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## Notary Listserv Topic

### **Subject: Protesting Commercial Paper 7/17/02**

ORS 194.070, 194.090, 194.515(5)

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**Oregon Revised Statutes 73.0505(2).** A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. The protest may be made upon information satisfactory to that person. The protest must identify the instrument and certify that either presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

### **What is a protest of commercial paper or negotiable instrument?**

"A protest is a written statement by a Notary indicating that payment for a negotiable instrument - a check or promissory note, for example - has not been received. Failure to pay as promised is called "dishonor."

"(A bill of exchange is a written order from Person A, the drawer, directing Person B, the drawee, to pay Person C, the holder, a certain sum of money...) The Notary's protest certificate is a written declaration detailing where and when the bill was presented, and the reason the drawee (the person obligated to pay) refused to pay, among other particulars. By presenting the protest to the drawee and other liable parties, the Notary is issuing public notice that the holder can seek damages for the dishonored bill."

*The National Notary*, November 1986, p. 21.

### **Why does it exist?**

"The purpose of the protest is to formally recognize the dishonor and set 'into motion' the formal process required to start the civil legal proceeding to secure the payment of money."

Notary Public Handbook: Principles, Practices, & Cases, National Edition, by Alfred E. Piombino,

### **How does it work?**

"A common instance which may require the notary public to perform a protest is when a sight draft (i.e. bank check or share draft) is presented for payment to the financial institution on which it is drawn and it is returned for non-sufficient funds (NSF). In other words, the payee (or the payee's bank or credit union) presents the check to the issuing bank, and there is not enough money in the account to cover the full payment of the check." Ibid., p. 126.

Example: John Jones (drawer) writes a check from his account at Wells Fargo (drawee) to pay for a refrigerator he bought at Sears (holder). Sears deposits the check at its bank, Citicorp, which presents it to Wells Fargo for payment. However, Wells Fargo, noting that John Jones is overdrawn, denies payment of the check (known as dishonor). Sears eventually gets the NSF check back and tries to get John to pay up. If John doesn't make good on the check, then Sears (or Citicorp on behalf of Sears) can request a notary public at Wells Fargo to protest the dishonored check. The notary attaches a certificate of protest to the NSF check (notice of dishonor) and sends it to Sears (as protester) and another original to John Jones. Sears presents the protest with the dishonored check to civil court and takes action against John Jones.

### **Who should do the notarial act?**

For the most part, commercial protests are highly technical documents that someone very familiar with bank practices can draw up. They are antiquated and largely obsolete in our modern society. Our recommendation, and that of most notarial experts, is to refuse to do it - unless you are a bank official who understands the law about this very well. As you can see, doing a commercial protest is not even in the notary public statutes, but in the banking laws, which should tell you something about the required expertise. Unless you are an expert in what is presentment and dishonor of that presentment, you should not do a protest. Note as well that notaries are not the only ones who can execute protests of commercial paper.

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