general opinions are highly persuasive and are entitled to great weight."

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