



STATE OF WEST VIRGINIA
COUNTY OF Montana

The foregoing instrument was acknowledged before me this
Feb 27, 2009 by John Smith

My commission expires May 5, 2018
Jane Doe
Notary Public



West Virginia Notary Handbook

Natalie E. Tennant • Secretary of State



*. . . a message from
Natalie E. Tennant
Secretary of State*

Dear Fellow West Virginian:

Thank you for choosing to serve the people of West Virginia as a notary public. When you received your notary commission, you were entrusted with a great responsibility. It will be up to you to ensure the validity of signatures on many kinds of documents.

This guide will help you understand what the duties of a notary public are and what is required by our law. It will also tell you what to avoid. In making sure you know exactly what is required of you, this guide will help you prevent any inconvenience or consumer loss that may result from improper actions. As a notary public you may be held responsible for financial liability in the event of a consumer loss due to impropriety.

If you have any questions, please feel free to call my office at (304) 558-6000 or visit us online at www.wvsos.com. We will be happy to assist you. Together we can continue to offer outstanding service to the people of West Virginia.

Sincerely,

Natalie E. Tennant

*Natalie E. Tennant
Secretary of State*

NOW THAT YOU'RE A NOTARY

What is a Notary Act?

A proper notary act requires more than a signature and stamp. These are the basic requirements:

1. The person whose signature you are notarizing must **appear before you** to acknowledge the signature or give the oath.
2. If you do not know the person, you must **require ID**.
3. Every notarial act requires a **proper acknowledgment form** -- see pages 5 through 9 for these forms.
4. Every notarial act requires **your original signature**.
5. Every notarial act requires **your rubber stamp seal and your commission expiration date**.

Your Commission

Your notary certificate gives the date on which you were commissioned by the Governor of West Virginia. If you have met all the requirements of the law which was in effect at the time you were commissioned, you may act as a notary under that commission for a period of exactly ten years.

Most papers you notarize will have a line which says "My commission expires _____." The last day of your ten-year term should be filled in. For example, if you were commissioned on March 1, 2002, your commission will expire on March 1, 2012. If the document does not include a place for your commission expiration date, be sure to include it somewhere near your signature.

Your Official Signature

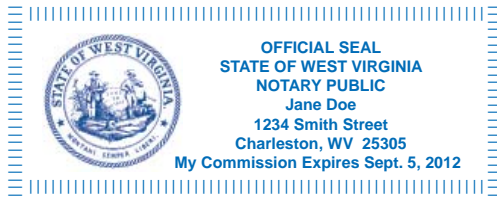
When you act as a notary, always sign your name exactly as you did on your application, and exactly as it appears on your seal.

If you change your name, you must give notice to the Secretary of State within thirty days. (See "Changes," p. 11)

Your Notary Seal

1. The law requires that you use your rubber stamp seal on every notarial certificate, and the stamp must be readable.

2. Your rubber stamp seal must give your official name, your business or residence address, and include the words “Official Seal,” “Notary Public,” “State of West Virginia” and “My commission expires (your date).” The seal must be a rectangle, no larger than one by two and one half inches, with a serrated or milled edge border.



3. An embossing seal engraved with your name and the words “Notary Seal,” and “State of West Virginia” may be used in conjunction with the rubber stamp seal on the notarial certificate, however, it may not be used without the rubber stamp seal. If you use the embossing seal, you must carefully apply it so the indentations don’t make the printing or writing on the document illegible.

POWERS -- WHAT YOU CAN DO AS A NOTARY

The West Virginia Code specifically empowers notaries to:

- Take acknowledgments (verify signatures)
- Administer oaths and affirmations
- Certify that a copy of a document is a true copy of another document
- Perform any other act permitted by law

Almost all duties fall within the first three categories.

Acknowledgments: When a person brings a document to a notary, it is generally to have the signature on the document “acknowledged.” The acknowledgment is the notary’s statement that the person signing the document appeared in person and either signed the document in the notary’s presence or attested to the fact that the signature was his or hers.

Oaths: Whenever an oath may be lawfully administered, a notary may administer it unless the law expressly provides that it be done by another officer. A certain form should be used for oaths (see page 8).

Certification of documents: When a notary is asked to certify that a photocopy of a document is a true facsimile, the notary may make the certification if these conditions are met:

1. The notary receives a signed written request stating that:
 - a. a certified copy of the document can't be obtained from the office of any recorder or custodian of public documents in this state; and
 - b. making a copy of the document doesn't violate any state or federal law;
2. The notary keeps a copy of the facsimile on file. A special form of certification should be used (see page 8).

LIMITATIONS -- WHAT TO AVOID

As long as you perform your notarial acts according to law, you aren't liable for problems which arise relating to the papers you notarize. It's very important to remember these prohibitions:

Don't notarize any document if you have a "disqualifying interest" in the transaction.

According to §29C-3-102 of the West Virginia Code, a notary has a disqualifying interest in a transaction if he or she:

1. May receive directly, and as a result of the notarization, "any advantage, right, title, interest, cash or property, exceeding in value the sum of any fee properly received . . ." [the \$2/signature fee - see page 5]; or
2. Is named, individually, as a party to the transaction.

Generally, be careful about notarizing papers for members of your immediate family if you could conceivably receive money or property interest from the transaction.

If you are an attorney and have prepared the documents for your client, the West Virginia State Bar advises that you have a third party perform the notarization.

According to law, an employee is specifically allowed to notarize documents prepared by his or her employer as long as this is part of the regular duties of the job and no extra compensation is given as a result.

Don't notarize the signature of a person who has not appeared before you.

The whole point of having a notary public system is to insure that the signature on a notarized document has been validated by a disinterested party - that the signature is truly the writing of the person named.

To act properly, and to protect yourself from liability, follow these guidelines:

1. You don't need to ask for identification if you know the person signing the document, otherwise ask for a driver's license or some other identification.
2. If the form is an acknowledgment, it's enough for the person to attest that signature is his or hers, without having actually signed in your presence.
3. If the form is similar to that used for an oath, that is, "Subscribed and sworn before me . . . ," the person must actually sign in your presence.

Don't notarize a blank, unsigned document on the promise that a certain person is going to sign it later.

Don't engage in the practice of law.

If you prepare legal instruments such as wills, deeds, contracts, mortgages, releases, deeds of trust, sales agreements and the like, you are practicing law. Under West Virginia Code [§30-2-5] a person found guilty of practicing law without having a license will be guilty of a misdemeanor.

If you were commissioned in your capacity as a state or local government employee (with the application fee waived), you may act only as authorized by the government office or offices in which you are employed.

If the office authorizes you to notarize private documents for walk-in clients, it is permissible, but you may not charge a fee. You should not perform notarial services outside the office except those specifically pertaining to office business.

FEES

The law clearly specifies the maximum fees a notary may charge, and states that a notary who charges more than the maximum fee is guilty of official misconduct. The maximum fees are:

For each signature notarized	\$2.00
For certification of a facsimile of a document, proper recordation of the certification, and retention of the document in the notary's file; per page kept on file	\$2.00
For any other notarial act	\$2.00

FORMS

In most cases, the document you will be asked to notarize will already have the proper form of acknowledgment typed or printed for you to fill in the blanks. **If the form is missing, you have the responsibility of writing out the proper form of acknowledgment to complete the notarization.**

Acknowledgments

The most common form you will use as a notary is the certificate of acknowledgment. Although the law does give certain wording for the certificate of acknowledgment, the courts have held that “substantial compliance with the statute form is all that is required.”

To make the acknowledgment valid, it must include the words “**acknowledged before me.**” The acceptable forms are listed on the next four pages.

1. Statutory short form for an individual acting in his or her own right (from W.Va. Code §39-1A-6):

STATE OF WEST VIRGINIA
COUNTY OF _____

The foregoing instrument was acknowledged before me this
_____ (date) _____ by _____ (name of person acknowledged) _____.

My commission expires _____

Notary Public

2. Alternate form for one or more individuals acting in his or her own right:

STATE OF WEST VIRGINIA
COUNTY OF _____

I, (name of notary) a notary public in and for said state, do hereby certify that (name of person signing document) , whose name is signed to the writing above, has this day acknowledged the same before me.

Given under my hand this _____ day of _____ , _____

My commission expires _____

Notary Public

3. Statutory short form for a corporation:

STATE OF WEST VIRGINIA
COUNTY OF _____

The foregoing instrument was acknowledged before me this (date) by (name and title of person signing document) of (name of corporation) , a (state or place of incorporation) corporation, on behalf of the corporation.

My commission expires _____

Notary Public

4. Alternate form for a corporation:

STATE OF WEST VIRGINIA
COUNTY OF _____

I, (name of notary) , a notary public in and for said state, do hereby certify that (name of officer signing document) , who signed to the writing above, bearing the date of (date) , for (name of corporation) has this day acknowledged before me the said writing to be the act and deed of said corporation.

Given under my hand this _____ day of _____ , _____

My commission expires _____

Notary Public

5. Statutory short form for a partnership:

STATE OF WEST VIRGINIA
COUNTY OF _____

The foregoing instrument was acknowledged before me this
____ (date) by ____ (name of partner or agent signing document)
partner (or agent) on behalf of ____ (name of partnership) _____,
a partnership.

My commission expires _____

Notary Public

6. Form for an individual who cannot write his or her name:

STATE OF WEST VIRGINIA
COUNTY OF _____

On this _____ day of _____, in the year _____, before
me _____ (notary's name) _____, a notary public in and for
said state, personally appeared ____ (name of individual) _____,
known to me to be the person who, being unable to write his
name, made his mark in my presence. I signed his name at his
request and in his presence on the ____ (type of document) _____
within and he acknowledged to me and to the two witnesses who
have signed and printed their names and addresses hereto, that
he made his mark on the same for the purposes therein stated.

My commission expires _____

Notary Public

(Signatures of two witnesses
and their addresses)

Oaths

Oaths can be administered either in writing or verbally. The form used by the notary depends on how the oath is administered.

a. If the oath is administered in writing, the person must sign the oath in the presence of the notary, and the notary shall use this form under the text of the oath:

Subscribed and sworn before me this ____ day of _____, ____ .

My commission expires _____

Notary Public

b. If the oath is administered verbally, the notary public addresses the person taking the oath with substantially these words:

“Do you solemnly swear or affirm, under the penalty of perjury, that the testimony you shall give in the matter in issue, pending between _____ and _____ shall be the truth, the whole truth, and nothing but the truth, so help you God?”

Certified facsimiles of a document

If the conditions for certifying a facsimile of a document are met (see page 2-3), the notary may certify it using this form:

STATE OF WEST VIRGINIA
COUNTY OF _____

I, _____ (name of notary) _____, a notary public in and for said state (or county), do certify that on _____ (date) _____, I carefully compared the attached facsimile of _____ (type of document) _____ and the facsimile I now hold in my possession. They are complete, full, true and exact facsimiles of the document they purport to reproduce.

My commission expires _____

Notary Public

Executing witness

Occasionally a person is unable to appear before a notary to acknowledge his or her signature. In this case, another person witnesses the first person sign the document, then appears before the notary as an executing witness to complete the notarization needed. An executing witness may not be related by blood or marriage or have a disqualifying interest in the transaction (see page 3). Use the following form:

<p>STATE OF WEST VIRGINIA COUNTY OF _____</p> <p>I, _____ (name of executing witness) _____, do solemnly swear under the penalty of perjury, that _____ (name of person originally signing the document), personally known to me, has executed the _____ (type of document) _____ within my presence, and has acknowledged to me that he (or she) executed the same for the purposes therein stated and requested that I sign my name on the within document as an executing witness.</p> <p>_____ (Signature of executing witness) _____</p> <p>Subscribed and sworn before me this _____ day of _____, _____</p> <p>My commission expires _____</p> <p>_____</p> <p>Notary Public</p>

Attorney-in-fact

When one person has been given a power of attorney to act in behalf of another person, the notary uses a special form for any acknowledgments made by the attorney-in-fact (the person having the power of attorney) on behalf of the principal (the person for whom the action is taken). The form is:

<p>STATE OF WEST VIRGINIA COUNTY OF _____</p> <p>The foregoing instrument was acknowledged before me this _____ (date) by _____ (name of attorney-in-fact) _____ as attorney-in-fact on behalf of _____ (name of principal) _____.</p> <p>My commission expires _____</p> <p>_____</p> <p>Notary Public</p>

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, name and type of document notarized will help protect you. Journal forms are available through office supply houses or notary associations.

MISCONDUCT: LIABILITIES AND PENALTIES

In this guide, we've tried to stress the importance of proper performance of your duties as a notary. It's very important that you recognize the penalties for misconduct.

What is 'misconduct'? West Virginia Code [§29C-6-201] defines official misconduct as "the wrongful exercise of a power or the wrongful performance of a duty." It goes on to say, "the term 'wrongful' . . . means unauthorized, unlawful, abusive, negligent, reckless or injurious."

Serious consequences can result from misconduct:

- You can become liable for all damages directly or indirectly caused by your official misconduct.
- You can be convicted of a misdemeanor.
- Your commission can be revoked.

If documents are sent to the Secretary of State which you have improperly notarized, you will receive a warning letter. Multiple warnings may be grounds for revoking your commission.

Liability

Notaries are not required to have a bond. However, unless they buy liability insurance relating to their notary work, they can be held personally liable for the damages if they are found guilty of misconduct.

An employer of a notary public can also be held liable for the notary's official misconduct if: (a) the notary was acting within the scope of his or her employment at the time he or she engaged in the official misconduct; and (b) the employer consented to the notary's official misconduct.

Criminal Penalties

West Virginia Code [§29C-6-202] states:

"(a) A notary public who knowingly and willfully commits any official misconduct is guilty of a misdemeanor, and, upon conviction, shall be fined not more than five thousand dollars or imprisoned in the county jail not more than one year or both fined and imprisoned."

"(b) A notary public who recklessly or negligently commits any official misconduct is guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand dollars."

Revocation of Commission

West Virginia Code [§29C-7-101] states:

“The Governor or Secretary of State may revoke the commission of a notary public who during the current term of appointment:

(a) Submits an application for commission and appointment as a notary public which contains substantial and material misstatement or omission of fact;

(b) Is convicted of any felony or official misconduct under this chapter;

(c) Fails to exercise the powers or perform the duties of a notary public in accordance with this chapter;

(d) Is adjudged liable in any suit grounded in fraud, misrepresentation, impersonation or violation of the state regulatory laws of this State, if his liability is not solely by virtue of his agency or employment relationship with another who engaged in the act for which the suit was brought;

(e) Represents or implies from unauthorized use of his title of notary public that he has qualifications, powers, duties, rights or privileges that by law he does not possess;

(f) Allows or permits his name or his title of notary public to be used deceptively, fraudulently or in false or misleading advertising;

(g) Engages in the unauthorized practice of law;

(h) Ceases to be a citizen of the United States or a national of a country which permits American citizens to become notaries public therein;

(i) Ceases to be a qualified elector of a state;

(j) Ceases to have a business or residence address in this State; or

(k) Becomes incapable of reading and writing the English language.

A notary’s commission may be revoked under the provisions of this chapter only if action is taken subject to the rights of a notary public to notice, hearing, adjudication and appeal.”

CHANGES

You **must** notify the Secretary of State within thirty days if certain changes occur. The fees required are set by statute.

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 with your new information;

* send a letter to the Secretary of State giving:

--your old and new name and address

--your commission expiration date

--an imprint of your new rubber stamp seal

--\$2 fee for each change, \$4 if both are changed

If your name changes, until you completed the change officially, you may 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. The fee for recording the loss of a seal is two dollars.

When you get a replacement seal, send an imprint of that seal to the Secretary of State. This will be filed with your original application for your protection.

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 you to:

1. Send by certified mail or deliver to the Secretary of State a letter of resignation and all papers and copies relating to your notarial acts; and
2. Destroy your official seal.

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. All new commissions are statewide. The costs include a \$52 fee and the cost of a new rubber stamp seal. A bond is no longer required. Applications should be available at your county clerk's office and public libraries in your county, or online at www.wvsos.com/notary.

If a member of your family who is a notary dies . . .

The law requires the notary's heirs or personal representative to send by certified mail or by delivery to the Secretary of State the notary's papers and any copies relating to the notary's acts. This should be done as soon as reasonably possible after the notary's death.

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QUESTIONS?

Call: (304) 558-6000
TOLL-FREE: 1-866-SOS-VOTE
or Write: Business and Licensing Division
State Capitol
Bldg. 1, Suite 157-K
1900 Kanawha Blvd., E.
Charleston, WV 25305-0770
Web site: www.wvsos.com
E-mail: notary@wvsos.com

WILL YOUR NOTARIZATION BE CORRECT?

- ✓ **Is the document filled out or completed?**
Never notarize a blank document.
- ✓ **Is the person signing the document in your presence?**
To give an oath, person must sign while you watch. For other documents, the person must acknowledge the signature in person --never on the phone.
- ✓ **Will the person show ID if you are not acquainted?** *Never notarize the signature of someone you don't know without requiring ID.*
- ✓ **Is the person able to understand the purpose of the document?** *If you are doubtful of the person's mental competence to understand the transaction, do not notarize.*
- ✓ **Have you entered the correct acknowledgment form?**
(see pp. 5-9) A notarization without the form is improper.
- ✓ **Did you sign and date the notarization?**
- ✓ **Did you put an impression of your rubber stamp seal near your signature?** *The seal is required on every document!*