

December 21, 2023

Dear Secretary,

We are representing Colorado notaries public as well as Lindy Rich Services, LLC., a Colorado nation-wide signing service, and also Notary Academy Colorado, a national notary training service training Colorado notaries on state laws and best practices. We work very closely with the Secretary of State ensuring we practice and teach Colorado notary law correctly and completely. Lindy Rich is a family run business that consists of 9 Colorado notaries.

Firstly, we want to thank you for your services to us in all our capacities, as well as the state of Colorado, and for opening this up for us to respond to the proposed rule. We are committed to knowing, upholding and teaching our notary laws, so we value your staff and knowledge TREMENDOUSLY and could not do our jobs as well without your assistance! Thank you!

As for this proposed rule: 2.4 to 8 CCR 1505-11, we do feel it makes sense for General Notary work, to itemize the fees associated with the services provided by the notary. It keeps pricing fair and transparent, as well as keeps accountability and accessibility to the service for all parties (including yours, when disputes as the one you spoke of in the hearing occur).

That said, we do feel that Signing Services, such as ourselves, as well as title, escrow, lending companies, and loan closing agents (notaries public who close loan docs) should be exempt from providing the itemized invoices for real estate transactions, as it would cause each party involved in the settlement undue hardship or burden. Not to mention the devastating effects it could have on the consumer in a real estate transaction.

If you will bear with us, we'd like to state what a typical signing looks like for our signing service:

Lindy Rich has a web portal that allows title/escrow, realtors, lenders, and brokers to place an order for a mobile notary to be available to present documents for a closing. For the sake of the example, we are going to say it will be a purchase real estate transaction.

So Title Company ABC puts in an order for a mobile notary in the city of Aurora, in CO. Title has the following information available for us to schedule the closing:

File Number | Name of Signer(s) | Date of the Closing | Notary to Coordinate the Time | Phone Number(s) of Signer(s) | Property Address of the Transaction | Location of Where the Signing is to Take Place | Type of Closing Package (Purchase Package).

As soon as the order is placed, Lindy Rich starts to look for a qualified mobile notary in the area of the signing. Title offices count on a flat fee from their partnered signing service (Lindy Rich), which can be edited BEFORE assigning a notary if the location is rural and the notaries in the area have to drive extra far away, or other extenuating circumstances, but since Aurora is pretty populated, this is not an issue for our example mobile closing...

Lindy Rich offers notaries in the area a flat fee to do the closing for us, and after we and the notary come to an agreement on the cost of their services, we send an invoice to title, so they can get all the fees balanced for the transaction.

This flat fee to the notary includes their duties of:

Coordinating the Signing Time and Updating the Order | Printing the Documents (Purchase package can be 50pgs to 200pgs - no one knows this page amount until the documents arrive) | Printing a Copy of the Documents for the Signer to Keep for their Records | Driving to the Signer's Chosen Location | Providing the Signer with the Ink Pens that are Accepted by Title (Blue or Black) | Presenting Each Document (this takes a vast amount of training) | Filling out and Stamping All Notarial Certs | Ensuring All Documents, Notarized or Not, are Filled Out Completely and Legibly | Making Copies of Signer(s) ID for the Title/Lender | Completing Notary Services (oath, journal entries, journal signatures, thumbprints(optional)) | Driving back to the notary's office | Scanning the Documents to Lindy Rich | Correcting Any Documents Needing Correction (as stated from Lindy Rich after their review of the scanned documents) | Printing a Shipping Label Provided by Lindy Rich | Couriering the Executed Documents to Shipping Location | Packaging Executed Documents for Shipment | Obtaining a Receipt for Shipping | Scanning Shipping Receipt Back to Lindy Rich.

If the new rule is passed, this already complicated and intricate process gets even more complicated.

If the rule is passed as is - in the same example as above, Lindy Rich would receive the request for a mobile notary for a purchase signing in Aurora, CO and the process would change thus:

Lindy Rich would have to ask title how many notarial certifications are going to be in the package. Title would have no idea, as 90% of the documents in a purchase are lender documents. They would reach out to the lender and the lender would have no idea how many notarial certs would be present as they don't do the processing themselves and the documents are not even being processed at the time that the order for a mobile notary is being placed.

At this point, Lindy Rich cannot assign a notary, as the notary has no idea what to charge, and cannot create an accurate itemized invoice to Lindy Rich. Lindy Rich doesn't know what amount to invoice title, and cannot create an itemized invoice to title without the notary's invoice, so the order cannot be placed.

Going further with this example...

Title finally gets the documents on the day the signing is supposed to take place. They count the notary certs from the lender docs and from their own docs and can now place the order with Lindy Rich Services. Since real estate documents and transactions are date sensitive (due to rate locks, interest per day, proration of taxes, hoa fees, water, electric, etc.), the closing needs to take place the same day that title receives the documents.

Title reaches out to Lindy Rich, places an urgent order for same-day mobile closing to take place. AND here's where it all falls apart...

Lindy Rich can rush to find a notary who is available same day to do the closing, who can get the documents scanned back to Lindy Rich, and who can courier the documents to the shipment facility before the end of their shipping day so title can receive the physical documents in-hand the next day so the funding can happen on time... BUT, that cannot happen because at this point in the transaction - if the rule passes - Lindy Rich CAN find a notary - we CAN tell the notary how many notary certs they have in the doc set, we CAN get the itemized invoice from the notary, then Lindy Rich can turn around and send our own itemized invoice to title with the accurate amounts... BUT now title needs to change the documents and fees to reflect the itemized invoice and amount being charged for the mobile closing.

Title can update the lender with the new itemized invoice and the mobile notary fee, and the lender now has to regenerate the Closing Disclosure (CD) with that information. CD's have to be sent to the signers 3 days in advance of the closing, so now the closing has to be postponed for 3 days... This does not work.

Let's say for argument's sake that we are going to take "educated guesses" that the documents will have 5 notary certs so we guess the fee for the notary, Lindy Rich can generate an itemized invoice for title to submit to lender, so they can get the itemization on the CD and the Settlement Statement. Now the lender can set a date for the closing, title can schedule the mobile closing with us, and we can find a notary. Eureka right? Wrong...

Lindy Rich finds the notary (in Aurora, CO) to do the closing, at a flat rate, but we still don't know the amount of notarial certs until the documents come in.

Now it's the day of the closing, the documents have come in from the lender and title has added theirs and uploaded the full set to Lindy Rich. We are now able to count the notarial acts and there are 9.

Lindy Rich lets the notary know that we would like an itemized invoice and that there are 9 notarial acts, so now the notary can create an itemized invoice for us. Seems good, except, the notary accepted the signing at a flat fee of \$100, and now if the notary calculates all their "items", the 9 notarial certs alone would be \$135, not to mention the paper, ink, gas, vehicle

mileage, courier fees, and convenience fees, so they now want to increase their fees to accommodate all their other expenses.

The fee has already been set, it has already been finalized in documents, the signers have been informed of how much they are being charged, and now there is this discrepancy. So the consumer either has to agree to pay the notary the overage (provided the notary supply another itemized invoice to them at their closing), or Lindy Rich is left scrambling to find a new notary that will accept the closing for \$100 (which is a very good rate for our industry of signings from a signing service). Or Lindy Rich or Title are left having to eat the extra cost that the notary is requiring to do the closing, so the closing gets completed on time.

Unfortunately, there is no real “average” amount of notary certs for each transaction. We can say we see them come through in document sets from 5 certs - 16 certs. For certain banks, it is common to have 15-16 notarizations on certain purchase or refinance transactions, which would have cost the consumer \$240 if we were to charge based on notary cert for a single signer rather than on a “package” fee. Again, this is not including any travel, expenses or convenience fees.

We can decide on a fee that it shouldn't go above, say 10 certs, but then if there are not 10 certs, we have to decrease the notary's fee?

We hope we are getting it through that this process is already complicated, but this new rule, in its current proposed state, would create havoc with the very last step of a real estate deal, and I hope you can see and agree, does not appear to be in the consumer's best interest.

One more time, if you would, let's take this beaten down example to a national signing level...

Colorado mobile notary signers take closings from all over the nation, this means we can assist in mobile closings from Florida title companies, Hawaii title companies, New Mexico, Texas, Iowa, and all the other states in the US, but since our notaries are Colorado notaries, they can't accept those jobs until the documents are ready and available to have an accurate count of all the notarial certs between lender and title documents for the Colorado notary to provide an acceptable fee and an itemized invoice to the signing service or title company. Or the notary can gamble and take a guess as to their fee, based on what amount of certs they think may be present, but if the notary guesses the amount of certs wrong and there are not as many as they think, do they have to decrease their fee?

What if a notary creates an itemized invoice based on 6 notarial certs, this means they can charge \$90 for only the notarial sections. Then they calculate the mileage, the cost of printing, and the convenience fee for being mobile, and it should be \$25-\$50. But because the out of state signing service is offering them \$80 to do the closing, and they want to be able to accept the job, they decide to accept it at \$80 and adjust their itemized invoice to take less than \$15 for each of the notary certs. Instead of invoicing for the 6 certs at \$15, the notary only charges \$66 total for the 6 notary stamps and \$14 for the mileage, printing and convenience fee, for a total of \$80.00.

The day they receive the documents, the notary finds there are only 3 notarial stamps, so now they have to adjust their itemized receipt to \$45 for the notary certs (at the full \$15 per cert) and either keep the original \$14 for the mileage, printing and convenience fee, and must then DECREASE their actual fee to the signing service, or the notary has to increase those fees to \$35, so their fee stays the same at \$80 for the whole package. This gets confusing and feels deceptive, as the notary is just trying to “fit” their fees into the flat rate.

The point of this ridiculously long set of examples is that this rule will effectively create complete pandemonium in the real estate community, and all its moving parts and has the potential to affect the consumer in a MASSIVELY negative way. With a higher likelihood of much higher notary closing fees, last minute changes for the signers, invoice edits and changes for notary, signing service, title and lenders, and possible loan closing and funding delays.

If a loan is delayed, it may cause a rate lock to be missed. If a rate lock date is missed, it may cost THOUSANDS of dollars to the consumer, to either extend their rate, or buy down their rate if it increased during the delay. Even if a rate lock isn't broken, all the prorated items (taxes, utilities, HOAs, interest, etc.), all have to be readjusted to the new date of funding, which is more money from the consumer, more time for document redraws, more cost of printing materials for everything needing to be reprinted, more headaches for everyone trying to rebalance, more juggling for Lindy Rich to try to get the signing rescheduled, more cost in time/materials for notaries if they blocked off a time slot for the signing, and if they printed the docs... the snowball effect just keeps going.

The risk of this type of chaos is much more likely, with drastically worse consequences than the benefits this rule is trying to achieve.

Lastly, we would like to point out that in the case you spoke of in the hearing, where the notary stated she collected a flat rate for “signing services” and was brought up for charging too excessive of a fee. Your question was, “How do you verify what the notary charged?”. In the case of a contracted loan signing notary, who is obligated to carry a notary journal, wouldn't it be written in her journal of the amount of notarial acts that she charged for? As our law states, even in the case of a notary getting a flat rate for a loan closing, they still are required to write in the amount collected in their journal for the notarial acts they performed. So even if the notary made \$100 flat-rate on the closing job, and did 4 notarial acts - their notary journal should reflect \$60 in the fee area. The remaining amount of the \$100 would be the convenience fees listed on page 2 of this letter. Would that not suffice to clear the notary of wrongdoing in a similar circumstance?

With all of this in mind, we as Colorado notaries public, as Lindy Rich Services, LLC, a Colorado nation-wide signing service, and Notary Academy Colorado, a Colorado notary training service, are 100% in agreement with **LTAC's Option 1 Alternative** formulated in their letter to the SOS on this matter, which we are referencing henceforth as *Exhibit A - LTAC Comments to SOS Proposal to Rule 2.4 to 8 CCR 1505-11*. We also would ask that we attach an addition on top of LTAC's 2.4.3.

Option 1 request to carve out title, and settlement services from this rule in relation to real estate closings, as pasted below AND LRS's 2.4.4:

2.4.1 IF A NOTARY PUBLIC CHARGES FOR ANY SERVICE IN ADDITION TO THE NOTARIAL ACT, THE NOTARY PUBLIC MUST:
(A) INFORM THE CUSTOMER OF THE CHARGES BEFORE PERFORMING THE NOTARIAL ACT; AND
(B) PROVIDE AN ITEMIZED INVOICE THAT LISTS EACH SPECIFIC CHARGE.

2.4.2 IF A NOTARY PUBLIC FAILS TO ITEMIZE SPECIFIC CHARGES, THE AMOUNT CHARGED IS PRESUMED TO SOLELY COVER THE NOTARIAL ACT. IF THAT AMOUNT EXCEEDS THE STATUTORY FEE LIMIT IN SECTION 24-21-529, C.R.S., THE INVOICE IS PRESUMPTIVE EVIDENCE OF A VIOLATION OF THE REVISED UNIFORM LAW ON NOTARIAL ACTS.

LTAC's OPTION 1

2.4.3 RULE 2.4 SHALL NOT APPLY TO SERVICES PROVIDED IN CONJUNCTION WITH THE BUSINESS OF TITLE INSURANCE, AS DEFINED IN C.R.S. 10-11-102(3), TO CLOSING AND SETTLEMENT SERVICES, AS DEFINED UNDER C.R.S. 10-11-102(3.5), OR TO SETTLEMENT SERVICES, AS DEFINED UNDER C.R.S. 10-11-102(6.7).

Please also see the request from Lindy Rich Services and CO Notary Academy to add the below carve out verbiage about flat-rate jobs to the proposed rule:

2.4.4 RULE 2.4 SHALL NOT APPLY IN INSTANCES WHERE THE NOTARY IS ENGAGED IN A FLAT-RATE ARRANGEMENT. THESE CIRCUMSTANCES PERTAIN TO SITUATIONS WHEREIN THE NOTARY IS NOT DIRECTLY ENGAGED BY A CONSUMER. IN SUCH CASES, THE NOTARY PROVIDES SERVICES ENCOMPASSING NOTARIAL CERTIFICATES, WHERE THE FEE REMAINS CONSTANT AND IS NOT CONTINGENT UPON THE NUMBER OF NOTARIAL CERTIFICATES BUT RATHER IS INCLUSIVE WITHIN THE PREDETERMINED FEE STRUCTURE.

We would still like to caution you that there may be other industries, other than real estate (such as automotive, law, etc.), that may have similar detrimental effects to their services, were this rule to pass as it currently is written.

We are attaching LTAC's letter (*Exhibit A - LTAC Comments to SOS Proposal to Rule 2.4 to 8 CCR 1505-11*) in hopes of you seeing the issue from theirs and our perspectives, and be able to alter the rule as they and we propose.

Again, thank you for your time and consideration.

With the utmost respect,

Lindy Rich Services, LLC
& Notary Academy CO

Lindy Rich Services

, Lindy Rich Services & Notary Academy Colorado
719-238-9292, 719-238-9206

Lindy Rich Services, LLC

Lindy Rich Services

Lindy Rich Services

Lindy Rich Services, LLC

Lindy Rich Services

The Owners, Members, and Family of Lindy Rich Services, LLC and Notary Academy Colorado



Notary
ACADEMY
COLORADO



December 18, 2023

Via Email

The Honorable Jena Griswold
Secretary of State
State of Colorado
1700 Broadway
Suite 550
Denver, CO 80206

Re: LTAC Comments to SOS Proposed Rule 2.4 to 8 CCR 1505-11

Dear Secretary Griswold:

On behalf of the Land Title Association of Colorado (LTAC), I hereby submit comments in response to Proposed Rule 2.4 to 8 CCR 1505-11:

As background, an escrow officer is an employee of a title company, a notary, and closes real estate transactions. They do not charge separately for notarization of certain closing documents. Any charges applied are part of the overall settlement service fee. This proposed rule would require a title company/escrow officer to provide an itemized invoice to the consumer before performing notarial acts associated with real estate closings. This will cause confusion for the consumer as further outlined below.

Title companies are regulated by the Colorado Division of Insurance (DOI). Closing fees in relation to the business of title insurance are approved and filed with the DOI. These filed fees are public record and are available online or upon request from the title company. In addition, the Consumer Financial Protection Bureau (CFPB) as part of the governance of lenders, requires accurate disclosures of all closing costs to the buyer within three days of the loan application on the Initial Loan Estimate form. There are specific fields for closing costs on this federally mandated form. It is standard industry practice for title companies to incorporate notary services as part of the overall closing cost and disclose that cost on both the Initial Loan Estimate form and an additional required form known as the Closing Disclosure. The Closing Disclosure form is required three days before closing. The Initial Loan Estimate Form and the Closing Disclosure form must match. Mandating a separate notarial cost disclosure for a real estate transaction will cause confusion to the consumer and could result in delayed real estate closings.

For example, under this proposed rule, the Lender must disclose a separate notary fee for each of the six documents requiring notarization on the Initial Loan Estimate. Once the property is ready for closing and the title company is preparing the final documents, it is determined that there are 10 documents which require notarization (as opposed to six). The closing would have to be delayed for the redisclosure of the charge for the additional four documents requiring

notarization, which is required by the CFPB. This could delay the closing and transfer of the property for several days.

For these reasons, LTAC proposes two alternative changes to the proposed rule, highlighted in red below, in preferential order:

Option 1

2.4.1 IF A NOTARY PUBLIC CHARGES FOR ANY SERVICE IN ADDITION TO THE NOTARIAL ACT, THE NOTARY PUBLIC MUST:

- (A) INFORM THE CUSTOMER OF THE CHARGES BEFORE PERFORMING THE NOTARIAL ACT; AND
- (B) PROVIDE AN ITEMIZED INVOICE THAT LISTS EACH SPECIFIC CHARGE.

2.4.2 IF A NOTARY PUBLIC FAILS TO ITEMIZE SPECIFIC CHARGES, THE AMOUNT CHARGED IS PRESUMED TO SOLELY COVER THE NOTARIAL ACT. IF THAT AMOUNT EXCEEDS THE STATUTORY FEE LIMIT IN SECTION 24-21-529, C.R.S., THE INVOICE IS PRESUMPTIVE EVIDENCE OF A VIOLATION OF THE REVISED UNIFORM LAW ON NOTARIAL ACTS.

2.4.3 RULE 2.4 SHALL NOT APPLY TO SERVICES PROVIDED IN CONJUNCTION WITH THE BUSINESS OF TITLE INSURANCE, AS DEFINED IN C.R.S. 10-11-102(3), TO CLOSING AND SETTLEMENT SERVICES, AS DEFINED UNDER C.R.S. 10-11-102(3.5), OR TO SETTLEMENT SERVICES, AS DEFINED UNDER C.R.S. 10-11-102(6.7).

Option 2

2.4.1 IF A NOTARY PUBLIC CHARGES FOR ANY SERVICE IN ADDITION TO THE NOTARIAL ACT, **WHICH IS REQUIRED IN ORDER TO PERFORM THE NOTARIZATION**, THE NOTARY PUBLIC MUST:

- (A) INFORM THE CUSTOMER OF THE CHARGES BEFORE PERFORMING THE NOTARIAL ACT; AND
- (B) PROVIDE AN ITEMIZED INVOICE THAT LISTS EACH SPECIFIC CHARGE.

2.4.2 IF A NOTARY PUBLIC FAILS TO ITEMIZE SPECIFIC CHARGES, THE AMOUNT CHARGED IS PRESUMED TO SOLELY COVER THE NOTARIAL ACT. IF THAT AMOUNT EXCEEDS THE STATUTORY FEE LIMIT IN SECTION 24-21-529, C.R.S., THE INVOICE IS PRESUMPTIVE EVIDENCE OF A VIOLATION OF THE REVISED UNIFORM LAW ON NOTARIAL ACTS.

The proposed language above provides consumers transparency in pricing without jeopardizing the real estate closing. The proposed rule is duplicative and unnecessary in real estate transactions. Thank you for your consideration.

Respectfully submitted,



Penny McKelroy, CTIS, CESS
President

cc: LTAC Board