7 FAM 890
UNUSUAL NOTARIAL REQUESTS

(CT:CON-223; 12-28-2007)
(Office of Origin: CA/OCS/PRI)

7 FAM 891 INTRODUCTION

(CT:CON-168; 05-22-2007)

This subchapter addresses frequently asked questions about unusual instruments presented to consular officers for notarization or authentication. For further guidance, contact Consular Affairs, Directorate of Overseas Citizen Services, Office of Policy Review Interagency (CA/OCS/PRI) via cable, fax, and email or at ASKPRI@state.gov.

7 FAM 892 MEDALLION SIGNATURE GUARANTEES - NOT A NOTARIAL SERVICE

(CT:CON-168; 05-22-2007)

Posts are often mistakenly asked to perform a service known as a "medallion signature guarantee" or a "medallion stamp guarantee." Consular officers are **not/not authorized** to provide a signature guarantee/medallion guarantee service. Only a financial institution participating in a U.S. Securities and Exchange Commission (SEC) medallion signature program is authorized to affix a medallion imprint.

7 FAM 892.1 What Is a Medallion Signature Guarantee?

(CT:CON-110; 09-13-2005)

A medallion signature guarantee is **not a notarial service**. It should not be confused with a corporate acknowledgement executed by a corporate officer before a notary public or U.S. State Department notarizing official authorized to administer oaths. A medallion signature guarantee is a special signature guarantee for the transfer of securities. It is a guarantee by the transferring financial institution that the signature is genuine and the financial institution accepts liability for any forgery. Signature guarantees protect shareholders

by preventing unauthorized transfers and possible investor losses. They also limit the liability of the transfer agent who accepts the certificates.

7 FAM 892.2 Who Can Execute a Medallion Signature Guarantee?

(CT:CON-110; 09-13-2005)

When selling or transferring securities, the signatures of investors on stock certificates must be "guaranteed" by a financial institution participating in a medallion program approved by the U.S. Securities and Exchange Commission (SEC). An eligible guarantor institution (bank, stock broker, savings and loan association or credit union) must have a membership in an approved signature guarantee medallion under SEC Rule 17ad-15. Entities with membership in an approved signature guarantee medallion program must arrange a surety bond and apply for, and receive, acceptance as a program guarantor. The guarantor institution must then obtain the necessary equipment required to perform the medallion signature guarantee function.

7 FAM 892.3 Consular/Notarizing Officers Are not Authorized to Perform Medallion Signature Guarantees

(CT:CON-168; 05-22-2007)

U.S. consular/notarizing officers are **not authorized** to provide signature guarantee/medallion guarantee service. Only a financial institution participating in an SEC medallion signature guarantee program is authorized to affix a medallion imprint. No other form of signature verification can be accepted to transfer securities.

7 FAM 892.4 Questions

(CT:CON-168; 05-22-2007)

a. Persons who ask posts to perform signature guarantee/medallion guarantee services may be referred to local branches of U.S. banks, brokers or attorneys. Alternatively, they may contact the SEC directly via the internet, via phone at 1-800-SEC-0330 (investor assistance and complaints), via fax at 202-942-7040, or by mail at Mail Stop 11-2, 450 Fifth Street N.W., Washington, DC 20549.

b. 7 FAM 888 provides guidance about acceptable consular notarial services on documents required by the Treasury Department.

> **See**:
> SEC – Signature Guarantees –
> Preventing the Unauthorized Transfer of Securities

7 FAM 893 NOTARIZATION OF WORLD SERVICE AUTHORITY-RELATED DOCUMENTS

(CT:CON-168; 05-22-2007)

a. Requests for notarial services respecting these booklets or applications for them should be declined under 22 CFR 92.9(b) ("inimical to the best interests of the United States").

b. The U.S. Department Authentications Office (A/OPR/GSM/AUTH) also declines to provide such services under 22 CFR 131.2.

c. See 7 FAM 1300, Passport Services for further guidance regarding documents that do not constitute passports under 8 U.S.C. 1101(a)(30).

7 FAM 894 DOCUMENTS THAT PURPORT TO RELATE TO ALLEGIANCE, SELF-DECLARED NATIONALITY, ABSENCE OF U.S. JURISDICTION, SOVEREIGNTY, IMMUNITY

(CT:CON-168; 05-22-2007)

a. Documents from "14th Amendment Protestors" purporting that the United States has no jurisdiction over them, that they are their own sovereign nation, that they have universal immunity, or self-declared nationality should not be notarized or authenticated by U.S. diplomatic or consular officers (see 22 CFR 92.9(b): "inimical to the best interests of the United States").

b. The U.S. Department of State Authentications Office (A/OPR/GSM/AUTH) declines to authenticate such documents under the authority provided in 22 CFR 131.2.

c. Questions should be directed to CA/OCS/PRI via cable, phone, fax or email ASKPRI@state.gov.

7 FAM 895 PROCTORING EXAMS

(CT:CON-168; 05-22-2007)

At posts' discretion, you may agree to proctor Federal and State examinations for which the applicable hourly rate should be charged according to 22 CFR 22.1. Fees for notarial services required in connection with this practice should be charged in addition to the hourly rate.

7 FAM 896 CRIMINAL RECORD CHECKS

(CT:CON-168; 05-22-2007)

U.S. nationals can obtain criminal records checks from their local police in their State of residence in the United States. In addition, see the CA Internet Page Criminal Record Checks feature, which explains how private citizens can request a Federal Bureau of Investigation (FBI) records check. The FBI advises that once the search is conducted the report belongs to the bearer and can affix with an Apostille after the bearer executes a "custodian certification statement." (See 7 FAM 862, Certifications of True Copies.)

See:

CA Internet Page Criminal Record Checks feature.
FBI Identification Record Request.

7 FAM 897 REQUEST FOR NOTARIALS OF BIRTH PARENT CONSENT TO ADOPTION DOCUMENTS

(CT:CON-223; 12-28-2007)

a. **Background**: Posts may sometimes receive requests from host-country national birth parents who want a U.S. consular officer to notarize their relinquishments of their parental rights with respect to children who are already present in the United States and living with U.S. citizen prospective adoptive parents. Although the specific circumstances may vary, a typical scenario involves children who entered the United States on tourist (B2) or student (F1) nonimmigrant visas or through the Visa Waiver Program (VWP) or without inspection and who are related biologically to the prospective adoptive parents. No adoption has occurred in either the United States or the children's country of origin, and the document for which the notarial service has been requested is

intended to serve as a fundamental element of an adoption case in the United States. The notarial request may be a direct response to a U.S. State court or State legal requirement for the birth parent(s)' notarized consent to relinquishment. Adoption notarial requests have become increasingly common.

b. **U.S. courts and domestic adoptions of foreign children**: Although the Immigration and Nationality Act, the Intercountry Adoption Act and relevant regulations set out very specific rules and procedures for the adoption and immigration of foreign-born children residing abroad, it is not uncommon for U.S. State court judges to award adoption decrees to U.S. citizen parents for children who did not enter the United States through the normal immigrant visa process. The Department is aware of many cases in which U.S. judges have granted adoptions of children who were in nonimmigrant visa status, who originally entered the United States in nonimmigrant status but whose status had since expired, or who entered the United States illegally. Such adoptions are legal under the laws of the U.S. State, though they raise concerns under the Immigration and Nationality Act. In some cases, such adoptions may also be viewed as an effort by the prospective adoptive parent(s) to circumvent the adoption laws of the country of origin of the child. In some cases, the prospective adoptive parent(s) were not involved in the child's immigration to the United States. In other cases, the child may come to the attention of State public authorities because he or she has been abandoned or is being abused or neglected. The State court, faced with a child in need of assistance within its jurisdiction, has a responsibility to make a decision based on the child's best interests, and typically does so without regard to the child's immigration status.

c. **Applicable law and policy on notarial requests**:

(1) United States law (22 U.S.C. 4215) regarding the performance of notarials abroad by consular officers provides as follows:

> "Every consular officer of the United States is **required** whenever application is made . . . within the limits of his consulate, to administer or take from **any person** any oath, affirmation, or deposition, and to perform any other **notarial act** which any notary public is **required or authorized** by law to do within the United States. . . ." (Emphasis added.)

(2) 22 CFR 92.4(a) provides that:

> "All notarizing officers are required, when application is made to them within the geographic limits of their consular district, to administer to and take from any person any oath, affirmation,

> affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to perform within the United States. . . ."

(3) 22 CFR 92.4(b) provides that:

> "These acts may be performed for any person regardless of nationality so long as the document in connection with which the notarial service is required is for use within the jurisdiction of the Federal Government of the United States or within the jurisdiction of one of the States or Territories of the United States."

(4) As stated in 22 CFR 92, and 7 FAM 800, a consular officer should refuse requests to perform notarials only after careful consideration. A consular officer may refuse to perform a notarial act if the officer has reasonable grounds to believe that it will be used for a purpose that is patently unlawful, improper, or inimical to the best interests of the United States. Also, under 22 CFR 92.9 and 7 FAM 834, a consular officer may perform only those notarial acts that are authorized by treaty between the United States and the host country or that are permitted by the authorities of the host country. Observance of local legal restrictions abroad in this regard relates directly to the treaty limits on recognized consular activity. Illegality of the notarial act means that performance of the act itself, such as the taking of a deposition, is prohibited by treaty or domestic law. As noted, a typical example is in countries that do not allow foreign depositions and other discovery usually under the theory that the courts of one country do not have any official jurisdiction in another;

(5) If the underlying subject matter of the notarial may be inconsistent with local law, this may factor into the analysis whether the notarial will be used for a purpose that is inimical to the best interests of the United States. In declining a notarial as being inimical to the best interests of the United States, a consular officer may consider visa and citizenship fraud as well as enforcement of the INA or adherence to relevant international agreements to represent solid U.S. legal interests. Also relevant are factors listed in paragraph e of this section.

d. **Immigration and adoption law concerns**: Some posts have expressed concern that providing such notarial services in the context of domestic adoption cases would be tantamount to assisting the family/ies in circumventing the immigration laws of the United States and the adoption laws of the child's country of origin:

(1) The INA provides for immigrant status as an immediate relative in adoption cases on the basis of either a qualifying foreign adoption or admission for the purpose of being adopted in the United States. For adjustment of status from nonimmigrant to immigrant as an immediate relative of a U.S. citizen, an otherwise qualified applicant must be the beneficiary of an approved, unexpired visa petition. By way of example, many children in these cases are adopted by birth family members. Under current U.S. immigration law, it is not possible for birth parents to place for adoption a child directly with relatives in the United States. Additionally in cases where child(ren) may not be eligible to adjust status under Section 101(b)(1)(E) of the INA (which requires the adoptive parents of a child under age 16 at the time of adoption to have two years of legal and physical custody of the child before filing the immigrant visa petition), an adoption would lead to the anomalous and difficult position of a child of a United States citizen residing in the United States without having legal permanent residence status and typically having an illegal immigration status;

(2) Additionally, country of origin requirements for intercountry adoption cases, as well as provisions of the Hague Convention on Intercountry Adoption and U.S. implementing legislation and regulations, could be circumvented by an adoption in the United States. For example, the law of the country of origin may allow adoption of a child only under the age of five. Further, countries of origin do not have the opportunity to screen the prospective adoptive parents to ensure that they qualify under those countries' laws. Additionally, country of origin law may include specific mention of how and when birth parent consents must be granted; for Convention countries, U.S. regulations do include such requirements. For instance, a country of origin would normally require that the child's birth parent(s) give consent before the child can depart the country. Additionally, the country of origin may require the notarized consent of both birth parents but only one parent is presenting himself or herself to the U.S. consular officer and it is not clear that the other parent concurs with the relinquishment. Another important factor is the general inability of U.S. consular officers abroad to verify that the child who is said to be in the United States is in fact the child for whom the relinquishment document has been prepared. In short, adoption of an alien already in the United States in nonimmigrant status circumvents the INA and may circumvent the Hague Adoption Convention and U.S. implementing legislation and regulations, absent exceptional circumstances (e.g., death or incapacitation of birth parent while the child is in nonimmigrant status in the United

States, where a close relative lives);

(3) There may additionally be risks to the children. U.S. immigration law and regulations with regard to intercountry adoption require that prospective adoptive parents undergo a home study and be approved by USCIS (U.S. Citizenship and Immigration Services) before they may adopt a foreign child and take that child to the United States. When a birth parent has decided to allow his or her child who is already living temporarily in the United States to remain there permanently, however, this USCIS home study does not occur. Although the U.S. court or social services agency facilitating/approving the adoption may conduct a home study as part of its normal pre-adoption procedures, in these cases this occurs only after the child has already been residing in the household.

e. **Factors in considering whether to deny a notarial request**: In view of the foregoing, the following guidance is provided:

(1) Where an adoption notarial (relinquishing the parental rights of the birth parent(s)) is not to be used for submission in an ongoing adoption proceeding in the United States in a State court having jurisdiction over the prospective adopted child, the consular officer is advised to deny the adoption notarial request as inimical to the best interests of the United States. Performing the notarial under these circumstances, when there is no countervailing State judicial interest, should be disallowed as inconsistent with United States immigration law with respect to the terms and conditions of entry and stay of nonimmigrant visa holders or those who enter the United States under the Visa Waiver Program (VWP), as well as implicate several of the concerns raised in paragraph d of this section. Indeed, adoption may be viewed as inherently inconsistent with nonimmigrant visa status where the establishment of an absence of intent to immigrate is a basic requirement for grant of the visa and entry into the United States. The United States has a clear anti-fraud interest to deny an adoption notarial in the absence of the countervailing interest of a competent judicial authority's assertion of jurisdiction over an adoption proceeding;

(2) Where an adoption notarial is to be used in connection with an ongoing adoption proceeding in the United States in a State court having jurisdiction over the prospective adopted child, the situation is more complex. A consular officer presented with a request for notarization of relinquishment documents should not consider performing the notarial unless all of the following factors are established. If all the factors are established, the consular officer is

requested to then examine the request under subparagraph e(3) of this section:

(a) There is a State or local court adoption proceeding pending with respect to the child about whom the notarial is prepared; and

(b) The court has certified in writing to the Department that, having taken into account the child's immigration status in the United States, consent is needed from the persons, institution and/or authorities executing the consent in connection with an ongoing adoption proceeding currently before the court. An INA 222f type of court certification may serve as a precedent; that is, a certification typically prepared by counsel quoting the language of this provision for execution by the court is sufficient for this purpose; and

(c) The identity and proof of relationship of the affiant and the child as well as verification that the child about whom the notarial is requested is the same child subject to the ongoing adoption proceeding is submitted; and

(d) The signature of both birth parents is generally required (see 8 CFR Part 204; see also 22 CFR 96; 22 CFR 97; 22 CFR 98; 22 CFR 99); however if a death certificate is provided for the nonsigning birth parent or if single parentage is otherwise firmly established, the signature of one parent may be sufficient, consistent with the requests of the state court; and

(e) the birth parent(s) are fully informed of the irrevocable consequences of the relinquishment and knowingly consent to the relinquishment;

(3) If all of the above factors are established in deciding whether to recommend a grant of a request for notarization of birth parent relinquishment documents or a denial as inimical to the best interests of the United States, consular officers need to take into the account the following factors:

(a) Whether the child's life or limb would be endangered if the adoption did not proceed;

(b) Whether Section 101(b)(1)(E) of the INA might potentially be applicable to allow the adopted child to adjust status in accordance with the terms of that provision;

(c) Whether the country of origin would permit or acquiesce in

the adoption;

(d) Whether performing the notarial is likely to raise bilateral concerns with the country of origin or adversely affect the broader adoption relationship between the United States and the country or origin;

(e) Whether the adoption appears to be genuine or an attempt to circumvent United States immigration law; for example, the proposed parent-child relationship is being created solely for the purpose of permitting the child to live in the United States rather than to establish a true parent-child bond;

(f) Whether there is evidence of fraud in the original nonimmigrant visa application for the child (e.g., a short lag time between the child's NIV approval or travel to the United States and the beginning of the adoption process); and

(g) Other factors deemed relevant by the consular officer to the particular case, such as the relationship between the prospective adoptive parents and child.

f. **Advisory opinion requests**: Posts that face situations such as those described in sections subparagraphs e(2) and e(3) of this section should send a cable using CJAN tags to CA/OCS/PRI (action), CA/OCS/ACS and CA/OCS/CI (info), addressing each of the factors noted in paragraphs e(2) and e(3) of this section, along with a recommendation whether to perform the notarial. All three CA offices will also be interested in background information. The Department will respond with guidance to post on whether or not to deny performance of the notarial as patently unlawful, improper, or inimical to the best interests of the United States.

g. Posts dealing with notarial denial (see subparagraph e(1) of this section) should report to the Department the denial of the notarial, as in all other notarial denial situations.

NOTE: At present, notarial refusals are reported by posts to CA/OCS/PRI by cable. The ACS system will be modified to provide for an automated method of reporting notarial refusals (see 7 FAM 834).

h. Even posts not dealing with immediate cases should feel free to submit relevant information to CA/OCS/PRI at ASKPRI@state.gov.

i. Additionally, given the systemic aspect of this situation, consular officers should closely monitor the volume and nature of these requests and let CA/OCS/PRI (ASKPRI@state.gov) and CA/OCS/CI know of any significant changes or trends.

7 FAM 898 AND 899 UNASSIGNED