WEST VIRGINIA

NOTARY HANDBOOK

West Virginia Secretary of State

NOW THAT YOU'RE A NOTARY

Being a notary, you are entrusted with a great responsibility for ensuring that signatures are valid on the documents you will be notarizing, and that the notarial act you perform is done according to the notary laws set forth in the West Virginia Code Chapter 39, Article 4. Failure to provide a proper notary acknowledgement on documents is a violation of the notary code and you may have your notary commission conditioned, suspended, or revoked.

Don't let this happen to you!

Read the notary laws. Always put a full notary acknowledgement on the document you are notarizing. NEVER just affix your notary stamp and sign your name, because that is not a proper acknowledgment. View the sample notary acknowledgements located in this book and use them as your guide when doing a notarial act.

Powers of a Notary

- Take acknowledgments (verify signatures)
- Administer oaths and affirmations
- Certify that a copy of a document is true and accurate

Your Commission

Notary commissions are valid for a five year period. §39-4-20

Most documents for notarization include the phrase, "My commission expires _____." This blank is where you fill in your specific expiration date. If the document does not include a space for the expiration date, write it somewhere near your signature.

Your Official Signature

Always sign your name exactly as it appears on your seal, which should be identical and in the same manner as to what is on file in the Secretary of State's Office. If your name changes, you must notify the Secretary of State within thirty days.

Your Notary Stamp

Your rubber stamp seal must include the following:

- The words *Official Seal*, *Notary Public* and *State of West Virginia*
- Your name
- Your address or the address of your business or affiliation
- Your commission expiration date

The seal must have a border, and be no larger than 1 x 2 ½ inches.

You are responsible for the security of your stamping device and may not allow another individual to use the device to perform a notarial act. If your commission ends due to resignation, revocation or expiration, you must disable the stamp by destroying it so that it is unusable. In the event of a notary's death, the notary's representative, guardian or any other person knowingly in possession of the stamp must render it unusable.

If a stamping device is lost or stolen, please notify the Secretary of State's Office immediately. Proper notification could prevent misuse of the seal.

Qualifications of a Notary

- Be at least 18 years of age
- Be a legal resident of the United States
- Be a resident of or have a place of employment in West Virginia
- Be able to read and write English
- Have a high school diploma or its equivalent
- Not be disqualified to receive a commission under W.Va. State Code§39-4-20(6)

Bond Required

West Virginia notaries public are required to carry a surety (bond or insurance) in case they are held liable for some act of official misconduct. There are several ways in which you, as a notary, can carry a surety. The surety must cover the entire term of your commission, and you cannot perform a notarial act at any time when there is no surety in place (expiration of bond or insurance). §39-4-20(d)

1. **Bond.** A bond is a form of surety specific to an individual and for a specific purpose. It is issued by an insurance company. For more information about a bond, contact your insurance company or any one of several online resources.
2. **Professional Liability insurance policy.** Many notaries work for lawyers, law firms, and other similar employers. Their duties as a notary are usually covered by the employer's professional liability insurance policy. However, be sure to check with the policy provider to ensure coverage.
3. **Errors and Omissions insurance policy.** Commonly known as "malpractice insurance," the policy held by you or your employer may provide coverage for liability for official misconduct in a notarial act. Contact the policy provider to ensure coverage.
4. **Commercial General Liability insurance policy.**
5. **An equivalent policy.** If you have some other type of insurance policy other than the ones listed here, and it covers your actions as a notary, you can provide a certification of the coverage with your application.

Regardless of the type of surety, you must provide certification of your coverage as part of your application to be commissioned as a notary public.

Government Notaries

State and local government employees may be commissioned as government notaries to act for and on behalf of their respective state and local government office. A government notary may not operate privately. Specific information relating to government notaries may be found in West Virginia Code §39-4-31.

Government notaries are required to maintain a surety as described in the previous section. Notaries public for state government agencies are likely to be covered by the agency's insurance policy through the Board of Risk and

Insurance Management. However, check with BRIM to ensure coverage and obtain a certification from them to provide with your application. www.state.wv.us/brim or (304)766-2646.

POWERS OF A NOTARY

For Every Notarial Act:

- The person whose signature is being notarized must be present to acknowledge the signature or attest to the oath. §39-4-6
- An ID must be produced if the person is unknown to you. §39-4-7
- A proper acknowledgment form has to be used (see pages 11-12). §39-4-15& §39-4-16
- You must hand-write your original signature (rather than use a reproduction) and your commission expiration date. §39-4-15
- You need to affix your rubber stamp seal. §39-4-15

Acknowledgments

Most documents brought before a notary are simply for acknowledgment of a signature. The acknowledgment is the notary's statement that the individual signing the document appeared *in person* to sign the document.

If the individual is physically unable to sign, they may direct someone to sign on their behalf, other than the notarial officer. The notarial officer must add "Signature affixed by (name of other individual) at the direction of (name of individual)" to any document signed under these circumstances.

Oaths

A notary can administer an oath unless the law expressly states that it be done by another officer. The individual to whom you are administering the oath must be present.

Certification of Documents

A notary can certify that a photocopy of a document is a true facsimile on these conditions:

- That a written, signed request states that a certified copy of the document cannot be obtained from the office of any recorder or custodian of public documents in the state;
- That making a copy of the document does not violate state or federal law; and
- That the notary keeps a copy of the facsimile on file.

Limitations

Do not notarize papers for members of your immediate family if you could receive money or property interest from the transaction.

Do not notarize papers if the individual does not appear before you. Telephone, Skype, or other electronic means are not permitted as a substitute for the individual appearing in person.

Do not notarize a document in which you or your spouse is a party or in which either of you have a direct beneficial interest, financial or otherwise. §39-4-4

An attorney who has prepared documents for a client should have a third party perform the notarization.

An employee of a company or agency is allowed to notarize documents prepared by an employer if it is part of the regular duties of the job, and no extra compensation is given as a result.

REFUSAL TO NOTARIZE

A notary may refuse to perform a notarial act if the notary believes:

- The individual signing the record is not competent or does not have the capacity to sign the record.
- The individual's signature is not knowingly and voluntarily made. §39-4-8

Abuse, Neglect & Financial Exploitation

Because of their frequent interaction with vulnerable West Virginians, notaries public are uniquely situated to recognize and report potential abuse, neglect and/or financial exploitation.

Financial exploitation is the intentional misappropriation or misuse of funds or assets of an elderly person, protected person or incapacitated adult. Anyone who depends on someone else for any or all of his/her personal needs may be vulnerable. Most often abuse, neglect and/or financial exploitation are/is committed by someone the victim trusts.

Here are some common warning signs:

- Person seems unclear about the documents being presented for notarization
- Person seems to be afraid of the person(s) accompanying them
- Person seems to be pressured/forced into signing documents
- Person is making a lot of changes to the same documents in a short period of time

If you suspect someone is being abused, neglected or financially exploited, report the activity immediately to your local county Department of Health and Human Resources (DHHR). You may also call the Abuse Hotline at 1-800-352-6513. If you suspect someone is in immediate danger, call 911.

FEES

The maximum fee in this state for the notarization of each signature, the certification of a facsimile of a document, and any other notarial act performed is $5.00. Any notary who charges more than the maximum $5.00 fee is guilty of official misconduct. §39-4-30

MISCONDUCT: LIABILITIES AND PENALTIES

It is important to properly perform your duties as a notary and recognize the penalties for misconduct.

To Protect Yourself from Liability, Follow These Guidelines

- Do not notarize the signature of a person who does not appear before you. The entire reason for a notary public system is to ensure that the handwriting on the document is verified by a disinterested party.

- If you don't know the person signing the document, ask for a driver's license or some other form of photo identification. The identification cannot have been expired for more than three years.
- If you are commissioned as a state or local government employee you are only authorized to notarize documents of the office in which you are employed. If you are commissioned to notarize private documents for walk-in clients, it is permissible to notarize documents that are not related to your agency.
- Do not assist persons in drafting legal records, give legal advice or otherwise practice law.
- Do not act as an immigration consultant or an expert on immigration matters.
- Do not use false or misleading advertising that misrepresents your authority as a notary.
- Notify the Secretary of State within 30 days of an address or name change.
- Do not charge more than the $5 maximum fee for each notarized signature.

The Secretary of State may deny, refuse to renew, revoke, suspend or impose a condition on a commission as a notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence or reliability to act as a notary public, including but not limited to:

- A dishonest misstatement or omission in the application for a commission as a notary public submitted to the Secretary of State
- A conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty or deceit
- Denial, refusal to renew, revocation, suspension or conditioning of a notary public commission in another state

Criminal Penalties

A notary public who knowingly and willfully commits any official misconduct (any act that may result in the denial, refusal to renew, revocation, suspension or condition commission of a notary public) is guilty of a misdemeanor and, upon conviction, will be fined not more than $5,000, or confined in jail not more than one year, or both fined and confined. §39-4-33

Any person who acts as, or otherwise willfully impersonates, a notary public is guilty of a misdemeanor and, upon conviction, will be fined not more than $5,000, or confined in jail not more than one year, or both fined and confined. §39-4-33

Any person who unlawfully possesses a notary's official seal or any papers or copies relating to notarial acts, is guilty of a misdemeanor and, upon conviction, will be fined not more than $1,000. §39-4-33

Schools, University and Colleges Who Have Notaries on Staff

Foreign exchange students or students traveling out of the country may need their school transcripts and/or diplomas certified or notarized in order to obtain a certification or an apostille from the Secretary of State's Office.

It is important that the notary properly certifies the documents or notarizes the signature of the proper authority of the school who is attesting to the validity of the documents. Failure to perform the notarization properly may cause a rejection of the documents by the Secretary of State's Office, or a rejection from the other country to which they are being sent, and may affect the student's ability to continue in the foreign exchange program.

KEEPING RECORDS

In West Virginia, notaries are not required to keep a journal of their acts. However, if you are concerned about liability, keeping a notary journal listing the date, person's name and type of document notarized will help protect you. Examples of proper notary journal formats can be found on the Secretary of State's website (www.wvsos.com). Journal forms are available through office supply houses or notary associations.

FORMS

A notarial act must be evidenced by a certificate of notarial act, commonly known as an acknowledgment. §39-4-15

In most cases, the document to be notarized will already have a proper form of acknowledgment typed or printed on it. **If the form is missing, you are responsible for writing the proper form of acknowledgment to complete the notarization.**

Short Form Certificates

The most common form used in notary work is the certificate of acknowledgment. Although the law provides certain wording for the certificate of acknowledgement, the courts have held that "substantial compliance with the statute form is all that is required."

For the acknowledgment to be valid, it must include the words "**acknowledged before me**," or something similar.

The following short form certificate/acknowledgements are sufficient for the purposes indicated if completed with the information required by §39-4-15(a)(b).

For an acknowledgement in an individual capacity:

State of .....
County of .....
This record was acknowledged before me on ..... {date} by .....{Name(s) of individual(s)}
..... {Signature of notarial officer}
{Stamp}
..... {Title of office}
My commission expires: .....

For verification on oath or affirmation:

State of .....
County of .....
Signed and sworn to (or affirmed) before me on ..... {date} by
.....{name(s) of individual(s) making statement}
..... {Signature of notarial officer}
{Stamp}
..... {Title of office}
My commission expires: .....

For an acknowledgment in a representative capacity:

State of ……
County of …….
This record was acknowledged before me on ….{date} by
…….{names of individual(s)} as …….{Type of authority, such as officer or trustee} of …….{name of party on behalf of whom record was executed}.
……. {Signature of notarial officer}
{Stamp}
……. {Title of office}
My commission expires: …….

For certifying a copy of a record:

State of ……
County of …….
I certify that this is a true and correct copy of a record in the possession of ……
{name of party on behalf of whom record was executed}.
……. {Signature of notarial officer}
{Stamp}
……. {Title of office}
My commission expires: …….

For witnessing or attesting to a signature:

State of …….
County of …….
Signed or attested before me on ……{date} by ……. {name(s) of individual(s) making statement}
……. {Signature of notarial officer}
{Stamp}
……. {Title of office}
My commission expires: …….

CHANGES

You must notify the Secretary of State within thirty days if certain changes occur. Failure to do so could result in the suspension, revocation or conditioning of your commission.

Name and/or Address: If your name changes, or the address you listed in your original application (whether business or residence address) changes, take these steps:

- Have a new rubber stamp seal made reflecting your new information
- Send a letter to the Secretary of State giving:
  --your old and new name and address
  --your commission expiration date

Before you have completed a name change officially, you can sign your new name on the line for the notary's signature, then write underneath, "Commissioned as _____", with your old name.

Seal: If you lose your official seal, send a letter to the Secretary of State giving your name, your commission expiration date, your address, and the date you lost your seal. Contact a vendor to order your replacement seal.

Resignation: If you wish to resign your commission, or if you no longer have a business or residence address in the state, the law requires that you notify the Secretary of State in writing within thirty days. §39-4-20(a)(3)

OTHER REQUIREMENTS

If Your Commission Is About To Expire

Renewals are not automatic. Every reappointment requires that a new application be filed with the Secretary of State. There is a $52 application fee and the cost of a new rubber stamp seal (paid to a vendor and not the Secretary of State). A bond is required. Applications are available online at www.wvsos.com/notary or by contacting the Secretary of State's office at 304-558-8000 to have an application mailed to you.

If A Notary Dies

In the event of a notary's death, the notary's representative, guardian or any other person knowingly in possession of the stamp shall render it unusable.

Electronic Notarization

Beginning July 1, 2014, notaries may use an electronic notarization software to notarize electronic documents. All electronic notarization software must meet the rules and standards set forth in W.Va. 153 CSR 45. You can see the standards online at www.wvsos.com or contact the Notary Division at (304)558-8000.

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