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WHEN LEGAL SYSTEMS CLASH: WHY FOREIGN-BORN RESIDENTS FALL PREY TO UNSCRUPULOUS NOTARIES PUBLIC AND WHAT SHOULD BE DONE TO PREVENT IT

by Victor D. López, J.D., Esq.*

I. INTRODUCTION

United States citizens and long-term residents usually seek the services of a notary public when they need to have a signature authenticated in a document that requires it or when they need to have a document that is required to be executed under oath. And, although they may be largely unaware of the actual limited powers granted to notaries public under each state's law, it is highly unlikely that they will turn to a notary public for legal advice or representation in the mistaken belief that every notary public is also a highly trained lawyer. Alas, immigrants from most countries around the world whose legal systems are based on the dominant civil law rather than the much less prevalent common law system adhered to by the United States and most former British colonies have a very different view of the powers, competencies, and training of notaries public. In civil law jurisdictions, notaries are generally not only lawyers, but usually lawyers with significant additional training beyond their law degrees who must go through a very rigorous vetting process that often includes both competitive exams and internships supervised by a notary public.¹ In sharp contrast, there are 4.4 million notaries in the United States according to the National Notary Association (NNA).² And the requirements for becoming a U.S. notary public are extremely modest: "In general, Notary applicants must be 18 years old and a legal resident of the state with no criminal record."³ At present only California, Colorado, Florida, Missouri, Montana, Nevada, North Carolina, Ohio, Oregon and Pennsylvania require training as a prerequisite to becoming a notary public, and Delaware requires

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training and continuing education for electronic notaries according to NNA.⁴ Even when training is required, it too is very modest, usually limited to three to six hours of instruction.⁵ Moreover, most states do not require a notary to take and pass an exam; only California, Colorado, Connecticut, Hawaii, Louisiana, Maine, Montana, Nebraska, New York, North Carolina, Ohio, Oregon and Utah require prospective notaries to take and pass an exam that generally lasts about one hour.⁶ (Lawyers are exempt from having to take the exam in Louisiana,⁷ North Carolina,⁸ New York,⁹ and Ohio.¹⁰)

Because of the very different connotation that the term notary or notary public has for the typical U.S. citizen and citizens of most other countries around the world, unscrupulous notaries in the United States can easily prey upon unsuspecting foreign-born individuals in need of legal assistance or representation and fraudulently misrepresent themselves as authorized to provide legal advice, legal document preparation, and representation across a wide range of matters—all of which constitute the unauthorized practice of law subject to civil violation and/or criminal prosecution.¹¹

Commentators who write about the issue tend to concentrate on “notario fraud” in reference to undocumented immigrants from Mexico and other Latin American countries who fall prey to unscrupulous notaries public in the mistaken belief that notaries in the United States have similar qualifications to notaries in their countries of origin.¹² And there is no question that both legal and illegal immigrants who face deportation or who seek advice on changing their immigration status often fall victims to unscrupulous notaries.¹³ But undocumented immigrants and recent Latin America legal immigrants are by no means the only communities that can fall prey to unscrupulous notaries due to a misapprehension of their limited powers which are very different from those enjoyed by notaries in their countries of origin. The mistaken assumptions that immigrants from Mexico and Latin America make as to the training and competencies of U.S. notaries public are shared by citizens from most countries around the world, including Asia, Africa, and Europe.¹⁴

To better understand why unscrupulous notaries public are able to prey upon unsuspecting foreign-born populations, it is useful to survey the difference between U.S. jurisdictions and foreign jurisdictions as to the powers and authority invested in notaries public. In the next section, we will examine the functions notaries public are permitted to perform in all U.S. jurisdictions. In sections III-VII, we will take a close look at both the functions and qualifications of notaries public in other parts of the world in jurisdictions that follow the majority civil law system that is sometimes interchangeably referred to as Roman Law and Latin Law. Once the sharp contrast between U.S. notaries and notaries in most other parts of the world is better understood, it should be possible to suggest some effective means of protecting foreign born individuals who reside in the United States from becoming easy prey for unscrupulous notaries public.

II. AUTHORIZED FUNCTION OF NOTARIES PUBLIC BY STATE AND TERRITORY

The authorized function of notaries public in the United States is dictated by state law. Therefore, there are some differences in the specific functions that a notary public may perform in each state. However, these differences are relatively minor and in every state the functions of a notary public are very limited. To better understand the exact nature and strict limitations on the functions notaries public are authorized to perform, a quick survey of the law in all 50 states and U.S. territories may be instructive.

Table I: Powers of Notaries Public in U.S. States and Territories

Jurisdiction	Powers of Notaries Public
Alabama	(1) Administer oaths in all matters incident to the exercise of their office; (2) Take the acknowledgment or proof of instruments of writing relating to commerce or navigation and certify the same and all other of their official acts under their seal of office; and (3) Demand acceptance and payment of bills of exchange, promissory notes, and all other writings which are governed by the commercial law as to days of grace, demand, and notice of nonpayment and protest the same for nonacceptance or nonpayment and to give notice thereof as required by law. ¹⁵

Alaska	A notary public in Alaska may administer oaths and affirmations. ¹⁶ In addition, she/he may “take the acknowledgment of or proof of execution of instruments in writing, and give a notarial certificate of the proof or acknowledgment, included in or attached to the instrument; the notarial certificate shall be signed by the notary public in the notary public's own handwriting or by electronic means as authorized by regulations adopted by the lieutenant governor.” ¹⁷ Alaska also further clarifies the very limited nature of a notary public's authority by specifying that a “notary public who is not an attorney may complete but may not select notarial certificates, and may not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.” ¹⁸ A notary public is also prohibited from making “representations to have powers, qualifications, rights, or privileges that the office of notary public does not have.” ¹⁹
Arizona	Notaries public in Arizona may perform all of the following duties: Take acknowledgments and give certificates of the acknowledgments endorsed on or attached to the instrument; ²⁰ administer oaths and affirmations; ²¹ perform jurats; ²² and perform copy certification. ²³
Arkansas	Arkansas empowers notaries public to perform the following acts: Swearing witnesses; ²⁴ taking affidavits; ²⁵ taking depositions under Rule 28 of the Arkansas Rules of Civil Procedure and Rule 28 of the Federal Rules of Civil Procedure ²⁶ and taking acknowledgments of deeds and other instruments in writing and authorized by law to be acknowledged. ²⁷
California	California defines the duties of notaries public as follows: ²⁸ (a) It is the duty of a notary public, when requested: (1) To demand acceptance and payment of foreign and inland bills of exchange, or promissory notes, to protest them for nonacceptance and nonpayment, and, with regard only to the nonacceptance or nonpayment of bills and notes, to exercise any other powers and duties that by the law of nations and according to commercial usages, or by the laws of any other state, government, or country, may be performed by a notary. This paragraph applies only to a notary public employed by a financial institution, during the course and scope of the notary's employment with the financial institution. (2) To take the acknowledgment or proof of advance health care directives, powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of that proof or acknowledgment, endorsed on or attached to the

	<p>instrument. The certificate shall be signed by the notary public in the notary public's own handwriting. A notary public may not accept any acknowledgment or proof of any instrument that is incomplete.</p> <p>(3) To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board. Any deposition, affidavit, oath, or affirmation shall be signed by the notary public in the notary public's own handwriting.</p> <p>(4) To certify copies of powers of attorney under Section 4307 of the Probate Code. The certification shall be signed by the notary public in the notary public's own handwriting.</p> <p>(b) It shall further be the duty of a notary public, upon written request:</p> <p>(1) To furnish to the Secretary of State certified copies of the notary's journal.</p> <p>(2) To respond within 30 days of receiving written requests sent by certified mail or any other means of physical delivery that provides a receipt from the Secretary of State's office for information relating to official acts performed by the notary.</p>
<p>Colorado</p>	<p>Colorado defines notarial acts that are within the power of notaries public to perform as “taking an acknowledgment, administering an oath or affirmation, taking a deposition or other sworn testimony, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying a copy, and noting a protest of a negotiable instrument.”²⁹ Colorado also statutorily addresses practices specifically prohibited to notaries public in the state, including all of the following:³⁰</p> <p>(1) A commission as a notary public does not authorize an individual to:</p> <p>(a) Assist persons in drafting legal records, give legal advice, or otherwise practice law;</p> <p>(b) Act as an immigration consultant or an expert on immigration matters;</p> <p>(c) Represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters; or</p> <p>(d) Receive compensation for performing any of the activities listed in this subsection (1).</p> <p>(2) A notary public shall not engage in false or deceptive advertising.</p>

	<p>(3) A notary public, other than an attorney licensed to practice law in this state, shall not use the term “notario” or “notario publico”.</p> <p>(4) A notary public, other than an attorney licensed to practice law in this state, shall not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise practice law. If a notary public who is not an attorney licensed to practice law in this state in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media, and the internet, the notary public shall include the following statement, or an alternate statement authorized or required by the secretary of state, in the advertisement or representation, prominently and in each language used in the advertisement or representation: “I am not an attorney licensed to practice law in the state of Colorado and I may not give legal advice or accept fees for legal advice. I am not an immigration consultant, nor am I an expert on immigration matters. If you suspect fraud, you may contact the Colorado attorney general's office or the Colorado supreme court.” If the form of advertisement or representation is not broadcast media, print media, or the internet and does not permit inclusion of the statement required by this subsection (4) because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.</p> <p>(5) A notary public, other than an attorney licensed to practice law in this state, shall not engage in conduct that constitutes a deceptive trade practice pursuant to section 6-1-727.</p> <p>(6) Except as otherwise allowed by law, a notary public shall not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.</p> <p>(7) A notary public shall not perform any notarial act with respect to a record that is blank or that contains unfilled blanks in its text.</p>
<p>Connecticut</p>	<p>Notarial acts that notaries public are authorized to perform in Connecticut include “taking an acknowledgment, administering an oath or affirmation, witnessing or attesting a signature and completing a copy certification.”³¹</p> <p>Connecticut expressly prevents notaries public from giving immigration advice or representing persons in immigration proceedings unless they are also attorneys.³² Likewise, notaries</p>

	public in Connecticut cannot assume the title of or advertise themselves to be “notaries” or “notario publico” unless they are admitted to practice as attorneys or unless the advertisement states or the notaries public provide written notice that they are not admitted to practice as attorneys in the state. ³³
Delaware	The state of Delaware provides the following powers to notaries public: Taking an acknowledgment; ³⁴ taking a verification upon oath or affirmation; ³⁵ witnessing or attesting a signature; ³⁶ certifying or attesting a copy of a document; ³⁷ making or noting a protest of a negotiable instrument. ³⁸
Washington D.C.	A notary public in Washington D.C. is authorized to engage in the following acts: “taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, noting a protest of a negotiable instrument, taking and certifying the acknowledgment or proof of powers of attorney, mortgages, deeds, other instruments of writing, and taking affidavits to be used before any court, judge, or officer within the District.” ³⁹
Florida	Notaries public in Florida are empowered to administer oaths, ⁴⁰ take acknowledgments of deeds and other instruments of writing for record, ⁴¹ and perform civil marriages. ⁴² Florida also recognizes civil law notaries (also referred to as “international notaries”). ⁴³ To qualify as a civil law notary public, an applicant must be a lawyer admitted to practice in the State for a minimum of five years. ⁴⁴ A three-day training session and subsequent examination must be completed and passed before an attorney can become a civil law notary public. ⁴⁵ In addition to the functions of regular notaries public, a civil law notary public has the power to authenticate an act and attest to the validity of documents. ⁴⁶ As attorneys, civil law notaries public can, of course, also give legal advice and represent clients.
Georgia	Notaries public in Georgia have the authority to witness or attest signature or execution of deeds and other written instruments; take acknowledgments; administer oaths and affirmations in all matters incidental to their duties as commercial officers and all other oaths and affirmations which are not by law required to be administered by a particular officer; witness affidavits upon oath or affirmation; take verifications upon oath or affirmation; Make certified copies, provided that the document presented for copying is an original document and is neither a public record nor a publicly recorded document certified copies of which are available from an official source other than a notary and provided that the document was photocopied under supervision of the notary; and perform such other acts as they are authorized to perform by other laws of this state. ⁴⁷ Georgia specifically prohibits notaries public from making claims to have or imply

	that they have powers they do not possess, including the power to counsel on immigration matters or give legal advice. ⁴⁸
Hawaii	Hawaii notaries public are empowered to “take acknowledgments, administer oaths and affirmations, witness the signing of documents, attest to the identity of the signer of a document, note protests, and perform any other act permitted by chapter 456, HRS.” ⁴⁹
Idaho	Idaho notaries public are empowered to perform the following notarial acts: taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing, or attesting a signature, certifying, or attesting a copy, and noting a protest of a negotiable instrument. ⁵⁰
Illinois	Notarial acts that a notary public in Illinois is authorized to perform include taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, and witnessing or attesting a signature. ⁵¹
Indiana	Notarial acts in Indiana include all of the following: Taking an acknowledgment; administering an oath or affirmation; taking a verification on an oath or affirmation; attesting to or witnessing a signature; attesting to or certifying a copy of a tangible document or record, or an electronic document or record; noting a protest of a negotiable record; and any other act authorized by common law or the custom of merchants. ⁵²
Iowa	Iowa defines notarial acts to include taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing, or attesting a signature, certifying, or attesting a copy, and noting a protest of a negotiable instrument. ⁵³
Kansas	Kansas defines notarial acts to include “taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, [and] certifying or attesting a copy and noting a protest of a negotiable instrument.” ⁵⁴
Kentucky	Kentucky permits notaries public to perform the following acts: Take acknowledgments; administer oaths and affirmations; take verifications of statements on oath or affirmation; certify that a copy of any document, other than a document that is recorded or in the custody of any federal, state, or local governmental agency, office, or court, is a true copy; certify depositions of witnesses; make or note a protest of a negotiable instrument; witness or attest signatures; and perform any other notarial act authorized by law. ⁵⁵
Louisiana	Notaries public in Louisiana have somewhat broader powers than their counterparts in other states. Louisiana Revised Statutes Title 35 Chapter 1 grants to notaries public the

	<p>following powers LSA-R.S. 35:2 grants to notaries public the following enumerated powers:</p> <p>A. (1) Notaries public have power within their several parishes:</p> <ul style="list-style-type: none">(a) To make inventories, appraisements, and partitions;(b) To receive wills, make protests, matrimonial contracts, conveyances, and generally, all contracts and instruments of writing;(c) To hold family meetings and meetings of creditors;(d) To receive acknowledgements of instruments under private signature;(e) To make affidavits of correction;(f) To affix the seals upon the effects of deceased persons and to raise the same. <p>(2) All acts executed by a notary public, in conformity with the provisions of Civil Code Art. 1833, shall be authentic acts.</p> <p>(3) Notwithstanding any provision in the law to the contrary, a notary public shall have power, within the parish or parishes in which he is authorized, to exercise all of the functions of a notary public and to receive wills in which he is named as administrator, executor, trustee, attorney for the administrator, attorney for the executor, attorney for the trustee, attorney for a legatee, attorney for an heir, or attorney for the estate.</p> <p>B. However, each notary public of this state shall have authority to administer oaths in any parish of the state, to swear in persons who appear to give testimony at a deposition before a general reporter or free-lance reporter certified under the provisions of R.S. 37:2551 et seq., and to verify interrogatories and other pleadings to be used in the courts of record of this state. Such oaths, and the certificates issued by such notaries shall be received in the courts of this state and shall have legal efficacy for purposes of the laws on perjury.</p> <p>C. Every qualified notary public is authorized to certify true copies of any authentic act or any instrument under private signature hereafter or heretofore passed before him or acknowledged before him, and to make and certify copies, by any method, of any certificate, research, resolution, survey or other document annexed to the original of any authentic acts passed before him, and may certify such copies as true copies of the original document attached to the original passed before him.⁵⁶</p> <p>Although notaries public have somewhat broader authority in Louisiana than they do in other states, no doubt as a result of the State's original civil law roots when a French possession, it</p>
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	should be noted that they, along with everyone else in the state, are subject to the prohibition against unauthorized practice of law which in Louisiana carries a maximum penalty of \$1,000 and two-years imprisonment for violations by a natural person. ⁵⁷
Maine	<p>Maine notaries public may perform the following functions: administration of oaths or affirmations; certification of an affidavit or an acknowledgment of instruments related to real estate transfers; certification of copies of private documents; and solemnization of marriages.⁵⁸</p> <p>Notaries public who are not admitted to practice law in Maine and who advertise in any language other than English in the state must provide a notice in the language of the advertisement the fees they are authorized to charge for their services and the following statement in both English and the language of the advertisement:</p> <p><i>"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN MAINE AND MAY NOT GIVE LEGAL ADVICE ABOUT IMMIGRATION OR ANY OTHER LEGAL MATTER OR ACCEPT FEES FOR LEGAL ADVICE."</i>⁵⁹</p> <p>Notaries public may not use a direct translation into another language of the term notary public that implies in the foreign language the authority to practice law.⁶⁰ This prohibition effectively prevents a notary public from advertising as a "notario" or "notario publico" as that term in civil law jurisdictions, including Latin America, Spain (and most civil law jurisdictions generally) denotes an individual who is either a lawyer or has specialized training that allows her/him to provide legal services. Civil violations of this section can result in civil penalties of up to \$5,000⁶¹ and civil actions for actual damages, treble damages, attorney's fees, and court costs.⁶²</p>
Maryland	Maryland defines notarial acts to all of the following: taking an acknowledgment; administering an oath or affirmation; taking a verification on oath or affirmation; witnessing or attesting a signature; certifying or attesting a copy; and noting a protest of a negotiable instrument. ⁶³
Massachusetts	Notaries public in Massachusetts are empowered to administer oaths or affirmations in all cases in which an oath or affirmation is required and take acknowledgments of deeds and other instruments. ⁶⁴
Michigan	The powers of a notary public in Michigan include taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, and witnessing or attesting a signature. ⁶⁵
Minnesota	The notarial acts that a notary public is authorized to perform in Minnesota are defined to include taking an acknowledgment, administering an oath or affirmation, taking a verification on

	oath or affirmation, witnessing, or attesting a signature, certifying, or attesting a copy, and noting a protest of a negotiable instrument. ⁶⁶
Mississippi	Notaries public in Mississippi have the “power to receive the proof or acknowledgment of all instruments of writing relating to commerce or navigation, such as bills of sale, bottomries, mortgages, and hypothecations of ships, vessels or boats, charter parties of affreightment, letters of attorney, and such other writings as are commonly proved or acknowledged before notaries; and to perform all other duties required of notaries by commercial usage, and also to make declarations, including the filing of an affidavit as provided in Section 25-33-9, and certify the truth thereof, under his seal of office, concerning all matters done by him in virtue of his office.” ⁶⁷
Missouri	Notaries public in Missouri are empowered to take acknowledgments; administer oaths and affirmations; certify that a copy of a document is a true copy of another document; and perform any other act permitted by law. ⁶⁸
Montana	Montana defines notarial acts to include “taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, certifying or attesting a transcript of an affidavit or deposition, and noting a protest of a negotiable instrument.” ⁶⁹
Nebraska	<p>Nebraska notaries public have the power “(1). [t]o administer oaths and affirmations in all cases; (2) to take depositions, acknowledgments, and proofs of the execution of deeds, mortgages, powers of attorney, and other instruments in writing, to be used or recorded in this or another state; and (3) to exercise and perform such other powers and duties as authorized by the laws of this state.”⁷⁰</p> <p>Nebraska also specifically addresses unauthorized practice of law by non-lawyer notaries public and prohibits the use of the term “notario publico” or equivalent foreign term as follows:⁷¹</p> <p>(1) A notary public who is not an attorney shall not engage in the unauthorized practice of law as provided in this section.</p> <p>(2) If notarial certificate wording is not provided or indicated for a document, a notary public who is not an attorney shall not determine the type of notarial act or certificate to be used.</p> <p>(3) A notary public who is not an attorney shall not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.</p> <p>(4) A notary public who is not an attorney shall not claim to have powers, qualifications, rights, or privileges that the office</p>

	<p>of notary public does not provide, including the power to counsel on immigration matters.</p> <p>(5) A notary public who is not an attorney and who advertises notarial services in a language other than English shall include in any advertisement, notice, letterhead, or sign a statement prominently displayed in the same language as follows: “I am not an attorney and have no authority to give advice on immigration or other legal matters”.</p> <p>(6) A notary public who is not an attorney may not use the term notario publico or any equivalent non-English term in any business card, advertisement, notice, or sign.</p> <p>(7) This section does not preclude a notary public who is duly qualified, trained, or experienced in a particular industry or professional field from selecting, drafting, completing, or advising on a document or certificate related to a matter within that industry or field.</p> <p>(8) A violation of any of the provisions of this section shall be considered the unauthorized practice of law and subject to the penalties provided in section 7-101.</p> <p>Violations of the foregoing statute are punished as a Class III misdemeanors, the same as other forms of unauthorized practice of law in the state.⁷²</p>
Nevada	<p>Notarial acts in Nevada are defined to include taking an acknowledgment, administering an oath or affirmation, certifying a copy, executing a jurat, noting a protest of a negotiable instrument, and performing such other duties as may be prescribed by a specific statute.⁷³</p>
New Hampshire	<p>New Hampshire defines notarial acts to include taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing, or attesting a signature, certifying, or attesting a copy, and noting a protest of a negotiable instrument.⁷⁴</p>
New Jersey	<p>Notaries public in New Jersey are empowered to administer oaths and affirmations, take acknowledgments, take proofs of execution, jurats, and execute protests for non-payment or non-acceptance.⁷⁵</p> <p>The New Jersey Notary Public Manual explicitly prohibits notaries public under penalty of civil and criminal sanctions from preparing a legal document or giving advice on legal matters, or matters pertaining to land titles, preparing pleadings, affidavits, briefs, and any other submissions to the court, appearing as a representative of another person in a legal proceeding, or acting for others in the collection of delinquent bills or claims.⁷⁶</p>

New Mexico	<p>The general powers of notaries public in New Mexico include acknowledgments, oaths, and affirmations, jurats and copy certifications.⁷⁷</p> <p>As is true of many states, New Mexico specifically addresses the unauthorized practice of law by non-lawyer notaries public and prohibits these notaries from determining the type of notarial act or certificate to be used, assisting another person in drafting, completing, selecting or understanding a document or transaction requiring a notarial act, and claiming to have powers, qualifications, rights or privileges that the office of notary public does not provide, including the power to counsel on immigration matters.⁷⁸ Notaries public are also prohibited from using the term “notario publico” or any equivalent non-English term in any business card, advertisement, notice or sign.⁷⁹</p>
New York	<p>New York notaries public are empowered to “administer oaths and affirmations, to take affidavits and depositions, to receive and certify acknowledgments or proof of deeds, mortgages and powers of attorney and other instruments in writing; to demand acceptance or payment of foreign and inland bills of exchange, promissory notes and obligations in writing, and to protest the same for non-acceptance or non-payment, as the case may require, and, for use in another jurisdiction, to exercise such other powers and duties as by the laws of nations and according to commercial usage, or by the laws of any other government or country may be exercised and performed by notaries public, provided that when exercising such powers he shall set forth the name of such other jurisdiction.”⁸⁰</p>
North Carolina	<p>Notaries in North Carolina may perform the following notarial acts: Acknowledgments, oaths and affirmations, verifications, or proofs.⁸¹</p>
North Dakota	<p>North Dakota defines notarial acts that notaries public may perform to include “taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy except as provided in subsection 7 of section 44-06.1-23, and noting a protest of a negotiable instrument.”⁸²</p> <p>As is true of many other states, North Dakota specifically prohibits a notary public to “advertise or represent that the notary public may assist in drafting legal records, give legal advice, or otherwise practice law.”⁸³ In addition, a notary public who is not an attorney licensed to practice law in the state advertises or represents that she/he offers notarial services whether orally or through broadcast media, print media, and the internet, the notary public must include the following statement</p>

	prominently in the advertisement in the same language of the advertisement: "I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities." ⁸⁴
Ohio	Notarial acts in Ohio may include "the administration of oaths and affirmations, taking proof of execution and acknowledgment of instruments, attesting documents, and executing a jurat." ⁸⁵
Oklahoma	Oklahoma defines acts that a notary public may perform to include "taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument." ⁸⁶
Oregon	Oregon defines notarial acts that notaries public may perform as "(a) Taking an acknowledgment; (b) Administering an oath or affirmation; (c) Taking a verification on oath or affirmation; (d) Witnessing or attesting a signature; (e) Certifying or attesting a copy; (f) Making, noting or recording a protest of a negotiable instrument; or (g) Any other act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state." ⁸⁷
Pennsylvania	Notarial acts in Pennsylvania are defined to include all of the following: "(1) taking an acknowledgment; (2) administering an oath or affirmation; (3) taking a verification on oath or affirmation; (4) witnessing or attesting a signature; (5) certifying or attesting a copy or deposition; and (6) noting a protest of a negotiable instrument." ⁸⁸
Rhode Island	Rhode Island defines notarial acts that notaries public may perform to include: "taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, noting a protest of a negotiable instrument and transact, do and finish all matters and things relating to protests and protesting bills of exchange and promissory notes, and all other matters within their office required by law, take depositions as prescribed by law, and acknowledgments of deeds and other instruments." ⁸⁹
South Carolina	South Carolina defines notarial acts to include "the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents." ⁹⁰
South Dakota	Notarial acts in South Dakota are defined to include "taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a

	signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.” ⁹¹
Tennessee	In Tennessee, a notary public has “the power to acknowledge signatures upon personal knowledge or satisfactory proof, to administer oaths, to take depositions, to qualify parties to bills in chancery, and to take affidavits, in all cases.” ⁹²
Texas	Texas gives notaries the authority to “(1) take acknowledgments or proofs of written instruments; (2) protest instruments permitted by law to be protested; (3) administer oaths; (4) take depositions; and (5) certify copies of documents not recordable in the public records.” ⁹³
Utah	Utah authorizes notaries public to perform the following acts: “(a) a jurat; (b) an acknowledgment; (c) a signature witnessing; (d) a copy certification; and (e) an oath or affirmation.” ⁹⁴
Vermont	Vermont defines notarial acts that notaries may perform to include: “taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, attesting a signature, and noting a protest of a negotiable instrument.” ⁹⁵
Virginia	Virginia notaries public are “empowered to perform the following notarial acts: (i) take acknowledgments, (ii) administer oaths and affirmations, (iii) certify that a copy of any document, other than a document in the custody of a court, is a true copy thereof, (iv) certify affidavits or depositions of witnesses, (v) perform verification of fact, and (vi) perform such other acts as may be specifically permitted by law.” ⁹⁶
Washington	Washington notaries public are empowered to perform the following acts: “taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, certifying the occurrence of an event or the performance of an act, and noting a protest of a negotiable instrument if the protest was prepared under the authority of an attorney licensed to practice law in this state or another state, or was prepared under the authority of a financial institution that is regulated by this state, another state, or the federal government.” ⁹⁷
West Virginia	West Virginia defines notarial acts to include “taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.” ⁹⁸
Wisconsin	Wisconsin notaries public have the power “to demand acceptance of foreign and inland bills of exchange and payment thereof, and payment of promissory notes, and may protest the same for nonacceptance or nonpayment, may administer oaths, take depositions and acknowledgments of deeds, and perform

	<p>such other duties as by the law of nations, or according to commercial usage, may be exercised and performed by notaries public.”⁹⁹</p> <p>Non-attorney notaries public are prohibited from stating or implying that they are attorneys or using the phrase “notario,” “notarizaciones,” “notarizamos,” or “notario publico,” unless an advertisement using such words also includes all in caps in the same size font as the advertisement the following statement: “<i>I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN WISCONSIN AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.</i>”¹⁰⁰ Violations of this section are punishable by a fine not to exceed \$10,000 and imprisonment to exceed 9 months for a first offense and a fine not to exceed \$10,000 and imprisonment not to exceed 6 years for any subsequent offenses.¹⁰¹</p>
<p>Wyoming</p>	<p>Notarial acts in Wyoming include: “(A) Taking an acknowledgment; (B) Administering an oath or affirmation; (C) Taking a verification upon oath or affirmation; (D) Witnessing or attesting a signature; (E) Certifying or attesting a copy; (F) Noting a protest of a negotiable instrument; (G) Performing a jurat; and (H) Performing other acts so authorized by the laws of this state.”¹⁰²</p>
<p>Guam</p>	<p>A notary public in Guam is “empowered to perform the following notarial acts: (a) Acknowledgments; (b) Oaths and affirmations; (c) Jurats; and (d) Copy certifications.”¹⁰³</p>
<p>Puerto Rico</p>	<p>Puerto Rico deviates from the rest of the U.S. in the function and training of notaries who do, in fact, conform to the traditional definition of notaries in Europe, Latin America and throughout most of the world.¹⁰⁴ Only lawyers may be notaries in Puerto Rico, a tradition that is doubtless traceable to its former status as a colony of Spain. Puerto Rico notaries must be members of the Puerto Rico Bar who are subsequently admitted to practice as notaries by the Supreme Court of Puerto Rico.¹⁰⁵ And the function of Puerto Rico notaries is very different from that of notaries public in the states and other U.S. territories as they perform a vital function in the creation and acknowledgment of public documents that include the execution and transfer of deeds,¹⁰⁶ creation of original deeds,¹⁰⁷ certification of wills,¹⁰⁸ and various other functions relating to the creation and certification of public documents.¹⁰⁹ It is worthy of note that notaries can charge the usual fees for the preparation of legal documents, and statutorily defines fees for the notarial service of certifying the documents they create (or are created by lawyers who are not notaries).¹¹⁰ And unlike the nominal statutory fees that notaries public are allowed to charge</p>

	for their services, the statutory fees allowed notaries in Puerto Rico can be significant, ranging from \$15 to \$40 for issuing certified copies of deeds (depending on the property value) to \$100 for executing notarial documents involving items or things with a determinate value under \$10,000 and 1 percent of the value of items with a determinate value above \$10,000 up to \$500,000, and 0.5 percent of the value in excess of \$500,000. ¹¹¹ When issuing notarial documents without a material value, the fee is whatever the notary and the client agree to. ¹¹²
U.S. Virgin Islands	Notaries public in the U.S. Virgin Islands are authorized to “take acknowledgments of deeds and other instruments, administer oaths and affirmations, and perform such other acts as may be authorized by law.” ¹¹³
Northern Mariana Islands	Notaries public in the Northern Mariana Islands have the power to perform the following notarial acts: “(a) Acknowledgments (such as powers of attorney, mortgages, grants, deeds and leases); (b) Oaths and affirmations to be used before any court, judge, officer or administrative agency in this Commonwealth; (c) Jurats; (d) Copy certifications and affidavits; (e) To take depositions and affidavits; (f) To keep a record of all official acts done by them; (g) To keep a record of the parties the date and character of every instrument acknowledged or proved before them; (h) When requested and upon payment of their fees therefor, to make and give a certified copy of any record in their office; (i) To provide and keep official seals or stamps, which shall be engraved as required by this chapter; and (j) To authenticate with their official seals all official acts.” ¹¹⁴

III. NOTARIES IN MEXICO

Notaries in Mexico (*notarios públicos*) are governed under Mexican state and federal law and there can be minor variations in the requirements for their training and functions. For purposes of illustration, I will focus on the requirements and function of notaries of *notarios públicos* in the Mexican State of Hidalgo. The requirements are translated by me into English from the original Spanish text.¹¹⁵ Notaries in the Mexican State of Hidalgo must meet the following qualifications:

- I. Be Mexican by birth, in plenary command of his rights, and of good conduct.;
- II. Be a citizen of the State of Hidalgo;
- III. Be at least 25 years of age;

- IV. Have an uninterrupted residence in the State of more than five years prior to the date of the exam;
- V. Have no permanent illness that can impede intellectual ability nor any physical disability that would impede the exercise of the notarial duties;
- VI. Have earned the title of Attorney at Law and been registered with the *Dirección General de Profesiones de la Secretaría de Educación*, have a minimum of five years of experience in the practice of law and completed a course on Notarial Law at any legally recognized University of the Republic, or provided by the College;
- VII. Have practiced a minimum of two years as a notary under the direction of a Notary Public in the State. The [supervising] Notary Public responsible for the practice must communicate the beginning and end of the practice of the person seeking to be appointed Notary Public to the Secretariat and to the College [Colegio de Notarios Públicos del Estado de Hidalgo], prior to the payment of the corresponding fees;
- VIII. Must not have been condemned of an international crime subject to corporal punishment by executive sentencing;
- IX. Must not be a member of the clergy, nor a minister of a religious sect; and
- X. Must pass an exam of theory and practice as required by this Law.¹¹⁶

In sharp contrast to the United States where the requirements to become a notary public seldom require more than being 18 years of age with no criminal convictions and passing a relatively simple exam with either nominal or no formal training required,¹¹⁷ Mexican *notarios públicos* are all lawyers with significant practical experience who had to take additional coursework beyond their law degrees to become notaries and work under the supervision of a notary for a number of years before qualifying for the distinction and powers accorded *notaries públicos*. This is a familiar pattern in civil law jurisdictions around the world as we will see in a sampling of Asian, Central and South American, European and African nations in the sections that follow. It is, therefore, unsurprising that so many immigrants—both legal and illegal—into the United States become

easy prey for unscrupulous notaries public who have neither the training, experience nor legal right to offer legal advice or representation to “clients”, assist in document preparation or even advise what legal forms to use for any civil or criminal matter. And though the problem of “notario fraud” is usually framed as one affecting illegal immigrants seeking assistance on immigration-related matters—and it certainly does that—it goes well beyond fraud perpetrated against those who need immigration-related advice and representation as individuals familiar with the role of notaries public in the international arena are also easy prey when they consult an unscrupulous notary public for other matters commonly performed by notaries with vastly different credentials, skills and authority overseas, including contract preparation, real estate deed preparation and transfers, matters relating to wills and trusts, divorce, and so on.

IV. A REPRESENTATIVE SAMPLING OF NOTARIAL PRERREQUISITES IN ASIA

China

Notaries in China must meet the following requirements: (1) having the nationality of the People’s Republic of China; (2) being between 25 and 65 years old; (3) being fair-minded [sic] and upright, observing laws and rules of discipline, and being of good moral character; (4) having passed the national judicial examination; and (5) having served as an intern in a notarial institution for two or more years, or having three or more years of experiences in another legal profession and having served as an intern in a notarial institution for one year or more, and being professionally qualified.¹¹⁸

Matters subject to notarization include: (1) a contract; (2) succession; (3) the power of attorney, statement, gift, and will; (4) division of property; (5) bid invitation, tendering, and auction; (6) marital status, kindred relationship, and adoption relationship; (7) birth, existence, death, identity, experiences, educational background, degree, job title, professional title, and having or not having illegal or criminal record; (8) articles of association of a company; (9) preservation of evidence; (10) signature, seal and date as indicated in a document, and duplicate or photocopy of a document conforming

with the original document; and (11) other matters for which a natural person, legal person or other organization voluntarily requests for notarization.¹¹⁹

India

Notaries in India are appointed by the central government and as a general rule must be lawyers in practice for at least ten years (seven years for members of certain casts and women).¹²⁰ Individuals who are members of the Indian Legal Services under the Central Government may also become notaries, as can individuals with 10 years of judicial service or service as an officer of the central or state governments requiring special knowledge of the law, or service as an officer in the department of the Judge Advocate General or in the legal department of the armed forces.¹²¹

Notaries in India have the authority to: (a) verify, authenticate, certify or attest the execution of any instrument; (b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security; (c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (26 of 1881), or serve notice of such note or protest; (d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters; (e) administer oath to, or take affidavit from, any person; (f) prepare bottomry and respondentia bonds, charter parties and other mercantile documents; (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate; (h) translate, and verify the translation of, any document from one language into another; (ha) act as a Commissioner to record evidence in any civil or criminal trial if so directed by any court or authority; (hb) act as an arbitrator, mediator or conciliator, if so required;] (i) any other act which may be prescribed.¹²²

Japan

Notaries in Japan have the following powers: (i) creating a notarized instrument with regard to a juridical act or any other fact concerning a private right; (ii) certifying a private instrument; (iii) certifying articles of incorporation pursuant to Article 30, paragraph (1) of the Companies Act (Act No. 86 of 2005) and the provisions pursuant to which Article 30, paragraph (1) of the Companies Act applies *mutatis mutandis*, as well as Articles 13 and 155 of the Act on General Incorporated Associations and General Incorporated Foundations (Act No. 48 of 2006); and (iv) certifying electronic or magnetic records (records made in electronic form, magnetic form, or any other form that is impossible to perceive by the human senses (hereinafter referred to as an "Electronic or Magnetic Form"), which are used in information processing by computers; the same applies hereinafter); provided, however, that this applies only in cases of certifying electronic or magnetic records other than ones created by a government employee in performing said employee's duties.¹²³

The training requirements for non-lawyer notaries include being a Japanese national who has attained the age of majority who has completed practical training as an apprentice for at least six months after passing an examination as specified by the Minister of Justice.¹²⁴ Judges (excluding judges of summary courts), public prosecutors (excluding assistant public prosecutors) and attorneys at law may be appointed as a notary without having passed a notary examination or completed the associated practical training.¹²⁵

V. A REPRESENTATIVE SAMPLING OF NOTARIAL PRERREQUISITES IN CENTRAL AND SOUTH AMERICA

El Salvador

The requirements to be a notary in El Salvador are as follows (translated by the author from the original Spanish language applicable statute):¹²⁶ The notarial function may only be practiced by those authorized by the Supreme Court of Justice in conformity with the law. To obtain the authorization, it is required [that one be]: 1. Salvadoran; 2. Authorized to practice the profession of lawyer in the Republic; 3. Submit to an exam of sufficiency in the Supreme Court

of Justice for all Salvadorans who obtained foreign law degrees. Central Americans authorized to practice law in the Republic and with two years of residence in the Republic as long as they are not disqualified from practicing as notaries in their country of origin, and also as long as there is a reciprocity in recognizing the right of Salvadoran notaries to practice in their countries of origin.

Costa Rica

The requirements to be a notary in Costa Rica are as follows (translated by the author from the original Spanish language applicable statute):¹²⁷ In order to be a notary public and engage in the notarial practice, the following requirements must be met: a) Be of good conduct; b) Have no legal impediment to exercise the [notarial] charge; c) Be a licensed attorney with the postgraduate degree in Notarial Law and Registry, graduate of a university recognized by the relevant educational authorities. In addition, must be incorporated to the College of Lawyers of Costa Rica for a minimum of two years prior to soliciting the right to practice [as a notary public].

Honduras

The requirements to be a notary public in Honduras are as follows (translated by the author from the original Spanish language applicable statute):¹²⁸ To be a notary requires: 1) Being Honduran by birth and in free exercise of [his/her] civil rights; 2) Being a lawyer; 3) Being at least 30 years of age; 4) Being recognized as honorable and prestigious; 5) Being of a secular state [e.g., not a member of the clergy]; 6) Passing the notarial exam before the Supreme Court of Justice as provided by the Court; and 7) Obtaining the exequatur of notary.

Panama

The requirements to qualify as a notary in Panama are as follows (translated by the author from the original Spanish language applicable statute):¹²⁹ Article 2120. To be a Circuit Notary, Principal or Alternate, in Panama and Colon, requires the same qualifications as to be a Magistrate of the Supreme Court of Justice. To be a Circuit Notary, Principal or Alternate, in other places in the Republic, it is required to be Panamanian by birth or naturalization, with more than

ten years of residence in the Republic, be twenty-five years of age, be in full enjoyment of civil and political rights and be a graduate in Law in the country or abroad, or possess a certificate of suitability issued by the Supreme Court of Justice to practice Law in the Courts of the Republic. In the case of graduates abroad, it will also be necessary that the interested party has revalidated their degree at the University of Panama and that proof of same be registered in the Ministry or in the office that the Law shall indicate. No person who has been convicted and penalized for any common crime may become a principal or alternate notary.

Argentina

Notaries (alternately referred to as “notarios” or “escribanos”) in Argentina, as in many other countries, must generally meet the following requirements (translated by the author from the Spanish original):¹³⁰ a) Be native-born Argentine or naturalized with a minimum of six years of naturalization; b) Have a law degree either earned or revalidated by a national [Argentine] university or otherwise legally habilitated. A similarly obtained different degree may be substituted as long as the curriculum fully encompasses the totality of the coursework and analogous discipline to those that embody the study of law at the Universidad Nacional de Buenos Aires; c) Be accredited with good conduct at the point of matriculation, and possess good conduct, antecedents and unimpeachable morality; d) Have the ability to exercise the notarial function in accordance with that which is established in the last paragraph of article 3. [The relevant paragraph states that only those who have obtained ownership of a notarial registry or those who are in a position to be appointed as assigned, in accordance with the provisions of article 46, paragraph c), of this law may enroll.]

Brazil

The requirements to become a notary (*tabeliões*) in Brazil include: Brazilian nationality; civil capacity; fulfilment of electoral and military obligations; qualification of graduate in law; qualification in public competitive examination; conduct appropriate to performance of the profession.¹³¹

Chile

Notaries in Chile are appointed by the President, must be Chilean, possess the title of lawyer, have practiced law for a minimum of one year, and not be affected by any incapacity or legal disability.¹³²

Ecuador

The requirements to become a notary in Ecuador are as follows (translated by the author from the Spanish original):¹³³ a) Must be Equatorian by birth; must be inscribed in the Contraloría General de la Nación, after providing a bond of up to one hundred thousand sucres; b) Possess free exercise of citizenship rights; c) Enjoy good reputation and prove [her/his] suitability before a Tribunal made up of a Minister Judge delegate of the Superior Court, a delegate of the College of Notaries, and a delegate from the College of Lawyers; The delegates of the Colleges of Notaries and Lawyers must be members of the Honor Tribunal of their respective Colleges; and d) Must possess the title of Lawyer or Doctor in Jurisprudence.

Peru

The requirements in Peru to become a notary include the following (translated by the author from the Spanish original):¹³⁴ a) Must be Peruvian by birth; b) Must be a lawyer; c) Must have the capacity to exercise [his/her] civil rights; d) Must possess unimpeachable moral conduct; e) Must be physically capable to discharge the notarial duties; and f) Must not have been condemned of a crime of malice.

Venezuela

Notaries public in Venezuela must be Venezuelan, of legal age, and lawyers with a minimum of five years of professional experience.¹³⁵

VI. A REPRESENTATIVE SAMPLING OF NOTARIAL PRERREQUISITES IN EUROPE

Belgium

The requirements to become a candidate civil-law notary in Belgium include: a master in notary practice (5 years of law + 1 year of notarial practice) and passing a comprehensive written and oral exam after an internship.¹³⁶ Meeting the requirements and passing the exam does not guarantee appointment as a junior civil-law notary as the process is competitive and a limited number of French- and Dutch-Speaking notaries are appointed every year.¹³⁷

Germany

Notaries in Germany must be under the age of 60 at the time of their appointment, have worked on a significant scale for various clients for a period of at least five years, at least three continuous years of which must be in the prospective notarial jurisdiction, passed the professional examination for notaries, and take part in a minimum of 15 hours of approved continuing training starting the year after they passed the professional examination for notaries.¹³⁸

Greece

Notaries in Greece are appointed from persons who pass an exam organized by the Ministry of Justice, Transparency and Human Rights and are law graduates from a Greek university or a foreign university which is recognized as of equal standing.¹³⁹ Applicants must also be at least 28 years of age and have practiced, for at least two years, the profession of a lawyer or a court officer of any sector or degree or of a non-stipendiary mortgage registrar.¹⁴⁰

France

A French notary must hold a Master 1 degree in law and then obtain a Master 2 degree in Notarial Law. A minimum one-month internship is also required along with four half yearly teaching assignments in a university in partnership with the *Institut National des Formations Notariales* – INFN, and write a report.¹⁴¹

Italy

The requirements for becoming a notary in Italy include having a law degree, an apprenticeship in a notary's office for 18 months (six months of which can be done in parallel with the last year of university), and entering the open competition run by the Ministry of Justice for the available notarial spots.¹⁴²

Russia

Notaries in Russia “are required to attain a higher legal education; complete an internship of at least a year in a public or private notary's office; pass a qualification examination; and receive a notary's license to practice, which is issued according to a procedure established by the Ministry of Justice.”¹⁴³

Spain

The requirements for becoming a notary in Spain include being a Spaniard or member of a European Union member nation having completed a bachelor's or doctoral program in law and completing a series of four competitive examinations—two written and two oral.¹⁴⁴ Open competitive exams are periodically staged by the Ministry of Justice to award the title of notary.¹⁴⁵

VII. A REPRESENTATIVE SAMPLING OF NOTARIAL PRERREQUISITES IN AFRICA

Statutory material in English relating to the prerequisites and processes for appointment of notaries in African countries is not readily available online or through Westlaw or Lexis/Nexis. It is, therefore, difficult to create a representative sampling of the requirements and functions of notaries in African nations that adhere to the civil law, Latin notarial system as opposed to the common law notarial system of Great Britain and most former British colonies. Nevertheless, through their membership in the International Union of Notaries, a non-government organization which aims to “[p]romote and apply the fundamental principles of the civil law notarial system and the principles of notarial deontology”,¹⁴⁶ one can surmise that the following African countries adhere to the requirement that their notaries be “professional lawyers and public officials appointed by the State to confer authenticity on legal deeds and contracts contained in

documents drafted by them and to advise persons who call upon their services”:¹⁴⁷ Member countries include Algeria, Benin, Cameroon, Central African Republic, Chad, Gabon, Guinea, Ivory Coast, Madagascar, Mali, Mauritania, Morocco, Niger, Republic of Congo, Senegal, and Tunisia.¹⁴⁸ Whatever specific requirements notaries may need to meet in their respective countries in order to qualify as a notary, all would at a minimum be required to be lawyers.¹⁴⁹

VIII. STEPS NEEDED TO ADDRESS THE ISSUE OF NOTARIAL FRAUD

A useful first step in preventing the fraudulent unauthorized practice of law by notaries public in the United States is one that some states are already undertaking: regulating advertising by non-attorney notaries public and requiring disclosure of the fact that they are not attorneys.¹⁵⁰ While these prohibitions vary in the states that impose them, every state should consider enacting regulations similar to Colorado’s which make a genuine attempt at preventing misleading advertising and informing the public about the inability of non-attorney notaries to use the misleading terms *notario* and *notario publico* in advertisements and signage, and makes clear notaries public are not authorized to give legal advice, draft legal documents, practice law, act as immigration consultants, represent persons in immigration-related matters or hearings, and requires disclosures to this effect in broadcast media advertisements and signage if print advertisements are used.¹⁵¹

Wide adoption of the types of regulations that Colorado has implemented would be an important first step in protecting the public from falling prey to unscrupulous notaries public who abuse their office. But regulations of themselves will not cure the problem. A second step that every jurisdiction must take to protect the public is the aggressive enforcement of criminal and civil sanctions for the unauthorized practice of law by notaries public and others who practice law without a license. Unscrupulous individuals will doubtless continue to engage in the unauthorized practice of law if it remains lucrative and they believe they can flaunt the law with impunity, or if the only punishment is a modest civil fine when caught.

A third step that every state should take to prevent notario fraud and the unauthorized practice of law by notaries public generally is better training of prospective notaries. Notaries public themselves need to be made aware of what constitutes unauthorized practice of law and the consequences therefore. Given the extraordinarily modest requirements to become a notary public in most states¹⁵² it is quite possible that many honorable, well-meaning notaries public are not aware of what constitutes unauthorized practice of law or the criminal and civil sanctions attendant to it in their states.

Finally, legislation and enforcement alone will not eliminate the misuse of notarial powers. The final and most critical step that needs to be taken by every state to curb both the intentional and unintentional unauthorized practice of law by notaries public is wider education of the general public as to the limited function of non-attorney notaries public in the United States and their inability and incompetence to provide legal advice or representation in any matter. In this regard, broadcast and print media that serve members of immigrant communities both in their native language and in English have a special role to play in preventing notario fraud through both investigative reporting and public service announcements.

IX. CONCLUSION

Given the radical difference in the function, training, and powers of U.S. notaries public and notaries public in most other countries around the globe, recent immigrants to our shores need and deserve to be informed about an issue that disproportionately affects them. If nothing else, this paper should make it clear that notario fraud is not an issue that only affects immigrants from Mexico and South America or undocumented immigrants as one may be led to believe from the current literature. It affects immigrants and visitors from all parts of the world who understandably believe notaries to be highly trained lawyers they can turn to with regard not only to immigration matters, but for advice and representation on a wide range of legal issues. Education and strict enforcement of criminal and civil sanctions against unauthorized practice of law are the most effective means of

protecting a vulnerable segment of our population from being preyed upon by unscrupulous individuals who abuse their trust.

¹ See *Infra* Sections III-VII.

² National Notary Association, “About the NNA” available online at [https://www.nationalnotary.org/about-the-nna#:~:text=The%20National%20Notary%20Association%20\(NNA.best%20practices%20for%20U.S.%20Notaries.](https://www.nationalnotary.org/about-the-nna#:~:text=The%20National%20Notary%20Association%20(NNA.best%20practices%20for%20U.S.%20Notaries.) (last accessed August 26, 2020).

³ National Notary Association, “Notary Requirements: Who can be a Notary Public” available online at <https://www.nationalnotary.org/knowledge-center/about-notaries/how-to-become-a-notary-public> (last accessed August 26, 2020).

⁴ National Notary Association, “Notary Training” available online at <https://www.nationalnotary.org/knowledge-center/about-notaries/how-to-become-a-notary-public> (last accessed August 26, 2020).

⁵ *Id.*

⁶ National Notary Association, “Taking the Notary Exam” available online at <https://www.nationalnotary.org/knowledge-center/about-notaries/how-to-become-a-notary-public> (last accessed August 26, 2020).

⁷ National Notary Association available at <https://www.nationalnotary.org/notary-bulletin/blog/2015/10/which-states-have-toughest-notary-exams#:~:text=New%20York%20has%20one%20of,material%20covered%20in%20the%20exam.> (last accessed August 26, 2020).

⁸ *Id.*

⁹ New York Division of Licensing Services, Notary Public Application, Application Instructions at par. 3 available online at <https://www.dos.ny.gov/forms/licensing/0033-f-l-a.pdf> (last accessed August 26, 2020).

¹⁰ Columbus Bar Association, Become an Ohio Attorney Notary, available online at http://www.chalaw.org/CBA_PROD/Main/Resources/Public/Notary/Attorney_Notary.aspx#:~:text=Attorneys%20are%20not%20required%20to,the%20time%20of%20class%20registration. (last accessed August 26, 2020).

¹¹ See generally Victor D. López *Unauthorized Practice of Law in the U.S.: A Survey and Brief Analysis of the Law*, North East Journal of Legal Studies, Vol. 26, 60 (Fall 2011) available online at https://victordlopez.com/uploads/3/4/8/2/34829592/unauthorized_practice_of_law_-_final_published_version_-_v_lopez.doc (last accessed September 2, 2020).

¹² See, e.g., Jeffrey DeCristofaro, *A Closer Look at Notario Fraud: Perspectives from an Immigration Attorney*, 308-OCT N.J. Law. 44 (2017); Bianca Carvajal, COMBATTING CALIFORNIA’S NOTARIO FRAUD, 35 Chicana/o-Latina/o L. Rev. 1 (2017); Lorelei Laird, LEGAL PREY, 104-MAY A.B.A. J. 52 (May 2018); Joseph M. Gietl, LIKE LAMBS TO THE SLAUGHTER: HOW UNREGULATED IMMIGRATION PRACTITIONERS HARM IMMIGRANTS, 19 Pub. Int. L. Rep. 66 (Fall 2013).

¹³ *Id.*

¹⁴ See Sections III-VII *infra*.

¹⁵ Ala. Code 1975 § 36-20-73 (1)-(3).

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- ¹⁶ AS § 44.50.060 (1).
¹⁷ AS § 44.50.060 (2).
¹⁸ AS § 44.50.061 (a).
¹⁹ AS § 44.50.061 (c).
²⁰ A.R.S. § 41-313 (1).
²¹ A.R.S. § 41-313 (2).
²² A.R.S. § 41-313 (3).
²³ A.R.S. § 41-313 (4).
²⁴ A.C.A. § 21-14-104 (1).
²⁵ A.C.A. § 21-14-104 (2).
²⁶ A.C.A. § 21-14-104 (3).
²⁷ A.C.A. § 21-14-104 (4).
²⁸ CA GOVT § 8205 (a)-(b).
²⁹ C.R.S.A. § 24-21-502 (6).
³⁰ See C.R.S.A. § 24-21-525 (1)-(7).
³¹ C.G.S.A. § 3-94a (4).
³² C.G.S.A. § 3-95a (a).
³³ C.G.S.A. § 3-95a (b).
³⁴ 29 Del.C. § 4322 (a).
³⁵ 29 Del.C. § 4322 (b).
³⁶ 29 Del.C. § 4322 (c).
³⁷ 29 Del.C. § 4322 (d).
³⁸ 29 Del.C. § 4322 (e).
³⁹ DC ST § 1-1231.01 (7).
⁴⁰ West's F.S.A. § 117.03.
⁴¹ West's F.S.A. § 117.04.
⁴² West's F.S.A. § 117.045.
⁴³ 2018 Florida Statutes, Chapter 118.
⁴⁴ *Id.* at Ch. 118.10 (1) (b).
⁴⁵ See Florida Department of State, Division of Corporations, Civil Law Notary, available online at <https://dos.myflorida.com/sunbiz/other-services/notaries/civil-law-notary/> (last accessed August 11, 2020).
⁴⁶ *Id.*
⁴⁷ Ga. Code Ann., § 45-17-8 (a) (1)-(7).
⁴⁸ Ga. Code Ann., § 45-17-8.2 (a).
⁴⁹ Haw. Admin. Rules (HAR) § 5-11-4.
⁵⁰ I.C. § 51-102 (5).
⁵¹ 5 ILCS 312/6-101 (a).
⁵² IC 33-42-0.5-18 (1)-(7).
⁵³ I.C.A. § 9B.2 (5).
⁵⁴ K.S.A. 53-502 (a).
⁵⁵ KRS § 423.310 (1) (a)-(h).
⁵⁶ LSA-R.S. 35:2 (A)-(C).
⁵⁷ LSA-R.S. 37:213 (C).

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- ⁵⁸ See Notary Public Handbook and Resource Guide, State of Maine, Department of the Secretary of State at 3, available online at <https://www.maine.gov/sos/cec/notary/notaryguide.pdf> (last accessed July 27, 2020).
- ⁵⁹ 4 M.R.S.A. § 960 (2) (A)-(B).
- ⁶⁰ 4 M.R.S.A. § 960 (3).
- ⁶¹ 4 M.R.S.A. § 960 (4).
- ⁶² 4 M.R.S.A. § 960 (5) (A)-(C).
- ⁶³ MD Code, State Government, § 18-201 (j) (2) (i)-(vi).
- ⁶⁴ M.G.L.A. 222 § 1A
- ⁶⁵ M.C.L.A. 55.265 (d) (i).
- ⁶⁶ M.S.A. § 358.52 Subd. 6.
- ⁶⁷ Miss. Code Ann. § 25-33-11.
- ⁶⁸ V.A.M.S. 486.250.
- ⁶⁹ MCA 1-5-602 (13).
- ⁷⁰ Neb. Rev. St. § 64-107
- ⁷¹ Neb. Rev. St. § 64-105.03
- ⁷² Neb. Rev. St. § 7-101.
- ⁷³ N.R.S. 240.004.
- ⁷⁴ N.H. Rev. Stat. § 456-B:1.
- ⁷⁵ New Jersey Notary Public Manual (Revised April 20, 2020) at pp. 4-6. Available online at <https://www.state.nj.us/treasury/revenue/pdf/NotaryPublicManual.pdf> (Last accessed July 30, 2020).
- ⁷⁶ *Id.* at 7.
- ⁷⁷ N. M. S. A. 1978, § 14-12A-7.
- ⁷⁸ N. M. S. A. 1978, § 14-12A-15 A-D.
- ⁷⁹ N. M. S. A. 1978, § 14-12A-15 E.
- ⁸⁰ McKinney's Executive Law § 135.
- ⁸¹ N.C.G.S.A. § 10B-20.
- ⁸² NDCC, 44-06.1-01 5.
- ⁸³ NDCC, 44-06.1-01 4.
- ⁸⁴ *Id.*
- ⁸⁵ R.C. § 147.51.
- ⁸⁶ 49 Okl. St. Ann. § 112.
- ⁸⁷ O.R.S. § 194.215 (8).
- ⁸⁸ 57 Pa. C.S.A. § 302.
- ⁸⁹ R.I. Gen. Laws 1956, § 42-30.1-2 (7).
- ⁹⁰ S.C. ST § 26-3-20.
- ⁹¹ SDCL § 18-1-1.1 (3).
- ⁹² T. C. A. § 8-16-112 9a).
- ⁹³ V.T.C.A., Government Code § 406.016 (a).
- ⁹⁴ U.C.A. 1953 § 46-1-6 (1).
- ⁹⁵ 26 V.S.A. § 5304 (7).
- ⁹⁶ VA Code Ann. § 47.1-12.
- ⁹⁷ West's RCWA 42.45.010 (8).
- ⁹⁸ W. Va. Code, § 39-4-2 (5).
- ⁹⁹ W.S.A. 137.01 (5).

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- ¹⁰⁰ W.S.A. 137.01 1(i)1, 4.
¹⁰¹ W.S.A. 137.01 1(k).
¹⁰² W.S.1977 § 34-26-101 (iii).
¹⁰³ 5 G.C.A. § 33301.
¹⁰⁴ See *infra* Sections III-VII
¹⁰⁵ 4 L.P.R.A. § 2011 (2004).
¹⁰⁶ 4 L.P.R.A. § 2022 (2004).
¹⁰⁷ 4 L.P.R.A. § 2031 (2004).
¹⁰⁸ 4 L.P.R.A. § 2123 (2004).
¹⁰⁹ See generally 4 L.P.R.A. § 2001 (2004).
¹¹⁰ 4 L.P.R.A. § 2131 (2004).
¹¹¹ *Id.*
¹¹² *Id.*
¹¹³ 3 V.I.C. § 777.
¹¹⁴ NMI Office of the Attorney General, Notaries Public Rules and Regulations § 5-30-201 Available online at <http://www.cnmilaw.org/pdf/admincode/T05/T05-30.pdf> (Last accessed August 1, 2020).
¹¹⁵ LEY DEL NOTARIADO PARA EL ESTADO DE HIDALGO, *Alcance al Periódico Oficial*, (January 25, 2010) available online at http://www.pjihidalgo.gob.mx/transparencia/leyes_reglamentos/leyes/85_ley_notaria_do.pdf (last accessed August 11, 2020).
¹¹⁶ LEY DEL NOTARIADO PARA EL ESTADO DE HIDALGO, TÍTULO I DE LA FUNCIÓN DEL NOTARIADO, ARTÍCULO 24, available at http://www.pjihidalgo.gob.mx/transparencia/leyes_reglamentos/leyes/85_ley_notaria_do.pdf (last accessed August 11, 2020).
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¹¹⁸ Order of the President of the People's republic of China No, 39, Notarization Law of the People's Republic of China, Chapter III, Article 18 (August 28, 2005) available online at http://english.www.gov.cn/archive/laws_regulations/2014/08/23/content_281474983042417.htm (last accessed August 9, 2020).
¹¹⁹ *Id.* at Chapter II, Article 11.
¹²⁰ NOTARIES ACT, 1952 (53 OF 1952), THE NOTARIES RULES, 1956 (SRO.324, dt.14.2.1956) §4, available **online at** <https://web.archive.org/web/20160627192902/http://lawmin.nic.in/la/subord/notaryrules.htm> (last accessed August 9, 2020).
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¹²² NOTARIES ACT, 1952 § 8, available online at https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_46_00007_195253_1517807328336&orderno=8 (last accessed August 9, 2020).
¹²³ Notary Act, (Act No. 53 of April 14, 1908), Article 1, available online at file:///Users/actvdl/Downloads/m41Aa000530206en8.0_h23A74.pdf (last accessed August 9, 2020).
¹²⁴ *Id.* at Article 12.
¹²⁵ *Id.* at Article 13.

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¹³⁵ DECRETO CON RANGO< VALOR Y FUERZA DE LEY DE REGISTROS Y DEL NOTARIADO, TÍTULO IV, Capítulo I, Artículo 69, Par. 2 [as translated by the author from the Spanish original] available online at http://historico.tsj.gob.ve/gaceta_ext/noviembre/19112014/E-19112014-4232.pdf (last accessed August 14, 2020).

¹³⁶ See notaries.be, General info available online at <https://www.notaris.be/notaris/wetgevingheth-notariaat-in-belgie/hoe-wordt-men-notaris/benoeming-van-de-kandidaat-notarissen> (last accessed August 12, 2020).

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¹³⁸ Federal Code for Notaries in the consolidated version published in the Federal Law Gazette III, Index No. 303-1, as last amended by Article 4 of the Act of 30 October 2017 (Federal Law Gazette I, p. 3618), Section 6, translation from German

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¹⁴⁷ See International Union of Notaries, Fundamental principles of the Latin type notarial system,

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¹⁴⁹ *Id.*

¹⁵⁰ See e.g., Section II supra (Colorado, Connecticut, Georgia, Maine, Nebraska, New Mexico, North Dakota, and Wisconsin.)

¹⁵¹ See C.R.S.A. § 24-21-525 (1)-(7).

¹⁵² See Section I supra.