

A GUIDEBOOK FOR NOTARIES PUBLIC
Furnished by
LOGAN COUNTY COMMON PLEAS COURT
Bellefontaine, Ohio

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A GUIDEBOOK FOR NOTARIES PUBLIC

A "Notary Public" is a public officer of the State of Ohio. His office is created and regulated by the laws of Ohio, which are commonly known as the Ohio Revised Code. The Ohio Constitution provides that no person may be appointed to public office in Ohio unless he is a citizen, over 18 years of age, and qualified to vote at every election in the County in which he resides. "Qualified" to vote means "Registered" to vote in those counties requiring such registration.

APPOINTMENT AS A NOTARY PUBLIC

"The Governor may appoint and commission as notaries public as many persons as he deems necessary, who are citizens of this state and are of the age of eighteen or over. A notary public shall be appointed and commissioned as a notary public for the state. *** The Governor may revoke a commission issued to a notary public upon presentation of satisfactory evidence of official misconduct or incapacity."

Ohio Revised Code, Sec. 147.01

CERTIFICATE OF QUALIFICATIONS

"Before the appointment of a notary public is made, the applicant shall produce to the Governor a certificate from a judge of the Court of Common Pleas, Court of Appeals, or Supreme Court, that he is of good moral character, a citizen of the county in which he resides. *** No Judge shall issue such certificate until he is satisfied from his 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, Sec. 147.02

COMMENT

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 the 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 approval.

TERM OF OFFICE:

“Each notary public, except a citizen of this state admitted to the practice of law by the Ohio Supreme Court, shall hold his office for the term of five years unless the commission is revoked. Before entering upon the duties of his office, he shall take and subscribe an oath to be indorsed on his 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 he resides, 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 to the office of notary public.”

“Each citizen of this state holding office as a notary public on the effective date of this section shall continue in such office until the expiration of his term and he shall thereafter hold office pursuant to the provisions of this section.”

Ohio Revised Code, Sec. 147.03

COMMENT

As a public officer, the Notary Public is liable, personally, to any person who suffers damage because of his negligence, malice or corruption. This may result in a suit for damages being filed in court by the injured party and possible judgment against the notary.

POWERS OF NOTARIES: JURISDICTION

“A Notary Public shall have power throughout the state for which he is appointed only:

1. To administer oaths required or authorized by law.
2. To take and certify to acknowledgements of deeds, mortgages, liens, powers of attorney and other instruments of writing.
3. To take and certify depositions.
4. To receive, make and record notarial protests.”

COMMENT

1. What is an Oath?

An oath is: (1) a statement by a person before an officer authorized by law to take oaths (such as a notary) that what he has said or is about to say is true (as when a witness takes the stand in a courtroom); or (2) a promise that he will faithfully perform certain acts (as when public officers are "sworn in"). To be a proper oath, the statement must be substantiated by an appeal to God to witness the truthfulness 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?"
"I do."

Affirmation Instead of Oath

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 statement before an authorized officer promising, under the penalties of perjury, to state the truth or perform certain acts, but not accompanied by an appeal to God. Perjury consists of knowingly making a false statement under oath, and is punishable by imprisonment.

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

The Most Frequent Instance of Requiring an oath or Affirmation is an 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 presence.

SAMPLE AFFIDAVIT

State of Ohio
County of

AFFIDAVIT

Before me, a Notary Public, in and for said county, personally appeared John Doe who being by me duly sworn (or affirmed) deposes and says that he is a soldier in the Army of the United States, stationed at Fort Bragg, North Carolina, and further affiant saith not.

(Signed)John Doe.....

Sworn to before me and signed in my presence this 22nd day of September, 20....

(Signed)Mary Smith.....

My commission expires
Date.....
(SEAL)

Mary Smith, Notary Public
State of Ohio

Must the Notary Administer the Oath or Affirmation?

“No Notary Public shall certify to the affidavit of a person without administering the oath or affirmation to such 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 was had. The Court shall thereupon certify such removal to the Governor. The person so removed shall be ineligible to reappointment for a period of three years.”

Ohio Revised Code, sec. 147.14

COMMENT

FOR FAILURE TO ADMINISTER THE OATH OR AFFIRMATION, SECTION 147.99 (B) PRESCRIBES A FINE OF \$100.00 OR IMPRISONMENT FOR 30 DAYS OR BOTH. THEREFORE, EVERY NOTARY MUST ADMINISTER THE OATH OR AFFIRMATION BEFORE HE SIGNS AND SEALS THE DOCUMENT.”

2. What is an Acknowledgment?

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 by (1) bringing the unsigned instrument to the notary and signing it in his presence, or (2) he may sign the instrument before bringing it to the notary; in either case, he must acknowledge to the notary that the signature on the instrument is his and that he signed it voluntarily without duress. The notary then certifies, on the same sheet of paper, that the instrument has been acknowledged in his presence.

Example:

State of Ohio
County of

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 22nd day of June, 20...

My commission expires	(Signed)Mary Smith....
Date.....	Mary Smith, Notary Public
(SEAL)	State of Ohio

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

Nor can a notary certify that John Doe "appeared before him" 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 a notary public who has satisfied himself 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 liable, personally, 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 intent to defraud, falsely impersonates another before a Notary Public, is guilty of a felony.

There is a 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 bringing the person who signed the document into court, as a witness, and asking him on the stand whether or not he executed the instrument. However, papers that have been acknowledged before a Notary Public need not be proven in such manner. The notary's certification is considered sufficient to show the authenticity of the signature. This responsibility, then, is no small, unimportant matter.

Some Important Facts About Acknowledgments

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

A notary cannot notarize an instrument when he is out of the physical boundaries of the state for which he is commissioned. He may not witness the signature and take the acknowledgment in a state for which he is not commissioned, and then make the certification in his own state. All three acts must take place within the limits of his jurisdiction.

A notary may act as a witness to and notarize the same instrument. He may take the acknowledgment of a relative, even a wife or husband. However, if he has any personal interest in the transaction, he may neither witness nor take the acknowledgement on the document.

A notary may take the acknowledgment of a person who cannot sign his name. Such 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	His
Richard Roe (Signed)	John X Doe
May Smith (Signed)	Mark

An acknowledgment must show the official capacity of the person taking it. The words Notary Public and the State for which he is commissioned, the expiration date of his commission, and the impression of his notary seal must accompany his signature.

A notary should remember that he acknowledges the "signature" merely and need not concern himself 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 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. The notary should require the party presenting the instrument to see that this has been done before the instrument is acknowledged.

3. What are Deeds, Mortgages and Powers of Attorney?

Deeds, mortgages and powers of attorney are types of instruments creating legal rights and duties between parties. They are exceedingly important to the individuals concerned, and if incorrectly prepared or executed, can cause serious hardship to these individuals.

Because of the technical rules of law which apply to these instruments, a notary should never prepare them or give advice as to their contents or the method of execution. The notary may take the acknowledgment of the grantor in a deed, the mortgagor in a mortgage, or the grantor in a power of attorney. For his own protection, a notary should politely but firmly decline to give any other advice or service regarding these instruments. To do otherwise might subject the notary not only to revocation of his commission, but even to a fine or imprisonment.

Example:

(after the last provision of the deed...)

In witness whereof, the grantor has hereunto set his hand this Day of
....., 20...

(Signed)William Seller....

In the presence of
John Doe (signed)
Richard Roe (Signed)
State of Ohio
County of

Be it remembered, that on the 10th day of November, 20...., before me, a Notary Public, in and for said state, 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)May Smith.....

May Smith

Notary Public, State of Ohio

My Commission expires, Date

(SEAL)

8) What are 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:

- 8) the witness does not reside in, or is absent from the county where the trial is held,
- 8) the witness is dead or imprisoned at the time of the trial, or is unable to attend by reason of age or infirmity.

Because the taking of depositions usually requires the service of a notary who is also a highly skilled specialist on shorthand stenography, the average notary public does not have occasion to perform this service. It is extremely technical, and is nearly always done under the immediate supervision of the attorney for one of the parties to a lawsuit.

When the occasion arises, the Notary Public may consult the statutes of Ohio with regard to depositions, and should submit any questions in his mind to counsel requesting the depositions, before exercising his powers in this regard.

Protest of Negotiable Instruments

A notarial protest is a solemn declaration under the hand and seal of a Notary Public stating the he, 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 Indorsers. 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 Indorsers liable on the instrument. It is received in Court as prima facie evidence of the facts stated therein.

It is impossible in this small guidebook to cover the law dealing with the protests of negotiable instruments. The law describes what constitutes proper presentment, protest, and notice of dishonor.

Duties of the Notary Public after his commission is received from the Governor Commission to be recorded:

“Before entering upon the duties of his office, a notary public shall leave his commission with the oath indorsed thereon with the Clerk of the Court of Common Pleas of the county in which he resides. The commission shall be recorded by the Clerk 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 he received it for record, and make a proper index to all commissions recorded by him. For recording and indexing such commission, the fee of the clerk shall be as provided for in division (S) of section 2302.20 of the Revised Code.”

Ohio Revised Code, Sec. 147.05

Seal and Register of Notaries

“Before entering upon the discharge of his duties, a notary public shall provide himself with the seal of a notary public. The seal shall consist of the coat of arms of the state within a circle one inch in diameter and shall be surrounded by the words “notary public,” “notarial seal,” or words to the effect, the name of the notary public and the words “State of Ohio”. The seal may be of either a type that will stamp ink onto a document or one that will emboss it. The name of the notary may, instead of appearing on the seal, be printed, typewritten, or stamped in legible, printed letters near his signature on each document signed by him. A notary public shall also provide himself with an official register in which shall be recorded a copy of every certificate of protest and copy of note, which seal and record shall be exempt from execution. Upon the death, expiration of term without reappointment, or removal from office of any notary public, his official register shall be deposited in the office of the County Recorder of the county in which he resided.”

Ohio Revised Code, Sec 147.04

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, using the word nee.

Example:

New name, nee (Old name)

**SCHEDULE OF FEES
for
NOTARIES PUBLIC**

Taking and certifying the acknowledgment of deeds, mortgages, liens, powers of attorney, and other instruments in writing.....\$.80

Ohio Revised Code, Sec. 147.08

Taking and certifying proof of an account or claim against the estate of a deceased person.....\$.50

Ohio Revised Code, Sec 1907.29.1

Taking depositions and certifying to same.....per 100 words.....\$.25
(Depositions may be retained until these fees are paid, but only if permission is given to do so by the person entitled to them.)

Ohio Revised Code, Sec 1907.29.1

For each subpoena.....\$.10

Swearing witnesses, each \$.10

Ohio Revised Code, Sec. 1907.29.1

For the protest of a bill of exchange or promissory note and actual necessary expenses in going beyond the corporate limits of a municipal corporation to make presentment or demand..... \$1.00

Ohio Revised Code, Sec. 147.08

For other official services, a notary may charge the same fees allowed by law to judges of the county courts for like services. See Ohio revised Code, Sec. 1907.29.1.

THESE ARE MAXIMUM FEES. A NOTARY MAY CHARGE LESS, OR HE MAY CHARGE NO FEE.

PENALTY FOR RECEIVING EXCESS OF FEES

“A notary public who charges or receives for an act or service done or rendered by him a fee greater than the amount prescribed by law, or who dishonestly or unfaithfully discharges any of his duties as notary public, shall be removed from his office by the Court of Common Pleas of the county in which he resides, 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 to the office of notary public.”

Ohio Revised Code, sec. 147.13

PENALTY FOR ACTS DONE BY NOTARY AFTER TERM EXPIRES

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

Ohio Revised Code, Sec. 147.11

AUTHENTICATION

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