

A MANUAL FOR NOTARIES PUBLIC

A statement of the principal powers, duties, and limitations of the office of notary public, and an explanation of “what constitutes the *unauthorized* practice of law.”

FORWARD

This Manual for Notaries of Public has been prepared under the auspices of the Wayne County Bar Association.

It is their hope that the Manual may be of some assistance to notaries public by defining and explaining in some measure their powers and duties and so the penalties for their misfeasance.

It must be borne in mind, however, that this Manual is in no sense a text book or an exhaustive treatise upon the subject. It does not, nor is it intended to cover all of the aspects of its subject matter in any definite sense. Its primary purpose is merely to serve as a guide to notaries public with reference to some of the more common and practical questions which frequently arise in connection with the performance of their official duties.

Every notary public should carefully read and critically examine all of the statutes of Ohio which are quoted herein, and if ever a situation arises wherein the notary is doubtful as to the notary’s powers or duties, the notary should seek the advice of competent counsel before attempting to perform any official act. Notaries public are never authorized to engage in the practice of law.

Notaries public are public officers and they should not consider lightly the dignity of their office or of their responsibility to the community which they serve. It is essential that they have a clear and comprehensive understanding of their power and duties. There is no valid substitute for this. To contribute to this end, the Manual is furnished for their assistance.

In this Manual, all sections quoted are of the Ohio Revised Code (2001).

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I. INTRODUCTION

A “Notary Public” is defined as being an officer whose duty it is to attest the genuineness of any deeds or writings in order to render them available as evidence of the facts therein contained. It has been said that the notary is an officer known to the law of nations; hence, the notary’s official acts receive credence, not only in the notary’s own country, but in all others in which they are used as instruments of evidence. A notary is a public officer and at times an officer of the court.

Only a citizen of the state who is eighteen years of age or over is eligible to become a notary public. Such a person is appointed a notary public for the state. A notary public is a public officer, and the Constitution of the State of Ohio provides that only electors may hold office.

Attorneys-at-law only are licensed to engage in the practice of law.

II. THE STATUTES OF OHIO

Section 147.01 - Appointment of Notaries Public; Attorneys Commissioned for Entire State

The Secretary of State may appoint and commission as notaries public as many persons as the Secretary of State considers necessary, who are citizens of this state and are of the age of eighteen or over. A notary public shall be appointed and commissioned as a notary public for the state. The Secretary of State may revoke a commission issued to a notary public upon presentation of satisfactory evidence of official misconduct or incapacity.

Section 174.02 - Certificate of Qualification

Before the appointment of a notary public is made, the applicant shall produce to the Secretary of State a certificate from a judge or the court of common pleas, court of appeals, or supreme court, that the individual is of good moral character, a citizen of the country in which the individual resides, and if it be the fact, that applicant is an attorney-at-law qualified and admitted to practice in this state, and possessed of sufficient qualifications and ability to discharge the duties of the office of notary public. No judge shall issue such certificate until satisfied from personal knowledge that the applicant possesses the qualifications necessary to a proper discharge of the duties of the office, or until the applicant has passed an examination under such rules and regulations as the judge may prescribe. If the applicant is admitted to the practice of law, in this state, this fact shall also be certified by the judge.

Note: The Court of Common Pleas of Wayne County has adopted a rule which provides for the filing of a written application under oath by an applicant for the office of notary public, which application is furnished to each applicant upon request. A committee of lawyers appointed by the Common Pleas Court must examine each applicant in person and report its approval or disapproval in writing

to the Court. No judge of that court will consider or act upon the application of any person unless there is first submitted to the judge the aforesaid statement in writing under oath and the report of the committee which conducted the examination of such applicant.

The Ohio Constitution, Article 15, Section 4, provides as follows:

“No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector.”

A citizen under Section 147.02 means an elector qualified to vote at every election at the place of the elector’s residence.

Section 147.03 - Term of Office;Oath

Each notary public, except a citizen of this state admitted to the practice of law by the Ohio Supreme Court, shall hold the office for the term of five years unless the commission is revoked. Before entering upon the duties of office, the notary shall take and subscribe an oath to be indorsed on commission.

A citizen of this state admitted to the practice of law by the Ohio Supreme Court shall hold the office as a notary public as long as such citizen is a resident of this state, is in good standing before the Ohio Supreme Court, and the commission is not revoked. Before entering upon the duties of this office, the notary shall deposit with the Secretary of State the certificate provided for in Section 147.02 of the Revised Code and shall take and subscribe an oath to be indorsed on his commission.

A notary public who violates the oath required by this Section, shall be removed from office by the court of common pleas of the county in which the notary resides, upon complaint filed and substantiated in such court, and the court shall thereupon certify such removal to the Secretary of State. The person so removed shall be ineligible for reappointment to the office of notary public.

Section 147.04 - Seal and Register

Before entering upon the discharge of duties, a notary public must obtain a seal of a notary public. The seal shall consist of the coat of arms of the state within a circle one inch in diameter and shall be surround by the words “notary public,” “notarial seal,” or words to that effect, the name of the notary public and the words “State of Ohio.” The seal may be of either a type that will stamp ink onto a document or one that will emboss it. The name of the notary public may, instead of appearing on the seal, be printed, typewritten, or stamped in legible, printed letter near the notary’s signature on each signed document. A notary public shall also keep an official register in which shall be recorded a copy of every certificate of protest and copy of note, which seal and record shall be exempt from execution. Upon the death, expiration of term without reappointment, or removal from office of any notary public, this official register shall be deposited in the office of the county recorder of the county in which the notary resides.

Note: If by reason of marriage or otherwise, the name of a person is legally changed after he or she is commissioned a notary public and during the term of the commission, the notary public must print here the signature the name which the commission was issued.

Section 147.05 - Commission To Be Recorded;Fee

Before entering upon the duties of office, a notary public shall leave commission with the oath indorsed thereon with the clerk of the court of common pleas of the county in which the notary resides. The commission shall be recorded by the clerk in a book kept for that purpose. The clerk shall indorse on the margin of the record and on the back of the commission the time it was received for record, and make a proper index to all commissions recorded. For recording and indexing such commission, the fee of the clerk shall be as provided for in division (R) of Section 2303.20 of the Revised Code.

Note: Revised Code Section 2303.20(R) provides for a charge of five dollars (\$5.00) for recording the commission of a notary public.

Section 147.07 - Powers;Jurisdiction

A notary Public may, throughout the state, administer oaths required or authorized by law, take and certify depositions, take and certify acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments of writing, and to receive, make, and record notarial protest. In taking depositions, the notary shall have the power that is by law vested in judges of county courts to compel the attendance of witnesses and punish them for refusing to testify. Sheriffs and constables are required to serve and return all process issued by notaries public in the taking of depositions.

Section 147.08 - Fees

A notary public is entitled to the following fees:

(A) For the protest of a bill of exchange or promissory note, one dollar and actual necessary expenses in going beyond the corporate limits of a municipal corporation to make presentment or demand;

(B) For recording an instrument required to be recorded by a notary public, ten cents for each one hundred words;

(C) For taking and certifying acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments of writing, and for taking and certifying depositions an affidavits, administering oaths and other official services, the same fees as are allowed by Section 2319.27 of the Revised Code or by law to clerk of the court of common pleas for like services.

Section 147.10 - Notary Public Acting After Commission Expires

No notary public shall do or perform any act as a notary public knowing that his or her term of office has expired.

Section 147.11 - Forfeiture

A person appointed notary public, who performs any act as such after expiration of term of office, knowing that the term has expired, shall forfeit not more than five hundred dollars (\$500.00), to be recovered by an action in the name of the state. Such act shall render such person ineligible for reappointment.

Section 147.13 - Removal for Receiving Excess Fees

A notary public who charges or receives for an act or service done or rendered by the notary a fee greater than the amount prescribed by law, or who dishonestly or unfaithfully discharges any duties as notary public, shall be removed from office by the court of common pleas of the county in which the notary resides, upon complaint filed and substantiated in such court, and the court shall thereupon certify such removal to the Secretary of State. The person so removed shall be ineligible for reappointment to the office of notary public.

Section 147.14 - Removal from Office for Certifying Affidavit Without Administering Oath

No notary public shall certify to the affidavit of a person without administering the oath or affirmation to such person. A notary public who violates this Section shall be removed from office by the court of common pleas of the county in which the conviction was had. The court shall thereupon certify such removal to the Secretary of State. The person removed shall be ineligible to reappointment for a period of three years.

III. AFFIDAVIDT OF AFIRMATION

An affidavit is a voluntary ex parte statement reduced to writing, signed by the affiant, sworn or affirmed oaths, and properly attested. The affiant is the one who swears or affirms that the matters contained in the affidavit are true. It may be expressed either in the first or third person, though it is generally the latter. And affidavit may be sworn to or attested before a notary public but the notary should not draw the same.

“A person may be sworn in any form he or she deems binding on his or her conscience.”

Section 2319.04 - Before Whom Affidavit May Be Made

An affidavit may be made in or out of this state before any person authorized to take depositions, and unless it is a verification of a pleading, must be authenticated in the same way as a deposition. Such affidavit may be made before any person authorized to administer oaths whether an attorney in the case or not.

Note: An affidavit for an attachment, replevin or an injunction is in the nature of a deposition and a notary public who is not an attorney should be governed by the rule set forth in paragraph 3 of Title III B "Depositions," supra.

No formal solemnities are necessary other than the signature of the affiant to the affidavit and the official statement of the notary public that the affidavit was subscribed and sworn to (or affirmed) before the notary , to properly authenticate an affidavit, the notary public should certify it officially. Merely signing name, without anything to show official character, is not sufficient.

A notary public should request the person to raise the right hand and then ask the following question:

"Do you solemnly swear (or affirm) under penalty of perjury, that the statements in the affidavit are true?"

The answer to this question must be, "I do" or words to that effect.

After this procedure the notary should then complete one of the following suggested forms, which is usually printed or typewritten in the document before the notary public.

Oath

The following form of oath is suggested for use:

STATE OF OHIO, COUNTY OF _____

ss:

The undersigned having been duly sworn says that all statements contained in the foregoing affidavit are true.

Subscribed and sworn to before me

This _____ day of _____, _____,

By _____

(SEAL)

Notary Public

(PRINT OR STAMP NAME)

My commission expires _____

Affirmation

The following form of oath is suggested for use:

STATE OF OHIO, COUNTY OF _____

ss:

The undersigned having been duly sworn says that all statements contained in the foregoing affidavit are true.

Subscribed and sworn to before me

This _____ day of _____, _____,

By _____

(SEAL)

Notary Public

(PRINT OR STAMP NAME)

My commission expires _____

IV. ACKNOWLEDGMENT

An acknowledgment is the act of one who has executed a deed, mortgage, lease or other formal instrument, in going before some competent officer or court and declaring it to be his or her signature and free act and deed. In other words, it is a formal authentication of the instrument. Its purpose chiefly is to entitle the instrument to record and to authorize its introduction in evidence without further proof of its execution.

A notary public may take the acknowledgement of the signer of any instrument, provided the signer appears before the notary public. A notary public cannot lawfully function as such beyond the territorial limits of the State of Ohio.

A party to an instrument cannot act as a notary public in taking an acknowledgement to the instrument.

A notary public may take an acknowledgement and also act as a witness to the same instrument.

A certificate of acknowledgement is insufficient unless the notary taking the acknowledgement states the notary's official character either in the body of the certificate or after the signature.

Section 2921.13 makes it a misdemeanor of the first degree for anyone with intent to defraud to falsely impersonate another before a notary.

The notary, after ascertaining that the person before the notary is the party signing or having signed the instrument, should ask the person the following question without the necessity of raising the right hand:

"Do you acknowledge that this is your signature on the instrument before you and that it is your own free act and deed?"

The answer to this question must be "I do" or words to that effect.

After this procedure, the notary public should then complete the following suggested form, which is usually printed or typewritten in the document before the notary public.

The following form of acknowledgment is suggested for us:

STATE OF OHIO, COUNTY _____

ss:

Before me a notary public in and for said county, personally appeared the above named _____ who acknowledged that _____

Did sign the foregoing instrument and that the same is _____ free act and deed.

In Testimony whereof, I have hereunto affixed my name and official seal at _____, Ohio, this _____ day of _____, _____,

By _____

(SEAL)

Notary Public

(PRINT OR STAMP NAME)

My commission expires _____

V. OTHER INSTRUMENTS REQUIRED TO BE ACKNOWLEDGED

A deed, mortgage or lease (for a term of more than three years) of any estate or interest in real property must be signed by the grantor, mortgagor or lessor. Such signing also must be

acknowledged by the grantor, mortgagor or lessor before a person authorized by the law to administer an oath (a notary public is one of these), who shall certify the acknowledgement on the same sheet on which the instrument is written or printed, and subscribe his or her name thereto.

A deed, mortgage or lease not executed and acknowledged as required by the law is not entitled to be recorded, even if recorded, the record is irregular and has no effect as constructive notice.

A party to an instrument cannot act as a notary public in taking an acknowledgment to the instrument.

In the case of a deed or a mortgage where the owner is married, it is necessary that both the husband and wife execute and acknowledge the instrument.

VI. THE NOTARY'S LIABILITY AND SURETY

A notary public is a public officer whose duties are prescribed by the law, and for the failure on the notary's part to perform the notary's whole duty, the notary is liable in damages to any person who suffers therefrom. The notary's liability is not that of an insurer, but, if the notary is to be held liable at all, it must be on the ground of negligence, malice or corruption. Therefore, if a notary public neglects the duties under the law, to the damage of another, the notary may be liable personally.

It is not intended here to attempt to set forth all of the acts or omissions to act which might result in liability against a notary public, but attention is invited to some of the more common instances where such liability has been imposed.

Proof of Identity upon which a notary certifying to an acknowledgement is justified in acting.

Although a notary is not a guarantor or insurer of the identity of the person whose notarial acknowledgement the notary administers and certifies, the notary is bound, as all executive and ministerial officers are generally bound, to exercise reasonable diligence on the discharge of the notary's official duties. Before certifying that a certain named person came before the notary and executed and acknowledged the execution of any instrument, the notary must be reasonably sure of the identity of such person. Even in the absence of statutory provisions, the law does not permit an officer to take the acknowledgement of a stranger, without satisfactory proof of his identity. The courts have held that a notary is not justified in taking an acknowledgment upon the mere introduction of the notary by the person desiring to make the acknowledgement. Likewise, there is substantial agreement that a mere introduction by a third person, who is not well known to the notary, is not sufficient evidence of identity to justify the notary in certifying to the acknowledgement. If, on the other hand, the introducer is well known to the notary, and is apparently well acquainted with the acknowledged, and there is nothing to create any suspicion as to the identity of the latter, the notary may be justified in relying upon the identification without further proof.

Under no circumstances should a notary take an acknowledgement over a telephone. This is not a "personal appearance" before the notary, nor can the notary truthfully certify that the instrument

was signed in the notary's presence. The human voice is easily imitated, and no one can be sure that the voice of the speaker is the voice of the signer. Any notary who takes an acknowledgement in this manner is only inviting trouble, if not a liability.

"It may be very courteous to waive all precautions and formalities in this matter of identification; it may be disagreeable to speak plainly, and tell a party that one is not willing to assume that he is not falsely impersonating another; but no one is at liberty to practice, courtesy or gain popularity, to indulge the notary's own indolence, or avoid unpleasant things, at the expense of other. If these others sustain loss by the notary's laxity, it is impossible to listen to assurances from the notary that the notary meant well, and really did not know better, where it was the notary's plain duty to make certain of the identity of the person acknowledging the instrument, and not to certify it at all until the notary was sure. It is perfectly idle from the notary to protest that the notary did not know or suspect that the certificate was false. The notary's business was to know that it was true."

VII. THE PRACTICE OF LAW

A commission of a notary public is not a license to practice law. The powers and duties of a notary public are limited to those set forth in Section 147.07, supra. No other powers or privileges are implied or permitted. The courts of this state have held that it is unlawful for a notary public to prepare, draw or draft for others any legal papers, documents or instruments, including the following; wills, deeds, notes, real estate mortgages, chattel mortgages, contracts, options, leases, escrow instructions, release, affidavits for mechanic's liens, bulk sales affidavits, affidavits of any nature, bills of sale, powers of attorney, or pleadings in court. Likewise, no notary is permitted to advise another person how to prepare, draw or draft these or other instruments, to render opinions as to the title of real estate or to the rights and liabilities of others in matters of litigation. Any attempt on the part of a notary to do any of these things may result in the revocation of the notary's commission.

VIII. HINTS AND WARNINGS

1. Before entering upon your duties as a notary, you are required to leave your commission, with the oath endorsed thereon, with the Clerk of Court of Common Pleas of Wayne County for recording. (See Section 147.05).
2. Provide yourself with a notary public seal.
3. Provide yourself with a rubber stamp, stating your name and date your commission expires. This should be impressed upon every instrument you sign immediately under or near your signature. Otherwise you will have to print your signature in legible letters. (See Section 147.04)
4. Study carefully and familiarize yourself with the schedule of fees you are permitted to charge for your services. (See Section 147.08).
5. You are subject to removal from office in the event you accept an excess fee and once removed you are ineligible for reappointment as a notary public. (See Section 147.13).

6. Do not perform any act as a notary after your term of office has expired. Should you do so, you shall forfeit to the State a penalty of not more than five hundred dollars (\$500.00), and are henceforth ineligible to reappointment. (See Section 147.11). you are also guilty of a misdemeanor and subject to a fine of not more than five hundred dollars (\$500.00).

7. Do not take the acknowledgement of any person unless you personally know the person signing, or unless the person has been identified by someone else, in whom you have confidence, who knows such person. Under no circumstances should an acknowledgment be taken over the telephone.

8. Do not take the acknowledgement of a signature of a person signing by mark (X), unless you saw the person make the same, and the mark is properly witnessed.

The following form is suggested for use:

His

John X Doe

Mark

9. Do not act as a notary on any instrument beyond the territorial limits of the State of Ohio. Your acts are invalid and you may destroy some valuable rights of persons interested in the proper authentication of this instrument which you have unlawfully certified.

10. Do not take the acknowledgment on any instrument wherein blanks are left to be filled in later. Read and examine it carefully before administering the oath or affirmation. Insist upon a completely prepared instrument before you take the acknowledgement of any person a party thereto.

11. Do not prepare for others any legal instrument or pleading, and do not advise or counsel with anyone as to how it should be prepared. These are facts falling within the practice of law and you are duly bound in such cases to point out that it would be unlawful for you to perform such acts and would subject you to the possibility of loss of your commission as a notary. In the interest of the public, a careful check of all future activities by those commissioned as notaries will be carried on under the supervision of the court, with the aid of the Wayne County Bar Association.

12. The Secretary of State may revoke a commission issued to a notary upon presentation of satisfactory evidence of official misconduct or incapacity.