



Manual For Notaries Public

Prepared by

Judges' Committee on Notaries Public

Appointed by

The Court of Common Pleas of Hamilton County

Published by

The Cincinnati Bar Association
225 E. 6th Street, 2nd Floor,
Cincinnati, Ohio 45202-3209
(513) 651-5118 ext. 223

www.cincybar.org

PREFACE

A commission of a Notary Public is not a license to practice law. A notary is a public officer of the State of Ohio, a position created by the Legislature. To be a notary in the state of Ohio, you must be at least 18 years of age, of good moral character, and be able to verify your identity.

THE STATUTES

Appointment of Notaries Public

The Secretary of State may appoint and commission as notaries public as many persons as he 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.

Ohio Revised Code, Sec. 147.01

Certificate of Qualifications

Before the appointment of a notary public is made, the applicant shall produce to the Secretary of State a certificate from a judge or justice of the court of common pleas, court of appeals, or supreme court, that he is of good moral character, a citizen of the county in which he resides, and, if it is the fact, that the 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 or justice shall issue such certificate until he is satisfied from his 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 regulation as the judge or justice may prescribe. If the applicant is admitted to the practice of law in this state, this fact shall also be certified by the judge or justice in his certification.

Ohio Revised Code, Sec. 147.02

Terms of Office; Oath

Each notary public, except an attorney admitted to the practice of law by the Ohio Supreme Court, shall hold office for the term of five years unless the commission is revoked. An attorney admitted to the practice of law in this state by the Ohio Supreme Court shall hold office as a notary public as long as such citizen is a resident of this state or has the attorney's principal place of business or primary practice in this state, is in good standing before the Ohio Supreme Court, and the commission is not revoked. Before entering upon the duties of office, a notary public shall take, and subscribe an oath to be endorsed on the notary public's commission.

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

Ohio Revised Code, Sec. 147.03

Seal and Register of Notaries Public

Before entering upon the discharge of his duties, a notary public shall provide himself with 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 surrounded 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 letters near his signature on each document signed by him. A notary public shall also provide himself with 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, his official register shall be deposited in the office of the county recorder of the county in which he resides.

Ohio Revised Code, Sec. 147.04

Commission To Be Recorded; Fee.

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

Ohio Revised Code, Sec. 147.05

Certified Copy of Commission to Be Evidence; Fee.

Upon application, the clerk of the court of common pleas shall make a certified copy of a notary public commission and the endorsements on the commission, under the seal of the court, the certified copy shall be prima-facie evidence of the matters and facts contained in it. For a certified copy of each notary public commission the clerk shall be entitled to receive a fee of FIVE (\$5.00) dollars.

Ohio Revised Code, Sec. 147.06

Powers: Jurisdiction.

A notary public may, throughout the state,

- (1) administer oaths required or authorized by law,
- (2) take and certify depositions,
- (3) take and certify acknowledgements of deeds, mortgages, liens, and powers of attorney, and other instruments of writing, and
- (4) receive, make, and record notarial protests.

In taking depositions, he shall have the power which 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.

Ohio Revised Code, Sec. 147.07

Fees.

A notary public is entitled to the following fees:

For taking and certifying acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments of writing, and for taking and certifying depositions, administering oaths, and other official services, the same fees as are allowed by law to clerk of county courts for like services.

Ohio Revised Code, Sec.
147.08

Under present law, the "fees allowed by law to clerk of county courts for like services" amount to \$1.50 for taking and certifying one signature on an affidavit and \$2.00 for acknowledging all instruments in writing. THE MAXIMUM FEE THAT A NOTARY CAN CHARGE IS \$2.00 PER SIGNATURE ON AN ACKNOWLEDGEMENT AND \$1.50 PER SIGNATURE ON AN AFFIDAVIT.

Notary Public Acting After Commission Expires.

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

Ohio Revised Code, Sec. 147.10

Forfeiture.

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

Ohio Revised Code, Sec. 147.11

Removal For Receiving Excess Fees.

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

Ohio Revised Code, Sec. 147.13

Removal From Office For Certifying Affidavit Without Administering Oath.

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

Ohio Revised Code, Sec. 147.14

Acknowledgment of Deeds, Mortgages and Leases.

A deed, mortgage, land contract as referred to in division (B)(2) of section 317.08 of the Revised Code, or lease of any interest in real property and a memorandum of trust as described in division (A) of section 5301.255 of the Revised Code shall be signed by the grantor, mortgagor, vendor, or lessor in the case of a deed, mortgage, land contract, or lease, or shall be signed by the settlor and trustee in the case of a memorandum of trust. The signing shall be acknowledged by the grantor, mortgagor, vendor, or lessor, or by the settlor and trustee, before a judge or clerk of a court of record in this state, or a county auditor, county engineer, notary public, or mayor, who shall certify the acknowledgment and subscribe the official's name to the certificate of the acknowledgment.

Ohio Revised Code, Sec. 5301.01

POWER OF NOTARIES: JURISDICTION

A Notary Public shall have power throughout Ohio:

1. To administer oaths required or authorized by law.
2. To take and certify to acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments of writing.
3. To take and certify depositions.
4. To receive, make and record notarial protests.

1. Administering Oaths.

An oath is a declaration by a person before an office authorized by law, such as a notary public, to take oaths that what he has said or is about to say is true or a promise that he will faithfully perform certain acts. To be a proper and legal oath, the declaration but be substantiated by an appeal to God to witness the sincerity of the statement, accompanied by some outward act demonstrating this appeal, such as raising the right hand or placing it on the Bible.

Example: "Do you solemnly swear that what you are about to say or have said is true, so help you God?"

If the person for religious reasons refuses to take an oath, you are permitted to substitute an affirmation which eliminates the appeal to God.

Example: "Do you solemnly swear (or affirm) that what you have said or about to say is true under pains and penalties of perjury?"

Affidavit.

An affidavit is a written statement of facts, the truth of which is sworn to before a person authorized to administer oaths, and followed by an official statement of the person taking the oath that the affidavit was signed and sworn to, or affirmed, in his presence.

Example:

State of Ohio :
County of Hamilton : ss AFFIDAVIT

Before me, a Notary Public, in and for said state, personally appeared John Doe who being by me duly sworn (or affirmed) deposes and says that he is a soldier in the Army of the United States, stationed at Fort Bragg, North Carolina, and further affiant says not.

(Signed) John Doe
Sworn to before me and signed in my presence this day of _____, 20
(Signed) (Mary Roe)

(Seal)
My commission expires _____
Month – Day – Year _____
Mary Roe, Notary Public
State of Ohio

In certifying to an affidavit, the Notary must do the following:

1. Administer an oath or affirmation to the affiant (the person giving the affidavit) whereby the affiant is asked to state that the facts set forth in the affidavit are true. (Examples: "Do you swear that the facts set forth in this affidavit are true, so help you God?" or "Do you affirm that the facts set forth in the affidavit are true?")
2. Have the affiant sign the affidavit in the presence of the Notary
3. Complete and execute the certification on the instrument, below the signature of the affiant.

Note that the affidavit must be signed in the presence of the Notary, after the oath is administered, and cannot merely be acknowledged in the presence of the Notary. Also note that the Notary must administer the oath of affirmation. Failure to do so can result in the Notary's removal from office.

2. To Take and Certify Acknowledgments to Deeds, Mortgages, Liens, Powers of Attorney and Other Such Instruments of Writing.

An acknowledgment is a formal declaration by a person executing a document, made to an official authorized by law to take an acknowledgment (such as a Notary Public), that the person executed the document freely and voluntarily for the purpose set forth in the document.

The law of the State of Ohio requires that signatures to certain legal instruments, in order to be recorded in the County Recorder's Office, must be acknowledged before a person authorized by law to take acknowledgments (as a Notary Public). A person who wishes to acknowledge his/her signature on a document may bring the document to a Notary and then acknowledge to the Notary that the signature is his/her own and that he/she signed the instrument voluntarily and without duress. The Notary must either know the person seeking notarial services or obtain satisfactory evidence that he/she is the person described in, and who executed, the document. The Notary then signs his/her own name certifying that the document was acknowledged in his/her presence.

Example:

State of Ohio :
County of Hamilton : ss

Before me, a Notary Public in and for said State, personally appeared the above named John Doe who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

In Testimony Whereof, I have hereunto affixed my name and official seal at Cincinnati, this _____ day of _____, 20____

Mary Roe
(Print or Stamp Name)

(Seal)
My commission expires
Month – Day – Year

Naturally, a notary cannot truthfully certify that John Doe appeared before him, unless he is reasonably certain that the person who signed the instrument actually is John Doe. If the signer is not known to the notary, proof of his identity must be presented. This proof is often satisfied by examination of a driver's license or other identification card (preferably one with a picture). Proof may also be satisfied by a third person known to the Notary who introduces John Doe to him.

Nor can a notary certify that John Doe "appeared before him" if the instrument is brought to the notary by a third person. It bears repeating that the only way a signature can be acknowledged is in the presence of a notary public who has satisfied himself as to the identity of the person signing the instrument who then takes the acknowledgement and certifies it.

Some notaries are inclined to take this, their most frequently used function, rather lightly. They forget that they are liable, personally, to anyone who suffers damage through their negligence. The courts have found a notary public guilty of negligence who has certified the acknowledgment of a person who has misrepresented himself, when the notary failed to ask of proof of identity. In fact, in Ohio, anyone who with intent to defraud, falsely impersonates another before a Notary Public, is guilty of a felony.

There is a reason why acknowledgments are so important. When a signed instrument is presented in Court as evidence in a case, proof of its execution must be given. This is usually done by securing the person who signed the document as a witness, and asking him on the stand whether or not he executed the instrument. However, papers that have been acknowledged before a Notary Public need not be proven. The notary's certification is considered sufficient to show the authenticity of the signature. This responsibility, then, is no small, unimportant matter.

Some Additional Facts About Acknowledgements

A Notary may never notarize his/her own signature

A Notary cannot take the acknowledgment to an instrument in which he himself has an interest, for instance, if he is party to a deed.

A Notary cannot notarize an instrument when he is out of the physical boundaries of the state. He may not witness the signature and take the acknowledgment in another state, then make the certification in Ohio. All three acts must take place within the limits of his jurisdiction.

A Notary may take an acknowledgment only within the State of Ohio. The document may, however, refer to property or other matters outside the State of Ohio. For example, a Notary may take an acknowledgment on a deed for real estate located in New York if the person signing the deed acknowledges his/her signature before Notary while in the State of Ohio.

dishonor, if the instrument were made outside of Ohio, a “protest” of the non-acceptance or non-payment must be made on the day of the dishonor.

PROTEST

A notarial protest is solemn declaration under the hand and seal of a Notary Public stating that he, at a certain time, presented the bill or note for payment or acceptance, that it was refused and that the notice of the dishonor was given to the Drawers and Endorsers. Its purpose is merely to furnish formal evidence of the dishonor of a bill or note by showing that all the necessary requisites have been complied with to hold the Drawers and Endorsers liable on the instrument. It is received in court as prima facie evidence of the facts state therein.

The usual procedure in protests of negotiable instruments is thus: (1) the holder, or one authorized by him, presents the instrument for acceptance or payment and is refused, (2) he gives the instrument to a notary, who again formally makes demand for its payment or acceptance, (3) if payment or acceptance is again refused, the notary gives notice of the dishonor to the Drawers and Endorsers immediately, and (4) fills out the formal Certificate of Protest (a form which may be obtained at any legal stationers) and attaches the bill or note to it. He then records a copy of the Certificate of Protest and the instrument in his official register.

Since the use of a Certificate of Protest is much easier than obtaining evidence of dishonor, the Courts allow a protest form to be used also in cases involving Ohio negotiable instruments. This is allowed, but is not required, as in the case of foreign instruments.

It is impossible in the small guidebook to cover all the statutes dealing with the protests of negotiable instruments. The law describes what constitutes proper presentment, protest, and notice of dishonor. When notary is called upon to protest a negotiable instrument, it is suggested that he acquaint himself with the statutes that are applicable.

CHANGE OF NAME

If, by marriage or otherwise, a notary changes his or her name, he or she may use the new name, but must indicate the name in which the commission was issued in parenthesis after it. Example: Mary Roe married John Doe. She would sign Mary Doe (Roe).

HOW TO DETERMINE YOUR EXPIRATION DATE

Your Notary Public commission is valid for 5 years. To determine your expiration date subtract 1 day and add 5 years to the date of commencement printed on your Notary Public certificate issued by the Governor.

AUTHENTICATION

When papers are to be used outside of the State, an authentication is usually required. This merely a declaration by the Clerk of Common Pleas Court that the notary is properly commissioned under law at the time of notarizing the instrument. This authentication is forwarded with the papers to the foreign jurisdiction. Any Notary Public wishing to obtain an authentication can contact the Clerk’s office at the Hamilton County Court House.

CHANGE OF ADDRESS

If you move during the 5 year period that your commission is in effect, please notify the Notary clerk at the Cincinnati Bar Association of your new address. In addition to your new address, please include your expiration date. This will ensure you of receiving your renewal notice in sufficient time of your expiration date.

RULE ADOPTED BY THE COURT OF COMMON PLEAS, HAMILTON COUNTY, OHIO RULE 22

- (A) This court shall not issue or approve the certificate of qualifications required by Sec. 14.01 R.C. in connection with application for appointment as Notaries Public unless the applicant is a resident of Ohio, and either (a) is a member of the Bar of the State of Ohio in good standing or (b) has passed the examination hereinafter prescribed.
- (B) The Joint Session shall appoint a committee of not less than 10 members of Bar of the State of Ohio in good standing and practicing law in Hamilton County, Ohio, one of whom shall be designated as Chairman. This committee shall be known as the Judges Committee on Notaries Public, which committee shall serve until further order of the Court.
- (C) Said committee or sub-committee or member thereof, shall from time to time, but not less than once each month, conduct at the Courthouse of this County, for the purpose of determining whether the applicant possesses the qualifications necessary for the proper discharge of the duties of the office set forth in Section 147.02 of the Ohio Revised Code. Paragraph (C) shall not apply to persons admitted to the practice of law in this State.
- (D) Every applicant shall first file with the Committee, with his application, a statement in writing, which statement shall be in such form, and set forth such matters as the Committee shall prescribe. The Committee or sub-committee shall report to one of the Judges of this Court in writing after such examination is had. Said report is to contain either an approval or disapproval by the Committee and is to be submitted within seven (7) days after the applicant has been examined; and the said Judge shall duly pass on the applicant as the facts and the law may require.
- (E) Each application filed shall be accompanied by a fee in the amount hereinafter provided, which will be returned to the applicant if that applicant is not permitted to take the examination by reason of lack of citizenship, legal residence or other statutory requirement. If his name is placed on the examination roll and he fails to receive a recommendation of approval, a new application may be filed and an additional examination fee, in the amount hereinafter provided, must accompany each such subsequent application.
- (F) Any complaint filed by the Committee seeking to have a Notary removed, suspended or disciplined shall be heard and determined by the Presiding Judge, or any judge designated by the Presiding Judge after notice thereof to the Committee and the individuals or individuals against whom the complaint is filed.
- (G) Whenever any applicant, in the opinion of the Committee, is not qualified for appointment to the office of Notary Public, said applicant may file a new application for re-examination after thirty (30) days; should said applicant, in the opinion of the Committee, upon said second examination be still unqualified to hold such office, then said applicant shall not be permitted to file an application for an additional examination until thirty (30) days or more have elapsed from the day of said second examination; should said applicant, in the opinion of the Committee, be still unqualified to hold said office upon said third examination, then said applicant shall not be permitted to file an additional application until five (5) years has elapsed from the date of said first examination. Each such application shall be accompanied by the fee hereinafter provided.

(H) Should any applicant, after filing an application for examination, fail to appear for said examination within thirty (30) days after the filing of said application, the Committee shall notify said applicant, by mail, that unless said applicant appears for examination within the next succeeding thirty (30) days, after the notice, then said application will be cancelled, and no part of the fee shall be returned to the applicant unless the Committee or a judge of this Court so authorizes.

(I) Any person who has been commissioned as a notary public pursuant to the Statutes of Ohio, who desire a renewal of such commission, shall file his application for such renewal with the Judges Committee on Notaries Public. All application for renewals shall be in writing and shall set forth such facts as said Committee shall prescribe and shall be accompanied by a fee in the amount hereinafter provided. Such application shall be examined by the Committee or some member thereof and approved by it. The applicant shall thereupon be considered qualified for a renewal of his commission without examination, unless ordered by the Court.

(J) The amount of fees hereinbefore designated to be paid by each applicant, who is either a resident of Hamilton County or has been appointed a Notary Public in an adjacent county in which he is a resident, is fixed as follows:

Original Application.....	\$80
Re-examination.....	\$10
Renewal Application.....	\$75
Attorney Application.....	\$80

The fees provided herein shall be used to defray the costs incident to the processing of Notary Public application, and a financial report together with the activities of the Judges Committee on Notaries Public shall be made to the Presiding Judge annually.

(K) The Judges Committee on Notaries Public is hereby empowered to administer the rule hereinbefore set forth and shall perform such duties as may be prescribed by the Court.