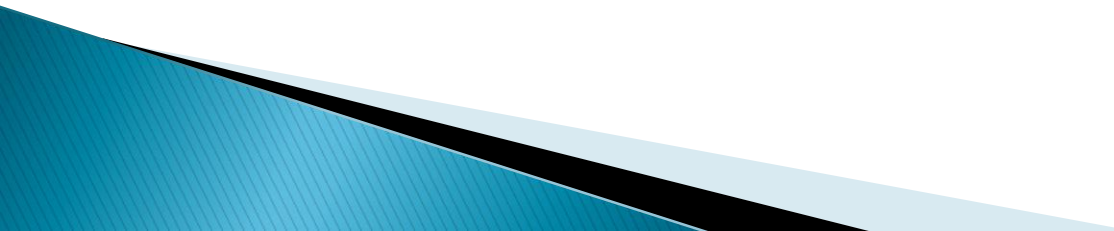


REAL ID, Licenses, and Legal Names

Current issues

Law Access New Mexico,
Senior Citizens' Law Office

What is the client's goal?

- ▶ Get an ID
 - Driver's license
 - Identification card
 - ▶ Birth certificates
 - Correct information
 - Register a birth
 - ▶ Get a passport
 - ▶ Get a Social Security Card or Number
- 

Issues we're seeing

- ▶ MVD: renewing license / ID card
 - MVD won't accept certain documents
 - Names on documents don't match
- ▶ Vital Records: birth certificates
 - Amending / correcting
 - Delayed registration

Why is it *so hard* to get a license now?!

REAL ID Act of 2005

- ▶ Limits what state-issued IDs can be accepted for “federal purposes” (REAL IDs)
- ▶ Sets stricter requirements for documentation used to issue REAL IDs
 - Prior state ID not acceptable for REAL ID
 - Names must match on documentation

“Federal Purposes”

- ▶ Federal purposes include:
 - Board a commercial airliner (TSA)
 - Enter a nuclear power plant
 - Enter federal facility that requires ID
 - Whatever DHS decides

Do I *have* to get a REAL ID?

No.

- ▶ Can get “non-compliant” state ID:
 - Driver Authorization Card
 - State ID Card
- ▶ Acceptable for non-federal purposes:
 - Driving
 - Voting
 - Buying alcohol
 - Proving identity to states
- ▶ *But*, some reports of non-compliant ID being rejected (e.g., by banks)



NEW MEXICO

DRIVER'S LICENSE

SAMPLE

LANI

License # **999999999** ISSUED **08/01/2016**
 Date of Birth **03/01/1957** EXPIRES **03/31/2025**

123 STATE STREET
 ALBUQUERQUE, NM 87102

WEIGHT **110** SEX **F** CLASS **D**
 HEIGHT **5'04"** EYES **BRO** ENDORSEMENTS **NONE**
 RESTRICTIONS **NONE**

Lani Sample

← **REAL ID**

Non-Compliant State ID →



NOT FOR FEDERAL PURPOSES

NEW MEXICO DRIVING AUTHORIZATION CARD

SAMPLE

LANI

DAC # **999999999** ISSUED **08/01/2016**
 Date of Birth **03/01/1957** EXPIRES **03/31/2025**

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 ALBUQUERQUE, NM 87102

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Lani Sample

NEW MEXICO DRIVING AUTHORIZATION CARD

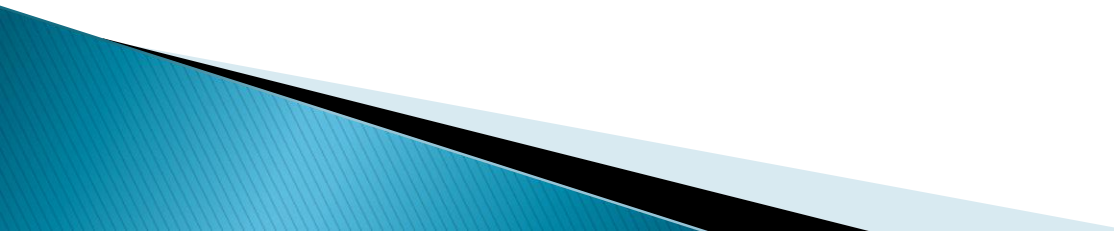
Documentation required: Real ID

- ▶ Proof of Identification Number (1)
- ▶ Proof of Identity and Age (1)
 - Non-compliant state ID *not* accepted
- ▶ Proof of Residency (2)

Documentation: Non-Compliant IDs

- ▶ Proof of Identity and Age (2)
 - State-issued photo ID accepted, if current or expired less than 1 year
- ▶ Proof of Residency (2)

Proof of Identification Number

- ▶ Social Security Card
 - ▶ Tax documents: W-2 or 1099
 - ▶ Paystub w/ SSN
 - ▶ Foreign passport w/ visa and I-9
- 

Proof of Identity and Age

- ▶ For Non-Compliant ID: current or recently expired state ID
- ▶ REAL ID
- ▶ Birth Certificate
- ▶ Passport
- ▶ Certificate of Citizenship or Naturalization
- ▶ Consular report of birth abroad
- ▶ Immigrants:
 - Foreign Passport w/ I-551 stamp, or unexpired visa
 - Employment authorization document

Proof of NM Residency

- ▶ Lease, mortgage docs., property tax statement
- ▶ Public assistance card, letter, or profile printout w/ address
- ▶ Less than 6 months old:
 - Insurance documents/bill
- ▶ Less than 2 months old:
 - Utility bill (no cellphones)
 - Bank or credit card statement
 - Paystub w/name and address
 - Documents from school/college
- ▶ If under 18:
 - Membership documents for religious or sports organization
 - Affidavit of NM Residency (MVD Form 10021)

Matching names...

- ▶ For REAL ID, names on all documents must match.
 - MVD says: middle name and initial both acceptable, so long as no conflict.

Issues with Proving Identity: Birth Certificates

▶ Common Issues:

- Name on B.C. doesn't match other documents
 - Exs: known by middle name; anglicized version (“Joseph” for “Jose”); marriage, divorce, etc.
 - Solutions:
 - Use passport with matching name to get REAL ID
 - Use current state ID to get non-compliant ID
 - Amend/correct the B.C
 - Name change
- No B.C.: birth was never recorded
 - Solution: Delayed Registration

Birth certificates are restricted records. To obtain a copy from Vital Records, you need to prove your identity as the registrant, or an immediate family member, or a person with a legal interest in the record.

Amending Birth Certificates

NMAC 7.2.2.17

Contact: Bureau of Vital Records and Health Statistics

- ▶ Clients (18+), or parent/guardian can amend:
 - ▶ *Given name* – proof they've commonly used another name
 - ▶ *First & middle name* – affidavit (B.C. is incorrect, should read ___), documentary evidence at least 5 years old (2 pieces)
 - ▶ *Or: court order*
 - ▶ *Last name* – need a court order.
 - ▶ *Other amendments* – at discretion of registrar.
- ▶ Must have court order to amend same item more than once.
- ▶ Vital Records can also correct obvious minor errors on B.C.s during first year after birth.

Name Changes

NMSA 40-8-1 to -3

- Forms available at:
 - District court websites
 - Law Access website
 - SCLO website
- ▶ Requirements:
 - ▶ Filing fee (or Indigency Affidavit)
 - ▶ Publication – 2 consecutive weeks, paper with circulation in county
 - ▶ Hearing – no unlawful purpose
 - ▶ Certified copy of order – to present to Vital Records

Name Changes

Completing the forms

- ▶ Client's "legal name" goes in the first blank of the petition, notice, and order
 - ▶ Usually what's on the B.C.
 - ▶ Unless: legally changed by court order, marriage/divorce, amendment to Vital Records, etc.
 - ▶ If birth not registered, or no record: need to establish client's legal name.

Court orders to amend records – Sending to Vital Records

- Normally, BVR must amend B.C. on receipt of certified court order. NMSA 24-14-25(B)
- They *will not* amend if...
 - Reason to question validity/accuracy of documents or statements
 - Applicant doesn't submit required documents
 - Advise applicant of defects in application, not corrected
- Registrar must advise applicant of reason for denial.

Delayed Registration

- ▶ Normally, birth certificates are filed w/in 10 days of birth, and no later than 1 year.
 - But some clients' births may not have been registered: midwife birth, indigenous peoples, etc.
- ▶ Applicant (18+), parent, or guardian can register. NMAC 7.2.2.10
 - Must show:
 - Full name at birth (2)
 - Place of birth (2)
 - Date of birth (2)
 - Mother's full maiden name (1)
 - Father's full name, if paternity established

Delayed Registration

- ▶ Documentary evidence
 - ▶ Must be original or certified copy, from independent source
 - ▶ At least 5 years old, or created before applicant was 10
 - ▶ Not created for purpose of delayed birth registration
 - ▶ Affidavits of personal knowledge *not* accepted
- ▶ Cost:
 - ▶ \$10 registration fee
 - ▶ \$10 for certified copy
- ▶ If denied:
 - ▶ Registrar must send Final Rejection Letter which states reason.
 - ▶ Applicant can petition court for order to establish a record. NMSA 24-14-16.
 - ▶ Court must notify registrar, set hearing.

Delayed Registration

- ▶ Acceptable Evidence – examples
 - ▶ Official archived copies of:
 - ▶ Application for voter registration
 - ▶ Marriage license
 - ▶ Tribal birth affidavit
 - ▶ Certificate of Indian Blood
 - ▶ Medical records
 - ▶ Baptism certificate
 - ▶ Application for Social Security card
 - ▶ Military discharge records

Appeal Rights if MVD Denies License

- ▶ **Administrative – NMSA §66-2-17**
 - File a “written protest.” Include:
 - Client’s name
 - Action they’re disputing (denial of license)
 - Grounds for protest (incl. summary of evidence in support; can supplement before hearing)
 - Relief sought
 - 30 days to file from date of denial (verbal, or date of mailing)
 - May get informal conference before hearing
- ▶ **Must exhaust administrative remedy before going to court.**

Appeal Rights if MVD Denies License

- ▶ Judicial – NMSA §§ 66-5-36, 39-3-1.1
 - To District Court, either:
 - In county where admin. hearing was held, or
 - Santa Fe County – First District Court (MVD's principal office)
 - 30 days to file from final administrative decision
 - Standard of Review: the court may set aside a decision that was:
 - Fraudulent, arbitrary, or capricious
 - Not supported by substantial evidence
 - Not in accordance with law
 - Can appeal District Court decision to Court of Apperals, then Supreme Court
 - Discretionary at both levels – writ of certiorari

What is preventing your client from the goal?

- ▶ Is your client really missing something?
 - Find out which documents your client has
 - Find out if there are additional documents that exist
 - Find out what evidence your client produced to the agency
 - Help your client track the name changes
- ▶ Names on documents don't match
 - What is the easiest way to reconcile this?
 - Are there alternative documents they could use?
- ▶ Document exists and Client needs to obtain a copy
- ▶ Document not created
 - Delayed birth certificate
 - Court order granting name change