



**NOTARY EDUCATION AND TESTING**

# **NOTARY PUBLIC HANDBOOK**

## **Term of Office**

Notaries Public [“NPs”] are appointed by the Secretary of State for a term of five years and a renewal of a notary commission is also valid for five years, unless the commission is revoked. Before a Notary Public [“NP”] enters upon the duties of the office, he or she must take an oath, under O.R.C. 147.03. If the NP violates that oath, he or she shall be removed from office by the Secretary of State. A person removed for the violation of the oath is ineligible for reappointment to the office of NP. NPs can serve in all eighty-eight counties in Ohio.

## **Requirements for Renewal**

Three months before the expiration of a NP’s commission, he or she may begin the renewal process by electronically submitting the following to the Secretary of State: (1) Ohio criminal records check by the Ohio Bureau of Criminal Identification and Investigation or federal background check by the U.S. Department of Justice. The background check cannot be more than six months old. (2) Proof of successful completion of one hour of continuing education for NPs. Continuing education cannot be completed more than twelve months prior to the expiration of the commission. (3) Payment of application fee.

## **Reporting Requirements for Disqualifying Offenses**

A NP is required to inform the Secretary of State if he or she is convicted of or pleads guilty or no contest to a “disqualifying offense” or any offense under an existing or former Ohio law, law of any other state, or law of the United States that is substantially equivalent to a “disqualifying offense.” A “disqualifying offense” is defined in O.R.C. 147.011 as a crime of moral turpitude under O.R.C. 4776.10 and a violation of a provision of Chapter 2913 of the Revised Code. Upon the reporting of such an offense, the Secretary of State is required to revoke the NP’s commission. A person may never serve again as a NP following the commission of a “disqualifying offense.”

## **Maintaining a Notarial Journal**

A Notarial Journal is an important tool that provides a written record of the NP’s official acts. It contains details of the transaction in the event a notarized document is lost, altered, or if facts concerning the notarization are challenged in court.

Information in Notarial Journals may also help investigators locate and arrest dishonest signers who attempt to commit fraud or forgeries. Generally, there are five steps to a proper notarization:

Step 1: Require personal appearance (unless you are an online notary).

Step 2: Review the document to ensure it has been completed, i.e. no blank spaces, (do not engage in any type of legal review).

Step 3: Carefully identify the signer.

Step 4: Record your journal entry.

Step 5: Complete the notarial certificate.

A well-kept journal, in which each of these five steps is memorialized, can provide supporting evidence that a NP acted properly during a transaction if the NP is ever accused of an inadvertent or willful mistake.

The National Notary Association recommends that NPs keep a journal with bound pages and that entries be recorded in chronological order to prevent tampering, and further recommends including the following information in each notary journal entry:

1. The date and time of the Notary act (the date and time indicates when the signer appeared before the NP);
2. The type of notarization performed (for example, "acknowledgment" or "jurat" or "verification by oath");
3. The location where the notarization took place;
4. The title or type of document or transaction (for example, "deed" "personal letter" or "Affidavit of Identity") and the date on the document, if any (for example, a date appearing at the top of the document or date of signing appearing opposite a signature line);
5. The printed name and address of each signer;
6. The method used to identify each signer (personal knowledge, type of ID document, or credible witness(es));
7. The fee charged for the notarization, if any (Ohio law allows a notary to charge up to a \$5 fee (\$25 for online notarization). Fees may not be calculated on a per signature basis. In addition, a notary may charge a reasonable travel fee as agreed to in advance between the notary and the principal);
8. The signature of each signer; and,
9. Any other pertinent information (for example, "John Smith signed as President of XYZ Corporation").

The journal entry should be recorded while the signer is present and before the NP completes the notarization. This way the NP may obtain all necessary information needed for the journal entry.

### **Requirements for a Notary Seal**

A NP must obtain a seal of a notary public before engaging in the discharge of his or her duties as a notary.

The seal must consist of the coat of arms of the state of Ohio within a circle that is 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 either be a type that stamps ink onto a document, or a type that embosses it. The name of the notary public may, instead of appearing on the seal, be printed, typewritten, or stamped in legible, printed letters near the NP's signature on each document signed by the NP. The following is an example of a notary seal:



### **What Constitutes a Notarial Act that Complies with Applicable Ohio Law and Administrative Rules**

A “notarial act” is defined by statute as “an official act that a notary public is authorized to perform by law and as provided in section O.R.C. 147.60(H).”

An “acknowledgement” is a notarial act in which the signer of the notarized document acknowledges all of the following:

- a) the signer has signed the document;
- b) the signer understands the document; and,
- c) the signer is aware of the consequences of executing the document by signing it. (O.R.C. 147.011)

A “jurat” is a notarial act in which:

- a) the signer of the notarized document is required to give an oath or affirmation that the statement in the notarized document is true and correct; and,
- b) the signer signs the notarized document in the presence of a NP. The words "*Affidavit*," "*Sworn to and subscribed*" or "*Being duly sworn*" in the notary certificate are indications that it is a jurat, and that the oath/affirmation is required.

A NP notarizes signatures, not documents, and does so in a completely impartial manner.

A NP does not have an interest in the content of the document, other than ensuring it has been completed. For example, a NP should scan the document to ensure that it is complete; if there are any blank spaces, the signer must either complete the spaces or line through them.

A NP must ensure that the signer is aware of the content of the document, and that he or she has willingly signed the document without any outside influence or coercion. While this can sometimes become a sticky step, it is an important one.

A NP shall provide a completed notarial certificate for every notarial act the NP performs. (O.R.C. 147.542)

No NP shall perform any notarial act knowing the NP's term of office has expired or the notary NP has resigned the notary public's commission. (O.R.C. 147.10)

### **Compliant Notarial Acts, Acknowledgments, Notarial Certificates and Jurats**

A "Compliant Notarial Act" must COMPLY with all of the requirements of the statute.

What is a "Notarial Act"? -- "An official Act that a notary public is authorized to perform by law as provided by Ohio Rev. Code," except "notarial act" does not include the taking or certifying of depositions (even though a NP is permitted to do so, it is not defined as a "notarial act").

"Notarial acts" means acts which the laws and regulations of this state authorize NPs of this state to perform, including:

1. the administration of oaths and affirmations;
2. taking proof of execution and acknowledgment of instruments;
3. attesting documents; and
4. executing a jurat.

(O.R.C. 147.51)

"Acknowledgment"... "means a notarial act in which the signer of the notarized document acknowledges all of the following:

- (1) The signer signed the document;
- (2) The signer understands the document; and
- (3) The signer is aware of the consequences of executing the document by signing it. (O.R.C. 147.111)

"Taking an acknowledgment" requires the NP **to certify** that:

(A) The person acknowledging appeared before the NP and acknowledged he/she executed the instrument;

(B) The person acknowledging was known to the NP, or that NP had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

Notarial Certificate. The NP must include the "Notarial Certificate" on the document notarized. "Notarial certificate" means the part of, or attachment to, a document that is completed by the NP and upon which the NP places the NP's signature and seal. (O.R.C. 147.111(E))

"Jurat" means a notarial act in which both of the following are met:

- (1) The signer of the notarized document is required to give an oath or affirmation that the statement in the notarized document is true and correct; and
- (2) The signer signs the notarized document in the presence of a NP.

### **Verifying the Identity of the Principal**

O.R.C. 147.53: Taking an acknowledgment.

The person taking an acknowledgment shall certify that: “(B) The person acknowledging was known to the person taking the acknowledgment, or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.”

In O.R.C. 147.541 “Acknowledged before me” was defined: “(D) The person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.”

The importance of properly fulfilling this obligation is illustrated in *Keck v. Keck*, 54 Ohio App. 2d 128, 375 N.E.2d 1256 (1977). Plaintiff's wife, who was a total stranger to the NP, misrepresented to the NP that the signer was her husband. The NP failed to get any evidence that the person executing the instrument was the person he was represented to be even though under the circumstances, any reasonable person in the exercise of ordinary care would have been suspicious. The improper acknowledgment resulted in the improper sale of an automobile, for which the NP was held financially liable due to his negligence.

### **The Taking of an Acknowledgement**

A NP may, throughout the state, certify acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments of writing. O.R.C. 147.07. In order to be recorded in the recorder's office, or to be accepted as legally effective and binding, this acknowledgment is mandatory.

The NP taking an acknowledgment certifies that the person acknowledging did appear before the NP and acknowledged executing the instrument voluntarily with knowledge of its purpose. O.R.C. 147.53. The NP then certifies the instrument has been acknowledged in the NP's presence.

The form of a certificate of acknowledgment used by a NP shall be accepted in this state if the certificate is in a form prescribed by Ohio law; and, the certificate contains the words "acknowledged before me," or their substantial equivalent. O.R.C. 147.54.

The words "acknowledged before me" means the person acknowledging appeared before the NP; acknowledged executing the instrument; and, fulfilled their specific role. O.R.C. 147.541. The acknowledger's status dictates what that role may be. Those different roles can be: (1) a natural person; (2) a corporation; (3) a partnership; (4) a person acknowledging as principal by an attorney in fact; and, (5) a person acknowledging as a public officer, trustee, administrator, guardian, or other representative. Carefully check the statute to see what the specific acknowledgment must actually acknowledge.

Under O.R.C. 147.542, a NP shall provide a completed notarial certificate for every notarial act the NP performs.

The “statutory forms of acknowledgment” found at O.R.C. 147.55, are not mandatory, but if followed, are sufficient. Appropriate for various potential signers, they each contain the following components:

1. Identification of the state and county  
State of .....  
County of .....
2. Identification of date and acknowledger, with different language for different entities. For example, for an individual acting in the individual's own right:  
*The foregoing instrument was acknowledged before me this (date) by (name of person acknowledging).*  
Be sure to check the statute for the other formats.
3. Signature of person taking acknowledgment and his or her title or rank.

The following is an example of an acknowledgment for reference:

Signed: Sally Signer

State of Ohio  
County of Franklin

The foregoing instrument was acknowledged before me on this September 20, 2019 by  
Sally Signer (name of person acknowledged).

(Notary Seal)

Nancy Notary  
Signature of Notary Public



Nancy Notary  
My Commission Expires  
December 31, 2021

## **Administration of Jurat**

### **What is a jurat?**

“Black’s Law Dictionary (4th Ed.), 990, defines ‘jurat’ as follows:

“Certificate of officer or person before whom writing was sworn to.” *Stern v. Bd. of Elections of Cuyahoga Cty.*, 14 Ohio St.2d 175, 237 N.E.2d 313 (1968). “In common use the term is employed to designate the certificate of a competent administering officer that a writing was sworn to by the person who signed it. It is not part of the oath, but is merely

evidence of the fact that the oath was properly taken before the duly authorized officer.” *Id.* at 181. Simply stated, the jurat is evidence that an affidavit was properly sworn.

**How is a jurat administered?** Before entering upon the discharge of official duties, a NP shall obtain the seal of a NP. See above section addressing “Requirements for a Notary Seal.”

### Omission of the Notary Seal.

“[O.R.C. 147.04] follows the long-standing position espoused by the Ohio courts that the omission of the notary's seal does not compromise the validity of a document otherwise properly acknowledged and notarized.” *In re Sunnafrank*, 456 B.R. 885 (Bankr. S.D. Ohio 2011). Although the statute allows for substantial compliance with the law, NPs must strive for strict compliance. This is due to the fact that the cost of litigating a disputed notarial seal is high and courts may not consider unsigned affidavits. *Bennett v. FirstEnergy Corp.*, 118 Ohio Misc.2d 174, 2002-Ohio-2745, 770 N.E.2d 164.

Below is a sample jurat for reference:



#### JURAT STAMP

STATE OF OHIO
County of _____
Subscribed and sworn (or affirmed) before me this _____ day of _____, 20____
by _____.
YOUR NAME HERE, Notary Public My Commission Expires Your Date Here

### Manner of Taking Depositions

What is a deposition? “A deposition is defined by statute as ‘a written declaration under oath, made upon notice to the adverse party.’ O.R.C. 2319.02. A deposition is a record of testimony and the person giving the testimony is a witness.” *Sudbury v. Arga Co.*, 12th Dist. Clermont No. CA85-03-015, 1985 WL 3970, \*2 (Dec. 2, 1985). The deposition is a written declaration under oath (the writing is the transcript). The written declaration under oath may also be in the form of interrogatories. The deposition itself is a contemporaneous series of verbal questions and verbal responses in civil litigation. A deposition is often the single most important aspect of civil litigation outside of a trial. An accurate transcript is essential.

What is the purpose of a deposition? “The purpose of depositions is threefold: First, to obtain the testimony of witnesses beyond the jurisdiction of the court; second, to perpetuate testimony; and, third, to operate as a bill of discovery.” *Ex parte Bevan*, 126

Ohio St. 126, 136 184 N.E. 393 (1933). “The Legislature ... sought to provide a means whereby a litigant's rights would be preserved in a case the exigencies of which would prevent him from producing his testimony in court in the regular way; to compel the production of testimony that might be forever lost; and to afford an opportunity to the litigant to secure evidence of facts necessary to make out his case, which evidence was peculiarly within the knowledge, or if documentary, in the possession and control of his adversary.” *Id.*

Depositions must ordinarily be taken before an officer appointed or designated under Ohio Civ. R. 28. A NP is such an officer. “In taking depositions, a notary public 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.” (O.R.C. 147.07)

Depositions must begin with an on-the-record statement that includes the following:

1. The officer's name and business address;
2. The date, time, and place of the deposition;
3. The deponent's name;
4. The officer's administration of the oath or affirmation to the deponent; and
5. The identity of all persons present.

After a deposition, “the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.” Fed. R. Civ. P. 30.

### **Signature by Mark and Designated Alternative Signer**

Physical disabilities can render a person unable to sign except with a simple “X.” This does not mean the person does not have sufficient capacity to execute a document. O.R.C. 147.59 allows for a “designated alternative signer” or “DAS” to sign for a party assuming the following requirements are satisfied: (1) Individual clearly indicates the individual’s intent for DAS to sign his or her name; (2) individual and DAS provide satisfactory identification; (3) DAS signs in the presence of the NP; (4) DAS is not named in the document; and, (5) Notarial certificate provides name of DAS and states the document was signed under O.R.C. 147.59 at the individual’s direction.

### **Requirements for Electronic Notaries Publics’ Signatures**

An electronic signature must satisfy the following performance requirements: (1) It must be attributed or uniquely linked to the electronic notary; (2) it must be capable of independent verification; (3) it must be retained under the electronic notary’s exclusive control; and (4) it must be linked to the electronic document to which it relates in such a manner that any subsequent change of the electronic document is detectable.

### **Seal Location in Document for Electronic Notaries Public**

The electronic NP's official seal must appear either as text in the electronic document near the electronic NP's signature or as a graphic image attached to or logically associated with the signature.

### **Requirements for Electronic Notaries Public Seal**

An electronic NP's seal must contain the following: (1) Electronic NP's name as shown on his or her notary commission; (2) commission number; (3) words "Electronic Notary Public"; (4) words "State of Ohio"; and (5) NP's commission expiration date.

### **Electronic Journal**

An electronic NP must maintain and protect an electronic journal of all electronic notarial acts for a period of at least five years from the date of the transaction. Electronic journal requirements include the following: (1) Date and time of notarial act; (2) type of notarial act; (3) type, title, or a description of the document or proceeding; (4) printed name and address of each person seeking an electronic notarization; (5) type and identification used to establish identity of each person seeking electronic notarization; and, (6) fee, if any, charged for the notarial act.

### **System Requirements for Electronic Journal**

Any system used to store an electronic journal must satisfy the following requirements: (1) Allow entries to be made, viewed, printed out and copied by an electronic NP only after access is obtained by at least one factor of authentication such as a password, biometric verification, token, or other form of authentication; (2) not allow a record to be deleted or altered in content or sequence by the electronic NP or any other person after a record of the electronic notarization is entered and stored; and, (3) have a back-up system in place to provide a duplicate electronic journal of notarial acts as a precaution in the event of loss of the original record.

### **Security/Control Requirements for Electronic Journal**

An electronic journal shall be kept under the exclusive control of the electronic NP. The electronic journal should not be used by any other electronic NP or surrendered to an employer upon termination of employment. However, an electronic journal may be examined and copied by law enforcement officials in the course of an official investigation or subpoenaed by court order.

### **Prohibited Acts, Fees, Reporting, Investigations, Discipline, and Revocation**

#### **ADVERTISEMENT AS IMMIGRATION CONSULTANT/OTHER PROHIBITED ACTS - O.R.C. 147.142**

(A) A NP who is not a licensed attorney in this state shall not represent or advertise himself or herself as an immigration consultant or an expert on immigration matters.

(B) A NP who is not a licensed attorney in this state shall not do any of the following:

- (1) Provide any service that constitutes the unauthorized practice of law in violation of the O.R.C. ;
- (2) State or imply the NP is an attorney licensed to practice law in Ohio;
- (3) Solicit or accept compensation to prepare documents for or otherwise represent the interest of another person in a judicial or administrative proceeding, including a proceeding relating to immigration to the U.S., citizenship, or related matters;
- (4) Solicit or accept compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or of the United States;
- (5) Use the phrase “notario” or “notario publico” to advertise the services of a notary public, whether by sign, pamphlet, stationery, or other written communication, or by radio, television, or other non-written communication.

### **FEES – O.R.C.147.08**

- (A) A NP is entitled to the following fees:
  - (1) Up to **\$5.00** for any notarial act that is not an online notarization.
  - (2) Up to **\$25.00** for an online notarization.
- (B) A NP charging the fee under (A)(2) shall not also charge the fee authorized under (A)(1).
- (C) The fees charged **shall not** be calculated on a per signature basis.
- (D) In addition to the fees authorized, a notary may charge a **reasonable** travel fee, as agreed to by the NP and the principal **prior** to the notarial act.
- (E) The secretary of state may adopt rules under Chapter 119. of the O.R.C. to increase the fees authorized under this section.

### **DUTY TO REPORT ABUSE – O.R.C. 5101.63**

- (A)(1) Any individual listed in Division (A)(2) of this section having reasonable cause to believe that an adult is being abused, neglected, or exploited, or is in a condition which is the result of abuse, neglect, or exploitation **shall immediately report** such belief to the county department of job and family services.
  - (2) All of the following are subject to division (A)(1):
    - (a) An attorney admitted in this state...
    - (b) An individual appointed and commissioned under section 147.01 of the O.R.C. as a **notary public**.
  - (B) Any person **may** report abuse...
  - (C) The reports made under this section shall be made orally or in writing except that oral reports shall be followed by a written report **if** one is requested by the department. Written reports shall include:
    - (1) name, address and approximate age of the adult
    - (2) name and address of the individual responsible for the adult's care, if known
    - (3) nature and extent of the alleged abuse, neglect or exploitation

(4) the basis of the reporter's belief.

(D) Any person who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from such a report, or any employee of the state or any of its subdivisions who is discharging responsibilities under this section **is immune from civil or criminal liability** on account of such investigation, report or testimony, except liability for perjury, unless the person has acted in bad faith or with malicious purpose.

(E) No employer or any other person with the authority to do so shall do any of the following as a result of the employee's having filed a report under this section:

- (1) Discharge, demote, transfer or prepare a negative work performance evaluation;
- (2) Reduce benefits, pay or work privileges;
- (3) Take any other action detrimental to an employee or in any way retaliate against the employee.

(F) The reports provided are confidential and are not public records. Upon request the information shall be made available to the adult who is the subject of the report and to legal counsel for the adult. If it is determined there is a risk of harm to a person who makes a report under this section or to the adult who is the subject of the report, the county department of job and family services may redact the name and identifying information related to the person who made the report.

(G) The Department shall be available to receive reports 24/7.

#### **PROHIBITED ACTS = REVOCATION - O.R.C. 147.14**

- NP should not certify the affidavit of a person without administering an oath or affirmation.

- Doing so shall result in removal from office; however, after three years the person can apply for reappointment.

O.R.C. 147.141:

(A) A NP **shall not** do any of the following:

- (1) Perform a notarial act with respect to a record or document executed by the notary;
- (2) Notarize the NP's own signature;
- (3) Take the NP's own deposition;
- (4) Perform a notarial act if the notary has a conflict of interest with regard to the transaction in question;

\*\*\*Conflict of interest means either of the following [per section (C)]:

- (i) The NP has a direct financial or other interest in the transaction in question, excluding fees authorized;
- (ii) The NP is named, individually or as a grantor, grantee, mortgagor, mortgagee trustor, trustee, beneficiary, vendor, lessor, lessee, or as a party in some other capacity to the transaction.

(5) Certify that a document is either:

- (a) an original document, or

(b) a true copy of a record

\*\*\*\* Per Division (B) of this section, Division (A)(5) does not prohibit a NP from notarizing a signature of a holder of a document on a written statement certifying that the document is a true copy of an original document.

- NP cannot certify what the document is, but can validate the signature of someone who says it is true.

(6) Use a name or an initial in signing certificates other than that by which the NP is commissioned;

(7) Sign notarial certificates using a facsimile signature stamp unless the NP has a physical disability that limits or prohibits the NP's ability to make a written signature and unless the NP has first submitted written notice to the Secretary of State with an example of the facsimile signature stamp;

(8) Affix the NP's signature to a blank form of an affidavit or certificate of acknowledgment and deliver that form to another person with the intent that it be used as an affidavit or acknowledgment;

(9) Take the acknowledgment of, or administer an oath or affirmation to a person the NP knows to have been adjudicated mentally incompetent by a court of competent jurisdiction, if the acknowledgment or oath or affirmation necessitates the exercise of a right that has been removed;

(10) Notarize a signature on a document if it appears the person is mentally incapable of understanding the nature and effect of the document at the time of notarization.

(11) Alter anything in a written instrument after it has been signed by anyone;

(12) Amend or alter a notarial certificate after the notarization is complete;

(13) Notarize a signature on a document if the document is incomplete or blank;

(14) Notarize a signature on a document if it appears that the signer may be unduly influenced or coerced so as to be restricted from or compromised in exercising the person's own free will when signing the document;

(15) Take an acknowledgment of execution in lieu of an oath or affirmation if an oath or affirmation is required;

(16) Determine the validity of a power of attorney document or any other form designating a representative capacity, such as trustee, authorized officer, agent, personal representative, or guardian, unless that notary is an attorney licensed to practice law in this state.

## **INVESTIGATIONS**

(A)(1) If the Secretary of State believes a violation has occurred, the Secretary of State may investigate.

(2) Secretary of State may also investigate possible violations upon signed complaint from anyone.

(B) A disciplinary hearing may be held if Secretary of State determines a hearing to be appropriate after an investigation.

## **PENALTIES**

(C) After holding an administrative hearing and concluding that a violation has occurred, the Secretary of State may:

(1) **Revoke** the NP's commission;

(2) **Suspend** the notary's commission for a specified period of time or until fulfillment of a condition, such as retraining, or both;

(3) Issue a **letter of admonition** that shall be placed in the NP's record.

(D) A person whose notary commission has been revoked may not apply for a subsequent notary commission.

(E) The Secretary of State may adopt rules under Chapter 119. of the O.R.C. to set forth procedures for investigations and hearings regarding violations of this chapter and disciplinary actions taken.

(F) The Secretary of State may establish an advisory board to meet as the Secretary of State considers necessary to discuss matters related to notary law and procedures.