

**ASHTABULA COUNTY BAR ASSOCIATION**  
**NOTARY PUBLIC HANDBOOK**

**Foreword**

This Handbook for Notaries Public has been prepared by the Ashtabula County Bar Association Notary Public Committee. It is intended as a study guide for notary applicants, and a reference tool for notaries. It is not intended to be an exhaustive treatise on the subject of notaries public.

Every notary public should carefully read and become familiar with Ohio Revised Code Chapter 147 ("R.C. 147"), which contains Ohio's notary statutes. In any situation where a notary is uncertain as to the meaning of a statute, or as to their powers, duties, or responsibilities, notaries are advised to seek legal counsel.

**I. INTRODUCTION**

A "Notary Public" is a public officer whose duty it is to attest to the genuineness of any deeds or writings in order to render them available as evidence of the facts they contain. The official acts of a notary receive credence not only in his or her own state or country, but in other states and countries as well.

Although notaries must understand and carefully observe all legal duties and responsibilities arising from their commission, which are set forth herein, a notary is well served to simply bear in mind the overriding functions and purposes of their office:

1. To verify and certify the identity of the person signing the document to be notarized, and;
2. To certify that the person signed the document in the notary's presence.

**II. QUALIFICATIONS**

Pursuant to R.C. 147.01, a notary public must be:

18 years of age or over, and;

A legal resident of the State of Ohio, or if not a resident, licensed to practice law in the State of Ohio with a principal place of business or primary practice in Ohio.

Additionally, before a notary public may be appointed and commissioned by the Ohio Secretary of State, R.C. 147.02 requires the applicant to present to the Secretary of State a Certificate of Qualifications from a judge or justice of the court of common pleas, court of appeals, or the Supreme Court of Ohio which states that the applicant:

Is of good moral character, and;

Is a resident of the county in which he or she is seeking appointment.

If the applicant is admitted to the practice of law in Ohio, this fact must also be certified by the judge.

### **III. TERM OF OFFICE, OATH**

According to R.C. 147.03, a notary public's term of office in Ohio is for five (5) years, unless the notary is an attorney, in which case his or her commission does not expire. Before a notary's commission actually begins, he or she must take an oath, or be "sworn in", and must also register his or her commission with the clerk of the court of common pleas of the county in which he or she resides. The notary's commission is recorded by the clerk, who collects a small fee for recording and indexing the commission. In Ashtabula County, notaries can register and be sworn in by the Clerk of Courts, any time during normal business hours, with no appointment necessary.

A notary public who violates his or her oath may be removed from office by the Court of Common Pleas, upon complaint filed and substantiated in the Court. The person so removed shall be ineligible for reappointment as a notary.

If a notary legally changes his or her name or address after having been commissioned, the notary must notify the Secretary of State and the appropriate Clerk(s) of Courts within thirty (30) days after the name or address change. Notification to the Secretary of State must be made on a form available from the Secretary of State's website: <http://www.sos.state.oh.us/>.

Upon changing residence to a different county, a notary must register his or her commission with the Clerk of Court in the new county of residence. A notary who resigns his or her commission is required to provide written notice to the Ohio Secretary of State. Again, a form for such notification is available from the Secretary of State's website.

### **III. SEAL AND REGISTER**

Before entering upon the discharge of his or her duties, a notary public must obtain a notary seal. The seal must consist of the coat of arms of the State of Ohio within a circle of one inch in diameter and be surrounded by the words "notary public," "notarial seal," or words to that effect, and the words "State of Ohio". Notary seals are available at most office supply stores, in the form of either a stamp or an embosser. A stamp may contain the seal, the name of the notary, and the date on which the notary's commission expires.

The seal itself may also contain the name of the notary. If not contained in the seal or stamp, the notary's name must be printed or typed legibly near the notary's signature on each document he or she notarizes.

In order to notarize a document, a notary must both apply the seal and sign the document. The notarization must also indicate the date on which the notary's commission expires.

Notaries are required to keep an official register in which to record a copy of each notarial protest undertaken by the notary. Few notaries will ever undertake a notarial protest, a process which is described below in more detail.

#### **IV. POWERS AND JURISDICTION**

Pursuant to R.C. 147.07, a notary public may, throughout the State of Ohio:

Administer oaths or affirmations required or authorized by law;

Take and certify acknowledgements of deeds, mortgages, liens, powers of attorney, and other instruments of writing;

Take and certify depositions;

Receive, make and record notarial protests.

#### **Jurisdiction**

An Ohio notary may notarize documents anywhere within the physical boundaries of the State of Ohio. The document being notarized, its subject matter, or the person signing it, may be from another state or country, as long as the person signing the document personally appears before the notary within the State of Ohio and signs the document in the notary's presence. If the notarized document leaves the State of Ohio, the notarization will have the same legal effect in another state,

and in most other countries, that it has in Ohio.

**Administering Oaths or Affirmations - Affidavits**

Most notaries will only administer an oath or affirmation when notarizing an affidavit. An affidavit is a voluntary, written statement, signed by the person making the statement (the affiant), and sworn to before a notary or some other officer authorized by law to administer oaths. No notary shall notarize a person's affidavit without first administering an oath or affirmation to such person. R.C. 147.14.

Prior to notarizing an affidavit, a notary should ask the affiant whether they are willing to take an oath before God. If the affiant is willing, the notary must have the affiant stand, raise their right hand, and answer affirmatively the following question: "[D]o you solemnly swear that the statements in the affidavit are true, so help you God?"

If the affiant is unwilling to take an oath before God for personal reasons, the affiant must answer affirmatively the following question, commonly referred to as an "affirmation": "[D]o you solemnly affirm that the statements in the affidavit are true under penalty of the law of perjury?"

After the affiant answers affirmatively one of the preceding questions, the notary should complete one of the following suggested forms, which are usually already contained within the affidavit:

STATE OF OHIO

)

COUNTY OF \_\_\_\_\_ ) ss: [meaning, "to wit"]  
 )

The undersigned having been duly sworn says that all statements contained in the foregoing affidavit are true, so help me God.

(Affiant's signature) \_\_\_\_\_  
(Affiant's printed name)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public (signature)  
(Print or Stamp Name)

My commission expires \_\_\_\_\_

**-OR-**

STATE OF OHIO )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The undersigned hereby affirms that the statements made in the foregoing affidavit are true, under penalty of the law of perjury.

(Affiant's signature) \_\_\_\_\_  
(Affiant's printed name)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public (signature)  
(Print or Stamp Name)

My commission expires \_\_\_\_\_

It should be understood that the affiant is the one attesting that the matters contained in the affidavit are true, not the notary public.

A notary public who notarizes an affidavit without first administering the appropriate oath or affirmation shall be removed from office by the Court of Common Pleas. The person so removed shall be ineligible for reappointment for a period of three (3) years, shall be fined not more than \$100.00 or imprisoned not more than thirty (30) days, or both. R.C. 147.99.

### **Acknowledgments**

An acknowledgment is the formal authentication of one's signature on a deed, mortgage, lease, power of attorney, or other formal instrument. The person signing the document is formally declaring the signature to be his or hers, and verifying that the signature was his or her free act and deed. The purpose of an acknowledgment is to lend credence to the authenticity of the instrument and to authorize its introduction in evidence without further proof that it was properly executed.

In taking an acknowledgment, a notary is certifying that the person signing the document personally appeared before the notary and acknowledged executing the document. The document must be executed in the notary's presence, and the notary must verify that the person executing the document is who they say they are.

After ascertaining the identity of the person, and after such person has signed the document, the notary should ask the person the following question: "Do you acknowledge this to be 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.

There are a number of different forms or "certificates" of acknowledgement appearing on various documents which a notary will notarize, but generally the form will contain the words "acknowledged before me", or their substantial equivalent.

A party to an instrument cannot act as a notary in taking an acknowledgment to the instrument. In fact, a notary should avoid notarizing any document in which it could be alleged that the notary has an interest, pecuniary or otherwise.

Notaries should avoid taking an acknowledgement on any document wherein blanks are left to be filled in later. A notary public may take an acknowledgment and also act as a witness to the same instrument. It should go without saying, but a notary cannot notarize his or her own signature.

## **Depositions**

In modern times, most notaries will not participate in the taking and certifying of depositions unless they are also professional court reporters. A deposition is an out-of-court proceeding which involves the taking of sworn testimony from parties or witnesses involved in a lawsuit. Ordinarily, just the parties and/or witnesses involved in the lawsuit are present, along with legal counsel and a court reporter. The court reporter, who by law must be a notary, memorializes and/or records deposition testimony. Before such testimony is taken, the witnesses are “sworn in” by the court reporter.

In taking depositions, a notary public has the power to compel the attendance of witnesses by subpoena (known as a “notary subpoena”) and to punish them (through contempt of court proceedings) for refusing to appear and/or testify. A notary subpoena may also compel witnesses to bring to the deposition documents or other items which may be used as evidence in the lawsuit. This type of subpoena is known as a “subpoena *duces tecum*”.

It should be noted that notaries may only issue subpoenas for the purpose of compelling attendance at a deposition, and for no other purpose. However, a notary subpoena carries the same weight as any other type of subpoena, and sheriffs and police officers are required to serve, return, and enforce notary subpoenas as they would any other type of subpoena. R.C. 147.07.

## **Protests of Negotiable Instruments**

Few notaries will ever find themselves involved with presenting and/or protesting negotiable instruments, but because notaries have the authority to perform such tasks under R.C. 147.07 and 147.09, a brief description of the process is provided herein. Notaries are cautioned that this process can be complicated, and should not be undertaken without a thorough understanding of the law pertaining to such protests and commercial transactions in general.

A negotiable instrument is a transferable document which is an order or promise to pay an amount of money. Checks and promissory notes are common examples of negotiable instruments, although notarial protests are generally not utilized in conjunction with such instruments.

In order for an instrument to be negotiable, it must be signed by the maker or drawer, must contain an unconditional promise or order to pay a specific amount of money, must be payable on demand or at a specified future time and/or place, and must be payable to order or to the bearer of the instrument.

Negotiable instruments are normally negotiated by endorsement and delivery (also called PRESENTMENT) to the payor, which is then obligated to pay on the instrument unless it is “dishonored”. If the instrument is dishonored upon presentment for payment, meaning the party liable on the instrument does not accept it or refuses to pay, the presenting party may initiate a notarial protest. The protest is a means of legally proving that presentment was properly made and the instrument was dishonored.

To initiate the protest, the notary presents the instrument for payment on behalf of the holder or bearer. If the instrument is dishonored, the notary essentially becomes a third-party witness to the fact of dishonor.

A notarial protest is a declaration in writing made by a notary public on behalf of the holder or bearer of a negotiable instrument which has been dishonored. The written declaration itself is also called a “certificate of dishonor”. The certificate should identify the instrument, and set forth the time, place, and manner of presentment. It should also set forth the reason for protest, the purported reason for dishonor, if any is given, or the fact that the party could not be found. The protest should also certify that notice of dishonor has been provided to all necessary parties.

The instrument of protest of a notary public constitutes prima-facie evidence (evident without further proof) of the facts therein certified, although the instrument may be contradicted by other evidence. R.C. 147.09.

A notary public is required to keep an official register in which the notary must record a copy of every certificate of protest along with a copy of the protested instrument. R.C. 147.04.

## **V. FEES**

A notary public is entitled to the following fees:

For the protest of a bill of exchange or promissory note, one (1) dollar and actual necessary expenses in going beyond the corporate limits of a municipal corporation to make presentment or demand;

For recording an instrument required to be recorded by a notary public, ten (10) cents for each one hundred (100) words;

For taking and certifying acknowledgements of deeds, mortgages, liens, powers of attorney, and other instruments of writing, and for taking and certifying

depositions and affidavits, administering oaths, and other official services, the same fees as are allowed by law to judges of county courts for like services.

Some of the more common fees permitted by law are as follows:

- Taking acknowledgments: \$2.00
- Swearing witnesses: \$2.00 each
- Taking & certifying proof of an account: \$2.00
- Swearing affiant, notarizing an affidavit: \$1.50
- Issuing Subpoenas: \$2.00

Pursuant to R.C. 147.13, a notary who charges or receives excessive fees, meaning any fee greater than the fees permitted by law, or who dishonestly or unfaithfully discharges any of his or her duties as notary, shall be removed from office by the Court of Common Pleas, upon complaint filed and substantiated in such court, and the court shall thereupon certify such removal to the Governor. The person so removed shall be ineligible for reappointment as a notary in Ohio.

#### **VI. NOTARY PUBLIC ACTING AFTER COMMISSION EXPIRES**

Pursuant to R.C. 147.10, notaries are forbidden from performing any notarial act knowing that his or her term of office has expired. Any notary who does so shall forfeit up to five hundred dollars (\$500.00), to be recovered in an action in the name of the State of Ohio. See, R.C. 147.99. Such act shall render the notary ineligible for reappointment in the State of Ohio. Despite such penalties, an official act done by a notary after the expiration of his or her term is considered to be valid as if done during his or her term of office.

#### **VII. LIABILITY OF A NOTARY**

A notary public is a public officer whose duties are prescribed by law, and as such, may be personally liable in damages to any person injured by the notary's failure to perform such duties with reasonable skill and diligence. For example, notaries have been held personally liable in instances where the notary failed to exercise reasonable diligence in ascertaining the identity of the person signing a particular document. Notaries can be insured or bonded against liability for notarial acts, but a keen awareness of the duties and responsibilities associated with the office of notary is always the best defense.

#### **VIII. UNAUTHORIZED PRACTICE OF LAW**

A notary commission does not equate to a license to practice law. Unless a notary is also a licensed attorney, he or she may not draft or compose legal language in the preparation of legal documents for others. However, a notary or non-attorney may perform the acts of a secretary or stenographer in transcribing and preparing a document dictated by an attorney.

Ohio courts have held that it is unlawful for a notary 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, releases, affidavits for mechanic's liens, bulk sales affidavits, affidavits of any nature, bills of sale, powers of attorney, or pleadings in court. Likewise, notaries are not permitted to give legal advice of any kind. Any attempt on the part of a notary to do any of these things may result in, among other potential penalties, the revocation of his or her commission.