

**GUIDEBOOK
FOR
NOTARIES
PUBLIC**

A GUIDEBOOK FOR NOTARIES PUBLIC

A "Notary Public" is a public officer of the State of Ohio, the office being created by statute. The Ohio Constitution provides that no person may be appointed to public office in Ohio unless he/she is a citizen, over 18 years of age, and qualified to vote at every election in the county in which he/she resides. "Qualified" to vote means "Registered" to vote in the county in Ohio in which he/she resides.

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 18 or over. 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 §147.01,
Effective September 26, 2003

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 of the court of common pleas, court of appeals, or supreme court, that he/she is of good moral character, and a citizen of the county in which he/she resides. No judge shall issue such certificate until he/she is satisfied from his/her 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.

Ohio Revised Code §147.02
Effective June 6, 2001

In the larger counties in Ohio, it would be impossible for the judges to know personally every applicant for the office of Notary public. They have, therefore, appointed a committee of lawyers to aid them in determining the qualifications of persons who seek to become notaries. This committee requires of each applicant a written form of application, under oath, and a passing grade on an examination as to the powers and duties of a notary public. When these requirements have been fulfilled, the committee presents the applicant's Certificate of Qualifications to the judge for his/her approval.

TERM OF OFFICE

Each notary public, except an attorney admitted to the practice of law in this state by the Ohio Supreme Court, shall hold office for the term of 5 years, unless the commission is 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 required by this section 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, 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 for the office of notary public.

Ohio Revised Code §147.03
Effective June 6, 2001

POWERS OF NOTARIES: JURISDICTION

A notary public may, throughout the state:

1. Administer oaths required or authorized by law;
2. Take and certify acknowledgments of deeds, mortgages, liens, powers of attorney and other instruments in writing;
3. Take and certify depositions; In taking depositions, the 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;
4. Receive, make and record notarial protests.

Ohio Revised Code §147.07 as amended,
effective August 23, 1977

1. To Administer Oaths

An oath is a declaration by a person before an officer authorized by law to take oaths (such as a notary) that what he/she has said or is about to say is true (as when a witness takes the stand in a courtroom) or a promise that he/she will faithfully perform certain acts (as when public officials are "sworn in"). To be a proper oath, the declaration must 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: "You do solemnly swear that what you are about to say is true, so help you, God?"

Affirmation

Some persons for religious reasons refuse to take an oath. The law of Ohio holds that the term "oath" includes an "affirmation" which is a solemn declaration before an authorized officer promising to state the truth or perform certain acts, but not accompanied by an appeal to God.

Example "You do solemnly swear that what you have said or are about to say is true, under the pains and penalties of perjury?" "I do."

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/her presence.

Example:

State of Ohio

County of _____, ss: AFFIDAVIT

Before me, a notary public, in and for said county, personally appeared _____ who being by me duly sworn (or affirmed), deposes and says that he/she is a soldier in the Army of the United States, stationed at Fort Bragg, North Carolina, and further

affiant says not.

(Signed) _____

(Affiant)

Sworn to before me and signed in my presence this _____ day of
_____, 20_____.

(Signed) _____

(Notary public)

Notary public, State of Ohio

My commission expires _____

**Penalty 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 pleas of the county in which the conviction occurred. The court shall thereupon certify such removal to the Secretary of State. The person so removed shall be ineligible to reappointment for a period of 3 years.

Ohio Revised Code §147.14

Effective June 6, 2001

- 2. **To Take and Certify Acknowledgments to Deeds, Mortgages, Liens, Powers of Attorney and other such instruments in writing.**

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 "acknowledges" his/her signature by bringing the instrument to the notary first, signing it in his/her presence and then acknowledging to the notary that the signature on the instrument is his/hers and that he/she signed it voluntarily without duress. The notary then certifies that the instrument has been acknowledged in his/her presence.

State of Ohio

County of _____, ss:

Before me, a notary public, in and for said county, 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 _____, Ohio, this day of _____, 20_____.

(Signed)_____

Print or typed name and Notary public

My commission expires _____

Naturally, a notary cannot truthfully certify that John Doe appeared before him/her unless he/she 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/her identity must be presented. This proof may be satisfied by a third person known to the notary who introduces John Doe to him/her.

Nor can a notary certify that John Doe "appeared before him/her" 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 by its being signed in the presence of a notary public who has satisfied himself/herself as to the identity of the person signing the instrument who then takes the acknowledgment and certifies it.

Some notaries are inclined to take this, their most frequently used function, rather lightly. They forget that they are personally liable 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 for proof of identity. In fact, in Ohio, anyone who with the intent to defraud, falsely impersonates another before a notary public, is guilty of a felony.

There is another 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/her on the stand whether or not he/she executed the instrument. However, papers that have been acknowledged before a notary public ordinarily need not be proven. The notary's certification is considered sufficient to show the authenticity to the signature. The responsibility then, is no small, unimportant matter.

See Ohio Revised Code §147.53
Taking and Acknowledgment

Some additional facts about acknowledgments.

A notary cannot take the acknowledgment to an instrument in which he/she himself/herself has an interest; for instance, if he/she is a party to a deed.

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

A notary may take the acknowledgment of a relative, even a wife or husband, if he/she himself/herself has no interest in the transaction.

A notary may act as a witness to and notarize the same instrument.

A notary may take the acknowledgment of a person who cannot sign his name. Such a person signs the instrument by marking an "X" in the presence of two witnesses one of which may be the notary.

Example:

In the presence of _____X_____ (his/her mark)
Richard Roe (Signed) JOHN DOE
Mary Smith (Signed)

A notary should remember that he/she acknowledges the "signature" merely and need not concern himself/herself with the contents of the instrument. This does not mean, however, that a notary may acknowledge a signature on a blank or partly blank piece of paper. He/she should insist that all blanks are filled in. Blank spaces not used in a legal instrument should have a line in ink drawn through them so that no one can add to the terms of the instrument after it is signed.

Deeds, Mortgages and Powers of Attorney

A deed or mortgage of real estate or an executory installment contract for the sale of land which by the terms thereof are not required to be fully performed by one or more of the parties thereto within one year of the date of such contracts is required by law to be signed and acknowledged before a notary public who certifies the acknowledgment. This same provision applies to leases for a term of more than three years.

(Signed) _____
William Seller

State of Ohio
County of _____, ss:

I hereby certify that on the ____ day of _____, 20____, before me, a Notary public, in and for said county, personally appeared William Seller, the grantor in the foregoing instrument and acknowledged the signing thereof to be his voluntary act and deed for the uses and purposes therein mentioned.

(Signed) _____
Mary Smith

Notary public, State of Ohio
Commission Expires _____(SEAL)

Only the grantor and spouse, if any (or person relinquishing ownership) need sign a deed and the mortgage (or borrower giving security) need sign a mortgage. Grantees' and mortgagees' signatures do not appear on these instruments although legally they are "parties" to the instrument.

If two or more people execute such an instrument, their

acknowledgments may be taken at the same or separate times by the same or different notaries public. In case the acknowledgments are taken separately, separate certifications are required for each separate signature.

A power of attorney for the conveyance mortgage or lease of real estate must be signed, witnessed and acknowledged in the same manner as deeds, mortgages and leases for terms of more than three years.

A Notary public is Not a Lawyer

Remember, the powers given to a notary public in acknowledging instruments do not permit him/her to prepare or draft these instruments, or to assist another in preparing them. The notary public who uses his powers in this manner not only endangers himself/herself to the revocation of his/her commission, but also may commit a crime, for which a fine and/or imprisonment can be imposed.

Ohio Revised Code §4705.07

3. Depositions

In Ohio, the testimony of witnesses for a trial may be taken outside of the courtroom, before a notary public, by means of a "deposition." A deposition is merely the written testimony of a witness taken under oath. It may be introduced into the trial if:

- a) the witness does not reside in, or is absent from the country where the trial is held,
- b) the witness is dead or imprisoned at the time of the trial, or is unable to attend by reason of

infirmity.

Today, when trials may not begin until as many as two years after the suit is filed, it is a common practice to take depositions of important witnesses.

In order to bring the witness before him/her to take his/her testimony, the notary issues a subpoena commanding the witness to appear before him/her at a fixed time and place. The subpoena may be issued at any time after the defendant in a lawsuit has received notice that it has been filed, and a copy of the petition or complaint served on him/her by the Sheriff, Constable, Coroner, or any person appointed by the notary. If any person other than the Sheriff, Constable, or Coroner serves the subpoena, he/she must prove that each service was made, by executing an affidavit to that effect. The subpoena may also include a clause directing the witness to bring with him/her any book or other thing under his/her control which he may be compelled to produce as evidence.

A written notice of the intention to take depositions must be given to the opposing party in the case, and must allow him/her sufficient time to reach the place where they will be taken, such time not to include the day of service, Sundays and one day's preparation. This notice is served by delivering a copy of the notice to the opposing party or his/her attorney and having him/her acknowledge the service.

Depositions may be taken orally or in writing. If the attorney desiring the deposition is present, he/she will, himself/herself after the witness is sworn by the notary, put the questions to the witness and the notary will reduce the questions and answers in writing. If the attorney is not present, the notary will swear the witness and he/she himself/herself, will ask the

questions that have been previously forwarded to him/her by the attorney requesting the deposition.

The written testimony is then signed by the witness, certified by the notary, sealed in an envelope on which are written the name of the notary public and the title of the case, and forwarded to the Clerk of Courts in which the action is pending.

It is not intended here to give a full treatise on depositions, but rather merely to acquaint the notary with them generally. Depositions are usually taken at the request of an attorney, and under his/her guidance. When the occasion arises, the notary public should consult the statutes of Ohio with regard to depositions, and should any questions come to his/her mind, inquire of counsel requesting the depositions, before exercising his/her powers in this regard.

CONTEMPT PROCEEDINGS

When a witness:

- a) disobeys the subpoena by failing to appear; or
- b) unlawfully refuses to answer a question put to him/her, or
- c) refuses to sign his name to a deposition

he/she is in contempt of the notary public, who has the power to have him/her brought before him/her by the Sheriff, or confined in jail until he/she agrees to answer or sign.

A witness may not lawfully refuse to answer any question put to him/her unless he/she claims a personal privilege. Such privilege arises out of the attorney-client, doctor-patient, husband-

at any other date not fixed must be presented to the drawee for acceptance in order that the date for payment shall be determined. This is called "presentment for acceptance."

Checks are simply drafts drawn on a deposit of funds in a bank.

The person making the draft or check is the DRAWER (Richard Roe), the one upon whom it is drawn, the DRAWEE (John Jones) or in the case of a check, the bank, who if they accept it, are the ACCEPTOR.

Promissory Note: A promissory note that is negotiable is an unconditional promise in writing by the maker that he will pay, on demand, or on a specified date a sum of money to the bearer or order.

Example:

\$50.00 _____, Ohio _____, 20___ Ninety days after date, I promise to pay John Black or order, Fifty Dollars, value received

Richard Roe

The signer of the note is called the MAKER (Richard Roe).

The person to whom it is payable, the PAYEE (John Black).

If John Black assigns his interest in the note, he signs his name on the back and becomes an ENDORSER, and the person to whom he assigns, it, the ENDORSEE.

Under Ohio law, when the holder of a bill of exchange or note presents it properly to the Maker, Drawee or Acceptor on the day it falls due, and the payment is refused, the instrument is said to be "dishonored." In order to get payment, then, from the Drawer or Endorser, a "notice of dishonor" must be given to the Drawer or Endorser:

The reason for the "notice of dishonor" is that the contract made by the Drawer and Endorser holds him/her liable only if

payment, and only if he/she receives notice of the dishonor. This notice may be given by the holder of the bill or note or by someone in his/her behalf, for instance a notary public. It may be oral, or in writing, and may be given personally or by mail. If the notice of dishonor is not received by the Drawer or Endorser within one day after the dishonor (if residing in the same place as then notary public) he/she is discharged from all liability on the instrument.

The contract of the Maker and Acceptor is different. It holds them liable even if the bill or note is not presented for payment on the day it falls due. (A drawee is never liable until he has accepted the bill.) In addition to the notice of 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 a solemn declaration under the hand and seal of a notary public stating that he/she, at a certain time, presented the bill or note for payment or acceptance, that it was refused and that notice of the dishonor was given to the Drawers or Endorsers. Its purpose is merely to furnish formal evidence of the dishonor of a bill or note by showing that all 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 stated therein.

The usual procedure in protests of negotiable instruments is thus: (1) the holder, or one authorized by him, presents the instrument for acceptance of payment and is refused, (2) he/she 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/she then records a copy of the Certificate of Protest and the instrument in his/her 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.

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

**DUTIES OF THE NOTARY PUBLIC AFTER HIS/HER
COMMISSION IS RECEIVED
FROM THE SECRETARY OF STATE**

Commission to be recorded, fee

Before entering upon the duties of his/her office, a notary public shall leave his/her commission with the oath endorsed thereon 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 the commission for record and make a proper index to all commission so recorded.. For recording and indexing a commission, the fee of the clerk shall be as provided in division (R) of §2303.20 of the Revised Code.

Ohio Revised Code, §147.05
Effective June 6, 2001

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 parentheses after it.

Schedule of Fees for Notaries Public

A notary public is entitled to the following fees:

A. For the protest of a bill of exchange or promissory note - \$1.00 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, 10¢ per each 100 words;

C. For taking and certifying the acknowledgments of deeds, mortgages, liens, powers of attorneys, and other instruments of writing, and for taking and certifying depositions, administering oaths, and other official services, the same fees as are allowed by §2319.27 of the Revised Code or by law to clerks of the courts of common pleas for like services;

D. For taking and certifying an affidavit, \$1.50.

Ohio Revised Code, §147.08
Effective October 12, 1994

Penalty For Acts Done By Notary After Term Expires

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

Ohio Revised Code §147.11

Authentication

When papers are to be used outside of the state, an authentication is usually required. This is merely a declaration by the Clerk of the Common Pleas Court that the notary is properly commissioned under law at the time of notarizing the instrument. The authentication is forwarded with the papers to the foreign jurisdiction.

Penalty for Receiving Excessive 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 official duties as 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 §147.13

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