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FOREWORD

Dear Notary,

Thank you for your interest in our Texas Notary Public Manual. Your proper adherence to notary law and sound practices will ensure your success and help you avoid liability and lawsuits from notarial errors or omissions. Learning to recognize unlawful requests and avoid conflicts adds professionalism to your practice and ensures compliance and security. Notaries all over the country are facing penalties and charges for incorrect and unlawful procedures. In fact, according to the Idaho Secretary of State’s office, “[o]ne of the fastest-growing areas of litigation in the country is action against notaries for losses caused by improper notarial acts.”

This manual is intended to provide a clear and concise understanding of Texas notary law. Many notaries fail to follow proper notarial procedures; they may notarize a signature on a document when they did not witness the signing of the document, for instance, or fail to require proper identification of signers. Improper notarizations are often performed at the request or insistence of an employer, because the notary never bothered to learn proper skills or simply because the notary failed to realize the importance of such procedures. It is vital that you adhere to proper principles to avoid costly lawsuits that may result in the loss of your notary commission, potentially severe financial penalties, and, on occasion, criminal charges and even prison.

The American Association of Notaries offers a very modestly priced Online Training Course available at www.becomeanotarypublic.com If you have not yet completed this course, it is highly recommended that you do so immediately. There is a direct correlation between education and reduction of liability, and it is in every notary’s best interests to obtain all the information available regarding proper notarization principles.

This book is a guide and is in no way intended to serve as a substitute for legal advice. The American Association of Notaries is not a law office, and its employees are not acting as your attorney. The American Association of Notaries does not practice law and does not give legal advice. Because the law differs from jurisdiction to jurisdiction, and may be interpreted or applied differently depending on your location or situation, the information on this manual is not a substitute for the advice of legal counsel.

Furthermore, the notary information contained in this manual is provided only for informational and educational purposes. The American Association of Notaries
of Notaries attempts to provide quality information, but makes no claims, promises, or guarantees about the accuracy, completeness, or adequacy of the information contained in this manual. Readers should not act upon this information without consulting with an attorney.

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Visit our website, www.texasnotary.com, for all your bonding, errors and omissions insurance, online notary training, and notary supply needs. The American Association of Notaries is the Texas notary’s premier source for information, education, and notarial supplies and materials. Sign up for membership in our Association today, and benefit from our expertise and our quality products. We make it our business to serve you.

Thank you.
WHY IS A NOTARY SO IMPORTANT?

NOTARY PUBLIC DEFINED

A notary represents the ultimate in security and confidence. When it is imperative to establish identity and an assurance of truthfulness, a notary is called into the transaction. The notary proves identity as completely as possible, and places the signers under oath or takes acknowledgments to enable the confidence required for a secure and successful execution.

According to the Texas Secretary of State’s office,

“The primary duty of a Notary Public is to show a disinterested party (the Notary Public) has admonished the signer of an instrument as to the importance of such document, and the signer of such document has declared that his/her identity, his/her signature and his/her reasons for signing such instrument are genuine. The signature and seal of a Notary Public do not prove these facts conclusively, but do provide prima facie proof of them, and allow persons in trade and commerce to rely upon the truth and veracity of the Notary Public as a third party who has no personal interest in the transaction.”

The office of notary public is a ministerial office. An Ohio lawsuit in 1933 (Ex Parte Bevan, 126 Ohio St. 126 (1933)) clearly established that notaries are ministerial officers of the state, and not judicial. Black’s Law dictionary defines ministerial as ‘of or relating to an act that involves obedience to instruction or laws instead of discretion, judgment or skill.’ Such acts do not involve judicial discretion or significant legal judgment over acts performed. County and court clerks are also ministerial officers. So while the notary public is technically a state officer, this position is not an executive, judicial, or legislative one. It is, however, one of great importance and should be taken very seriously by notaries and by the public they serve.

A notary is an officer of the state, appointed by the Secretary of State as a public servant to help prevent fraud. A notary is expected to know and follow proper procedures and protocol to ensure the execution of a document is appropriately handled; that signers are actually the people they present themselves to be (to the best of the notary’s ability to determine); that the intent of the document is understood by the signers; and the document being executed is complete and unaltered. The sensible judgment of the notary is absolutely essential to the integrity of the notarial act.
A notary’s primary duty is to authenticate the signature of the signer and to prevent fraud. A notary’s signature and seal on a document does not legalize, validate, or make a document true. However, the notarization of signatures on a document gives the receiving party confidence necessary to proceed, and enables trust between the parties, who often do not know one another. The notary provides an unattached, uninvolved, ‘third party’ on whom participants in a transaction can rely.

THE NOTARY IN SOCIETY

Without the notary, fraud would be much more prevalent than it is now; business transactions would have much more opportunity for misuse. The notary performs vital services in proving identity and willingness to sign, and serves as an official witness to a transaction, increasing reliability on the authenticity of signers and of intentions stated. When a notary places a signer under oath, the signer is legally bound to tell the truth. When a signer states, or acknowledges, an intention to pay, in the presence of a notary, that is a binding statement. The notary is required to document pertinent facts regarding the notarial act in a journal. Often the notarial act serves to bind the signer legally when otherwise, without a notarization, a signer could simply state that he’d never signed the document being challenged.

With more and more business transpiring between complete strangers, a notary has a definite place in our fast paced society. In the past, perhaps a handshake would suffice when a business deal was arranged. In today’s culture of skepticism, terrorism, and rampant fraud, the notary is more necessary than ever before to ensure the security of a transaction as much as possible.

Much of the world’s commerce requires the notary’s presence, which integrates the much-needed element of trust so important in good business practices. Notaries should be proud to serve the public in such a vital role, and should be appreciated and rewarded for diligence and proper adherence to law in that service.

As long as people continue to do business, people will continue to want the valuable services and security a notary provides.

ORIGIN AND HISTORY OF THE OFFICE

Notaries have been used in business dealings since the Roman Empire and have served the public for thousands of years. The office has always been one of respect and utmost integrity, and notaries are considered and should always be impartial and above reproach.

The following is reprinted with permission as written by English solicitor and notarial authority Tom Halliwell, an Associate Lecturer with the British Open University who has researched the history of the notary from its beginnings through the development of the office in England. Tom founded Border Courses,
WHY IS A NOTARY SO IMPORTANT?/Chapter 1

The Notary: A Short History

The Notary Public, or just ‘Notary’ is not a familiar term in the English Legal System, and yet with the spread of International Commerce, and increasing foreign home ownership, the Notary is a person with whom more and more people are coming into contact. Just who or what are Notaries?

Well the story goes back a very long way. They originated as scribes - Latin ‘SCRIBAE’ - literate clerks who took notes or minutes of important events and decisions and made copies both of Public and Private documents. We have to remember that widespread literacy is only a relatively recent phenomenon. The role can be traced back certainly to pre-Biblical times for example the ancient Egyptians and Greeks certainly employed notaries - though there is no record of what they were called, and over time the importance and value of official record keeping became more and more important and societies formalised their rules and decisions.

In Ancient Rome, well before the time of Julius Caesar, these scribes set out their stalls in the Roman market place, and they were called TABELLIONES, probably from the TABULAE or tables or plates covered with wax which they used instead of paper.

A distinction grew up between those who attended to monetary transactions - called ARGENTARII, and those who recorded and dealt with all other contracts who were called TABELLIONES. There they conducted business for the important Romans who needed written records for any particular purpose.

Over time this practice developed into that of a learned profession. By reason of the Notary’s technical knowledge they started to play an increasing part in both public and private affairs. Some became permanent officials attached to the Roman Senate and the Courts of Law - their duties being to record the relevant proceedings judgments and decrees. More generally the work of the ancient Roman Notary was concerned with the formal recording of private law matters, such as deeds, wills, transfers of property. They usually had slaves to do the laborious copying work. Legal secretaries have a view that little has changed!

In the last century of the Republic, probably in the time of Cicero, a new system of shorthand writing was invented. This Roman Shorthand was called NOTAE TIRONINAE. This took its name from Cicero’s secretary M Tullius Tiro, by whom it is said to have been invented, for the purpose of taking down his Master’s speeches. Cicero was well known for his extended oratory.

What was this shorthand? Well, those of you have studied shorthand will not be surprised to learn that it was a system of arbitrary marks or signs called NOTAE. Previously abbreviations of words had been used, much as an unskilled notetaker still does today. So you find for example APP for Appius; Coss for consules, or in writing one letter, usually the initial letter for the whole word eg PC for ‘partes conscripti’ or SC for ‘senatus consultum’. It will not surprise you to learn that a person who
adopted this new method was called a NOTARIUS, so we can date the origin of the
term to around 100 A.D. Although originally applied to the shorthand writer over
time the term NOTARIUS became reserved exclusively to the Registrars attached to
the Courts of Provincial Governors, to the secretaries of emperors, and to the highest
class of officials in the Roman Privy Council and the Imperial Chancery.

NOTARII was also the term given to shorthand writers who in the early days of
the Christian Church reported the examinations and trials of the early Christian
martyrs and confessors. They were employed to take down in writing the whole
judicial process of the Roman judges against the martyrs, and to write out the
circumstances of their examination and passion. The early notary recorded the
questions put to the Martyrs and the answers they gave, indeed everything that
passed during their trials and suffering. I leave it to your imagination as to what
these entailed. These reports were called the Acts of the Martyrs and were the
original records preserved by the fledgling Christian Church. By this means accounts
of the martyrdom of St Andrew, St Polycarp, and others were preserved, and the
earliest collection of the lives of the SAINTS was derived from the same source. The
first institution of these NOTARII at Rome was under the Emperor Fabian. Notaries
were also employed to take down the discourse of eloquent preachers. By this means
many of St Chrystostom’s sermons were preserved.

To jump slightly ahead of our story you can already see that Notaries were
intimately bound up with Ecclesiastical matters from the earliest of times. You will
not be surprised to learn that the authority to practice as a Notary today in this
Country is issued by the Faculty Office of the Archbishop of Canterbury.

What happened next?

Back to the Roman market. The records produced by these early notaries were
divided into two sorts. Public instruments called INSTRUMENTA PUBLICAE
CONFECTA which commanded a degree of authenticity and purely private
documents which did not. This distinction survives to the present day and I shall
look at it when we come to talk about the work of the modern Notary.

You all know that the Roman Empire collapsed. But this did not quite extinguish
the office of Notary. Obviously the invaders from the north who demolished the Old
Roman Empire introduced their own laws and customs, but they frequently found it
convenient to retain the customs and laws and institutions of Ancient Rome. If you
have read Machievelli’s The Prince you will know that he recommended this practice
when taking over Princedoms. In the days of the EEC perhaps we should be more
tolerant of local legal differences? But I digress.

So emerged the Teutonic Court, assisted by the Bishop of the Diocese to take the
place of the Roman Governor in the administration of Justice. Courts were held in
principal cities of Europe and were known as The Assize Court, and we find attached
to those early courts (and of course we are here still speaking here of continental
Europe, GB was pretty barbarous at this time) we find reference to ‘NOTARIES OF
THE COUNT’. ‘Count’ here being the local ruler in this era of princedoms.
WHY IS A NOTARY SO IMPORTANT?

By the beginning of the 9th century - the Carolingen period - legal matters were in a sorry state, complaints of injustice were frequently made and the Emperor Charlemagne, in order to remedy the situation, appointed itinerant justices or royal commissioners - called MISSA REGII - to hold the Assizes four times a year. In AD 803 these commissioners were directed by the Emperor to appoint notaries to accompany them on their circuits and to see that ‘all bishops, abbots and counts were provided with notaries.’ The notaries were known as Royal Notaries - and to this day the newly appointed Notary must swear allegiance to the Queen.

Moving on to the 12th Century A.D. the Emperors of Germany - as successors to Augustus - laid claims to the privileges of the Roman Emperors and thenceforward Notaries were called Imperial and Palatine Notaries. It was towards the end of this period that the Popes in Rome, who had previously always appointed notaries within their own territories decided - or more probably just assumed the right - to appoint Notaries outside their territories. Thus the concept of the Notary as a Papal appointee emerged. There was no territorial limitation on the Notary’s jurisdiction. William Durand in his SPECULUM of approximately 1271 states:

‘A notary public appointed by the Emperor or the Pope or by someone to whom they have granted this special privilege, may perform his office and draw up instruments anywhere, - EVEN IN FRANCE OR ENGLAND OR SPAIN’. (Clearly the writer regarded these northern European places as uncivilized and completely beyond the pale).

Thus here we have the beginnings of the present day Notary: A publicly appointed official, whose Acts and Records are acknowledged internationally.

The main requirement of a Notary is that the Acts and Records have to have a high degree of authenticity. There must be no doubt over the document, or the person executing it, and once attested by a Notary it is recognized internationally and given the force of a Court judgment.

A codification of the Latin laws was drawn up in Bologna which placed great emphasis on the legal and technical qualifications of the notary and drew up formularies to facilitate the production of notarial acts in correct form of law. It is to these mediaeval jurists that the status and accepted acts of the modern notary are attributed.

The other emphasis on notarial acts was the importance of the Deed. In Roman law countries only Court judgments carried any special force, but, as notaries ceased to be dependent on Judicial authorities more and more force was given to their ‘Authentic Acts’ as they are called. It was Louis XIV of France who abolished the last vestiges of the ancient dependence on judicial authority and granted to each notary a seal with the Royal Arms. The modern Notary must still employ his seal, but that is now for him to design personally and to guard carefully.

England of course did its own thing. England had ‘customary law’ rather than Roman law, and the function of notary was not embedded in the local law. The Romanizing effect of the Christian missions in the early Middle Ages brought literacy to the Clerical classes, but, writing was primarily for adding solemnity rather
than to produce an unquestionable written record. Even when documentary evidence was required for the conveyance of land, it was never a requirement in Britain (unlike the Continent) that a notary be used.

By the end of the 13th century Chenet reports that ‘every villain could have a seal from which forgery proliferated’. However, undaunted up to A.D. 1279 Notaries arrived sporadically from the Continent. The significance of this date is that it is the year in which the Pope authorized the Archbishop of Canterbury to appoint notaries. This practice continued until the Ecclesiastical Licences Act of 1533. Otherwise known as PETERS PENCE AND DISPENSATIONS which, as a result of the Reformation, transferred legal authority concerning the affairs of the Protestant Church in England from Rome to Canterbury. Which is where it remains to this day. From 1533 to 1801 members of the English notariat were appointed without foreign intervention or even Parliamentary intervention. They remain a distinct and separate legal profession, as by and large they still do today. But Parliament loves to legislate (what else is it for?) So in 1801 it passed the Public Notaries Act of 1801 - and the first Statutory regulation of the Notarial profession. The Act confirmed that it was the Master of Faculties of the Court of The Archbishop of Canterbury who should appoint and control notaries, whilst in the City of London exclusive right was given to the Scrivener’s Company to administer the profession within the City.

There was little further intervention by Parliament until the Courts and Legal Services Act of 1990 indirectly introduced more stringent qualifications and abolished the distinction between District and General Notaries.

There are thus two kinds of notary practicing in England today - Scrivener Notaries to be found in London (generally with particular language skills and knowledge of foreign laws) and general Notaries in the remainder of the Country who assist members of the public with their transactions involving the law of other jurisdictions.


THE NOTARY IN THE NEW WORLD

As this country became established, notaries obviously became necessary. In 1639 Connecticut (then called New Haven) appointed the first notary public, and other settlements quickly followed with New Amsterdam (New York), Massachusetts, and Virginia appointing notaries. In the beginning, newly formed legislatures appointed the first notaries. As government developed, other representatives were charged with this responsibility. Through the years, states developed laws and requirements for notaries that have grown to an extensive and thorough definition of duties, jurisdiction, and responsibilities.

THE NOTARY IN TEXAS

In the founding years of Texas, judges performed any necessary notarial services until 1837 when the Republic of Texas was struggling for statehood. On February
28, 1845, the Congress of the United States extended an offer to the independent Republic of Texas to join the Union as the 28th state. The “Annexation of Texas” was accomplished on December 29 of that year, and on February 19, 1846, the flag of the Republic was lowered for the last time leading to the establishment of the United States as a power that stretched from the Atlantic to the Pacific. Annexation was an event of incalculable importance to world history. Texas became a recognized state in the United States. The Texas Constitution of 1845 authorized ‘a convenient number of notaries, not to exceed 6 for each county.’ That year, Texas notaries were appointed for the first time, with the original Section 26 charging the governor with appointing notaries. A Constitutional Amendment in 1940 established that the Secretary of State was responsible for the appointment of notaries. Notary law has evolved from its beginnings to a comprehensive collection of statutes designed to protect the public and the notary.

In 1984 a change was made to Texas notary law when it was determined to be unconstitutional for the State of Texas to require an applicant to have U.S. Citizenship in order to obtain a Texas notary commission. A Mexican national living in Texas was denied a Texas notary commission in 1978 because he had not established citizenship. He sued, stating discrimination based on alienage, and the case went to the U.S. Supreme Court, where he won his case. (Bernal vs Fainter, 467 U.S. 216 (1984). A similar case (Yii vs then-Governor Rhodes; 577 F. Supp. 1128) had been won in Ohio the previous year.

The American Association of Notaries applauds the notary’s role in society from the beginning and promotes the notary’s increasing importance as we find ourselves in the electronic environment of the 21st century. Laws are being revised on a national level to further the notary’s involvement in the new world on interstate and international commerce. As Texas statutes change, AAN will keep notaries informed of new laws that affect them.

NOTARIES ACROSS THE COUNTRY

Here are some interesting statistics on notary law and procedures around the U.S.:

- A 2002 statistics shows there are approximately 4.5 million notaries in the United States. That is 12% of the population, or 2% of the work force, with Texas ranking 2nd after Florida with 352,000 notaries.

- In most states notaries’ duties and responsibilities are quite similar. Most are authorized to administer oaths, take acknowledgments, and certify copies of non-recordable documents. Some states don’t allow notaries to certify copies, as in Alaska and Illinois.

- Three states – Florida, South Carolina, and Maine – and one parish in Louisiana extend the authority of notaries to allow them to perform marriage ceremonies.
In most states the minimum age requirement to become a notary is 18 years. Alaska and Nebraska have an age requirement of 19 years.

Fifteen states require a notary to take a test or certify the completion of an approved course prior to applying to become a notary.

Some states have residency requirements before applying to become a notary public that range from a minimum of 1 to 30 days. Most states, including Texas, have no minimum residency requirement.

Some states require the notary to get an endorsement from his state representative, a judge, a county commissioner, three county citizens, and/or two character witnesses before applying for commission.

Some states, including Colorado, Illinois, and Missouri, require notaries to be able to write and read English.

Allowable fees that notaries can charge for taking acknowledgments, administering oaths, or certifying copies of non-recordable documents also vary from state to state. Some states like Alaska and Louisiana have no fee schedule in their notary requirements. Other states’ fees range from 50 cents in Alabama to $10 in California, Florida, and South Dakota.

Term of office for notaries public range from 2 years in Delaware to 10 years in South Carolina, and for life in Louisiana.

Only 35 states require a notary to post a bond as a prerequisite to a notary commission. Bond requirements range from $500 in Wyoming and Wisconsin to $15,000 in California.

For new or renewal notary applicants state fees range from $10 in New Mexico to $80 in Rhode Island. Most states grant notaries statewide jurisdiction and authority. However, in some states (such as Alabama) notaries can apply in the county where they reside or they can apply for a state ‘at large’ notary commission.

Some states allow the use of either an embossed or inked stamp. A few states like Florida and California allow the use of inked stamp only. New Jersey has no seal requirements; a notary signature is enough to authenticate the notarial act.

From state to state, different branches of the government commission notaries. Alaskan notaries are commissioned by the Lieutenant Governor of the state. In Florida, the Governor issues the commission. In Texas, the Secretary of State has the authority to appoint notaries. In Alabama, probate judges commission notaries.

As you can see, each state has different laws and authority regarding notary procedure and protocol. If you are to become a new notary in Texas, it is important to study this manual and become familiar with duties and responsibilities required of you by the State of Texas.
UNDERSTANDING THE OFFICE OF NOTARY PUBLIC

SECRETARY OF STATE

Tex. Gov’t. Code §406.001; §406.012

The Secretary of State’s office is solely responsible for appointing Texas notaries and maintaining records and bonds on Texas notaries. This office is also responsible for enforcing laws relating to notaries public. The Secretary of State handles the commissioning process and all records, including complaints against notaries.

To contact the Texas Secretary of State’s Office:

   Office of the Secretary of State
   Notary Public Unit
   P. O. Box 13375
   Austin, TX  78711-3375
   (512) 463-5705
   Website: www.sos.state.tx.us

   It is very important to communicate any name or address changes with the Secretary of State’s office immediately.

AUTHORIZED DUTIES

Tex. Gov’t. Code §406.016

A Texas Notary is authorized to:

• Take acknowledgments;
• Administer oaths and affirmations;
• Take depositions;
• Certify copies of documents not recordable in the public records; and
• Protest instruments.

Notarization is a generic term used by notaries and the general public. A prudent notary will always ask the customer whether the notary act requires taking an acknowledgment or administering an oath. A document that does not contain an acknowledgment or an oath certificate cannot be notarized without
first determining the type of notarial act required and attaching an appropriate notarial certificate based on the signer’s response.

**UNAUTHORIZED DUTIES**

Tex. Admin. Code §87.43

A notary is strictly prohibited from giving advice, helping to prepare legal documents, or any other assistance that could be considered ‘practicing law without a license,’ or ‘the unauthorized practice of law.’ There are so many forbidden acts for notaries that one could easily make a mistake and face penalties. Study this section very carefully to avoid serious liability that could include charges, fines, and even imprisonment. Below is a list of the most common illegal acts notaries mistakenly perform.

**PROHIBITED ACTS**

- A notary may not act as an attorney if not licensed to practice law.
- A notary may not give advice or help in preparing documents.
- A notary may not advertise as an immigration consultant or specialist.
- A notary may not unlawfully advertise services.
- A notary may not translate “notary public” into Spanish (notario or notario publico).
- A notary public may not notarize the notary’s own signature.
- A notary public may not issue an identification card.
- A notary may not perform a notarial act without making an impression of the notary seal on the notarial certificate.
- A notary may not perform a notarial act unless the signer is present.
- A notary may not make a certified copy of a publicly recorded or recordable document.
- A notary may not sign a notarial certificate in any name other than the name used on the notary’s commission.
- A notary may not perform a notarial act unless the notary
  - personally knows the signer or
  - obtains satisfactory evidence of identity.
- A notary may not make a false statement on the application for a notary commission or commission renewal.
- A notary may not perform a notarial act unless the notary also completes a notarial certificate attesting to pertinent details of the notary act.
- A notary may not make a false statement on a notarial certificate. This could result in felony charges against the notary.
- A notary may not complete a jurat on a document without administering an oath or affirmation to the signer of the document. The document must be
signed in the presence of the notary at the time the notarial act takes place.

• A notary may not fail to complete an acknowledgment certificate at the time
  the notary’s signature and seal is placed on it.

• The notary may not charge fees above the fees set forth in Texas notary law
  for each act.

• A notary may not distribute confidential information. This is a criminal
  violation.

• A notary must not refuse to provide public access to public information.

• A notary may not destroy, remove, or alter entries in a notarial record book.
  This is a criminal violation.

• A notary must never certify citizenship documents.

• Do not notarize for yourself, your spouse, significant other, or family
  member.

• Do not discuss client business with others.

• Do not notarize for a signer who appears confused, intoxicated, or mentally
  incapable of understanding the transaction taking place.

• Do not notarize a signature of a non-English-speaking signer on a
  document written in English unless the document is first translated into a
  language the signer does understand. The notary must not provide both
  translating and notary services for the same transaction.

• Do not notarize a signature on a document written in another language
  unless you are able to understand the nature of the document and the
  terms of the certificate.

• Do not notarize a signature when you feel the signer is being coerced into
  signing.

• Do not notarize a signature on a document that is dated after the date of
  notarization.

• Do not alter a notarial certificate after the notarial act occurs.

**APPOINTMENT REQUIREMENTS**

Tex. Admin. Code §87.4

To be appointed as a Texas notary public, you are required to:

• Submit the required application forms to the Secretary of State;

• Obtain a bond in the amount of $10,000 from a bonding or insurance
  company authorized to do business in Texas;

• Pay the state fees ($21);

• Be at least 18 years old, a permanent resident of the U.S. and the State of
  Texas. (U.S. citizenship is not required);

• Must not have been convicted of a felony or a crime involving moral
  turpitude (wrongdoing); and
• Execute the statement of officer as required by Section 1, Article XVI, Texas Constitution.

At their discretion, the Secretary of State’s office may require any other information deemed necessary for determining whether you are eligible for a notary commission.

The American Association of Notaries will handle your commission application process from start to finish, and when your commission is issued, will create your notary stamp and provide you with a catalog of notary supplies for your convenience. AAN will also handle your renewal when due. Mail your renewal forms well ahead of the expiration date of your commission to ensure timely and convenient continuity of your commission.

To obtain an application for a Texas notary public commission, please contact:

The American Association of Notaries (AAN)
PO Box 630601
Houston, Texas 77263
Telephone 1-713-644-2299 or 1-800-721-2663
Or visit www.texasnotary.com

**APPOINTMENT REJECTION**  
Tex. Admin. Code §87.4; §87.43

An application for appointment will be rejected if the applicant is not 18 years of age and a resident of the United States and Texas. A notary public commission will be revoked if it is later determined that the applicant was not at least 18 years of age at the time of appointment or is no longer a resident of the United States and Texas. According to Texas notary law, the Secretary of State shall not commission an applicant if he or she has had a prior application rejected or a commission revoked for a finding of ineligibility or good cause.

**SECRETARY OF STATE FEES**  
Tex. Gov’t. Code §406.007

The Secretary of State requires a fee of $21 to process an application for a notary commission. The $21 fee is divided as follows: $10 for filing and approving the bond; $1 for hiring an investigator and distribution of material that law requires the Secretary of State to distribute; and $10 for the notary public commission.

**BOND REQUIREMENTS**  
Tex. Gov’t. Code §406.010

A notary bond of $10,000 is required to be commissioned as a Texas notary public. The bond must be issued with a solvent surety company authorized to do business in Texas. The bond must be approved by the Secretary of State, payable
to the governor, and conditioned on the faithful performance of the duties of the
office. The bond must be deposited in the office of the Secretary of State and is
not void on first recovery. It can be used from time to time until the whole
amount of the bond is recovered. The bond only protects the public; the notary
is liable for paying the surety company for all damages paid to the injured party
by the surety company. Fees for this bond are payable to the bond company
who issues it. Suits against notary bonds are governed by a two-year statute of
limitation. (Gulf Coast Inv. v. Lawyers Sur. Corp.).

State employees in Texas are now exempt from the notary bond requirement.
State employee bonds will be issued by their risk management office, and these
notaries cannot use their stamps outside their state employment office. If the
notary wishes to perform notarial acts outside the state office of employment, the
notary will need to apply for a separate notary commission for that purpose. For
more information, contact the Secretary of State at 1-512-463-5705. Upon
resignation, the state must be notified and at that time, the notary must purchase
an independent bond for the remainder of the notary term.

Tex. Admin. Codes §87.22(b), (c); §87.25(a), (b) states that the state-employed
applicant must complete the notary application entitled: “Application for
Appointment as a Notary Public Without Bond.” The State Agency that employs
the applicant will submit the completed application to the State Office of Risk
Management for verification by that Office. The State Office of Risk Management
will complete the verification certificate on the application, and forward the
completed application to the Office of the Secretary of State for processing.

If a state-employed notary transfers to another state agency, the notary’s new
agency must notify the State Office of Risk Management and the Office of the
Secretary of State of the transfer.

If a notary public terminates state employment, the notary must:

(A) Voluntarily surrender the notary public commission;

(B) Purchase a notary public bond for the time-period remaining on the
notary’s current term of office; or

(C) Apply for a new term of office and provide a notary public bond.

**NOTARY COMMISSION**

Tex. Gov’t. Code §406.008

The Secretary of State will issue a commission immediately after a notary is
qualified, along with material outlining the powers and duties of the office, a list
of prohibited acts, and a sample form of acknowledgment, jurat, and oath.
Chapter 2 / UNDERSTANDING THE OFFICE OF NOTARY PUBLIC

OATH OF OFFICE
Tex. Gov’t. Code §406.010(c),(d)

Once a notary receives his commission, he is forbidden to perform any authorized duties before taking the oath of office required by Article XVI, § 1, Tex. Constitution. The oath form will be supplied to the notary with the commission and must be signed in front of a notary public or another person authorized to administer an oath. The notary cannot execute his or her own Oath of Office.

SEAL REQUIREMENTS
Tex. Gov’t. Code §406.013

No notarial act is complete and legal without affixing the notary seal. The notary seal is required on all notarizations, and must be applied at the time the notarization takes place. This seal authenticates the notarial act. Texas notaries may use either (or both) a metal embossing seal or a rubber stamp or pre-inked seal. The seal impression may be either circular or rectangular, and must include the following:

- The notary’s name exactly as commissioned;
- The notary’s commission expiration date;
- The words “Notary Public, State of Texas” around a five pointed star;
- The notary seal must have a serrated or milled edge border and may conform to either one of the following shapes:
  1) A rectangular form of not more than 1 inch in width and 2 1/2 inches in length; or
  2) A circular form of not more than 2 inches in diameter.

The notary seal must be stamped on the document so that it clearly imprints the required components of the notary seal and is legible when copied. Permanent ink must be used when using a rubber stamp type notary seal; black ink is strongly recommended. When using an embossing seal, you must be sure to darken the raised letters of the impression so that it is legible on a photocopy. To order an impression inker, contact our office at 1-800-721-2663.

Notaries should always keep record books and notary seals securely locked in a drawer or other safe place where there is no danger of fraudulent use by anyone other than the notary. Never share your notary seal or record book; this is strictly for use by the notary to whom the seal is issued. If you leave your employer, take your seal and record book with you.
SIGNATURE/NAME REQUIREMENTS

Tex. Gov’t. Code §406.016 (b)

A notary may not sign a notarial certificate in any name other than the name used on the notary’s commission. If you use a nickname or prefer to use initials rather than your full name, you must be sure to apply for your notary commission in that nickname in order to be able to use it legally when you sign your name in performance of your notarial duties.

TERM OF OFFICE


Texas notaries are commissioned for a term of four years. It is unlawful to use a notary seal after the term of commission has expired without first renewing the notary commission and obtaining a new seal.

JURISDICTION

Tex. Gov’t. Code §406.003

Texas notaries have statewide jurisdiction. They have absolutely no jurisdiction outside the state of Texas.

In Garza v. Serrato, 699 S.W.2d 275 (Tex.App.-San Antonio 1985), the record showed that a Doctor’s videotaped deposition was taken before a certified shorthand reporter and notary public in and for the State of Texas, in a medical office in Coahuila, Mexico, just a few blocks from the Mexican border. The court ruled that the notary is not authorized to administer an oath, or take an affidavit outside the state of Texas for use in Texas courts.

NOTARY PUBLIC EX-OFFICIO

Texas Constitution Article 5, Section 19

The Texas Constitution Article 5, Section 19, gives authority to justices of the peace to perform the same duties as those of a notary public. Justices of the peace are called notaries public ex-officio.

COMMISSIONER OF DEEDS

Tex. Gov’t. Code §406.051-$406.055

A commissioner of deeds is an officer appointed by the governor to perform similar duties as a Texas notary in other states or foreign countries or in the District of Columbia. The term of the commissioner of deeds is two years.
COMMISSIONED MEMBERS OF THE ARMED FORCES

Tex. Gov’t. Code §602.005; Tex. Civ. Prac. & Rem. Code 121.01(d)

Commissioned members of the armed forces have the same authority as a Texas notary to take acknowledgments and administer oaths. Due to the nature of their work, often in foreign lands, and their occasional inability to produce for instance a notarial seal when necessary, laws governing our military are somewhat different to allow for such challenges.

APPOSTILES AND CERTIFICATES OF AUTHORITY

On most occasions when a signature on a document is notarized in Texas for use in another state or country, a form will be required from the Texas Secretary of State’s office certifying that the notary was a duly commissioned notary on the date the notary act took place. This form will accompany the notarized document. The Secretary of State’s office is very familiar with which countries require which forms. Most use the Apostille. This form significantly simplified the process used prior to its inception to authenticate documents going into foreign countries. The person requesting this Certificate of Authority, or Apostille, must make a written request to the Secretary of State. For more information, call (512) 463-5705.
MAINTAINING YOUR COMMISSION

REAPPOINTMENT
Tex. Gov’t. Code §406.011

The renewal process is the same as a new application. A new application must be completed, the Statement of Officer must be made, and a new bond must be issued for the next four years. You must also obtain a new notary stamp with a new expiration date, but you must be certain not to use the new stamp until your old commission expires. Destroy the old seal at that time so no one can use it fraudulently. You may choose to obtain your new commission in a new name, or simply renew under the same name in which you were originally commissioned, if that is your choice.

You don’t want to miss your renewal date on your commission; letting your commission lapse could create problems and delays that may put your office in a bind. Remember, not earlier than 90 days prior to the expiration date of the notary’s term, a notary public may apply for a renewal of notary commission. Remember, the Secretary of State will not send you a renewal notice for your commission; it is your responsibility to know when it is time to renew.

To renew your notary commission, please contact:

The American Association of Notaries (AAN)
PO Box 630601
Houston, Texas 77263
Telephone 1-713-644-2299 or 1-800-721-2663
or visit www.texasnotary.com

ADDRESS CHANGE
Tex. Gov’t. Code §406.019

If your address changes, you must notify the Secretary of State’s office within 10 days of the change. This is mandatory. Contact them at:

Office of the Secretary of State
Notary Public Unit
P. O. Box 13375
Austin, TX  78711-3375

It is recommended that you contact your bonding agency immediately upon
making a change of address or any contact information in order to ensure prompt receipt of any mailings, including your renewal information.

**NAME CHANGE**

Tex. Admin. Code §87.44

You must sign documents you notarize in your commissioned name. You are not required to change your commission if your name legally changes, but if you choose to sign in your new name, you must first contact your bonding agent for a name change rider. There is a $20 fee for filing the name change form. You may also contact the Secretary of State’s office directly at 512-463-5705.

If you choose to change your name, it is important to note that you must not perform any notarial act from the time you submit your name change application until the new certificate is issued with your new name.

**RESIGNATION**

Tex. Gov’t. Code §406.020

If you move out of the state of Texas, or if you simply choose to terminate your notary commission, you must formally resign your commission by writing to the Secretary of State’s office advising them of the resignation. Return the notary commission certificate at the same time you submit your signed letter of resignation to:

- **Office of the Secretary of State**
  - Notary Public Unit
  - P. O. Box 13375
  - Austin, TX 78711-3375

You must also surrender your notary public record book and any public papers in your possession to the county clerk’s office of the county in which you reside. To avoid possible misuse of your notary seal, be sure to destroy it completely to prevent fraudulent notarizations by other users. Be sure to contact your bonding agent’s office to let them know, as well.

**NOTARY FEES AND RECORD KEEPING**

Tex. Gov’t. Code §406.024

Notary fees are very clearly defined in Texas law. Notaries are required to record details of each notarization including every fee charged in a notary record book. Please refer to Chapter 5 for details on record keeping and Chapter 6 for fee requirements.
SUSPENSION OR REVOCATION OF LICENSE


A notary public who removes his residency from the state of Texas will automatically be removed from office. Also, a notary can be removed from office if proved to have committed or is charged with malfeasance or willful neglect of duty. The law gives authority to the Secretary of State for a good cause to remove, revoke, or suspend a notary public commission. Good Cause as defined by Tex. Admin. Code §87.43 includes, but is not limited to:

1. A final conviction for a crime involving moral turpitude;
2. Any false statement knowingly made in an application for appointment or reappointment as a notary public;
3. A final conviction for the violation of any law concerning the regulation of the conduct of notaries public in this state or any other state;
4. Use of the phrase “notario” or “notario publico” to advertise the services of a notary public or any other false representation as an attorney as specified in the Texas Government Code, §406.017;
5. A failure to fully and faithfully discharge any of the duties or responsibilities required of a notary public;
6. The unauthorized practice of law;
7. A failure by the notary public to utilize a correct notary seal as described in the Notary Public Act, §406.013;
8. A failure to administer an oath or affirmation as required by law;
9. The collection of a fee in excess of those authorized by the Texas Government Code, §406.024;
10. The execution of any certificate as a notary public containing a statement known to the notary public to be false;
11. A failure to complete the acknowledgment at the time the notary public’s signature and seal are affixed to the document;
12. The advertising in any manner whatsoever that the notary public is an immigration specialist, immigration consultant, or any other title or description reflecting an expertise in immigration matters;
13. The use of false or misleading advertising of either an oral or written nature, whereby the notary public has represented or indicated that he or she has duties, rights, powers, or privileges that are not possessed by law;
14. Taking an acknowledgment when the person whose signature is acknowledged did not personally appear before the notary at the time of taking the acknowledgment;
15. Previous disciplinary action against the notary public in accordance with these sections; and
(16) A failure to comply with, or violation of, a previous disciplinary action taken pursuant to §87.48 of this title (relating to Other Disciplinary Action).

A crime involving moral turpitude means the commission of a crime *mala in se* (an offense that is evil or wrong from its own nature or by natural law irrespective of statute) which may include, but not be limited to:

(1) Class A and B type misdemeanors; and

(2) Felony convictions which have not been set aside, or for which no pardon or certificate of restoration of citizenship rights have been granted.

**SURRENDER OF RECORDS**

Tex. Gov’t. Code §406.020; §406.022

If you decide to resign, move out of state, or simply not renew your commission, you must turn in your record book to the county clerk’s office of the county in which you reside. Make sure to obtain a receipt. It is very important for the notary to place a note in the record book detailing an address for the county clerk’s office and where this book is to be delivered in case of death.
THE NOTARY’S LIABILITY

TOTAL LIABILITY

Tex. Civ. Prac. & Rem. Code §121.014

According to Texas law, ‘...a person injured by the failure, refusal, or neglect of an officer to comply with a provision of this chapter has a cause of action against the officer to recover damages resulting from the failure, refusal, or neglect of the officer.’

In other words, notaries may be and frequently are sued for a wrongful act. Many notaries are unaware that they have total liability for incorrect or inappropriate notarial acts.

If a notary makes an error that costs a client something of value, that client could sue, even if the notary had no idea of the wrongdoing. Ignorance of the law is not considered an excuse.

Obviously, if a notary performs a fraudulent and deliberate criminal act, that notary should be prosecuted. But notaries are most often sued because of simple errors, lack of instruction and education, and persuasion or intimidation by employers, friends, or family.

CIVIL LIABILITY

Notaries may be found guilty of negligence if they fail to perform their notarial duties according to laws and guidelines. Lawsuits may result, and severe financial and civil penalties may result against the notary and the notary’s bond. If a notary is sued within the two-year statute of limitation and the notary’s bond pays the claim, the notary is then expected to repay the bond company for the amount paid. Follow notary law and the procedures and recommendations in this book, and avoid liability.

CRIMINAL LIABILITY

Notaries charged with intentional misconduct may find themselves facing criminal charges, penalties, or even prison if convicted. Failure to require personal appearance of a signer; backdating documents; taking an acknowledgment over the phone and then completing a notarial certificate; falsifying documents; and any fraudulent acts are examples of intentional misconduct and will be severely punished.
Texas Penal Code §37.11 states that it is a felony to impersonate a public servant or to act as a public servant in order to induce another to rely on official acts by that person as a public servant. Based on this law, using an expired notary commission and seal or posing as a notary and using a false seal would be a felony. Also, it is a criminal violation to make a false statement on a notarial certificate. Therefore, if the notary states that the signer personally appeared before the notary when in fact he did not, or if the notary states that the signer stated ‘under oath’ or ‘acknowledged before me’ when in fact the notary did not verbally place the signer under oath or verbally take the signer’s acknowledgment but simply completed a notarial certificate, that is a criminal violation.

It is a criminal violation to distribute confidential information; never share information on any client or any notarial act. It is a criminal offense to destroy, remove, or alter public information, such as information in your record book. It is a criminal offense to refuse access or to certify copies of entries from the notary’s record book.

**HOW TO AVOID LIABILITY**

Liability can be easily reduced by following a few simple rules. You must take every precaution to avoid lawsuits and errors that can place you in serious liability. Please review the following guidelines and never allow a signer, employer, friend, or family member to influence you to practice unlawfully.

As listed in Chapter 3, the following are directly addressed in Texas Law:

- **A NOTARY MAY NOT ACT AS AN ATTORNEY IF NOT LICENSED TO PRACTICE LAW, ADVERTISE AS AN IMMIGRATION CONSULTANT OR SPECIALIST OR TRANSLATE “NOTARY PUBLIC” INTO SPANISH.**

A notary public not licensed to practice law in this state may not give legal advice or accept fees for legal advice. This includes giving ANY advice regarding the transaction; preparing forms; explaining forms and their meanings; advising a signer on what type of notarial act is required (oath or acknowledgment) or in any advertisement, stating or implying authority the notary does not possess. An offense under this section is a class A misdemeanor, and a felony of the 3rd degree if shown as a repeated offense.

A notary must avoid notarizing requests regarding immigration documents, referring the signer to an attorney or to the Immigration and Naturalization Service (INS).

A notary public who is not an attorney and who advertises the services of a notary public in any language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, MUST also include with the advertisement a notice that the notary public is not an attorney. The notice must be in English and in the language of the advertisement and in
letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice must include the fees that a notary public may charge and the following statement:

“I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”

Literal translation of the phrase “Notary Public” into Spanish (notario or notario publico) is prohibited. “Literal translation” means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated. This law is due to the many cases of fraud against Spanish-speaking individuals who believe a ‘notario publico’ to be an attorney with all of the authority of that position.

■ A NOTARY MAY NOT ACT IN AN OFFICIAL CAPACITY IF THE NOTARY HAS A PERSONAL OR FINANCIAL INTEREST IN THE TRANSACTION TAKING PLACE.

In other words, if the notary stands to gain in any way, the notary must refuse to notarize. Failure to do so may result in the notarization being challenged at a later date, and often if the notary is determined by a court of law to be an interested party, the executed document may be determined worthless and the notary could be charged with wrongdoing.

In Terrell v. Chambers, 630 S.W.2d 800 (Tex.App. 12 Dist. 1982), a case terminating a mother’s parental rights; an appeal was won and rights were restored to the mother partly due to an invalid notarial act.

The mother, the appellant, contended that the trial court erred as a matter of law in holding that the notary public taking the ‘affidavit of relinquishment’ was not disqualified when it appeared obvious that the affidavit should not have been admissible. The record reflects that appellees’ attorney, Mr. Damon Douglass, a notary public, took the verification of appellant on her affidavit of relinquishment. The record also shows that the affidavit named Mr. Douglass as managing conservator of appellant’s child and that at trial Mr. Douglass represented appellees in their suit to terminate appellant’s parental rights.

There was a dispute at the original trial concerning whether the appellant had actually sworn to the affidavit. The appellant testified that she had not; however, Mr. Douglass testified that she had.

Upon review, the rule stated that one who is an interested party to an instrument may be disqualified from functioning as a notary public. Morris v. Dunn, 164 S.W.2d 562 (Tex.Civ.App.-Fort Worth 1947, no writ); 41Tex.Jur.2d Notaries § 3 (1963). Under the facts of this case it was clear that Mr. Douglass had a strong financial and beneficial interest in the affidavit. It was concluded that
Mr. Douglass was disqualified to take the appellant’s affidavit and therefore such affidavit was void.

The big issue here is interest. A notary must have absolutely no financial, personal, or relationship interest in the transaction taking place.

In another case, Dallas County Child Welfare v. Thompson, 667 S.W.2d 282 (Tex.App. 5 Dist. 1984), the court determined that the notary involved had no interest and therefore the notarization was acceptable.

The Director of the Dallas County Child Welfare Unit of the Texas Department of Human Resources sought to terminate the parent-child relationship between the appellee and her child. The trial court denied termination on the ground that the notary public before whom the mother executed an affidavit of relinquishment of parental rights was an employee of the Texas Department of Human Resources, and as such, was disqualified as a matter of law to acknowledge the mother’s affidavit. The appeals court held that a notary public is not disqualified as a matter of law from acting in his or her official capacity as a notary public merely because such person is an employee of the state agency for whom the official act is performed. Consequently the court reversed the case and remanded the cause for trial.

The notary, a secretary with the Department of Human Resources, was a notary public whose annual bond premium was paid by the Dallas County Welfare Department. She made no policy decisions concerning child welfare cases, acting in a secretarial capacity only. When called upon, she acted in her official capacity as a notary public for the department, accepting no fees for her services. The affidavit of relinquishment in this case, naming the department as managing conservator, was executed before Ms. Thomas. The record showed that Ms. Thomas had no knowledge of the facts of the case, and no personal interest in its outcome.

The notary’s name did not appear in the affidavit as an agent of the Department of Human Resources and there was no evidence that she acted as an agent of appellant in the transaction in question. The court held that the notary had no direct interest, pecuniary or beneficial, in whether the appellee’s parental rights would be subsequently terminated. She was nothing more than an employee of the Department of Human Resources, and payment of the bond fee by the department did not make her such an agent, with respect to this transaction, as to disqualify her from notarizing an affidavit of relinquishment. Consequently, the trial court erred in disqualifying the notary public and voiding the affidavit of relinquishment.

The judgment of the trial court was reversed.

As you can see, performing notarial acts when the notary is personally, professionally or financially involved, in any capacity at all, is asking for trouble and may result in serious consequences.

It’s much more prudent to find an independent, uninvolved and disinterested
notary public to perform official duties than to have to defend improper acts later.

■ **MAINTAIN GOOD RECORDS.**

The next chapter details methods of good recordkeeping that must be maintained to avoid liability. Careful records are the notary’s best defense against liability for fraud or error, as they can prove that the notary acted properly. Texas notaries are required by law to keep a record book of all notary transactions and all notary fees charged.

■ **INSIST ON PROPER IDENTIFICATION.**

If you do not personally know the signer before you, you must insist on proper identification documents. There are no circumstances that should allow you to skip this vitally important part of the notarization process.

Failure to properly identify the signer could allow fraud, forgery, and penalties against the notary for failure to follow notary law. The notary will be held accountable for failure to identify the signer at the time the notary act took place.

■ **DON’T BE COERCED BY FAMILY AND FRIENDS.**

Family and friends should never request favors that involve breaking the law. But they do. Notaries are repeatedly asked to do favors and make exceptions to laws and proper procedures. These same notaries may find themselves in court trying to explain why these rules were broken, often with fines, charges, or both.

The best rule for notaries is to make no exceptions at all, for any reason. Use reasonable care when performing any notarial act; adhere to proven principles and notary laws, and carefully document every notarial act and fee in a record book. Avoid any activity that could incur criminal charges, fines, or revocation of your notary commission.

■ **AVOID OVERCHARGING.**

Notaries may incur severe penalties for overcharging notary fees.

■ **USE REASONABLE CARE AND GOOD JUDGMENT.**

In documenting information, identify documents, and in scanning for blank spaces, the notary is expected to use reasonable care and good judgment to avoid being deceived. Scrutinize identification documents closely. Carefully inspect the document presented and observe the signers before you for signs of nervous behavior or other signs that could indicate fraud. The notary can and will be held accountable and possibly prosecuted for failing to use reasonable care and good judgment.

Never notarize a signature when you feel the signer is being coerced into
signing. Though not addressed in law, if a signer appears frightened or forced into signing, this is an area where it would be wise to refuse.

■ **MAINTAIN HIGH ETHICAL STANDARDS.**

Notaries must be honorable and above reproach in the performance of their official duties.

■ **OBTAIN TRAINING.**

Notaries both new and experienced will benefit from the training offered in the Texas Notary Public Online Training Course provided by the American Association of Notaries. Please visit www.texasnotary.com.

■ **BE INFORMED ABOUT CHANGES IN NOTARY LAW.**

Ignorance of the law is no excuse. Notaries are expected to know and follow proper procedures at all times. Stay informed and alert.

■ **SUBSCRIBE TO A MEMBERSHIP.**

Notaries will benefit tremendously by a membership in a notary organization such as the American Association of Notaries, where they will have updates and news on changes in notary law, proper notarial procedures, expert advice, and assistance with notary questions and concerns, and renewal reminders.

■ **CARRY ERRORS AND OMISSIONS INSURANCE.**

Errors and Omissions Insurance is highly recommended for all Texas notaries. As stated previously, this insurance is not required by law. But, in this time of frequent lawsuits for minor infractions, as well as serious wrongdoing, it is a must. People will sue, and lawsuits against notaries abound. An error by an untrained notary could be very costly, and the notary will be required to repay the loss. Remember that the required notary bond only protects the injured party, and if paid, the notary must repay the surety company. If the loss to the injured party is extensive, fines and charges against the notary could be astronomical. Errors and Omissions insurance (E&O) will provide the notary with tremendous protection and peace of mind for only a few dollars over the life of the commission.

E&O is readily available and should cover the entire term of office, and should be renewed when the notary commission is renewed. Coverage amounts are available in several dollar amounts and this form of insurance is very inexpensive to obtain. This insurance will cover legal fees; however, it will not cover fraud or deliberately unlawful acts.
ENLIST AID OF EMPLOYER TO AVOID EMPLOYER LIABILITY (VICARIOUS LIABILITY).

Employers throughout the United States have been found liable for using coercion to cause employee notaries to break notary laws and omit important procedures such as requiring personal appearance and proper identification of signers. Some states have actually established laws to deal with this increasing problem; others use case law from other states to win cases against employers.

An employer should never request that staff notaries break laws governing proper notary practices and procedures. They can find themselves facing vicarious liability. Explain the potential liability to your employer if he or she requests that you ‘bend the rules’ of proper notarization.
MAINTAINING NOTARIAL RECORDS

IT’S THE LAW
Tex. Gov’t. Code §406.014

Notaries are required by law to maintain records of all notarial acts. Texas law is very clear on this. A Texas notary is required to maintain a record book of all transactions and must detail in a record book all notary fees charged. This is not optional. The law specifies entries that must be recorded; additional information may be added to further define the transaction.

WHY RECORD KEEPING IS VITAL

The notary’s best defense is the record book. These careful and precise entries in a properly maintained record book can prove that the notary acted properly at the time of the notarial act, and may mean the difference in penalties for wrongdoing or praise for proper adherence.

The record book entry may well serve to remind the notary of pertinent facts regarding a particular notarial act in question (often by a court of law) that may have occurred years before. The notary would in all probability be unable to recall details of a transaction after the fact without the benefit of proper records of the act made at the time the notarial act took place.

INFORMATION TO BE RECORDED
Tex. Gov’t. Code §406.014(a)

According to Texas notary law, a notary public (other than a court clerk notarizing instruments for the court) must keep in a book a record of:

1. The date of each instrument notarized (The date must NOT be a date in the future. The date of the document may be a past date or the current date, but never a future date);
2. The date of the notarization (Never backdate a notarial certificate. This is fraud. Enter the exact date and whenever possible, the time that the notary act is actually performed);
3. The name of the signer, grantor, or maker;
4. The signer’s, grantor’s, or maker’s residence or alleged residence;
(5) Whether the signer, grantor, or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public by a person personally known to both the notary and the signer and, if introduced, the name and residence of the individual introducing the signer;

(6) If the instrument is proved by a witness, the residence of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the witness;

(7) The name and residence of the grantee;

(8) If land is conveyed or charged by the instrument, the name of the original grantee and the county where the land is located;

(9) A brief description of the instrument; and

(10) Fees charged for notary services.

PROPER PROCEDURE FOR RECORD KEEPING

Though not defined in this section of the law, it is critical that the notary have the signer of the document also sign the record book. This proves that the signer did personally appear before you for this notarial act. Careful entries in your record book could prove you innocent of wrongdoing if this notarization is ever challenged in the future. It is also strongly recommended that the notary make a note that the signer did take an oath or make a verbal acknowledgment of the signature notarized.

It is recommended that the notary maintain record books for many years beyond the final entry of each completed book.

The American Association of Notaries recommends that you obtain a fingerprint of the signer in your record book, if you are able to do so. Though not required by law, it is added assurance that the signer is actually who he or she claims to be. The signer will not leave a fingerprint behind if they are attempting to forge or otherwise perpetrate fraud.

NOTARY RECORDS ARE PUBLIC INFORMATION

Tex. Gov’t. Code §406.014(b), (c)

A notary public must provide a certified copy of any record in the notary public’s record book to any person requesting the copy. It is difficult to draw the line between laws regarding public information, and those forbidding the sharing of confidential information. The law is clear that, a copy of a record must be provided, if requested. Therefore, if a request is made, carefully document each detail of that request in a new entry in your record book, so that later you have
proof by documentation and a signature that the individual signing for the record did in fact request the record and you complied with that request. Be sure that the record defines which record was requested (name of signer, date, description of document). Copy only the record requested; do not copy the entire page.

It is very important to note that failure or refusal to provide access or copies of public information is a criminal violation.

**DESTRUCTION, REMOVAL, DISTRIBUTION, OR ALTERATION OF PUBLIC INFORMATION**

Tex. Gov’t. Code §552.351; Tex. Penal Code §37.09(a)(1)

It is unlawful to remove or destroy pages from your record book, to alter or distribute entries, or to otherwise fail to provide access to or copies of these records. This is a criminal violation of Texas notary law and may result in fines, imprisonment, or both.

As previously stated, if you decide to resign, move out of state, or simply not renew your commission, you must turn in your record book to the county clerk’s office of the county in which you reside.
Chapter 5 / MAINTAINING NOTARIAL RECORDS
NOTARY FEES

ALLOWABLE FEES
Tex. Gov’t. Code §406.0024

The state of Texas has clearly defined maximum fees a notary or the notary’s employer may charge for all notarial acts. You are not required to charge a fee, but you are forbidden from overcharging and could be penalized for doing so. A record of all fees charged must be maintained. Most record books allocate space for fees to be recorded. Notaries are also required to post their fees for the public, and you should give a written itemized invoice for your notarial services. Here is a list of allowable fees for the most common notarial services.

- Taking acknowledgments or proofs
  1) For the first signature .................................................$6.00
  2) For each additional signature ......................................$1.00
- Administering oath or affirmation ..................................$6.00
- Swearing a witness for a deposition ...............................$6.00
- Taking a deposition of a witness (for each 100 words) .........$ .50
- Certifying a photocopy ..................................................$6.00
- Providing a copy of an entry from a notary’s record book (per page) ..$ .50

A notary public can charge $6 for a signature on an acknowledgment; if there is an additional signature on the same acknowledgment certificate (for a spouse, for example), the notary can charge only $1 for each additional signature(s). If there is a second certificate required for the same document, the notary can charge an additional $7 total for those two signatures.

FEES AND EMPLOYERS
Tex. Gov’t. Code  §406.024

Texas law gives the employer a say on how much to charge, if anything, as long as the customer is not charged over the legal amount; and the law doesn’t specify who keeps the fees. So be sure to reach an agreement with your employer on this issue.
POSTING OF FEES
Tex. Gov’t. Code §603.008

If you are going to charge a fee, the law requires you to keep fees posted at all times in a prominent location visible to your notary clients. You must post a complete list of fees you are allowed by law to charge for your notarial services.

BILLING FOR FEES
Tex. Gov’t. Code §603.007

Though not specifically mentioning notaries as state officers in the statute, Texas law requires ‘state officers’ to bill clients for all expenses. Therefore, it is recommended that you always prepare a detailed bill for any services you perform as a notary public. Discuss your fees with your signers before performing the notarial act to avoid confusion or conflict afterward. Always provide a written receipt for fees charged completely separating any non-notary business fees, such as travel expenses, from the actual notary fees charged.

FEES ARE TAXABLE INCOME

Your fees, if not turned in to your employer, are taxable. Please consult your tax advisor for details.

PENALTIES FOR OVERCHARGING
Tex. Gov’t. Code §603.010

Notary fees must follow guidelines established by the state of Texas. It is important to take extra care to never overcharge for a notarial service. As a matter of fact, Texas law states that a notary is required to pay the overcharged client four times the amount charged.
NOTARIAL CERTIFICATES

DEFINITION

The notarial certificate is the formal testament by the notary regarding facts of the notarial act performed. This certificate details who appeared before the notary, when the transaction occurred, where the notarial act occurred, and any other pertinent information.

Any notarial act, whether it’s taking an acknowledgment or executing a jurat on an affidavit, requires some wording that details the type of notarial act that is performed. These defining words are typically typed at the last page or section of a document, and the notary is required to complete this certificate. Without this, the act is not officially executed. Simply signing your name and stamping a notarial seal on a document does not constitute a valid notarization and the notary could be held liable for an improper act.

IMPORTANCE

Notarial certificates are critical to the notarization. The wording on a notarial certificate is of the utmost importance, and proper procedures must be followed. The notarial certificate must show the venue, or location where the notarial act takes place, in the form of the state (Texas) and county you are standing in when the notarial act occurs. It doesn’t matter which county you live in, work in, or where your commission was applied for; your venue must show the location where the notarization occurred. You and your signer must be in the same place at the same time, and your certificate must attest to that fact. Also, your certificate must clearly detail the date the transaction took place and the identification methods used for the signer. The wording on the certificate attests to the type of act you performed, i.e. ‘John Doe acknowledged before me…’ and without the proper wording, the document and the transaction could be rendered invalid.

Notaries are required to complete a notarial certificate of every notarial act, to document particular information regarding the transaction. The notarial certificate must be signed, dated, and sealed with the notary’s stamp. The certificate must be completed at the time the notarial act takes place, and documented in the notary’s record book as well. Never complete the certificate after the fact, or to alter it in any way after the notarial act takes place. If a certificate is determined after the fact to
have been completed incorrectly, the notarization must take place again in its entirety, and a new certificate created.

**COMPONENTS**

The notarial certificate consists of a venue, (State of; County of) stating the exact location where the notarial act took place; the body, which describes the official act and defines the participating signer(s); and the notary’s signature and seal. Starting with the next chapter, sample notarial certificates will be discussed thoroughly.

**LOOSE CERTIFICATES**

An acknowledgment or oath certificate should typically be a part of the document brought before the notary; however, if there is no certificate present, the notary may ‘attach’ one using the proper form. This is called a ‘loose certificate,’ and all notaries should keep plenty on hand in case a document is presented without the proper wording which is so critical. These can be used for affidavits, acknowledgments and certified copies as well, when no certificate is present. Loose certificates are available in many forms by calling the American Association of Notaries at 800-721-2663.

If using an attachment, or loose certificate, however, it is critical to include all identifying information regarding the document it will be attached to. This prevents the attachment from being used on a totally different document fraudulently. If the attachment describes the document, the signer’s name, the date, and any other pertinent information, it cannot be used on a different document. Sample wording for top of attached ‘loose’ certificate:

*This certificate is attached to a 3 - page deed dated September 4, 2002, regarding real estate property at 4567 Wilson Street, Austin, Texas, which was signed by Jude Lawson and acknowledged before me on September 6, 2002.*

Please note: the notary must NOT tell the signer what type of certificate to use, and must not choose for the signer. This is strictly forbidden. The notary may show the signer different forms and describe the use for each, and let the signer choose the type of certificate needed. If the signer cannot choose, you must refuse to notarize and refer the signer to an attorney or to the one requesting the notarization for clarification.

**ALTERATION OF DOCUMENTS**


Texas law allows for alterations as needed, depending on circumstances. However, alterations should not be made after one or more signers have signed the document.
Often a document will be presented to you with the notarial certificate partially filled out, or the information is incorrect. For instance, if there is a date on the certificate, it must be the date you are actually performing the notary act. If any other date appears, a new certificate should be utilized. Other areas may be incorrectly completed; if a document has an incorrect venue, for instance, and there is only one signer who is before you to acknowledge the signature, the venue must be corrected to the correct county and to reflect the state of Texas. Both you and the signer should initial the change.

However, if there are other parties involved who have already signed a document before a notary on a different occasion, and for some reason the signer before you makes a change to the actual document presented to you, you should refuse to notarize. Such changes could change the intent of the document and could adversely affect the signers who have already signed.

FALSE STATEMENTS
Tex. Admin. Code §87.43

Remember that a notary may face serious charges for the execution of any certificate as a notary public containing a statement known to the notary public to be false. Do not state that a signer appeared before you if he did not; do not ‘adjust’ dates to suit your client’s needs; and if you know a statement is false in the document itself, refuse to notarize.
ACKNOWLEDGMENTS AND PROOFS

ACKNOWLEDGMENT DEFINED

An acknowledgment is a statement regarding a signature on a signed document and usually attached to that document. The statement, made by the signer, acknowledges that the document was in fact signed by that person willingly for the purposes defined in the document.

An acknowledgment may have been signed years before an acknowledgment of that signature is made before a notary. The notary act concerns the ‘acknowledgment’ of that signature, regardless of when it was signed.

For example, a property owner may have signed a deed transferring ownership of a portion of his property to his grandson when that grandson reaches the age of twenty-one years of age. When the grandfather would go before a notary and acknowledge his signature on the deed so that the deed could be recorded and transfer of ownership could take place.

If the document has NOT been signed at the time it is presented for an acknowledgment it must then be signed in the presence of the notary before the acknowledgment can occur. Otherwise, how could the signer acknowledge signing it?

PURPOSE OF TAKING AN ACKNOWLEDGMENT

Deeds, wills, and contracts often require acknowledgments. An acknowledgment is required in order for a document such as a deed to be recorded.

WHO IS AUTHORIZED TO TAKE ACKNOWLEDGMENTS?

Tex. Civ. Prac. & Rem. Code §121.001

An acknowledgment or proof of a written instrument may be taken in this state by:

(1) A clerk of a district court;
(2) A judge or clerk of a county court;
(3) A notary public; or
(4) A county tax assessor-collector or an employee of the county tax assessor-collector if the instrument is required or authorized to be filed in the office of the county tax assessor-collector.
An acknowledgment or proof of a written instrument may be taken outside this state, but inside the United States or its territories, by:
(1) A clerk of a court of record having a seal;
(2) A commissioner of deeds appointed under the laws of this state; or
(3) A notary public.

An acknowledgment or proof of a written instrument may be taken outside the United States or its territories by:
(1) A minister, commissioner, or charge d’affaires of the United States who is a resident of and is accredited in the country where the acknowledgment or proof is taken;
(2) A consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who is a resident of the country where the acknowledgment or proof is taken; or
(3) A notary public or any other official authorized to administer oaths in the jurisdiction where the acknowledgment or proof is taken.

A commissioned officer of the United States Armed Forces or of a United States Armed Forces Auxiliary may take an acknowledgment or proof of a written instrument of a member of the Armed Forces, a member of an Armed Forces Auxiliary, or a member’s spouse. If an acknowledgment or a proof is taken under this subsection, it is presumed, absent pleading and proof to the contrary, that the commissioned officer who signed was a commissioned officer on the date that the officer signed, and that the acknowledging person was a member of the authorized group of military personnel or spouses. The failure of the commissioned officer to attach an official seal to the certificate of acknowledgment or proof of an instrument does not invalidate the acknowledgment or proof.

HOW TO TAKE AN ACKNOWLEDGMENT

Most lawsuits are generated against notaries for failure to understand how to perform their duties authorized by law.

The notary must:
- Require personal appearance of the signer at the time the notarization takes place;
- Prove the identity of the signer or signers before the notary;
- Determine that the signer understands and has signed or is signing the document willingly;
- Have the signer sign the notary’s record book and sign the document if it has not already been signed;
- Perform the verbal ceremony;
- Complete and sign the notarial certificate, and affix the notarial seal; and
- Record entry in notary’s record book.
Many notaries take acknowledgments but fail to include a vital part of the ceremony. It is imperative that the notary obtains from the signer a spoken acknowledgment of the signature in the form of the following or a similar question: “Do you acknowledge that this is your signature, and that you signed the document willingly for the purposes stated in it?”

The signer will answer, “I do” or any affirmative answer, and if speech impaired, a nod is sufficient and should be noted on the notarial certificate. The notarial act is not valid if the notary fails to take the acknowledgment of the signer.

**WHEN IS A NOTARY DISQUALIFIED TO TAKE AN ACKNOWLEDGMENT?**

A notary public officer may not:

- Take the acknowledgment of a written instrument unless the officer knows or has satisfactory evidence that the acknowledging person is the person who executed the instrument and is described in it, (§ 121.005);

- Perform any notarization when the person for whom the notarization is performed did not personally appear before the notary at the time the notarization was executed, §406.009.d(6); or

- Execute any certificate as a notary public containing a statement known to the notary public to be false, (§ 87.43 10);

- And, very, very importantly, a notary must never take an acknowledgment when the notary has any interest in the proceedings whatsoever. If the notary stands to gain financially, personally, professionally, the notary should refuse to notarize and allow a completely disinterested party to handle the notarization.

**NOTE:** An employee of a corporation is not disqualified because of his employment from taking an acknowledgment or proof of a written instrument in which the corporation has an interest.

An officer who is a shareholder in a corporation is not disqualified from taking an acknowledgment or proof of an instrument in which the corporation has an interest unless:

1. The corporation has 1,000 or fewer shareholders; and
2. The officer owns more than one-tenth of one percent of the issued and outstanding stock. §121.002.

Also, a notary public is not disqualified from taking an acknowledgment or proof of a written instrument solely because of the notary’s ownership of stock or a participatory interest in or employment by a financial institution that is an interested party to the underlying transaction.
TYPES OF ACKNOWLEDGEMENTS

It is very important to know and understand the components or parts of an acknowledgment. Acknowledgment certificates contain a venue, defining exactly where (state and county) the notary act took place, and the notary’s statement, consisting of wording such as, “The signing of this document was acknowledged before me…” with the signer’s name, date, and authority detailed. Typically there are two types of acknowledgment:

- Individual Capacity - Used by individual(s), and
- Representative Capacity - Used by authorized officer(s) of a corporation, by a partner in a partnership, by an attorney-in-fact, or by a guardian.

INDIVIDUAL ACKNOWLEDGMENT

When dealing with an individual or multiple individuals, the following standard form may be used. The notary must document the form of identity utilized and must clearly define exactly who appeared before the notary.

Ordinary Certificate of Acknowledgment (Individual)

State of Texas
County of ________________

Before me (name of notary) on this day personally appeared (name of person acknowledging signature), known to me (or proved to me on the oath of (name of credible witness) or through (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____day of ________________,
A.D., ________________.

____________________________________________
(Signature of Notary)

____________________________________________ (NOTARY SEAL)
(Name of Notary Type, Stamped, or Printed)
Notary Public, State of Texas
Or –

**Short Form of Acknowledgment Certificate (Individual)**

State of Texas  
County of ____________  

This instrument was acknowledged before me on (date) by (name of person acknowledging).

___ Personally Known  
___ Produced Identification  
ID Number and Type of ID ________________

__________________________________________ (NOTARY SEAL)

(Signature of Notary)

__________________________________________

(Name of Notary Typed, Stamped, or Printed)  
Notary Public, State of Texas

Again, the notary must always remember to obtain the verbal, spoken acknowledgment from the one acknowledging the signature. Otherwise, the notarial statement ‘before me acknowledged’ would be a false statement.

**REPRESENTATIVE CAPACITY**

If a signer appears before the notary to acknowledge a signature that was signed in a representative capacity, the notary is authorized to take that acknowledgment. The signer could possibly have ‘power of attorney’ (or authority) to sign in another’s behalf. The signer may be a partner in a partnership or a corporate executive signing for a corporation; there are many representative capacities. It is important to document the authority the signer claims both in the notarial certificate and in the notary’s record book.
Short Form Of Acknowledgment Certificate For A Person Acting In A
Representative Capacity (Public Officer, Administrator or Executor,
Guardian, Trustee, or other Representative.)

State of Texas  
County of ____________

This instrument was acknowledged before me on (date) by (name of
representative) as (title of representative) for (name of entity or person represented).

____ Personally Known
____ Produced Identification
ID Number and Type of ID ________________________________

_______________________________ (NOTARY SEAL)
(Signature of Notary)

_______________________________
(Name of Notary Typed, Stamped, or Printed)
Notary Public, State of Texas

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Short Form Acknowledgment Certificate For A Corporate Officer

State of Texas  
County of ____________

This instrument was acknowledged before me on (date) by (name of acknowledging corporate officer) as (title of corporate officer) of (name of corporation), a (state of incorporation, i.e. Texas corporation) corporation, on behalf of said corporation.

____ Personally Known
____ Produced Identification
ID Number and Type of ID ________________________________

_______________________________ (NOTARY SEAL)
(Signature of Notary)

_______________________________
(Name of Notary Typed, Stamped, or Printed)
Notary Public, State of Texas
Short Form Acknowledgment Certificate For A Partner In A Partnership

State of Texas
County of ____________

This instrument was acknowledged before me on (date) by (name of acknowledging partner or partners) as partner on behalf of (name of partnership represented), a partnership.

_____ Personally Known
_____ Produced Identification
ID Number and Type of ID __________________________

____________________________________________________________________ (NOTARY SEAL)
(Signature of Notary)

____________________________________________________________________
(Name of Notary Typed, Stamped, or Printed)
Notary Public, State of Texas

Short Form Acknowledgment Certificate For An Attorney-In-Fact

State of Texas
County of ____________

This instrument was acknowledged before me on (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

_____ Personally Known
_____ Produced Identification
ID Number and Type of ID __________________________

____________________________________________________________________ (NOTARY SEAL)
(Signature of Notary)

____________________________________________________________________
(Name of Notary Typed, Stamped, or Printed)
Notary Public, State of Texas
PROOFS


PROOFS DEFINED

A proof is the statement of a witness made in the presence of and duly certified by a notary public or an officer authorized to take an acknowledgment, that the person whose name appears subscribed to an instrument actually executed the instrument. In other words, if someone signed a document requiring an acknowledgment in order to properly execute and record the document but was unwilling or unable to appear before a notary to give an acknowledgment of that fact due to death, mental incapacity, or being out of state, Texas law allows a notary to take a ‘statement of proof of acknowledgment by a witness’ or a ‘proof of acknowledgment by handwriting’ from an individual who actually witnessed the signing of the original document and whose signature appears on the document as a witness. This occasionally is necessary also when a signer refuses to appear and acknowledge the signature. This seldom occurs but in certain circumstances is an option.

PROOF OF EXECUTION BY A WITNESS


The notary is authorized to take a sworn statement from the witness attesting to the witnessing of the signing. This statement is called a Proof of Execution by Witness.

The witness must appear before the notary and swear or affirm that:

- He or she actually witnessed the signing of the document, and/or that the signer acknowledged to the witness that he/she signed the document willingly for the purposes of the document; and that
- The witness was requested by the signer to sign the original document as a witness.

The notary cannot take the statement of the witness unless the notary personally knows the witness or has satisfactory evidence on the oath of a credible witness that the individual testifying is the person who signed the instrument as a witness. The notary will then complete a certificate attesting to the testimony of the witness regarding the facts of the original instrument’s signing, and attach this document to that instrument.

If evidence is used to identify the witness who signed the instrument, the officer must note the use of the evidence in the certificate of acknowledgment.

As always, notarial certificates will be signed and stamped with a notary seal by the notary at the time the notarial act takes place. Be sure to enter careful documentation regarding this proof of execution in your notary record book, and have the witness sign your book.
CERTIFICATE OF PROOF OF EXECUTION BY WITNESS

Tex. Civ. Prac. & Rem. Code §121.10

State of Texas
County of _____________

Before me, (name of notary), Notary Public, State of Texas, on this day ________________ personally appeared (name of witness), known to me, or proved to me on the oath of (name of credible witness), to be the person whose name is signed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated under oath that he/she saw (name of person), the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes therein expressed), and that he had signed the document as a witness at the request of the grantor (or person who executed the same).

_____ Personally Known
_____ Produced Identification
ID Number and Type of ID ___________________________
Given under my hand and seal of office this ____ day of ____________,
A.D., ________ (year).

______________________________________________________                       (NOTARY SEAL)
(Signature of Notary)
______________________________________________________
(Name of Notary Typed, Stamped, or Printed)
Notary Public, State of Texas

PROOF OF ACKNOWLEDGMENT BY HANDWRITING


Texas law allows for the execution of an instrument for the purpose of recording by proof of the handwriting of persons who signed the instrument if:

• The grantor of the instrument and all the witnesses are dead;
• The grantor and all witnesses are not residents of this state;
• The residences of the grantor and the witnesses are unknown to the person seeking to prove the instrument and cannot be ascertained;
• The witnesses have become legally incompetent to testify; or
The grantor of the instrument refuses to acknowledge the execution of the instrument and all of the witnesses are dead, not residents of this state or residence is unknown, or are legally incompetent.

ESTABLISHING PROOF OF HANDWRITING OF THE SIGNER

Proof may be established by a witness who signed the document and any evidence of handwriting of the signer different from the signed document, or by two witnesses who signed the document if the signer signed by mark. A stipulation to this form of proof is that the witnesses must be well acquainted with the handwriting of the signer. In addition, an affidavit or deposition of two disinterested parties must be taken regarding the evidence offered for proof of handwriting.
OATHS AND AFFIRMATIONS

OATH DEFINED

An oath is an attestation, spoken or written, by which a person signifies that he or she is bound (by conscience or by fear of judgment by a Supreme Being) to perform an act faithfully and truthfully.

An oath or an affirmation is an equally binding statement, subject to penalties of perjury, attesting to the truth of the statement spoken or presented in the form of a document signed before the notary. The document absolutely must be signed in the presence of the notary; make no exceptions. If the document was signed prior to the signer’s appearance before the notary, the document must be signed again in the notary’s presence. An entry on the document should be made by the notary that states, “Duplicate signature at notary’s request” to explain the extra signature. Identity must be proven before the notarization may take place.

It is strongly recommended that the notary ask the signer to raise his or her right hand at the beginning of the oath/affirmation ceremony. This instills an awareness of the gravity of the situation. The signer is swearing before the notary to the truth of the statement, occasionally in a verbal statement but usually in the written form of a document presented to a party, and it is critical that the notary verbally administer the oath – actually place the signer under oath – in the following or similar manner:

“Do you swear, under penalties of perjury, that the information included in this document is the truth, so help you God?”

The signer will answer “Yes,” or an affirmative response, or will nod, if speech-impaired.

Do not fail to perform this vitally important part of the notarial act. The notarial act is incomplete and unlawful without it. Many cases have been lost because a notary failed to administer an oath or take an affirmation or acknowledgment at the proper point in the ceremony.

AFFIRMATION DEFINED

If the signer is opposed to swearing or taking an oath, either for religious beliefs or lack of any religious beliefs, an affirmation is equally acceptable and binding. This is the same process without any reference to God. Your question to your signer would be,
“Do you affirm under penalties of perjury that the information included in this document is the truth?”

The signer would then answer in an affirmative manner.

OATH/AFFIRMATION CERTIFICATE (JURAT)

The jurat is your statement of the facts surrounding the notarial act. This notarial certificate attests that the signer (1) appeared personally before you; (2) signed the document or made the statement in your presence; (3) you positively identified the signer; and (4) (very critical,) that you actually administered an oath verbally to the signer, or took an affirmation, and received a confirming statement attesting to the truth of the document or statement. All of these components must be met. Every affidavit or other document requiring a notarized oath or affirmation must contain the notarial certificate (jurat) stating, ‘sworn to (or affirmed) and signed before me this day...’ in order to be properly notarized.

As discussed in ‘Acknowledgments,’ if no certificate is present on the document being sworn to, you can attach a loose certificate. However, unless you are an attorney, you cannot tell the signer which certificate is required. You can show the signer a sample of an acknowledgment and a jurat for oath, ask the signer if he needs to swear or affirm to the truth of a statement or if he simply needs to acknowledge that he signed a document for the purposes stated therein, and let the signer decide. If the signer cannot decide which act is required, refer him to an attorney for advice. Do not recommend an action. This could be considered ‘practicing law without a license’ and could result in stiff penalties and charges against you, the notary.

It is imperative to note that making a false statement on a notarial certificate could result in criminal charges against the notary. Do not risk this. If the signer did not appear before you at the time the notarial act took place, if you failed to administer an oath, or if the signer did not sign the document in your presence, don’t say he did. That would be a false statement.
Oath/Affirmation Certificate (Jurat)

State of Texas
County of ____________

Sworn to (or affirmed) and signed before me this ________ day of
____________, (year),
by (name of person making statement).

____ Personally Known
____ Produced Identification
ID Number and Type of ID ______________________

______________________________________________________                       (NOTARY SEAL)
(Signature of Notary)

______________________________________________________
(Name of Notary Typed, Stamped, or Printed)
Notary Public, State of Texas

HOW TO ADMINISTER AN OATH OR AN AFFIRMATION

In order to properly administer an oath or take an affirmation, you must
• Prove the identity of the signer before you;
• Witness the signing of the document;
• Verbally administer the oath or affirmation, compelling the signer to raise
  his/her right hand and swear to or affirm the truth of the statement made;
• Complete, sign, and seal the notarial certificate; and
• Record details of the act in your record book.

Don’t complete a notarial certificate if you did not actually administer an oath
or affirmation, verbally. Otherwise how could you say, ‘sworn to or affirmed
before me’ and be truthful? It is an act of perjury to lie under oath or affirmation,
and criminal charges could be brought against the one making the false statement.

Always check for proper identification. Remember to document what form of
identification was used on the notarial certificate.

DOCUMENTS THAT REQUIRE AN OATH/AFFIRMATION

Many documents may require an oath in order to be accepted as evidence or to
be acceptable to recipients for the purposes given. Some documents requiring
oaths are:
Chapter 9/ OATHS AND AFFIRMATIONS

- Affidavits;
- Depositions;
- Official Oaths of Office;
- Employment applications;
- Bank statements and documents.

PERSONS AUTHORIZED TO ADMINISTER AN OATH/AFFIRMATION

Tex. Gov’t. Code §602.002

An oath made in this state may be administered and a certificate of the fact given by:

1. A judge, clerk, or commissioner of a court of record;
2. A justice of the peace or a clerk of a justice court;
3. A notary public;
4. A member of a board or commission created by a law of this state, in a matter pertaining to a duty of the board or commission;
5. A person employed by the Texas Ethics Commission who has a duty related to a report required by Title 15, Election Code, in a matter pertaining to that duty;
6. A county tax assessor-collector or an employee of the county tax assessor-collector if the oath relates to a document that is required or authorized to be filed in the office of the county tax assessor-collector;
7. A peace officer described by Article 2.12, Code of Criminal Procedure, if:
   (A) The oath is administered when the officer is engaged in the performance of the officer’s duties; and
   (B) The administration of the oath relates to the officer’s duties;
8. The secretary of state;
9. The lieutenant governor;
An oath made outside this state but inside the United States or its territories may be administered and a certificate of the fact given by:

(1) A clerk of a court of record having a seal;
(2) A commissioner of deeds appointed under a law of this state; or
(3) A notary public.

An oath made outside the United States and its territories may be administered and a certificate of the fact given by:

(1) A minister, commissioner, or charge d’affaires of the United States who resides in and is accredited to the country where the oath or affidavit is made;
(2) A consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who resides in the country where the oath or affidavit is made; or
(3) A notary public.

A commissioned officer of the United States Armed Forces or of a United States Armed Forces auxiliary may administer an oath made by a member of the Armed Forces, a member of an Armed Forces auxiliary, or a member’s spouse and may give a certificate of the fact.

Unless there is pleading or evidence to the contrary, a certificate signed under this section that is offered in evidence establishes that:

(1) The commissioned officer who signed was a commissioned officer on the date the officer signed; and
(2) The person who made the oath or affidavit was a member of the Armed Forces or an Armed Forces auxiliary or was a member’s spouse when the oath was made.

An oath is not invalid because the commissioned officer that certified the oath did not attach an official seal to the certificate.
AFFIDAVITS

DEFINITION

An affidavit is a statement in writing of a fact or facts signed by the party making it, sworn to before an officer authorized to administer oaths, and officially certified to by the officer under his seal of office. An instrument cannot qualify as an affidavit unless it is sworn to before an officer authorized to administer an oath. The signer is making a statement of truth about something, and to lend validity to that statement, the signer is typically required to make this statement in the presence of a notary or other officer authorized to administer oaths.

An affidavit, unlike an oath, must be in writing; an affidavit is a written statement of truth. An affidavit may be on a separate paper, apart from the document it supports, or it may be incorporated into the body of the instrument that is sworn to and contains all the requirements of an affidavit.

CONFLICT OF INTEREST

In a criminal proceeding, any affidavit which has been notarized by the notary offering the affidavit as evidence in the case is void and may not be considered by the court.

Affidavits made before an attorney notary who is offering affidavits into evidence in a civil action are valid unless the attorney has a financial or beneficial interest in the lawsuit.

ELEMENTS OF AN AFFIDAVIT CERTIFICATE

An affidavit includes the venue, the signature, the jurat, and the body of the instrument.

VENUE

As previously defined, the venue is the portion of the document defining the exact location (county and state) where the notary and the signer are standing when the notary act takes place. This is shown as follows:

County of _________
State of ___________
SIGNATURE

An affidavit without a notarized signature is invalid. As with any oath, it is critical that the notary witness the signing of the document. If for some reason the signer has already signed the document, have him or her sign again, and include an entry in the notarial certificate to explain the additional signature, something to the effect of:

“Duplicate signature at notary’s request”

JURAT

The notarial certificate affixed to an affidavit is a jurat, as with any oath. See the previous chapter for a sample of the jurat form. As defined in Chapter 9, the jurat attests that the signer (1) appeared personally before you; (2) signed the document in your presence; (3) that you positively identified the signer; and (4) (very critical), that you actually administered an oath verbally to the signer, or requested an affirmation of truth, and received a confirming response attesting to the truth of the document.

The jurat must not be attached to the affidavit by anyone other than the officer who administered the oath.

BODY

The body of the document is the actual statement of truth, told in the signer’s words. For example, “I, John Smith, witnessed an accident that occurred on June 5, 2002, at the intersection of Wyatt Earp Blvd and Alamo Drive, Austin, Texas. This is what I observed:” and the document would then describe exactly what took place, as he saw it. It would end, “I swear this to be the truth under penalties of perjury.”

MANNER OF SWEARING

To properly administer an oath, it is essential that the notary compel the affiant to swear or affirm under oath that the facts stated in the document are true, otherwise, it is a false certificate and its execution is a criminal offense. If the signer does not appear before the notary to swear to the truth of the affidavit, the notary must refuse to notarize. The notary will request that the signer raise his or her right hand, and ask, “Do you swear that this statement is true, so help you God?” or a similar statement. The signer will answer, “I do.”
AFFIDAVIT CERTIFICATE

The main purpose of the affidavit is to prove that the affiant took an oath before a duly authorized officer, certifying to the truth of statements made in the affidavit.

See the following for a sample affidavit. Note: This is not a substitute for legal advice and it is suggested that an attorney be consulted.

State of Texas                     Dated
County of ____________

That on this 5th day of January 2003, John Bennett Smith personally came and appeared before me, (Name of Notary Public), of (City, State of Notary), known, and known to me, who after being first duly sworn, deposes and says:

I, John Bennett Smith, hereby swear that I witnessed an accident occurring at the intersection of ________ and ________ streets on December 20, 2002. The 2000 Ford Taurus ran through a red light and pulled out into the path of the 1998 Chevrolet Trailblazer, causing a disastrous accident the Trailblazer was unable to avoid.

I swear this to be the truth, under penalties of perjury, so help me God.

______________________________________________________
(Signature of Affiant)

______________________________________________________                       (NOTARY SEAL)
(Signature of Notary Public)

______________________________________________________
(Printed Name of Notary Public)
Notary Public, State of Texas

HOW TO ADMINISTER AN AFFIDAVIT

As discussed in the previous chapter on oaths, in order to properly administer an oath or take an affirmation in an affidavit, you must:

- Prove the identity of the signer before you;
- Witness the signing of the document;
- Verbally administer the oath or affirmation, by asking the signer to raise his or her right hand, and asking, “Do you swear that this statement is true,
so help you God,” or “Do you affirm under penalties of perjury that this statement is true?” (The signer will answer “yes” or “I do”);  
- Complete, sign, and seal the notarial certificate; and  
- Record details of the act as well as any fees charged in your record book.

The notary must not complete a notarial certificate if he/she did not actually administer an oath or affirmation verbally. The signer is swearing to the truth of the facts stated in the affidavit, and the notary is attesting to the truth that the signer appeared before him or her and took an oath.
DEPOSITIONS

DEFINITION

This is usually testimony under oath made by a witness (the deponent) in a court proceeding, under questioning, and is usually taken outside of a court in advance of a trial or hearing. The testimony is usually converted to writing (transcribed) and used in the court trial.

A deposition is different from an affidavit in that a deposition typically cannot be said to be voluntary, and the person making the deposition may be open to cross-examination, while an affiant is not.

PERSONS AUTHORIZED TO TAKE A DEPOSITION

A deposition must be taken before someone authorized to administer an oath. A deposition may be taken before a notary, a clerk of a district court, a judge or clerk of a county clerk’s.

HOW TO TAKE A DEPOSITION

In a deposition, the person deposing or making the statement, is called the deponent. The deponent will make his spoken testimony, which is recorded, attesting to the facts of which he is giving testimony under questioning. There may be attorneys, law enforcement personnel, or court officials present. At the conclusion of the deposition, the notary would ask the deponent:

“Do you honestly swear (or affirm) under penalties of perjury that the testimony you give and the statements you make in this deposition are true and exact, so help you God?”

The deponent would then answer in an affirmative statement or gesture, and such would be noted on the notary’s jurat, as well as any other relevant statements concerning the notarial act.

As above, it is perjury to lie under oath.
Deposition Certificate

Certificate to Deposition Upon Written Questions

State of Texas  
County of _____________

________________________ (Plaintiff)  In the _____________ Court of

________________ County, Texas

v.

________________________ (Defendant)  Cause No. ____________

I hereby certify that the foregoing answers of ____________, the witness forenamed, were signed and sworn to before me on (date), by said witness.

____ Personally Known

____ Produced Identification

ID Number and Type of ID ________________

______________________________ (NOTARY SEAL)

(Signature of Notary Public)

______________________________

(Printed Name of Notary Public)

Notary Public, State of Texas

DEPOSITIONS IN A FOREIGN STATE OR LAND

A deposition of a witness outside this state but within the United States may be taken by:

• A clerk of a court of record having a seal;
• A commissioner of deeds appointed under Texas law; or
• Any notary public.

A deposition of a witness outside the United States may be taken by:

• A minister, commissioner, or charge d'affaires of the United States who is an accredited resident of the country where the deposition is taken;
• A consul general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who is a resident of the country where the deposition is taken; or
• Any notary public.
CERTIFYING COPIES

DEFINITION

A certified copy is a duplication of an original (usually an official) document, certified as an exact reproduction, usually made by the officer representative of the individual issuing or keeping the original. A Texas notary is authorized to make a copy of an original document only; that document must NOT be any document that is a public record or a publicly recordable document.

DOCUMENTS THAT CAN/CANNOT BE CERTIFIED

A Texas notary may only make a certified copy of an original, unaltered document. So, if someone brings you a copy of a document and requests a certified copy, you must refuse. If they can bring you the original, and it is not a public record or a publicly recordable document, then you may make a certified copy.

The key here is that any document copied must not be a public record of any type, or a publicly recordable document. If a client appears before you and requests a copy of, for instance, a birth certificate, send the client to the office that stores those original birth certificates for a copy. You are not authorized to make a copy of any public record. Make no exceptions to this rule; it is a violation of law to do so.

You may copy:

- School and college forms, diplomas, reports, but not official school records or transcripts
- Insurance forms
- Student permission forms
- Consent forms
- Travel forms as long as they are not immigration papers
- Invoices, contracts
- Lease agreements; bills of sale
- An entry from a notarial record book
- Personal documents; letters

You may not copy:

- Birth Certificates
- Death Certificates
- Marriage or Divorce Decrees
- Deeds, Mortgages, or other RealEstate documents
- Probated Wills
- Official School Records and Transcripts
- Immigration Papers
- Military Records
- Texas Drivers’ Licenses
There are many other items that could be listed in both columns; the best rule is this: if in doubt, don’t copy a document without first determining (1) if it is a public record or a publicly recordable document and (2) if the document presented to you to be copied is an original. These precautions could prevent serious charges of impropriety.

**HOW TO CERTIFY COPIES**

The notary is required to make the copy personally. Keep a copy in your record. You must store the copy securely, and must produce it if ever requested, just as you would a copy of an entry in your record book. The notary must attach to the copy a notarial certificate specifically designed for that purpose.

**Certified Copy Certificate**

State of Texas  
County of ______________  

On this _____ day of ______________, (year), I attest that the attached document and the duplicate kept in my notarial records are true and exact copies made by me from the original document described as (description of document), presented to me by the holder of the document, (name of holder of document) and requested to be copied, and that, to the best of my ability to determine, the original document is neither a public record nor a publicly recordable document.

_____ Personally Known  
_____ Produced Identification  
ID Number and Type of ID ___________________________  

Given under my hand and seal of office this _____ day of ______________,  
A.D., ________ (year).

______________________________________________________                       (NOTARY SEAL)  
(Signature of Notary)  

______________________________________________________  
(Name of Notary Typed, Stamped, or Printed)  
Notary Public, State of Texas
PROCEDURES FOR PROPER NOTARIAL ACTS

Here is a review of key fundamentals. Consider this your notarization guide for every notarial act you perform, and do not miss any of the following critical elements:

1- DEMAND PERSONAL APPEARANCE
Tex. Civ. Prac. & Rem. §121.004

The Cardinal Rule of a good notarization: A notary should never perform any notary act unless the signer is standing before the notary at the time the notarial act takes place. Make no exceptions. The signer MUST appear before you at the time you perform the notarial act. Do not allow someone to coerce you into completing a notary act ‘after the fact.’ This could result in criminal charges against you.

2- PROPERLY VERIFY IDENTITY OF THE SIGNER
Tex. Civ. Prac.& Rem. §121.005

An officer may not take the acknowledgment of a written instrument unless the officer personally knows or has satisfactory evidence that the acknowledging person is the person who executed the instrument and is described in it. It is especially important to document on the notarial certificate the type of identification used in a notarization. Listed below are three methods of identifications:

(a) Personal Knowledge
Tex. Civ. Prac. & Rem. §121.005(b)

If you know the signer personally, that is sufficient and should be noted on the notarial certificate. But you must actually know them; don’t just take the word of another. For instance, if a neighbor says, “This is my brother, Bill,” just that statement is not sufficient for the purposes of identity. You must have actual knowledge of a signer in order to claim ‘personally known’ as a method of identification. Personal knowledge of the signer is of course the best form of ID.

(b) The oath of a credible witness personally known to the signer and to the officer

If you don’t know the signer personally, and the signer cannot produce
satisfactory identification documents you may take the oath of a ‘credible witness’ that is personally known to you and to the signer. There is a form to attach to the document for this purpose. You must actually place the credible witness under oath; simply asking them to identify the signer is not sufficient. If this form of identity is used, document that on the notarial certificate and in your record book. Have the credible witness sign an entry in your record book for that transaction, detailing the oath of credible witness, and of course have the signer of the document being executed sign in the next entry for that notarial act.

Be certain to attach the credible witness affidavit securely to the document being notarized to prove your method of identification of the signer. When you use this form of identification, it is important to place the witness under oath as follows:

**Credible Witness Oath**

“Do you swear under penalties of perjury that you personally know this person as (name of person whose signature is to be notarized) and that he/she is the person named in the document requiring notarization, so help you God?”

**Credible Witness Affidavit**

Affidavit of Identity by Credible Witness

On this ___ day of ___________, (year), under the penalties of perjury, I swear (affirm) that the person appearing before (name of notary) is personally known by me as (name of person whose signature is to be notarized) and is the same person who is named in the document requiring notarization of signature.

(Signature of Witness)  

(Printed Name of Witness)

State of Texas  
County of __________

Sworn to (affirmed) and subscribed before me this ____ day of ______________, (year), by (name of witness), who is personally known to me.

___ Personally Known  
___ Produced Identification

ID Number and Type of ID ______________________

(Signature of Notary Public)  

(Printed Name of Notary Public)

[NOTARY SEAL]

Notary Public, State of Texas
(c) A current identification card or other document issued by a federal or any state government agency that contains the photograph and signature of the acknowledging person.

Tex. Gov’t. Code §406.014(a)(5)

Proper identification is critical to any secure notarial act. With any acknowledgment or an oath, you must obtain proper identification. If you do not know the signer personally, and he/she has no proof of identification, simply request that he/she return with acceptable identification.

The best form of identification is a state or federally issued identification card, a driver’s license, passport, military ID, or any card containing a signature and photograph issued by a state or federal government office. The card should typically detail eye and hair color, height, weight, and date of birth. The ID card must be current, and the notary should carefully compare the photograph to the signer, and verify that the signatures match.

Beware of fake ID’s! Although even the most expert identity authority may be fooled by a carefully crafted false identification document, the prudent notary will take every precaution when checking credentials. If an identity document appears suspicious or seems to have been altered in any way, it is best to refuse to notarize. Always verify the signature on the identification card matches the signer’s signature.

The American Association of Notaries recommends that every notary keep a copy of the most recent issue of the I.D. Checking Guide, the most effective guidebook available for official state-issued ID cards and how to confirm authenticity of those cards.

3- REVIEW THE DOCUMENT

a) Verify that the date is not later than the date presented for notarization.

b) Check Venue. Is it accurate? If changes are needed, the notary and the signer should both initial the changes.

c) Be extremely careful of any alterations to a document. If a document has been altered and the only required signer is before you, that signer and the notary must initial any change. If there are multiple signers who are not all before you, and some of those not appearing have already signed the document, you should refuse to notarize. There is no way to determine if those signers are aware of any changes made to the document. If they are all, before you, then have everyone initial each change, including the notary. Under no conditions should the notary knowingly allow any change to a document once it has been notarized.

d) Determine the type of notarial act required. Is the signer acknowledging a signature (certificate will state, ‘acknowledged before me...’) or is the
signer taking an oath or making an affirmation (‘sworn to (or affirmed) and signed before me...’) NOTE: The notary is NOT to guide the signer into one or the other of these acts. The notary may explain both acts and what is required for each, and have the signer choose the act to follow, if the signer doesn’t already understand what is required... but the notary must never make that decision. This could result in charges of the Unlicensed Practice of Law (UPL).

e) Be sure there are no blank spaces on the document to be signed before you. You do not need to read the entire document, but scan over it to determine who has signed or is required to sign the document, if all signers are present before you, and that all spaces are filled in.

Do not notarize a signature on a document with blank spaces! Incorrect or fraudulent information could be filled in after the document is removed from your presence that could significantly alter the meaning and result of the document being executed. So be certain that all blanks are filled in and all signers are exactly identified and named in your notarial certificate.

4-NEVER ACT AS A LAWYER, AND NEVER GIVE ADVICE OR HELP IN PREPARING DOCUMENTS.

Unless licensed to practice law in the state of Texas, it is unlawful to give legal advice or even seemingly harmless general advice. The notary must take care to never lead a signer or suggest methods of handling important documents; this could result in charges against the notary of the Unlicensed Practice of Law (UPL) and could include extremely difficult and costly litigation. Just remember, unless you are licensed to practice law, you must avoid any comments or suggestions that might even remotely appear to be taken as legal advice. Don’t give help with forms, don’t design or prepare documents, and don’t give your opinion. It could be very, very costly.

5-DETERMINE SIGNER’S AWARENESS AND UNDERSTANDING OF THE TRANSACTION

Tex. Civ. Prac. & Rem. §121.005 (b)

This is a difficult area in that, of course, most notaries are not medically trained to recognize certain mental illness or disease. However, in order to provide a level of trust and security, the notary must determine that the signer understands the document being executed. Texas law states, ‘...the person who executed the instrument must appear before an officer and state that he executed the instrument for the purposes and consideration expressed in it.’

The notary must be able to communicate with the signer and both must understand the transaction taking place. It is the notary’s obligation to determine that the signer understands and is aware of the act being executed, and is signing willingly for that purpose. If there are communication barriers of any kind, please
do not proceed until understanding is reached.
If an interpreter is used, the notary and the interpreter should not be the same individual.

6- PERFORM THE VERBAL ELEMENT OF THE CEREMONY

This is critical and a vital part of your responsibility. Here are the tough questions to ask:

**Acknowledgment:**

“Do you acknowledge that this is your signature, that you signed the document willingly for the purposes stated in it?”

**Oath:**

“Do you swear, under penalties of perjury, that the information included in this document is the truth, so help you God?”

**Affirmation:**

“Do you affirm under penalties of perjury that the information included in this document is the truth?”

7- HAVE SIGNER SIGN YOUR RECORD BOOK

As we’ve discussed, this proves beyond a doubt that the signer did in fact appear before you at the time the notarial act took place.

Be certain to compare the signer’s signature to that of the signer’s identification card and signatures on the document signed.

8- RECORD ALL DETAILS IN RECORD BOOK

Tex Gov’t. Code §406.014

This serves to remind you of important information regarding the notarization if you are ever called on to testify about it. This will prove invaluable to you then. Remember that you are required by law to record information about the transaction and also any fee charged for a notary service.

9- STAMP/SEAL YOUR NOTARIAL CERTIFICATE

Tex. Gov’t. Code §406.016(b); Tex. Gov’t. Code §406.013; Tex. Civ. Prac.& Rem. §121.004(b)

The notarial act is incomplete and invalid without both a completed certificate and a notary’s clear and legible signature and seal on the certificate. Always sign and seal the document after authenticating all signatures, verifying all the
information listed in this section, and fully documenting the transaction

A simple checklist, is highly effective. By following set procedures you will help eliminate any possibility for error or omission, and greatly reduce any chance of liability.
UNUSUAL SITUATIONS

Notaries encounter difficult and unusual situations just as other professionals do. When faced with such difficulties, it is always best to handle them in a professional and capable manner.

A bilingual Texas notary is a tremendous asset! However, many are not bilingual, and yet notaries deal with language difficulties constantly, and manage very well.

FOREIGN LANGUAGE DOCUMENTS/ TRANSLATING DOCUMENTS

Suppose a signer appears before you with a document written in English, but speaks only Spanish. The key to this type of difficulty is a translator who speaks both languages fluently. Have a translator translate the document into a language the signer understands, and swear to the accuracy of the document’s translation in an affidavit. Then attach that affidavit to the document and continue as usual. If no translator is available, refuse to notarize and refer the client to a bilingual law firm or if immigration matters are involved, send them directly to the Immigration and Naturalization Service (INS).

If you are unable to communicate with the signer in any way, you must refuse to notarize.

The notarial certificate should be in English, even if the document has been translated to another language for the signer. The translator present may translate the particulars of the certificate to the signer if necessary. The notary who does not speak a foreign language should not complete a certificate written in the foreign language; if he did so, he would not truly understand the statements made on the certificate.

Even if the notary is bilingual however, it is critical to always have another individual provide the translation, or if the notary is the only bilingual in the office, have another individual perform the notarial act. The notary must never do both, as that could very possibly be construed as a conflict of interest.

Hopefully, the translator will be present for the verbal notarial ceremony so that you can ensure that the signer understands the nature and intent of the document to be executed. This is critical. You must be able to communicate with the signer to determine that he or she is signing the document willingly for the purposes stated therein, or if an oath is involved, you must place the signer under
oath regarding the truth of the statement being made, and receive an affirmative answer. Remember that this verbal ceremony is a serious and vital part of a notarial act, and do not fail to administer the oath or take the acknowledgment of your signer.

Your verbal question to the Spanish-speaking signer should be similar to this:

**Oath:**

*Usted jura, bajo los delitos de perjurio que la informacion contenida en este documento es la verdad y que Dios le ayude.*

**Acknowledgment:**

*Es de su conocimiento que esta es su firma legitima, que firmo el documento de buena fe por los propositos señalados en ella.*

The signer will reply in an affirmative manner such as “Si” or “Si, juro” (‘yes, I swear’) or nodding affirmatively, but preferably verbally speaking a reply.

Keep in mind that if you are unable to determine if a signer is signing willingly or if you are unable to administer an oath to the signer regarding the truth of the document because of a language difficulty, and do not have an interpreter, you must refuse to notarize.
Affidavit of Translator

When an affidavit is necessary, follow this format.

State of Texas
County of ______________

I, (name of person providing translation) do swear (or affirm) that I speak both the English and the ______________ languages and can accurately translate from one to the other, and that the attached is an exact and complete translation of (description of document) made by me from ______________ into ______________.

______________________________________________________
(Signature of Translator)

______________________________________________________
(Name of Translator Typed, Stamped, or Printed)

Sworn to (or affirmed) and subscribed before me this _________ day of ______________, (year), by (name of person making translation).

_____ Personally Known
_____ Produced Identification
ID Number and Type of ID ______________

______________________________________________________  (NOTARY SEAL)
(Signature of Notary Public)

______________________________________________________
(Printed Name of Notary Public)
Notary Public, State of Texas

VISUALLY IMPAIRED SIGNER

A notary must ensure that a document signer understands the transaction taking place, so if a visually impaired signer appears before you for a notarization, please read the complete document to the signer before continuing with the notarial act. This is the only way you can be sure the signer was not deceived by the preparing party, and the only way to assure yourself that the signer does understand what is actually being executed. Remember, though, you are not at liberty to explain the meaning of what you read, and if the signer obviously does not understand after you read the document, you should refer them to a trusted attorney for advice before continuing.

It is a good idea to note in your record book that you did read the entire document to the signer, in case a problem arises later and you are requested to testify to the particular circumstances of that notarization.
HEARING/SPEECH IMPAIRED SIGNER

There are many ways to communicate with one who is hearing or speech impaired. You can write notes asking the signer if he/she understands the document; you can write your notary questions such as ‘Do you swear…’ or ‘Do you acknowledge…’ and the signer can nod or make another affirmative gesture, and may even write a response which should be attached to the notarial certificate and noted in the notary’s record book for further proof that the notary took every measure available to communicate and determine that the signer acknowledged that he signed the document willingly for the purposes stated in it, or that the signer took an oath attesting to the truthfulness of the document.

SIGNER UNABLE TO WRITE (SIGNING BY MARK)

A signer may be unable to write due to a physical handicap or due to illiteracy. A ‘signature by mark’ may be accepted for a signature, if the signer is illiterate. It is recommended that you have two witnesses who know the signer witness the signing of the document. Be certain the witnesses are impartial and uninvolved in the transaction taking place.

The first step, as always, is to ensure that the signer understands the nature of the document to be signed. Once this is determined, go ahead and identify the signer, perform the notarization as you would in any notarial act, and then at the time the document is to be signed, have the signer make his/her mark on the signature line. The notary should then print the signer’s first name before the mark, and last name after the mark, and have the witnesses sign as well. Note the following certificate, and the differences between this one and a standard notarial certificate:
Oath / Affirmation Certificate (Jurat) for Signature by Mark

(First Name) X (Last Name)

(His Mark or Her Mark)

(Signature of Witness)

(Printed Name of Witness)

(Address of Witness)

State of Texas
County of ____________

Sworn to (or affirmed) and signed before me this ________ day of
__________, (year), by (name of person making statement) who signed
before me and this witness by making a mark.

_____ Personally Known

_____ Produced Identification

ID Number and Type of ID ________________

(Signature of Notary Public) (NOTARY SEAL)

(Printed Name of Notary Public)

Notary Public, State of Texas
Chapter 14 / UNUSUAL SITUATIONS

Short Form of Acknowledgement Certificate for Signature by Mark (Individual)

(First Name) X (Last Name)

(His Mark or Her Mark)

(Signature of Witness)

(Printed Name of Witness)

(Address of Witness)

State of Texas
County of __________

This instrument was acknowledged before me and this witness on (date) by (name of person acknowledging this signature by mark).

___ Personally Known
___ Produced Identification
ID Number and Type of ID _____________________________

(Signature of Notary Public)

(Printed Name of Notary Public)
Notary Public, State of Texas

SIGNING A DOCUMENT FOR AN INDIVIDUAL WITH A DISABILITY
Texas Gov’t. Code §406.0165

A Texas notary is authorized to sign a document for an individual with a disability. “Disability” means a physical impairment that impedes the ability to sign or make a mark on a document. This in no way means you may sign for someone for the sake of convenience, or if they are unable or unwilling to appear before you, or just got a manicure… this is strictly to assist those unable to write. Texas law states:

A notary may sign the name of an individual who is physically unable to sign or make a mark on a document presented for notarization if directed to do so by that individual, in the presence of a witness who has no legal or equitable interest in any real or personal property that is the subject of, or is affected by,
the document being signed. The notary shall require identification of the witness in the same manner as from an acknowledging person under Section 121.005, Civil Practice and Remedies Code.

A notary who signs a document under this section of law must then write beneath the signature the following statement:

“Signature affixed by notary in the presence of (name of witness), a disinterested witness, under Section 406.0165, Government Code.”

A signature made under this section is effective as the signature of the individual on whose behalf the signature was made for any purpose. A subsequent bona fide purchaser for value may rely on the signature of the notary as evidence of the individual’s consent to execution of the document.

NOTARIZING FOR MINORS

If a notarization request is made that involves a minor, standard rules of notarization must be followed. The young signer, if not known personally by the notary, must be able to prove his identity in a satisfactory manner. Young people may have a state identification card, and this is sufficient evidence of identity. Or, a credible witness that is not a relative may identify the signer. Identity must be proven. If unable to prove identity, the notary should consider referring the signer to the child’s school where the school notary will probably know the child and his parents personally, and be able to complete the transaction.

Also, the notary must be able to determine that the signer understands the notarial act taking place. If the signer is old enough to understand the meaning of an oath or affirmation, or to understand the meaning of ‘acknowledging that he signed for the purposes stated therein’ then the notary may proceed, after proving identity. If the child is very young and obviously does not understand the transaction taking place, the notary must refuse to notarize.

ATTORNEY-IN-FACT

In the event of a power of attorney, a signer may appear before a notary to sign on the behalf of the principal who appointed him or issued the signer the power to sign. In this case, the signer will sign his name as attorney in fact for the principle. You would place the signer under oath, or take the acknowledgment of the signer, as if the principal were before you. For example, the signature would read:

John M. Wilson, attorney in fact for Lynne Meadows.

SUBPOENA

A notary has the authority to issue a subpoena if a witness refuses to testify. This is typically a legal matter handled through court officials who will instruct the notary if the need arises.
OPENING SAFE DEPOSIT BOXES

Tex. Fin. Code § 59.109

Though not particularly difficult, this act seldom arises for most notaries. In certain circumstances where a safe deposit tenant abandons contents of a safe deposit box or fails to pay the required rental on a safe deposit box, a bank will enlist the services of a notary to attend and witness the opening of that box and then document contents of the box and details of the proceedings. An officer of the bank will also be present.

Texas law states, if the rental for a safe deposit box is delinquent for at least six months, the bank or safe deposit company may send notice to each lessee that the company will remove the contents of the box if the rent is not paid before the date specified in the notice, which may not be earlier than the 60th day after the date the notice is sent. If the rent is not paid before the date specified in the notice, the safe deposit company may open the box in the presence of two employees, at least one of whom is an officer or manager of the safe deposit company and at least one of whom is a notary public. The safe deposit company shall inventory the contents of the box in detail as provided by the comptroller’s reporting instructions and place the contents of the box in a sealed envelope or container bearing the name of the lessee.

The safe deposit company will have a lien on the contents of the box for an amount equal to the rental owed for the box and the cost of opening the box. The safe deposit company may retain possession of the contents. If the rental and the cost of opening the box are not paid before the second anniversary of the date the box was opened, the safe deposit company may sell all or part of the contents at public auctions in the manner and with the notice prescribed by Section 51.002, Property Code, for the sale of real property under a deed of trust. Any unsold contents of the box and any excess proceeds from a sale of contents shall be remitted to the comptroller as provided by Chapters 72–75, Property Code.

PROTESTS

A protest is a statement issued by a notary public that a certain bill or note was presented for payment or acceptance, and such payment or acceptance was refused. The notary public attests that the refuser shall be held liable for any losses arising from the dishonor of the document. This issue is virtually obsolete since the Uniform Commercial Code has been in place. However, if the need arises, here is a certificate as described:
PROTEST

(Insert bill or note or copy thereof)

State of Texas
County of ____________

Be it known that on the ____________ day of ____________, (year), at the request of (name), of ____________, I, (Notary Public’s name), a Notary Public duly commissioned and sworn, residing in __________ County, Texas, did present the original (instrument), hereto attached, for $ __________, with accrued interest thereon of $ __________, dated ____________, and demanded payment (or acceptance) thereof, which was refused.

Whereupon I, at the request of the aforesaid __________, did protest, and by these presents do protest, as well against the drawer, maker, endorsers, and acceptors of said instruments as against all others whom it may concern, for exchange, costs, charges, damages, and interest already incurred and hereinafter to be incurred by reason of non-payment thereof. I further certify that on (date), notice in writing of the foregoing presentment, demand, refusal and protest was given by (persons and status) by depositing notices thereof in the post office at __________, Texas, postage paid, directed as follows: ________________.

I further certify that notices were left as follows:

Notice left for _______________ at _______________
Notice left for _______________ at _______________

Each of the named places the reputed place of residence of the person for whom the notice was left.

In testimony whereof I have hereunto set my hand and affixed my seal of office at __________, Texas, on ______________ day of _______________, (year).

______________________________________________________                   (NOTARY SEAL)
(Signature of Notary Public)

______________________________________________________
(Printed Name of Notary Public)

Notary Public, State of Texas
THE NOTARY AS WITNESS

A notary may serve as a witness if the signature of the witness is not a part of the notarization. A notary may not notarize his or her own signature.

If the witness area falls below the notarial certificate and the witness signature does not require notarization, then the notary may serve as a witness. If the witness signatures do require notarization, simply find another notary or another witness to meet the requirements necessary to execute the document.

It is always prudent to document exactly whose signatures are notarized on the notarial certificate to avoid any questions or concerns by receiving parties.

DOCUMENT EVERYTHING

Always document anything unusual such as the above circumstances in your record book. You will not remember details of every notarial act years from now, and your documentation may be proved invaluable at some point in the future.

Documentation is critical to any future questions that may arise about a particular notarization, and may be used to prove your proper handling of the transaction. Any detail regarding a transaction may prove relevant in the future, so document well.
FOR VALID REASONS ONLY…
REFUSING TO NOTARIZE

DISCRIMINATION IS UNCONSTITUTIONAL

A notary is a public officer of the state, and should make every attempt to serve the public willingly whenever possible. And a notary must never discriminate for reasons of race, gender, social, political, or economic standing, or for any other reason that could be considered unlawful or unconstitutional.

However, there will be occasions when you must refuse a request to notarize.

NOTARY MUST ADHERE TO LAW

For instance, if the signer does not know what type of notarial certificate is required, and cannot understand if he needs to make an acknowledgment or take an oath, the notary should respectfully request that the signer seek legal counsel or other assistance and return when it is clear what is needed. As stated earlier, the notary is not authorized to give advice on any matter concerning a notarization. This includes telling the signer what form to use.

There are many other reasons you should or must refuse to notarize, and you will no doubt encounter reasons not found on this list. You must refuse to notarize under any of the following conditions:

• A signer you don’t know personally has no identification.
• A signer presents a document with blank spaces.
• A signer appears frightened or confused about the notarial act or appears unwilling to sign the document.
• A signer behaves in a threatening manner toward you.
• You do not have your notary seal with you at the time.
• A signer refuses to appear before you personally.
• A signer refuses to take an oath as required, or verbally acknowledge signing the document presented.
• You have information about the transaction that reveals it as fraudulent or unlawful.
• You and the signer are unable to speak the same language and have no interpreter.
• A document presented to be copied is a public record or publicly recordable document.
• You are involved in the transaction or stand to gain in any way.

It is best to be as gracious and respectful as possible when you refuse to notarize, explaining the circumstances if possible to avoiding a dispute. However, even if your refusal makes your client unhappy, it is much better to refuse than to find yourself in court explaining why you complied with a notarization when you knew it was inappropriate.

EMPLOYER REFUSES TO ALLOW NOTARIZATIONS

An employer should not refuse to allow an employee notary to perform notary acts. If a request is made for a notarization at a time that conflicts with duties of the employee, the signer could be requested to wait, or to return at a more convenient time, but the request for notarization should be met if at all possible.

There is a Texas Attorney General Opinion No. 0-471 dated April 3, 1939, that states the following:

A person who accepts a public office is considered as accepting its burdens and obligations with its benefits. He thereby subjects himself to all constitutional and legislative provisions relating thereto and undertakes to perform all the duties of the office, and while he remains in such office the public has the right to demand that he perform such duties.

Among the duties of a notary public, is the duty of taking acknowledgment of the public generally. If he accepts his appointment at the hand of the governor, and holds himself out as a notary public of the governor, and holds himself out as a notary public he accepts the duties imposed upon him by virtue of the office he holds. He has the duty of refusing to take acknowledgment under given conditions which, by their nature, constitutes good cause. There appear no facts in your inquiry which would constitute good cause for refusal to act.

It is, therefore, the opinion of this department and you are so advised that notaries public who are employed by the Agriculture and Mechanical College of Texas cannot legally refuse to do notary work for the public generally during office hours. There is, however no duty imposed upon a notary, or any other public official to execute a particular duty at any given moment. He may execute that duty at a reasonable time as is consistent with the other duties imposed upon him by reason of his particular employment.

NOTE REFUSAL IN RECORD BOOK

If you find it necessary to refuse a notarization, please record the circumstances in your record book in case you are ever requested to explain the refusal in the future. This is for your protection. Detail the pertinent information including the date, the signer’s name, brief details of the document presented, and of course, the reason for refusing to notarize.
ELECTRONIC NOTARIZATIONS

As electronic commerce has grown tremendously in recent years, so has the need to allow for the execution and signing of legally binding documents in an electronic format. In response to that need, Texas passed legislation during both the 75th and the 77th Legislative Sessions to facilitate the use of electronic documents and electronic signatures by government agencies. These laws also enable electronic notarization for use on electronic documents.

LAWS

Of the pertinent laws passed since the mid-1990’s, there are two that are the most important to electronic transactions.

a. SB 393 The Texas Universal Electronic Transaction Act. This bill is a version of the UETA. It amended the Texas Business and Commerce Code by creating Chapter 43. It allows for the use of electronic documents and signatures, including those of notaries, in electronic transactions and commerce to be legally enforceable.

b. SB 297. This bill amended Section 121.004 of the Texas Civil Practice and Remedies Code to allow for the electronic notarization of electronic documents. Through this law, notaries are not required to affix an embossed seal to these types of documents. Instead, they are required to legibly reproduce the elements of the notary seal onto electronically notarized documents. §121.004(d); 406.013(d).

STEPS FOR ELECTRONIC NOTARIZATIONS

The steps are the same for electronic documents as for paper documents. Excepting the fact that the documents and signatures are electronic and the notary seal is not used, the paper and electronic processes are the same.

a. Require presence. Each signer must be in the presence of the notary at the time of the notarial act. The signer will sit in front of a computer screen looking at the electronic document(s).

b. Examine the document. You will need to ensure that all blanks have been completed on the document before the notarization. Practically, electronic documents can be sent to the parties involved so they can review the documents before the execution and notarizations. In the near future as electronic notarizations become widely used, the process will include using
software that will check for certain elements of the document, such as the date of the document, missing information or blanks, the format of the notarial certificate, etc.

c. **Identify the person.** The same types of identification are required for an electronic notarization as for a standard notarization.

d. **Complete the record book entry.** For now, it is recommended that the notary use a paper record book with the signer’s original signature, identification, description of the document, and a notation that the document was an electronic document, etc. In the future, record books may become electronic.

e. **Perform the notarial act.** This step includes drawing a conclusion about the person’s mental capability of understanding the notarial act and the document at the time of the notarization, and actually administering the oath or taking the acknowledgment in a verbal ceremony. The person will also sign the document at this point.

f. **Complete the notarial certificate.** You will complete the notarial certificate by typing in the correct information in the appropriate spaces. Sign the certificate by one of the accepted signing methods, and type the information required on the official Texas notary seal below the notary’s signature.

**SIGNING DOCUMENTS**

Texas Business and Commerce Code §43.007

1. **Signing Methods.** Electronic and digital signatures can be added to an electronic document by the signer(s), the witnesses, and the notary in the following ways:
   - Typing;
   - Signing with a stylus on a digitizing pad;
   - Attaching a graphics file with a picture or drawing, possibly of a signature;
   - Attaching a recording of a sound, such as a voice;
   - Signing by using a software application or a process to apply an electronic or digital signature.

2. **Notary signing as witness.** The same procedure applies to the signing of an electronic document as to that of signing a paper document. The notary may sign as one of the witnesses if the witnesses’ signatures do not require notarization and if the notary states in the notarial certificate exactly whose signature is being notarized.

**SECURITY CONCERNS**

Secure signatures are not required by law. However, the Texas UETA provides that all electronic transactions must be by agreement between the parties. If the
parties agree that secure electronic signatures must be used for notarial purposes, then the notary must use one of several technologies that can provide secure signatures.

The Texas Department of Information Resources is responsible for establishing requirements for government agencies to use secure electronic signatures. These rules must be followed for any electronic business transaction involving a state or other government agency.

**USE OF NOTARY SEAL**

**Tex. Civ. Prac. & Rem. §121.004(d)**

Senate Bill 276 amended section 121.004 of the Civil Practice and Remedies code so that there is no longer a requirement that a Texas notary must use an embossed seal on electronic documents. Further, Texas UETA provides that:

*If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized by applicable law to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.*

Though it is not necessary to use an embossed seal on electronic documents, it is still necessary to legibly reproduce the required elements of the seal on the document. Section 406.013 of the Texas Government Code states that the following information must be included on the official seal:

- The words “Notary Public, State of Texas”;
- The notary public’s name; and
- The expiration date of the notary’s commission.

**COPIES OF ELECTRONIC DOCUMENTS**

Certain types of documents should not exist as duplicate originals. Texas UETA addresses one class of documents, called *transferable records*. These are financial documents, such as checks, notes securing debt, and bearer bonds, that presume the person in possession has certain rights to the value represented by the documents. These types of documents are seldom notarized.

**VOLUNTARY PARTICIPATION**

The Texas UETA makes participation by all parties voluntary, including that of the signer and the notary. However, a notary’s employer who agrees to participate electronically may require a notary to perform electronic notarial acts as a term of employment.
Chapter 16 / ELECTRONIC NOTARIZATIONS

ACCEPTANCE OF ELECTRONIC NOTARIZATIONS

Although the laws and technology are now in place for electronic notarizations, in reality it may be some time before this method of notarization is widely used. The socialization process is the biggest barrier to widespread implementation of electronic notarizations. Some businesses and some members of the public will always prefer a paper document that they can hold; but, as the younger generation grows up using this technology, experts predict that electronic notarizations will become commonplace during the next decade.

ELECTRONIC NOTARIZATIONS QUESTIONS

Because little is yet known about electronic notarizations, we’ve included a Q&A on this chapter to give more clarification to this new and innovative notary option:

**Q** Can I scan a signed document into the computer, then notarize the scanned image?
**A** No, that would be like notarizing a photocopy of a signature. You may attest the document was copied under your supervision.

**Q** Can I scan an image of the parties’ signatures and put those in a document, then notarize those signatures?
**A** Yes, you can notarize scanned images of signatures as long as the people are there and they acknowledge their intent that those images are attached for the purpose of their signing the document.

**Q** In the previous two questions, why can you notarize an image of a signature, but not the copy of a signed document?
**A** The issue here is one of notarizing the original document, whether paper or electronic, with the original signatures. The image of a person’s signature was logically associated with an electronic document with the intent that the scanned image be accepted as the person’s signature. In the first question, the signature was performed on the paper document.

**Q** Can I scan a notarized paper document into the computer?
**A** Yes, but it will be just a copy, like a photocopy of the original unless the notary makes an attestation that the copy is a true and correct copy. Notaries may not make certified copies of recorded or recordable documents.
If I put an entire file of documents on my computer's hard drive, then attest to the contents, what happens if I later add a document to the file? What if I delete a record from the file?

You have modified the attested work and invalidated the notarial act. Secure signature technology will no longer validate the signature. But you could re-attest the modified file. More than likely, imaging will be done on archival files on archival media, such as a CD-ROM or DVD.

If I can't add or delete records, what good is it?

For audit or records retention purposes, you may need to show that the electronic or imaged archives of your files are a true and exact copy of the original. Typically, these records are static; it is important to prove the individual items were not modified or changed. If documents can be added to and deleted from archival files, then it may be better to attest to the documents individually, rather than as a group.

If I need to look at a copy of a document in a file, can I check it out of the archive without invalidating the notarial attestation?

Of course. You can even change it or incorporate it into another document or file so long as you don't try to save it back to the original, attested file. What you "checked out" of the archive is a copy.
ACKNOWLEDGMENT: a formal declaration before an authorized official (such as a notary public) by a person signing an instrument that such execution is his/her free act and deed.

Acknowledgment Certificate: a written statement, in a form at the end of or attached to a document, signed and stamped by an authorized official such as a notary, that states that the official took the acknowledgment of the person who signed the document.

Administer: to discharge the duties of a notary, as in the giving of an oath. A notary administers an oath.

Affidavit: a document containing a statement of truth under penalties of perjury, made under oath or affirmation, signed by the affiant before a notary, that includes a jurat (oath/affirmation statement) signed and sealed by the notary.

Affirmation: a solemn statement of truth made under penalties of perjury, equivalent by law to an oath, but without any reference to a Supreme Being. This statement is legally binding.

Affix: to stamp or impress the notary seal to a document.

Apostille: a certificate issued by the Texas Secretary of State attesting to a notary’s authority, usually required for notarized documents being sent out of Texas to those countries who are parties to the international treaty commonly known as the Hague Convention.

Attest: to bear witness to, sign a document as a witness, or to certify. To state as truth.

Attorney-in-Fact: an individual authorized by a written power of attorney to act on behalf of another person.

Authentication: a process by which the Texas Secretary of State certifies or verifies the official status and authenticity of a commissioned notary. This generally results in an Apostille or a Certificate of Authority attached to the notarized document, usually when being sent to another country.

Bill of Sale: a document that conveys title or ownership of personal property.

Certified Copy: a copy of a document signed and attested to as a genuine copy by the public official with possession of the original record. A notary may make a certified copy of an original document only if it is not a “publicly
recordable” document such as a birth, marriage, or death certificate, among others.

**Certify:** to attest as being true.

**Codicil:** a document modifying the stipulations of a will.

**Coerce:** to force another into compliance or submission. Never notarize if evidence of coercion exists.

**Commission:** the certificate issued by the Secretary of State substantiating the notary’s appointment as a notary public, authorizing the notary to perform the official acts of that office, and defining the expiration date of the appointment.

**Contract:** a binding agreement between two or more individuals or representatives to perform in a certain way.

**Conveyance:** a document that transfers ownership of real property.

**Deed:** a document by which a person transfers ownership of real property.

- **Quitclaim Deed:** a deed transferring ownership, title, or interest in a real property, but not professing that such title is valid.
- **Warranty Deed:** a deed wherein the grantor guarantees clear title to a real property.

**Deposition:** the testimony of a witness, or deponent, under oath or affirmation, usually taken outside of a courtroom, during which attorneys verbally interrogate the witness. The testimony is typically then transferred to a written document and notarized, to be used in a court trial.

**Duress:** cruel, unscrupulous, or illegal manipulation of a reluctant or unwilling individual in an attempt to force a desired performance, behavior or action. If a signer is under duress, refuse to notarize.

**Execute a Document:** to act as necessary to make a document fully effective; typically by signing before a notary public.

**Executor:** an individual appointed to carry out the requirements of a will.

**Felony:** a crime punishable by imprisonment or death.

**Free Act and Deed:** An individual’s actions performed willingly for purposes stated. One who signs or acknowledges an act in such terms accepts complete responsibility for the act.

**Grantee:** an individual receiving a deed of real property from a grantor, typically the buyer.

**Grantor:** an individual transferring a deed of real property, typically the seller.

**Guardian:** an individual responsible for a minor and/or the minor’s property.

**Identification Document:** a current (unexpired) and unaltered document or card that proves the identity of the holder, preferably issued by a
governmental office, that includes:

- The holder’s photograph and detailed physical description such as height, weight, and eye color;
- The holder’s signature;
- An official seal of the governmental office that issued the card;
- An identifying number; and
- An expiration date.

**Instrument:** a written document.

**Judgment:** a court declaration stating that one individual owes another, and the amount of the indebtedness.

**Jurat:** the written notarial certificate on any sworn statement or affidavit completed by the notary public with clear wording and sealed by the notary, attesting that the document was signed and sworn to or affirmed by the signer in the presence of the notary public.

**Lease:** an agreement between two or more individuals or representatives, where one party is the owner of a certain property and grants to another or others the right to use this property for a specific period of time in exchange for periodic payment of a set price (rent).

**Lessee:** one who rents property from another.

**Lessor:** one who rents property to another.

**Lien:** an attachment by a seller or mortgagor to real estate or personal property withholding ownership until the payment is received in full, at which time seller conveys full ownership to the buyer.

**Litigation:** a lawsuit or legal action.

**Misdemeanor:** any crime other than a felony.

**Mortgage on Real Property:** a document establishing a seller’s or mortgagor’s lien on a property.

**Negligence:** the failure to use reasonable care.

**Notarial Act:** any official act that a notary public is authorized to perform. Texas notaries are authorized to:

- Take acknowledgments or proofs of written instruments;
- Protest instruments permitted by law to be protested;
- Administer oaths and affirmations;
- Take depositions; and
- Certify copies of documents not recordable in the public records.

Notaries may also be present at the opening of a safe deposit box.
GLOSSARY

Notarial Certificate: a written, signed, and sealed declaration made by the notary as a part of or attached separately to a document, certifying details of the notarial act performed.

Notary Public (Notarial Officer): a public officer appointed by the Secretary of State whose function is to administer oaths and affirmations; to take acknowledgments and proofs; to certify copies of certain documents; and to perform other duties specified by law.

Oath: any form of confirmation or testimony in which a person gives evidence that he/she is bound by a Supreme Being to tell the truth in a statement. Swearing to a false statement is perjury.

Perjury: making a false statement under oath or affirmation. Perjury is a felony, often resulting in fines and/or prison.

Personally Known: knowing an individual sufficiently to have faith and trust in that person’s identity as true.

Power of Attorney (POA): a document authorizing a person to act or sign legally in place of another.

Prima-Facie Evidence: evidence that would, if uncontested, establish a fact or raise a presumption of a fact.

Principal: the person making a power of attorney or will.

Proof: a declaration made by one who saw a document’s execution (signing) take place - a subscribing witness.

Protest: a formal statement made by a notary for another, declaring a failure to pay on a promissory note.

Reasonable Care: care a person of normal judgment and intelligence would take in a given circumstance. Failure to exhibit such care is negligence.

Rent: agreed-upon payment to an individual or entity for the use of property for an established period of time.

Representative Capacity: acting in place of a person, corporation, partnership, trust, or other entity.

Statute: a law established by legislative action.

Subscribe: to sign.

Swear: to take an oath.

Testator: the person making a will.

Texas Statutes: legislatively enacted laws governing the state, as opposed to court-decided or unwritten common laws.

Venue: the location where the notarial act actually takes place, usually stated in the following form:

State of Texas
County of
**Note:** if venue on a document is completed before the notarial act occurs and states a different state or county than where the notary and signer are standing at the time of the notarization, the venue must be corrected when presented to the notary in order for the notary act to be valid.

**Will:** a legal instrument by which an individual disposes of funds, real and personal property to take effect after death.
THE TEXAS CONSTITUTION

Article 4 - EXECUTIVE DEPARTMENT
Section 26 - NOTARIES PUBLIC

(a) The Secretary of State shall appoint a convenient number of Notaries Public for the state who shall perform such duties as now are or may be prescribed by law. The qualifications of Notaries Public shall be prescribed by law.

(b) The terms of office of Notaries Public shall be not less than two years nor more than four years as provided by law.

Article 5 - JUDICIAL DEPARTMENT
Section 19 - JUSTICES OF THE PEACE; JURISDICTION; EX OFFICIO NOTARIES PUBLIC

Justice of the peace courts shall have original jurisdiction in criminal matters of misdemeanor cases punishable by fine only, exclusive jurisdiction in civil matters where the amount in controversy is two hundred dollars or less, and such other jurisdiction as may be provided by law. Justices of the peace shall be ex officio notaries public.

Article 16 - GENERAL PROVISIONS
Section 1 - OFFICIAL OATH

(a) All elected and appointed officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation: "I, ________________________, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of ______________________ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

(b) All elected or appointed officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement: "I, ________________________, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God."

(c) Members of the Legislature, the Secretary of State, and all other elected and appointed state officers shall file the signed statement required by Subsection (b) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (a) of this section. All other officers shall retain the signed statement required by Subsection (b) of this section with the official records of the office. (Amended Nov. 8, 1938, and Nov. 6, 1956; Subsecs. (a)-(c) amended and (d)-(f) added Nov. 7, 1989; Subsecs. (a) and (b) amended, Subsecs. (c) and (d) deleted, and Subsecs. (e) and (f) amended and redesignated as Subsec. (c) Nov. 6, 2001.)
Article 16 - GENERAL PROVISIONS

Section 40 - HOLDING MORE THAN ONE OFFICE; EXCEPTIONS; RIGHT TO VOTE

(a) No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace, County Commissioner, Notary Public and Postmaster, Officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, and retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and the officers and directors of soil and water conservation districts, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer or enlisted man of the National Guard, and the National Guard Reserve, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States, or retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and officers of the State soil and water conservation districts, from holding at the same time any other office or position of honor, trust or profit, under this State or the United States, or from voting at any election, general, special or primary in this State when otherwise qualified.

(b) State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts. Such State employees or other individuals may not receive a salary for serving as members of such governing bodies, except that a schoolteacher, retired schoolteacher, or retired school administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district, including a water district created under Section 59, Article XVI, or Section 52, Article III.

(c) It is further provided that a nonelective State officer may hold other nonelective offices under the State or the United States, if the other office is of benefit to the State of Texas or is required by the State or Federal law, and there is no conflict with the original office for which he receives salary or compensation.

(d) No member of the Legislature of this State may hold any other office or position of profit under this State, or the United States, except as a notary public if qualified by law.

(Amended Nov. 2, 1926, Nov. 8, 1932, Nov. 7, 1972, and Nov. 6, 2001.)

Article 16 - GENERAL PROVISIONS

Section 61 - COMPENSATION OF DISTRICT, COUNTY, AND PRECINCT OFFICERS; SALARY OR FEE BASIS; DISPOSITION OF FEES

(a) All district officers in the State of Texas and all county officers in counties having a population of twenty thousand (20,000) or more, according to the then last preceding Federal Census, shall be compensated on a salary basis.

(b) In all counties in this State, the Commissioners Courts shall be authorized to determine whether precinct officers shall be compensated on a fee basis or on a salary basis, with the exception that it shall be mandatory upon the Commissioners Courts, to compensate all justices of the peace, constables, deputy constables and precinct law enforcement officers on a salary basis.
(c) In counties having a population of less than twenty thousand (20,000), according to the then last preceding Federal Census, the Commissioners Courts have the authority to determine whether county officers shall be compensated on a fee basis or on a salary basis, with the exception that it shall be mandatory upon the Commissioners Courts to compensate all sheriffs, deputy sheriffs, county law enforcement officers including sheriffs who also perform the duties of assessor and collector of taxes, and their deputies, on a salary basis.

(d) All fees earned by district, county and precinct officers shall be paid into the county treasury where earned for the account of the proper fund, provided that fees incurred by the State, county and any municipality, or in case where a pauper's oath is filed, shall be paid into the county treasury when collected and provided that where any officer is compensated wholly on a fee basis such fees may be retained by such officer or paid into the treasury of the county as the Commissioners Court may direct.

(e) All Notaries Public, county surveyors and public weighers shall continue to be compensated on a fee basis.

TEXAS STATUTES, PENAL CODE

TITLE 1. INTRODUCTORY PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

§ 1.07. Definitions

(a) In this code:

(9) "Coercion" means a threat, however communicated:

(32) "Oath" includes affirmation.

(36) "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, Section 51.212 or 51.214, Education Code, or other law.

(38) "Person" means an individual, corporation, or association.

(41) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(47) "Swear" includes affirm.

TEXAS STATUTES, GOVERNMENT CODE

CHAPTER 312. CONSTRUCTION OF LAWS
SUBCHAPTER B. MISCELLANEOUS PROVISIONS

§ 312.011. Definitions
The following definitions apply unless a different meaning is apparent from the context of the statute in which the word appears:

1. "Affidavit" means a statement in writing of a fact or facts signed by the party making it, sworn to before an officer authorized to administer oaths, and officially certified to by the officer under his seal of office.

8. "Oath" includes affirmation.

9. "Official oath" means the oath required by Article XVI, Section 1, of the Texas Constitution.

14. "Signature" includes the mark of a person unable to write, and "subscribe" includes the making of such a mark.

16. "Swear" or "sworn" includes affirm or affirmed.

17. "Written" or "in writing" includes any representation of words, letters, or figures, whether by writing, printing, or other means.

§ 312.012. Grammar and Punctuation

(a) A grammatical error does not vitiate a law. If the sentence or clause is meaningless because of the grammatical error, words and clauses may be transposed to give the law meaning.

(b) Punctuation of a law does not control or affect legislative intent in enacting the law.

TEXAS STATUTES, GOVERNMENT CODE

CHAPTER 406. NOTARY PUBLIC; COMMISSIONER OF DEEDS

SUBCHAPTER A. NOTARY PUBLIC

§ 406.001. Appointments
The secretary of state may appoint a notary public at any time.

§ 406.002. Term
The term of a notary public expires four years after the date the notary public qualifies.

§ 406.003. Jurisdiction
A notary public has statewide jurisdiction.

§ 406.004. Eligibility
Each person appointed and commissioned as a notary public shall be at least 18 years of age and a resident of the State of Texas and must not have been convicted of a felony or crime involving moral turpitude.
§ 406.005. Appointment Procedure—Statement
(a) Each person to be appointed a notary public shall submit an application to the secretary of state on a form prescribed by the secretary of state. The application must satisfy the secretary of state that the applicant is qualified. The application must state:
   (1) the applicant's name to be used in acting as a notary public;
   (2) the applicant's post office address;
   (3) the applicant's county of residence;
   (4) the applicant's date of birth;
   (5) the applicant's driver's license number or the number of other official state-issued identification; and
   (6) the applicant's social security number.
(b) The applicant shall also execute the statement of officers as required by Section 1, Article XVI, Texas Constitution.

§ 406.006. Qualification
An individual qualifies by:
   (1) properly completing the application form;
   (2) executing the statement;
   (3) providing the bond;
   (4) paying the required filing fees; and
   (5) meeting the eligibility requirements

§ 406.007. Fees Paid to Secretary of State
(a) The applicant must submit to the secretary of state:
   (1) a fee of $10 for approving and filing the bond of the notary public; and
   (2) a fee of $1 to be appropriated to and used by the secretary of state only for hiring an investigator and for preparing and distributing the materials required to be distributed under Section 406.008.
(b) The secretary of state shall charge for use of the state a fee of $10 for a notary public commission. The applicant must pay the fee in advance to the secretary of state.

§ 406.008. Commission; Notary Materials
(a) Immediately after the qualification of a notary public, the secretary of state shall send notice of appointment along with a commission to the notary public. The commission is effective as of the date of qualification.
(b) When the commission is issued, the secretary of state shall supply the notary public with:
   (1) materials outlining the powers and duties of the office;
(2) a list of prohibited acts; and
(3) sample forms for an acknowledgment, jurat, and verification and for the administering of an oath, protest, and deposition.

§ 406.009. Rejection of Appointment; Suspension or Revocation of Commission

(a) The secretary of state may, for good cause, reject an application or suspend or revoke the commission of a notary public.

(b) An action by the secretary of state under this section is subject to the rights of notice, hearing, adjudication, and appeal.

(c) An appeal under this section is to the district court of Travis County. The secretary of state has the burden of proof, and the trial is conducted de novo.

(d) In this section, "good cause" includes:
   (1) a final conviction for a crime involving moral turpitude;
   (2) a false statement knowingly made in an application;
   (3) the failure to comply with Section 406.017;
   (4) a final conviction for a violation of a law concerning the regulation of the conduct of notaries public in this or another state;
   (5) the imposition on the notary public of an administrative, criminal, or civil penalty for a violation of a law or rule prescribing the duties of a notary public; or
   (6) performing any notarization when the person for whom the notarization is performed did not personally appear before the notary at the time the notarization is executed.

(e) The dismissal and discharge of proceedings under either the misdemeanor adult probation and supervision law or the adult probation, parole, and mandatory supervision law shall not be considered a conviction for the purposes of determining good cause.

§ 406.010. Bond; Oath

(a) Each person to be appointed a notary public shall, before entering the official duties of office, execute a bond in the amount of $10,000 with a solvent surety company authorized to do business in this state as a surety. The bond must be approved by the secretary of state, payable to the governor, and conditioned on the faithful performance of the duties of office. The secretary of state has the authority to accept an electronic filing of the notary public bond if an agreement has been made with the surety company.

(b) The notary bond shall be deposited in the office of the secretary of state, is not void on first recovery, and may be sued on in the name of the injured party from time to time until the whole amount of the bond is recovered.

(c) A notary public, before entering on the duties of office, shall take the official oath required by Section 1, Article XVI, Texas Constitution.

(d) The oath shall be signed and sworn to or affirmed by the notary public in the presence of a notary public or other person authorized to administer oaths in this state. A notary public cannot execute his or her own oath of office.

(e) The secretary of state shall provide an oath of office form along with the commission and educational materials.
§ 406.011. Reappointment

(a) Not earlier than 90 days prior to the expiration date of the notary's term, a notary public may apply for reappointment on submission of a new application to the secretary of state.

(b) A notary public who is not reappointed on or before the expiration date of the term the notary public is serving will be appointed for a new term expiring four years from the date of qualification.

§ 406.012. Inspection of Records

All records concerning the appointment and qualification of the notary public shall be kept in the office of the secretary of state. The records are public information.

§ 406.013. Seal

(a) A notary public shall provide a seal of office that clearly shows, when embossed, stamped, or printed on a document, the words "Notary Public, State of Texas" around a star of five points, the notary public's name, and the date the notary public's commission expires. The notary public shall authenticate all official acts with the seal of office.

(b) The seal may be a circular form not more than two inches in diameter or a rectangular form not more than one inch in width and 2-1/2 inches in length. The seal must have a serrated or milled edge border.

(c) The seal must be affixed by a seal press or stamp that embosses or prints a seal that legibly reproduces the required elements of the seal under photographic methods. An indelible ink pad must be used for affixing by a stamp the impression of a seal on an instrument to authenticate the notary public's official act.

(d) Subsection (c) does not apply to an electronically transmitted authenticated document, except that an electronically transmitted authenticated document must legibly reproduce the required elements of the seal.

§ 406.014. Notary Records

(a) A notary public other than a court clerk notarizing instruments for the court shall keep in a book a record of:

1. the date of each instrument notarized;
2. the date of the notarization;
3. the name of the signer, grantor, or maker;
4. the signer's, grantor's, or maker's residence or alleged residence;
5. whether the signer, grantor, or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public, and, if introduced, the name and residence or alleged residence of the individual introducing the signer, grantor, or maker;
6. if the instrument is proved by a witness, the residence of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the witness;
(7) the name and residence of the grantee;
(8) if land is conveyed or charged by the instrument, the name of the original grantee and the county where the land is located; and
(9) a brief description of the instrument.

(b) Entries in the notary’s book are public information.

(c) A notary public shall, on payment of all fees, provide a certified copy of any record in the notary public’s office to any person requesting the copy.

(d) A notary public who administers an oath pursuant to Article 45.019, Code of Criminal Procedure, is exempt from the requirement in Subsection (a) of recording that oath.

(e) A notary public may maintain the records required by Subsection (a) electronically in a computer or other storage device.

§ 406.015. Copies Certified by County Clerk

(a) A copy of a record, declaration, protest, or other official act of a notary public may be certified by the county clerk with whom the instrument is deposited.

(b) A copy of an instrument certified by the county clerk under Subsection (a) has the same authority as if certified by the notary public by whom the record, declaration, protest, or other official act was originally made.

§ 406.016. Authority

(a) A notary public has the same authority as the county clerk to:

(1) take acknowledgments or proofs of written instruments;
(2) protest instruments permitted by law to be protested;
(3) administer oaths;
(4) take depositions; and
(5) certify copies of documents not recordable in the public records.

(b) A notary public shall sign an instrument in Subsection (a) in the name under which the notary public is commissioned.

(c) A notary public may not issue an identification card.

(d) A notary public not licensed to practice law in this state may not give legal advice or accept fees for legal advice.

§ 406.0165. Signing Document for Individual With Disability

(a) A notary may sign the name of an individual who is physically unable to sign or make a mark on a document presented for notarization if directed to do so by that individual, in the presence of a witness who has no legal or equitable interest in any real or personal property that is the subject of, or is affected by, the document being signed. The notary shall require identification of the witness in the same manner as from an acknowledging person under Section 121.005, Civil Practice and Remedies Code.

(b) A notary who signs a document under this section shall write, beneath the signature, the following or a substantially similar sentence:

"Signature affixed by notary in the presence of (name of witness), a disinterested witness, under Section 406.0165, Government Code."
(c) A signature made under this section is effective as the signature of the individual on whose behalf the signature was made for any purpose. A subsequent bona fide purchaser for value may rely on the signature of the notary as evidence of the individual's consent to execution of the document.

(d) In this section, "disability" means a physical impairment that impedes the ability to sign or make a mark on a document.

§ 406.017. Representation as Attorney

(a) A person commits an offense if the person is a notary public and the person:

(1) states or implies that the person is an attorney licensed to practice law in this state;

(2) solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters;

(3) solicits or accepts compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or the United States;

(4) uses the phrase "notario" or "notario publico" to advertise the services of a notary public, whether by signs, pamphlets, stationery, or other written communication or by radio or television; or

(5) advertises the services of a notary public in a language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, if the person does not post or otherwise include with the advertisement a notice that complies with Subsection (b).

(b) The notice required by Subsection (a)(5) must state that the notary public is not an attorney and must be in English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice must include the fees that a notary public may charge and the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

(c) It is an exception to prosecution under this section that, at the time of the conduct charged, the person is licensed to practice law in this state and in good standing with the State Bar of Texas.

(d) Except as provided by Subsection (e) of this section, an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

(f) Failure to comply with this section is, in addition to a violation of any other applicable law of this state, a deceptive trade practice actionable under Chapter 17, Business & Commerce Code.

§ 406.018. Removal From Office

(a) A notary public guilty of wilful neglect of duty or malfeasance in office may be removed from office in the manner provided by law.
(b) A notary public indicted for and convicted of a wilful neglect of duty or official misconduct shall be removed from office. The court shall include the order for removal as part of its judgment.

§ 406.019. Change of Address
A notary public shall notify the secretary of state of a change of the notary public’s address not later than the 10th day after the date on which the change is made.

§ 406.020. Removal From State
A notary public who removes his residence from this state vacates the office.

§ 406.021. Removal From Precinct
An ex officio notary public who moves permanently from the notary public’s precinct vacates the office.

§ 406.022. Effect of Vacancy
If the office of a notary public becomes vacant due to resignation, removal, or death, the county clerk of the county in which the notary public resides shall obtain the record books and public papers belonging to the office of the notary public and deposit them in the county clerk’s office.

§ 406.023. Administration and Enforcement
(a) The secretary of state shall adopt rules necessary for the administration and enforcement of this subchapter. The rules must be consistent with the provisions of this subchapter.

(b) The secretary of state may employ an investigator to aid in the enforcement of this subchapter.

(c) The secretary of state may provide for the appointment of county clerks as deputy custodians for the limited authentication of notary public records deposited in the clerks’ offices.

§ 406.024. Fees Charged by Notary Public
(a) A notary public or its employer may charge the following fees:

(1) for protesting a bill or note for nonacceptance or nonpayment, register and seal, a fee of $4;

(2) for each notice of protest, a fee of $1;

(3) for protesting in all other cases, a fee of $4;

(4) for certificate and seal to a protest, a fee of $4;

(5) for taking the acknowledgment or proof of a deed or other instrument in writing, for registration, including certificate and seal, a fee of $6 for the first signature and $1 for each additional signature;

(6) for administering an oath or affirmation with certificate and seal, a fee of $6;
(7) for a certificate under seal not otherwise provided for, a fee of $6;

(8) for a copy of a record or paper in the notary public's office, a fee of 50 cents for each page;

(9) for taking the deposition of a witness, 50 cents for each 100 words;

(10) for swearing a witness to a deposition, certificate, seal, and other business connected with taking the deposition, a fee of $6; and

(11) for a notarial act not provided for, a fee of $6.

(b) A notary public may charge a fee only for an acknowledgment or official act under Subsection (a). The fee charged may not exceed the fee authorized by Subsection (a).

§ 406.025. Signature on Commissions After Change in Office

If the governor or secretary of state ceases to hold or perform the duties of office, existing stocks of commissions bearing the person's printed name, signature, or facsimile signature may be used until they are exhausted, and the person succeeding to the office or the duties of the office shall have the commissions issued with:

(1) the obsolete printed name, signature, or facsimile signature struck through;

(2) the successor's printed name submitted for the obsolete printed name, signature, or facsimile signature; and

(3) the inscription "Printed name authorized by law" near the successor's printed name.

SUBCHAPTER B. COMMISSIONER OF DEEDS

§ 406.051. Appointment

(a) The governor may biennially appoint and commission one or more individuals in other states, territories, or foreign countries or in the District of Columbia to serve as commissioner of deeds.

(b) An appointment may be made only on the recommendation of the executive authority of the state, territory, or foreign country or of the District of Columbia.

§ 406.052. Term

The term of office of a commissioner of deeds is two years.

§ 406.053. Oath

Before performing the duties of office, a commissioner of deeds shall take and subscribe an oath to well and faithfully perform the duties of office under the laws of this state. The oath shall be:

(1) taken before the clerk of a court of record in the city, county, or country in which the commissioner resides;

(2) certified to by the clerk under the clerk's hand and seal of office; and

(3) filed in the office of the secretary of state of this state.
§ 406.054. Seal

A commissioner of deeds shall provide a seal with a star of five points in the center and the words "Commissioner of the State of Texas" engraved on the seal. The seal shall be used to certify all official acts of the commissioner of deeds. An instrument that does not have the impression of the seal, or an act of the commissioner of deeds that is not certified by the impression of the seal, is not valid in this state.

§ 406.055. Authority

A commissioner of deeds has the same authority as a notary public to take acknowledgments and proofs of written instruments, to administer oaths, and to take depositions to be used or recorded in this state.

TEXAS ADMINISTRATIVE CODE

CHAPTER 87, NOTARY PUBLIC

§87.1 Application for a Commission as a Notary Public

(a) All persons applying for a commission as a notary public shall use the application form prescribed by the secretary of state.

(b) The application form may be obtained by writing the Office of the Secretary of State, Notary Public Unit, P.O. Box 12079, Austin, Texas 78711.

§87.4 Issuance of the Notary Public Commission by the Secretary of State

(a) The secretary of state shall commission each applicant if:

1. the application is properly completed and executed;
2. the applicant is a resident of the United States and of Texas, and is at least 18 years of age;
3. the applicant is eligible and no good cause is known for rejection of the application as provided by law and hereafter by §87.41 of this title (relating to Rejection of Application and Revocation of Commission);
4. the fees specified in the Texas Government Code, §406.007, are submitted with the application form; and
5. If a renewal, the form is received by the secretary of state no later than the expiration date of the term for which the notary public is presently serving.

(b) The secretary of state shall not commission an applicant if he or she has had a prior application rejected or a commission revoked for a finding of ineligibility or good cause which still continues.

(c) If any application is received that is not properly completed and executed, the qualification of that particular applicant will be delayed. The secretary of state shall notify the applicant by means of a rejection notice stating why the commission was not issued, and the steps which should be taken to correct the errors or omissions. The applicant will have 30 days from the date of the notice to respond; otherwise, the application will be considered abandoned and all fees deposited forfeited.
(d) When an applicant states that he or she has been convicted of either a felony or a crime involving moral turpitude, or for the violation of any law concerning the regulation of the conduct of notaries public, the secretary of state may request such additional facts or supporting documentation as may be deemed necessary for fair consideration of the application. Once a request for additional facts or supporting documentation is made, the applicant shall have 30 days from the date of the request to respond; otherwise, the application will be considered abandoned and all fees deposited forfeited.

§87.22 Completion and Execution of the Bond and Statement of Officer

(a) The bond and statement of officer will be completed as follows.

(1) All information entered on the application will be legible.

(2) The name and social security number of the applicant will be entered in the space provided in the application.

(3) The complete name of the insurance or bonding company will be entered in the spaces provided in the bond.

(4) The name and address of the agent or agency will be entered in the space provided in the bond.

(5) The applicant will sign in the space provided for signature for the principal. The surety officer or an attorney-in-fact for an insurance or bonding company will sign in the space provided and give the surety company’s Texas Department of Insurance license number.

(6) A bond form that is preprinted with a surety company’s name may be used only by that surety for the issuance of a notary bond.

(7) The applicant’s name to be used as a notary public will be entered in the space provided in the statement of officer.

(8) The applicant will execute the statement of officer before a notary public or other qualified officer and sign in the space provided for signature. Both the initial qualification as well as renewals require the referenced statement of officer.

(b) An applicant who is an officer or employee of a state agency is not required to complete the surety bond. Such applicants will follow the procedure described in §87.25 of this Chapter.

(c) In this Chapter, "state agency" has the meaning assigned by Section 2052.101 of the Government Code.

§87.23 Review of the Bond and Statement of Officer

(a) The bond and statement of officer shall be approved by the secretary of state if:

(1) the form is properly completed and executed as hereinabove provided in §87.22(a) of this title (relating to Completion and Execution of the Bond and Statement of Officer); and

(2) the fees specified in the Notary Public Act, §406.007, Texas Government Code Annotated, §§406.001-406.024 (Vernon 1990) are remitted with the form to the secretary of state.
(b) When all conditions for qualification have been met, the application form shall be approved, stamped "qualified" with the date of qualification, and filed. The secretary of state shall cause a commission to be issued and sent to each notary public who has qualified, which commission shall be effective as of the date of qualification for a term of office as provided by law.

§87.25 Qualification by an Officer or Employee of a State Agency who does not furnish a Notary Public Bond

(a) Application for Appointment

(1) The applicant will complete the notary public application entitled: "Application for Appointment as a Notary Public Without Bond."

(2) The State Agency that employs the applicant will submit the completed application to the State Office of Risk Management for verification by that Office.

(3) The State Office of Risk Management will complete the verification certificate on the application, and forward the completed application to the Office of the Secretary of State for processing.

(b) Change in employment status.

(1) If a notary public transfers to another state agency, the notary public's new agency shall notify the State Office of Risk Management and the Office of the Secretary of State of the transfer.

(2) If a notary public terminates state employment, the notary public shall:

(A) voluntarily surrender the notary public commission;

(B) purchase a notary public bond for the time-period remaining on the notary's current term of office; or

(C) apply for a new term of office and provide a notary public bond.

§87.41 Rejection of Application and Revocation of Commission

The secretary of state by final decision and order may, for ineligibility or good cause, reject any application, suspend or revoke the commission of any notary public, or take other disciplinary action against a notary public. The other disciplinary action shall include, but not be limited to, those actions outlined in §87.48 of this title (relating to Other Disciplinary Acts). Rejection, revocation, and disciplinary proceedings will be held pursuant to the right of notice, hearing, and adjudication as set out in the rules of practice and procedure before the Office of the Secretary of State and the Administrative Procedure Act, Texas Government Code, §§2001.001-2001.902. Any party to a contested case has the right to be represented by legal counsel. Such action will be subject to the right of appeal to a district court of Travis County.

§87.42 Eligibility for Appointment or To Hold the Office of Notary Public

An application for appointment will be rejected if the applicant is not 18 years of age and a resident of the United States and Texas. A notary public commission will be revoked if the applicant was not at least 18 years of age at the time of appointment, or is no longer a resident of the United States and Texas. An applicant or notary public will no longer be eligible to hold the public office of notary public if convicted of a felony which has become
final, and not set aside, for which no pardon or certificate of restoration of citizenship rights has been granted. The dismissal and discharge of proceedings under the adult probation, parole, and mandatory supervision law will not be considered a conviction for the purpose of determining a person’s eligibility to be appointed or hold the office of notary public.

§87.43 Good Cause

(a) Good cause as stated in §87.41 of this title (relating to Rejection of Application and Revocation of Commission) may include, but not be limited to, the following:

1. a final conviction for a crime involving moral turpitude;
2. any false statement knowingly made in an application for appointment or reappointment as a notary public;
3. a final conviction for the violation of any law concerning the regulation of the conduct of notaries public in this state or any other state;
4. use of the phrase "notario" or "notario publico" to advertise the services of a notary public or any other false representation as an attorney as specified in the Texas Government Code, §406.017.
5. a failure to fully and faithfully discharge any of the duties or responsibilities required of a notary public;
6. the unauthorized practice of law;
7. a failure by the notary public to utilize a correct notary seal as described in the Notary Public Act, §406.013;
8. a failure to administer an oath or affirmation as required by law;
9. the collection of a fee in excess of those authorized by the Texas Government Code, §406.024;
10. the execution of any certificate as a notary public containing a statement known to the notary public to be false;
11. a failure to complete the acknowledgment at the time the notary public’s signature and seal are affixed to the document;
12. the advertising in any manner whatsoever that the notary public is an immigration specialist, immigration consultant, or any other title or description reflecting an expertise in immigration matters;
13. the use of false or misleading advertising of either an oral or written nature, whereby the notary public has represented or indicated that he or she has duties, rights, powers, or privileges that are not possessed by law;
14. taking an acknowledgment when the person whose signature is acknowledged did not personally appear before the notary at the time of taking the acknowledgment;
15. previous disciplinary action against the notary public in accordance with these sections; and
16. a failure to comply with, or violation of, a previous disciplinary action taken pursuant to §87.48 of this title (relating to Other Disciplinary Action).
(b) A crime involving moral turpitude means the commission of a crime mala in se (an offense that is evil or wrong from its own nature or by natural law irrespective of statute) which may include, but not be limited to:

1. Class A and B type misdemeanors; and
2. Felony convictions which have not been set aside, or for which no pardon or certificate of restoration of citizenship rights have been granted.

(c) The dismissal and discharge of proceedings under either the misdemeanor adult probation and supervision law or the adult probation, parole, and mandatory supervision law shall not be considered a conviction for the purposes of determining good cause.

(d) Final Class C type misdemeanor convictions shall not be considered in determining good cause.

§87.44 Qualification under New Name

(a) During the four-year term of office, a notary public may change the name on the notary commission by submitting the following to the secretary of state:

1. A completed change of name form;
2. A rider or endorsement to the bond on file with the secretary of state from the surety company or its agent or representative specifying the change of name;
3. The current certificate of commission or a statement that the notary public will perform all future notarial acts under the name specified on the amended commission; and
4. The statutory fees for the issuance of a commission and the filing of a bond.

(b) The change of name will be effective as of the date of receipt of the properly completed and executed elements listed in this section.

(c) When the name change is effective, the notary public will perform all notarial acts using the name on the amended commission.

§87.45 Rejection

If the submission of the change of name does not comply with §87.44(a) of this title (relating to Qualification under New Name), the secretary of state shall notify the notary public in writing of any deficiency. The notary public shall have 30 days from the date of the notice to respond; if no response is received, the request for the change of name will be considered abandoned and all fees paid will be forfeited.

§87.46 Issuance of Amended Commission

The secretary of state shall issue an amended commission to the notary public in the name requested.

§87.47 Complaint Procedures

(a) A person harmed by the actions of a notary public may file a complaint with the secretary of state. The complaint shall be filed on the form prescribed by the secretary of state for such purposes, shall be signed and verified by the person alleging
misconduct on the part of the notary public, and shall substantially comply with the requirements set forth on the prescribed form.

(b) The complaint shall be reviewed by an employee of the secretary of state to determine if the complaint substantially complies with the requirements set forth on the prescribed form and if the actions complained of are sufficient to constitute good cause for suspension, revocation, or other disciplinary action.

(c) The secretary of state may determine that the actions of the notary public are not sufficiently egregious to warrant formal disciplinary action. The secretary may determine to take no action on the complaint, or the secretary may determine to informally advise the notary public of the appropriate conduct and the applicable statutes and rules governing the conduct. The secretary of state shall notify the complainant of the determination not to take further or formal action.

(d) If the secretary of state determines that the complaint alleges sufficient facts to constitute good cause for the suspension or revocation of the notary public’s commission, or other disciplinary action against the notary public, the secretary of state shall notify the notary public of the filing of the complaint and send a copy of the complaint to the notary public.

(e) If the secretary of state determines to proceed on a complaint, the notary public shall be required to respond to the complaint within 20 days of mailing of the notice of complaint to the notary public. The response shall be in writing; the response should specify any disputed facts and provide such additional information as the notary public shall desire.

(f) The secretary of state shall review the response, and determine whether further administrative action is appropriate. If the secretary determines that no further action is appropriate, the secretary shall notify in writing the notary public and the complainant of the determination.

(g) If the secretary determines that further administrative action is appropriate, the secretary shall cause the initiation of a contested case under the rules of practice and procedure before the Office of the Secretary of State.

§87.48 Other Disciplinary Action

(a) The secretary of state may determine that the conduct which is the basis of a complaint against a notary public does not warrant the suspension or revocation of the commission of the notary public. In the discretion of the secretary of state and after the initiation of a contested case, the secretary of state may seek, but is not limited to, the following disciplinary actions:

(1) official reprimand to the public notary;

(2) a consent decree to cease and desist from engaging from any further misconduct;

(3) an agreement to voluntarily surrender the notary public commission;

(4) an agreement to complete a course of study relating to the powers, duties, and responsibilities of a notary public;

(5) an agreement not to seek renewal of a notary public commission for a specified period of time; or

(6) to take such information action as the secretary deems appropriate.
(b) If no agreement can be reached, the secretary of state shall give written notice to the
affected party of a right to a hearing in accordance with the rules of practice and
procedure before the secretary of state.

§87.49 Time for Action

(a) A complaint which arises during the time of office of a notary public which is not
disposed of prior to the end of the term may be pursued in a subsequent term of office.
The secretary of state shall not be barred from seeking suspension or revocation of a
notary public for acts or omission which during a prior term of office.

(b) In the discretion of the secretary of state, the secretary may determine to take other
disciplinary action after the expiration of the term of office of a notary public
regardless of whether the notary public has renewed or will seek to renew the
notary public commission.

§87.50 Authority

A notary public is authorized to issue a subpoena or subpoena duces tecum for written
depositions. This is a powerful authorization and should be exercised cautiously.

§87.52 Issuing

Prior to issuing a subpoena, the notary shall:

(1) require proof of service of notice to take a deposition from the requesting party or
attorney; or

(2) personally execute service of the notice to take a deposition. Additionally, the
notary shall confirm that there is no court or administrative order or procedure
that precludes the issuance of the subpoena. The notary shall obtain an affidavit
from the requesting party or attorney stating whether the party or attorney is
aware of any such procedure or order.

SUBCHAPTER D. SUBPOENAS

§87.54 Governed by Other Law

These rules do not independently authorize a notary public to issue a subpoena. The
issuance of a subpoena by a notary public must be authorized by other law, rule, or
procedure and in conformity with such law, rule, or procedure. Failure of a notary public
to conform to these administrative rules does not affect the validity of a subpoena but may
subject the notary public to disciplinary proceedings by the Office of the Secretary of State.

TEXAS STATUTES, CIVIL
PRACTICE & REMEDIES CODE

TITLE 6. MISCELLANEOUS PROVISIONS
CHAPTER 121. ACKNOWLEDGMENTS AND PROOFS OF WRITTEN INSTRUMENTS
§ 121.001. Officers Who May Take Acknowledgments or Proofs
(a) An acknowledgment or proof of a written instrument may be taken in this state by:

(1) a clerk of a district court;

(2) a judge or clerk of a county court;

(3) a notary public;

(4) a county tax assessor-collector or an employee of the county tax assessor-collector if the instrument is required or authorized to be filed in the office of the county tax assessor-collector; or

(5) an employee of a personal bond office if the acknowledgment or proof of a written instrument is required or authorized by Article 17.04, Code of Criminal Procedure.

(b) An acknowledgment or proof of a written instrument may be taken outside this state, but inside the United States or its territories, by:

(1) a clerk of a court of record having a seal;

(2) a commissioner of deeds appointed under the laws of this state; or

(3) a notary public.

(c) An acknowledgment or proof of a written instrument may be taken outside the United States or its territories by:

(1) a minister, commissioner, or charge d'affaires of the United States who is a resident of and is accredited in the country where the acknowledgment or proof is taken;

(2) a consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who is a resident of the country where the acknowledgment or proof is taken; or

(3) a notary public or any other official authorized to administer oaths in the jurisdiction where the acknowledgment or proof is taken.

(d) A commissioned officer of the United States Armed Forces or of a United States Armed Forces Auxiliary may take an acknowledgment or proof of a written instrument of a member of the armed forces, a member of an armed forces auxiliary, or a member's spouse. If an acknowledgment or a proof is taken under this subsection, it is presumed, absent pleading and proof to the contrary, that the commissioned officer who signed was a commissioned officer on the date that the officer signed, and that the acknowledging person was a member of the authorized group of military personnel or spouses. The failure of the commissioned officer to attach an official seal to the certificate of acknowledgment or proof of an instrument does not invalidate the acknowledgment or proof.

§ 121.002. Corporate Acknowledgments

(a) An employee of a corporation is not disqualified because of his employment from taking an acknowledgment or proof of a written instrument in which the corporation has an interest.

(b) An officer who is a shareholder in a corporation is not disqualified from taking an acknowledgment or proof of an instrument in which the corporation has an interest.
unless:

(1) the corporation has 1,000 or fewer shareholders; and

(2) the officer owns more than one-tenth of one percent of the issued and outstanding stock.

§ 121.003. Authority of Officers

In a proceeding to prove a written instrument, an officer authorized by this chapter to take an acknowledgment or a proof of a written instrument is also authorized to:

(1) administer oaths;

(2) employ and swear interpreters; and

(3) issue subpoenas.

§ 121.004. Method of Acknowledgment

(a) To acknowledge a written instrument for recording, the grantor or person who executed the instrument must appear before an officer and must state that he executed the instrument for the purposes and consideration expressed in it.

(b) The officer shall:

(1) make a certificate of the acknowledgment;

(2) sign the certificate; and

(3) seal the certificate with the seal of office.

(c) The failure of a notary public to attach an official seal to a certificate of an acknowledgment or proof of a written instrument made outside this state but inside the United States or its territories renders the acknowledgment or proof invalid only if the jurisdiction in which the certificate is made requires the notary public to attach the seal.

(d) The application of an embossed seal is not required on an electronically transmitted certificate of an acknowledgment.

§ 121.005. Proof of Identity of Acknowledging Person

(a) An officer may not take the acknowledgment of a written instrument unless the officer knows or has satisfactory evidence that the acknowledging person is the person who executed the instrument and is described in it. An officer may accept, as satisfactory evidence of the identity of an acknowledging person, only:

(1) the oath of a credible witness personally known to the officer; or

(2) a current identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging person.

(b) Except in a short form certificate of acknowledgment authorized by Section 121.008, the officer must note in the certificate of acknowledgment that:

(1) he personally knows the acknowledging person; or
(2) evidence of a witness or an identification card or other document was used to identify the acknowledging person.

§ 121.006. Alteration of Authorized Forms; Definition

(a) An acknowledgment form provided by this chapter may be altered as circumstances require. The authorization of a form does not prevent the use of other forms. The marital status or other status of the acknowledging person may be shown after the person’s name.

(b) In an acknowledgment form "acknowledged" means:

(1) in the case of a natural person, that the person personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument for the purposes and consideration expressed in it;

(2) in the case of a person as principal by an attorney-in-fact for the principal, that the attorney-in-fact personally appeared before the officer taking the acknowledgment and that the attorney-in-fact acknowledged executing the instrument as the act of the principal for the purposes and consideration expressed in it;

(3) in the case of a partnership by a partner or partners acting for the partnership, that the partner or partners personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument as the act of the partnership for the purposes and consideration expressed in it;

(4) in the case of a corporation by a corporate officer or agent, that the corporate officer or agent personally appeared before the officer taking the acknowledgment and that the corporate officer or agent acknowledged executing the instrument in the capacity stated, as the act of the corporation, for the purposes and consideration expressed in it; and

(5) in the case of a person acknowledging as a public officer, trustee, executor or administrator of an estate, guardian, or other representative, that the person personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument by proper authority in the capacity stated and for the purposes and consideration expressed in it.

§ 121.007. Form for Ordinary Certificate of Acknowledgment

The form of an ordinary certificate of acknowledgment must be substantially as follows:

"The State of ____________,

"County of ____________,

"Before me ____________ (here insert the name and character of the officer) on this day personally appeared ______________, known to me (or proved to me on the oath of ____________ or through ____________ (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal) "Given under my hand and seal of office this ________ day of ____________, A.D., ________."
§ 121.008. Short Forms for Certificates of Acknowledgment

(a) The forms for certificates of acknowledgment provided by this section may be used as alternatives to other authorized forms. They may be referred to as "statutory forms of acknowledgment."

(b) Short forms for certificates of acknowledgment include:

(1) For a natural person acting in his own right:

State of Texas
County of ____________
This instrument was acknowledged before me on (date) by (name or names of person or persons acknowledging).

____________________________   ________________________
(Signature of officer) (Title of officer)

My commission expires: ________

(2) For a natural person as principal acting by attorney-in-fact:

State of Texas
County of ____________
This instrument was acknowledged before me on (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

____________________________   ________________________
(Signature of officer) (Title of officer)

My commission expires: ________

(3) For a partnership acting by one or more partners:

State of Texas
County of ____________
This instrument was acknowledged before me on (date) by (name of acknowledging partner or partners), partner(s) on behalf of (name of partnership), a partnership.

____________________________   ________________________
(Signature of officer) (Title of officer)

My commission expires: ________
(4) For a corporation:

State of Texas  
County of ____________

This instrument was acknowledged before me on (date) by (name of officer), (title of officer) of (name of corporation acknowledging) a (state of incorporation) corporation, on behalf of said corporation.

____________________________   ________________________  
(Signature of officer)           (Title of officer)  

My commission expires: ________

(5) For a public officer, trustee, executor, administrator, guardian, or other representative:

State of Texas  
County of ____________

This instrument was acknowledged before me on (date) by (name of representative) as (title of representative) of (name of entity or person represented).

____________________________   ________________________  
(Signature of officer)           (Title of officer)  

My commission expires: ________

§ 121.009. Proof of Acknowledgment by Witness

(a) To prove a written instrument for recording, at least one of the witnesses who signed the instrument must personally appear before an officer who is authorized by this chapter to take acknowledgments or proofs and must swear:

(1) either that he saw the grantor or person who executed the instrument sign it or that that person acknowledged in the presence of the witness that he executed the instrument for the purposes and consideration expressed in it; and

(2) that he signed the instrument at the request of the grantor or person who executed the instrument.

(b) The officer must make a certificate of the testimony of the witness and must sign and officially seal the certificate.

(c) The officer may take the testimony of a witness only if the officer personally knows or has satisfactory evidence on the oath of a credible witness that the individual testifying is the person who signed the instrument as a witness. If evidence is used to identify the witness who signed the instrument, the officer must note the use of the evidence in the certificate of acknowledgment.
§ 121.010. Form of Certificate for Proof by Witness

When the execution of a written instrument is proved by a witness, the certificate of the officer must be substantially as follows:

"The State of ____________,
"County of ____________.

"Before me, ________ (here insert the name and character of the officer), on this day personally appeared ____________, known to me (or proved to me on the oath of ____________), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw ____________, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same.)

(Seal) "Given under my hand and seal of office this ________ day of ____________, A.D., ________.”

§ 121.011. Proof of Acknowledgment by Handwriting

(a) The execution of an instrument may be established for recording by proof of the handwriting of persons who signed the instrument only if:

(1) the grantor of the instrument and all of the witnesses are dead;

(2) the grantor and all of the witnesses are not residents of this state;

(3) the residences of the grantor and the witnesses are unknown to the person seeking to prove the instrument and cannot be ascertained;

(4) the witnesses have become legally incompetent to testify; or

(5) the grantor of the instrument refuses to acknowledge the execution of the instrument and all of the witnesses are dead, not residents of this state, or legally incompetent or their places of residence are unknown.

(b) If the grantor or person who executed the instrument signed his name to the instrument, its execution must be proved by evidence of the handwriting of that person and at least one witness who signed the instrument. If the grantor or person who executed the instrument signed the instrument by making his mark, its execution must be proved by the handwriting of at least two of the witnesses who signed the instrument.

(c) Evidence taken for proof of handwriting must give the residence of the testifying witness. A testifying witness must have known the person whose handwriting is being proved and must be well acquainted with the handwriting in question and recognize it as genuine.

(d) Evidence offered for proof of handwriting must be given in writing by the deposition or affidavit of two or more disinterested persons. The evidence must satisfactorily
prove to the officer each of the requirements provided by this section. The officer taking the proof must certify the witnesses' testimony. The officer must sign, officially seal, and attach this certificate to the instrument with the depositions or affidavits of the witnesses.

§ 121.012. Record of Acknowledgment

(a) An officer authorized by law to take an acknowledgment or proof of a written instrument required or permitted by law to be recorded must enter in a well-bound book and officially sign a short statement of each acknowledgment or proof. The statement must contain the date that the acknowledgment or proof was taken, the date of the instrument, and the names of the grantor and grantee of the instrument.

(b) If the execution of the instrument is acknowledged by the grantor of the instrument, the statement must also contain:

(1) the grantor's known or alleged residence;
(2) whether the grantor is personally known to the officer; and
(3) if the grantor is unknown to the officer, the name and residence of the person who introduced the grantor to the officer, if any.

(c) If the execution of the instrument is proved by a witness who signed the instrument, the statement must also contain:

(1) the name of the witness;
(2) the known or alleged residence of the witness;
(3) whether the witness is personally known to the officer; and
(4) if the witness is unknown to the officer, the name and known or alleged residence of the person who introduced the witness to the officer, if any.

(d) If land is charged or conveyed by the instrument, the statement must also contain:

(1) the name of the original grantee; and
(2) the name of the county in which the land is located.

(e) The statements of acknowledgment recorded by the officer are original public records, open for public inspection and examination at all reasonable times. The officer must deliver the book to his successor in office.

§ 121.013. Subpoena of Witness; Attachment

(a) On the sworn application of a person interested in the proof of an instrument required or permitted by law to be recorded, stating that a witness to the instrument refuses to appear and testify regarding the execution of the instrument and that the instrument cannot be proven without the evidence of the witness, an officer authorized to take proofs of instruments shall issue a subpoena requiring the witness to appear before the officer and testify about the execution of the instrument.

(b) If the witness fails to obey the subpoena, the officer has the same powers to enforce the attendance and compel the answers of the witness as does a district judge. Attachment may not be issued, however, unless the witness receives or is tendered the same compensation that is made to witnesses in other cases. An officer may not require the witness to leave his county of residence, but if the witness is temporarily present in the
county where the execution of the instrument is sought to be proven for registration, he may be required to appear.

§ 121.014. Action for Damages

A person injured by the failure, refusal, or neglect of an officer to comply with a provision of this chapter has a cause of action against the officer to recover damages resulting from the failure, refusal, or neglect of the officer.

§ 121.015. Private Seal or Scroll Not Required

A private seal or scroll may not be required on a written instrument other than an instrument made by a corporation.

TEXAS STATUTES,
FINANCE CODE

CHAPTER 59. MISCELLANEOUS PROVISIONS
SUBCHAPTER A. GENERAL PROVISIONS

§ 59.003. Authority of Notary Public

A notary public is not disqualified from taking an acknowledgment or proof of a written instrument as provided by Section 406.016, Government Code, solely because of the person's ownership of stock or a participation interest in or employment by a financial institution that is an interested party to the underlying transaction.

TEXAS STATUTES,
GOVERNMENT CODE

CHAPTER 602. ADMINISTRATION OF OATHS

§ 602.001. Definition

In this chapter, "oath" includes the oath in an affidavit.

§ 602.002. Oath Made in Texas

An oath made in this state may be administered and a certificate of the fact given by:

(1) a judge or a clerk of a municipal court, in a matter pertaining to a duty of the court;
(2) a judge, retired judge, senior judge, clerk, or commissioner of a court of record;
(3) a justice of the peace or a clerk of a justice court;
(4) a notary public;
(5) a member of a board or commission created by a law of this state, in a matter pertaining to a duty of the board or commission;
(6) a person employed by the Texas Ethics Commission who has a duty related to a report required by Title 15, Election Code, in a matter pertaining to that duty;

(7) a county tax assessor-collector or an employee of the county tax assessor-collector if the oath relates to a document that is required or authorized to be filed in the office of the county tax assessor-collector;

(8) the secretary of state;

(9) the lieutenant governor;

(10) the speaker of the house of representatives;

(11) the governor;

(12) a legislator or retired legislator;

(13) the attorney general;

(14) the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality; or

(15) a peace officer described by Article 2.12, Code of Criminal Procedure, if:

(A) the oath is administered when the officer is engaged in the performance of the officer’s duties; and

(B) the administration of the oath relates to the officer’s duties.

§ 602.002. Oath Made in Texas


An oath made in this state may be administered and a certificate of the fact given by:

(1) a judge or a clerk of a municipal court, in a matter pertaining to a duty of the court;

(2) a judge, clerk, or commissioner of a court of record;

(3) a justice of the peace or a clerk of a justice court;

(4) a notary public;

(5) a member of a board or commission created by a law of this state, in a matter pertaining to a duty of the board or commission;

(6) a person employed by the Texas Ethics Commission who has a duty related to a report required by Title 15, Election Code, in a matter pertaining to that duty;

(7) a county tax assessor-collector or an employee of the county tax assessor-collector if the oath relates to a document that is required or authorized to be filed in the office of the county tax assessor-collector;

(8) a peace officer described by Article 2.12, Code of Criminal Procedure, if:

(A) the oath is administered when the officer is engaged in the performance of the officer’s duties; and

(B) the administration of the oath relates to the officer’s duties;

(9) an employee of a personal bond office if the oath is required or authorized by Article 17.04, Code of Criminal Procedure;

(10) the secretary of state;
(11) the lieutenant governor;
(12) the speaker of the house of representatives;
(13) the governor; or
(14) the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality.

§ 602.003. Oath Made Outside Texas but Inside United States
An oath made outside this state but inside the United States or its territories may be administered and a certificate of the fact given by:

(1) a clerk of a court of record having a seal;
(2) a commissioner of deeds appointed under a law of this state; or
(3) a notary public.

§ 602.004. Oath Made Outside United States
An oath made outside the United States and its territories may be administered and a certificate of the fact given by:

(1) a minister, commissioner, or charge d'affaires of the United States who resides in and is accredited to the country where the oath or affidavit is made;
(2) a consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who resides in the country where the oath or affidavit is made; or
(3) a notary public.

§ 602.005. Oath Made by Member of Armed Forces or by Member's Spouse
(a) A commissioned officer of the United States armed forces or of a United States armed forces auxiliary may administer an oath made by a member of the armed forces, a member of an armed forces auxiliary, or a member’s spouse and may give a certificate of the fact.

(b) Unless there is pleading or evidence to the contrary, a certificate signed under this section that is offered in evidence establishes that:

(1) the commissioned officer who signed was a commissioned officer on the date the officer signed; and
(2) the person who made the oath or affidavit was a member of the armed forces or an armed forces auxiliary or was a member’s spouse when the oath was made.

(c) An oath is not invalid because the commissioned officer who certified the oath did not attach an official seal to the certificate.

§ 602.006. Oath of Office
An oath of office may be administered and a certificate of the fact given by a member of the legislature.
CHAPTER 603.
PROVISION OF DOCUMENTS AND FEES OF OFFICE

§ 603.001. Definition
In this chapter, "document" includes any instrument, paper, or other record.

§ 603.003. Copies for Claims Relating to Military Service
(a) A county clerk, district clerk, or other public official on request shall furnish without cost to a person or the person's guardian, dependent, or heir one or more certified copies of a document that is in the custody of or on file in the county clerk's, district clerk's, or other public official's office if:

   (1) the person or the person's guardian, dependent, or heir is eligible to make a claim against the United States government because of service in the United States armed forces or an auxiliary service, including the maritime service or the merchant marine; and

   (2) the document is necessary to prove the claim.

(b) The issuance of a certified copy under this section may not be considered in determining the maximum fee of the office.

§ 603.005. Fee for Acknowledgment
An officer who is authorized by law to take acknowledgment or proof of a deed or other written instrument shall receive the same fee a notary public may receive for the same service.

§ 603.006. Fee Book
An officer who by law may charge a fee for a service shall keep a fee book and shall enter in the book all fees charged for services rendered.

§ 603.007. Bill for Fees
A fee under this chapter is not payable to a person until a clerk or officer produces, or is ready to produce, a bill in writing containing the details of the fee to the person who owes the fee. The bill must be signed by the clerk or officer to whom the fee is due or who charges the fee or by the successor in office or legal representative of the clerk or officer.

§ 603.008. Posting of Fees Required
A county judge, clerk of a district or county court, sheriff, justice of the peace, constable, or notary public shall keep posted at all times in a conspicuous place in the respective offices a complete list of fees the person may charge by law.
§ 603.010. Overcharging of Fees; Penalty

An officer named in this chapter who demands and receives a higher fee than authorized under this chapter or a fee that is not authorized under this chapter is liable to the aggrieved person for four times the amount unlawfully demanded and received.

**TEXAS STATUTES, PENAL CODE**

**TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION**

**CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE**

§ 36.02. Bribery

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

(1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or

(4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.

(c) It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:

(1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or

(2) the public servant ceases to be a public servant.

(d) It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) that the benefit is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.

(e) An offense under this section is a felony of the second degree.

§ 36.03. Coercion of Public Servant or Voter
(a) A person commits an offense if by means of coercion he:

(1) influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty or influences or attempts to influence a public servant to violate the public servant's known legal duty; or

(2) influences or attempts to influence a voter not to vote or to vote in a particular manner.

(b) An offense under this section is a Class A misdemeanor unless the coercion is a threat to commit a felony, in which event it is a felony of the third degree.

(c) It is an exception to the application of Subsection (a)(1) of this section that the person who influences or attempts to influence the public servant is a member of the governing body of a governmental entity, and that the action that influences or attempts to influence the public servant is an official action taken by the member of the governing body. For the purposes of this subsection, the term "official action" includes deliberations by the governing body of a governmental entity.

§ 36.09. Offering Gift to Public Servant

(a) A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.

(b) An offense under this section is a Class A misdemeanor.

TEXAS STATUTES, PENAL CODE

CHAPTER 37. PERJURY AND OTHER FALSIFICATION

§ 37.02. Perjury

(a) A person commits an offense if, with intent to deceive and with knowledge of the statement’s meaning:

(1) he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath; or

(2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.

(b) An offense under this section is a Class A misdemeanor.

§ 37.03. Aggravated Perjury

(a) A person commits an offense if he commits perjury as defined in Section 37.02, and the false statement:

(1) is made during or in connection with an official proceeding; and

(2) is material.

(b) An offense under this section is a felony of the third degree.
§ 37.09. Tampering With or Fabricating Physical Evidence

(a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) This section shall not apply if the record, document, or thing concealed is privileged or is the work product of the parties to the investigation or official proceeding.

(c) An offense under Subsection (a) or Subsection (d)(1) is a felony of the third degree. An offense under Subsection (d)(2) is a Class A misdemeanor.

(d) A person commits an offense if the person:

(1) knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of or official proceeding related to the offense; or

(2) observes human remains under circumstances in which a reasonable person would believe that an offense had been committed, knows or reasonably should know that a law enforcement agency is not aware of the existence of or location of the remains, and fails to report the existence of and location of the remains to a law enforcement agency.

§ 37.10. Tampering With Governmental Record

(a) A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, a governmental record;

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;

(4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;

(5) makes, presents, or uses a governmental record with knowledge of its falsity; or

(6) possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

(b) It is an exception to the application of Subsection (a)(3) that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.
(c) (1) Except as provided by Subdivision (2) and by Subsection (d), an offense under this section is a Class A misdemeanor unless the actor’s intent is to defraud or harm another, in which event the offense is a state jail felony.

(2) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was a public school record, report, or assessment instrument required under Chapter 39, Education Code, or was a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States, unless the actor’s intent is to defraud or harm another, in which event the offense is a felony of the second degree.

(d) An offense under this section, if it is shown on the trial of the offense that the governmental record is described by Section 37.01(2)(D), is:

(1) a Class B misdemeanor if the offense is committed under Subsection (a)(2) or Subsection (a)(5) and the defendant is convicted of presenting or using the record;

(2) a felony of the third degree if the offense is committed under:

(A) Subsection (a)(1), (3), (4), or (6); or

(B) Subsection (a)(2) or (5) and the defendant is convicted of making the record; and

(3) a felony of the second degree, notwithstanding Subdivisions (1) and (2), if the actor’s intent in committing the offense was to defraud or harm another.

(e) It is an affirmative defense to prosecution for possession under Subsection (a)(6) that the possession occurred in the actual discharge of official duties as a public servant.

(f) It is a defense to prosecution under Subsection (a)(1), (a)(2), or (a)(5) that the false entry or false information could have no effect on the government’s purpose for requiring the governmental record.

(g) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more of the same type of governmental records or blank governmental record forms and if each governmental record or blank governmental record form is a license, certificate, permit, seal, title, or similar document issued by government.

(h) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 or 37.13, the actor may be prosecuted under any of those sections.

§ 37.11. Impersonating Public Servant

(a) A person commits an offense if he:

(1) impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts; or

(2) knowingly purports to exercise any function of a public servant or of a public office, including that of a judge and court, and the position or office through which he purports to exercise a function of a public servant or public office has no lawful existence under the constitution or laws of this state or of the United States.

(b) An offense under this section is a felony of the third degree.
$39.02. Abuse of Official Capacity

(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant’s office or employment; or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant’s custody or possession by virtue of the public servant’s office or employment.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is:

(1) a Class C misdemeanor if the value of the use of the thing misused is less than $20;

(2) a Class B misdemeanor if the value of the use of the thing misused is $20 or more but less than $500;

(3) a Class A misdemeanor if the value of the use of the thing misused is $500 or more but less than $1,500;

(4) a state jail felony if the value of the use of the thing misused is $1,500 or more but less than $20,000;

(5) a felony of the third degree if the value of the use of the thing misused is $20,000 or more but less than $100,000;

(6) a felony of the second degree if the value of the use of the thing misused is $100,000 or more but less than $200,000; or

(7) a felony of the first degree if the value of the use of the thing misused is $200,000 or more.

(d) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.

$39.03. Official Oppression

(a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or

(3) intentionally subjects another to sexual harassment.
(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) In this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person’s exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(d) An offense under this section is a Class A misdemeanor.

§ 39.06. Misuse of Official Information

(a) A public servant commits an offense if, in reliance on information to which he has access by virtue of his office or employment and that has not been made public, he:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;

(2) speculates or aids another to speculate on the basis of the information; or

(3) as a public servant, including as a principal of a school, coerces another into suppressing or failing to report that information to a law enforcement agency.

(b) A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that:

(1) he has access to by means of his office or employment; and

(2) has not been made public.

(c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that:

(1) the public servant has access to by means of his office or employment; and

(2) has not been made public.

(d) In this section, "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 552, Government Code.

(e) Except as provided by Subsection (f), an offense under this section is a felony of the third degree.

(f) An offense under Subsection (a)(3) is a Class C misdemeanor.

TEXAS STATUTES, GOVERNMENT CODE

CHAPTER 552. PUBLIC INFORMATION
SUBCHAPTER I. CRIMINAL VIOLATIONS

§ 552.351. Destruction, Removal, or Alteration of Public Information

(a) A person commits an offense if the person wilfully destroys, mutilates, removes without permission as provided by this chapter, or alters public information.
(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $25 or more than $4,000;

(2) confinement in the county jail for not less than three days or more than three months; or

(3) both the fine and confinement.

(c) It is an exception to the application of Subsection (a) that the public information was transferred under Section 441.204.

§ 552.352. Distribution of Confidential Information

(a) A person commits an offense if the person distributes information considered confidential under the terms of this chapter.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not more than $1,000;

(2) confinement in the county jail for not more than six months; or

(3) both the fine and confinement.

(c) A violation under this section constitutes official misconduct.

§ 552.353. Failure or Refusal of Officer for Public Information to Provide Access to or Copying of Public Information

(a) An officer for public information, or the officer’s agent, commits an offense if, with criminal negligence, the officer or the officer’s agent fails or refuses to give access to, or to permit or provide copying of, public information to a requestor as provided by this chapter.

(b) It is an affirmative defense to prosecution under Subsection (a) that the officer for public information reasonably believed that public access to the requested information was not required and that the officer:

(1) acted in reasonable reliance on a court order or a written interpretation of this chapter contained in an opinion of a court of record or of the attorney general issued under Subchapter G;

(2) requested a decision from the attorney general in accordance with Subchapter G, and the decision is pending; or

(3) not later than the 10th calendar day after the date of receipt of a decision by the attorney general that the information is public, filed a petition for a declaratory judgment, a writ of mandamus, or both, against the attorney general in a Travis County district court seeking relief from compliance with the decision of the attorney general, and a petition is pending.

(c) It is an affirmative defense to prosecution under Subsection (a) that a person or entity has, not later than the 10th calendar day after the date of receipt by a governmental body of a decision by the attorney general that the information is public, filed a cause of action seeking relief from compliance with the decision of the attorney general, and the cause is pending.
(d) It is an affirmative defense to prosecution under Subsection (a) that the defendant is the agent of an officer for public information and that the agent reasonably relied on the written instruction of the officer for public information not to disclose the public information requested.

(e) An offense under this section is a misdemeanor punishable by:

1. a fine of not more than $1,000;
2. confinement in the county jail for not more than six months; or
3. both the fine and confinement.

(f) A violation under this section constitutes official misconduct.

SUBCHAPTER B. SAFE DEPOSIT BOXES

§ 59.101. Definition

In this subchapter, "safe deposit company" means a person who maintains and rents safe deposit boxes.

§ 59.109. Delinquent Rental; Lien; Sale of Contents

(a) If the rental for a safe deposit box is delinquent for at least six months, the safe deposit company may send notice to each lessee that the company will remove the contents of the box if the rent is not paid before the date specified in the notice, which may not be earlier than the 60th day after the date the notice is delivered or sent. If the rent is not paid before the date specified in the notice, the safe deposit company may open the box in the presence of two employees, at least one of whom is an officer or manager of the safe deposit company and at least one of whom is a notary public. The safe deposit company shall inventory the contents of the box in detail as provided by the comptroller’s reporting instructions and place the contents of the box in a sealed envelope or container bearing the name of the lessee.

(b) The safe deposit company has a lien on the contents of the box for an amount equal to the rental owed for the box and the cost of opening the box. The safe deposit company may retain possession of the contents. If the rental and the cost of opening the box are not paid before the second anniversary of the date the box was opened, the safe deposit company may sell all or part of the contents at public auction in the manner and with the notice prescribed by Section 51.002, Property Code, for the sale of real property under a deed of trust. Any unsold contents of the box and any excess proceeds from a sale of contents shall be remitted to the comptroller as provided by Chapters 72-75, Property Code.

CHAPTER IV. EXECUTION AND REVOCATION OF WILLS

§ 57. Who May Execute a Will

Every person who has attained the age of eighteen years, or who is or has been lawfully married, or who is a member of the armed forces of the United States or of the auxiliaries thereof or of the maritime service at the time the will is made, being of sound mind, shall have the right and power to make a last will and testament, under the rules and limitations prescribed by law.
§ 59. Requisites of a Will

(a) Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator in person or by another person for him by his direction and in his presence, and shall, if not wholly in the handwriting of the testator, be attested by two or more credible witnesses above the age of fourteen years who shall subscribe their names thereto in their own handwriting in the presence of the testator. Such a will or testament may, at the time of its execution or at any subsequent date during the lifetime of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary, by the affidavits of the testator and the attesting witnesses, made before an officer authorized to administer oaths under the laws of this State. Provided that nothing shall require an affidavit or certificate of any testator or testatrix as a prerequisite to self-proof of a will or testament other than the certificate set out below. The affidavits shall be evidenced by a certificate, with official seal affixed, of such officer attached or annexed to such will or testament in form and contents substantially as follows:

THE STATE OF TEXAS
COUNTY OF ______________

Before me, the undersigned authority, on this day personally appeared _______________, _______________, and _______________, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said _______________, testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said testator and at his request; that he was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

________________________  _____________________________
Testator  (Signed)

________________________  _____________________________
Witness  (Signed)

Witness

Subscribed and sworn to before me by the said _______________, testator, and by the said _______________ and _______________, witnesses, this _____ day of ____________ A.D. ____________.

(SEAL)  (Signed)  
(Official Capacity of Officer)
(b) An affidavit in form and content substantially as provided by Subsection (a) of this section is a "self-proving affidavit." A will with a self-proving affidavit subscribed and sworn to by the testator and witnesses attached or annexed to the will is a "self-proved will." Substantial compliance with the form of such affidavit shall suffice to cause the will to be self-proved. For this purpose, an affidavit that is subscribed and acknowledged by the testator and subscribed and sworn to by the witnesses would suffice as being in substantial compliance. A signature on a self-proving affidavit is considered a signature to the will if necessary to prove that the will was signed by the testator or witnesses, or both, but in that case, the will may not be considered a self-proved will.

(c) A self-proved will may be admitted to probate without the testimony of any subscribing witness, but otherwise it shall be treated no differently than a will not self-proved. In particular and without limiting the generality of the foregoing, a self-proved will may be contested, or revoked or amended by a codicil in exactly the same fashion as a will not self-proved.

§ 63. Revocation of Wills

No will in writing, and no clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil, or declaration in writing, executed with like formalities, or by the testator destroying or canceling the same, or causing it to be done in his presence.

NOTARY PUBLIC EDUCATIONAL INFORMATION FROM THE TEXAS SECRETARY OF STATE

FOREWORD

The following educational materials are provided to you in accordance with Tex. Gov't Code Ann. §406.008(b). Updated information or changes to this information may be found on the Internet at www.sos.state.tx.us. All forms mentioned in this document may also be found at this Internet address.

This information should be kept for reference throughout your four-(4) year term. Please read through this information at least once before you begin to perform your notarial duties.

THE STATUTES REFERRED TO IN THESE MATERIALS ARE SUBJECT TO LEGISLATIVE CHANGE. The Secretary of State will provide a copy of these changes only upon request. Contact the Secretary of State, Notary Public Unit, P.O. Box 13375, Austin, Texas 78711-3375 or call (512) 463-5705 following each legislative session.

The Secretary of State's office would like to thank the Texas Young Lawyers Association for permitting us to use excerpts from their former publication, Texas Notary Public Handbook

INTRODUCTION

A Notary Public is a public servant with statewide jurisdiction who is authorized to take acknowledgments, protest instruments permitted by law to be protested (primarily
negotiable instruments and bills and notes), administer oaths, take depositions, and certify copies of documents not recordable in the public records.

A Notary Public is, in the true sense of the word, "a public servant" and "an officer of the State of Texas", conveniently located in the community so that the notary may be of service to the public. Each Notary Public takes an official oath of office to faithfully perform the duties of the office, and to insure such performance, a notary public is required to post a $10,000.00 bond with the Secretary of State.

The primary duty of a Notary Public is to show that a disinterested party (the Notary Public) has duly notified the signer of an instrument as to the importance of such document, and the signer of such document has declared that the signer's identity, signature, and reasons for signing such instrument are genuine. The signature and seal of a Notary Public do not prove these facts conclusively, but provide prima facie proof of them, and allow persons in trade and commerce to rely upon the truth and veracity of the Notary Public as a third party who has no personal interest in the transaction.

A Notary Public is personally liable for negligence or fraud in the performance of the duties of the office. The bond is to insure that the person injured can recover at least $10,000.00, but this does not protect the Notary Public from personal liability for the full extent of damages caused by a breach of official duty. In addition to civil liability, Notaries Public may be subject to criminal prosecution and the revocation or suspension of their notary public commission by the Secretary of State’s office.

The Secretary of State’s office may revoke or suspend the commission of any Notary Public for good cause subject to Tex. Gov't Code Ann. § 406.009 and the notary public rules.

**STATUTES**

**RECORD BOOK AND PUBLIC RECORDS**

Tex. Gov't. Code Ann. § 406.014 requires that a Notary Public maintain a record book. This record book must be maintained whether or not any fees are charged for your notary public services.

A notary public other than a court clerk notarizing instruments for the court shall keep in a book a record of: (1) the date of each instrument notarized; (2) the date of the notarization; (3) the name of the signer, grantor, or maker; (4) the signer’s, grantor’s, or maker’s residence or alleged residence; (5) whether the signer, grantor, or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and residence or alleged residence of the individual introducing the signer, grantor, or maker; (6) if the instrument is proved by a witness, the residence of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the witness; (7) the name and residence of the grantee; (8) if land is conveyed or charged by the instrument, the name of the original grantee and the county where the land is located; and (9) a brief description of the instrument.

Entries in the notary’s book are public information. A notary public shall, on payment of all fees, provide a certified copy of any record in the notary public’s office to any person requesting the copy.

A notary public who administers an oath pursuant to Article 45.019 of the Code of Criminal Procedure is exempt from the requirement of recording that oath in the notary public’s record book.
NOTARY SEAL

Tex. Gov't. Code Ann. § 406.013 requires a Notary Public to use a seal of office to authenticate the Notary Public's official acts. Section 406.013 states:

a. A notary public shall provide a seal of office that clearly shows, when embossed, stamped, or printed on a document, the words "Notary Public, State of Texas" around a star of five points, the notary public's name, and the date the notary public's commission expires. The notary public shall authenticate all official acts with the seal of office.

b. The seal may be a circular form not more than two inches in diameter or a rectangular form not more than one inch in width and 2½ inches in length. The seal must have a serrated or milled edge border.

c. The seal must be affixed by a seal press or stamp that embosses or prints a seal that legibly reproduces the required elements of the seal under photographic methods. An indelible inkpad must be used for affixing by a stamp the impression of a seal on an instrument to authenticate the notary public's official act.

d. Subsection (c) does not apply to an electronically transmitted authenticated document, except that an electronically transmitted authenticated document must legibly reproduce the required elements of the seal.

CHANGE OF ADDRESS

Tex. Gov't. Code Ann. § 406.019 requires a Notary Public to notify the Secretary of State of any change of address within ten (10) days of the date on which the change is made. You may fill out a Notary Public Change of Address form or send a letter with your name, social security number, old address, and new address to: Secretary of State, Notary Public Unit, P. O. Box 13375, Austin, Texas 78711-3375.

UNAUTHORIZED PRACTICE OF LAW

An attorney or similar trained legal professional often holds the position of a Notary Public in Mexico and many foreign countries. To avoid deception by such persons and to dispel erroneous assumptions, the Texas Legislature enacted § 406.017 of the Government Code. Section 406.017 states:

a. A person commits an offense if the person is a notary public and the person:
   1. states or implies that the person is an attorney licensed to practice law in this state;
   2. solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters;
   3. solicits or accepts compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or the United States;
   4. uses the phrase "notario or "notario publico" to advertise the services of a notary public, whether by signs, pamphlets, stationary or other written communication or by radio or television.
   5. advertises the services of a notary public in a language other than English, whether by signs, pamphlets, stationary or other written communication or by radio or television; if the person does not post or otherwise include the notice with the advertisement a notice that complies with Subsection (b).
b. The notice required by Subsection (a)(5) must state that the notary public is not an attorney and must be in English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice must include the fees that a notary public may charge and the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

c. It is an exception to prosecution under this section that, at the time the conduct charged, the person is licensed to practice law in this state and is in good standing with the State bar of Texas.

d. Except as provided by Subsection (e) of this section, an offense under this section is a Class A misdemeanor.

e. An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

f. Failure to comply with this section is, in addition to a violation of any other applicable law of this state, a deceptive trade practice actionable under Chapter 17, Business & Commerce Code.

REVOCATION OR SUSPENSION OF COMMISSION BY THE SECRETARY OF STATE

Tex. Gov’t. Code Ann. § 406.009 gives the Secretary of State the authority to reject an application, or suspend or revoke the commission of any Notary Public for "good cause".

a. The secretary of state may, for good cause, reject an application or suspend or revoke the commission of a notary public.

b. An action by the secretary of state under this section is subject to the rights of notice, hearing, adjudication, and appeal.

c. An appeal under this section is to the district court of Travis County. The secretary of state has the burden of proof, and the trial is conducted de novo.

d. In this section, "good cause" includes:
   1. a final conviction for a crime involving moral turpitude;
   2. a false statement knowingly made in an application;
   3. the failure to comply with Section 406.017;
   4. a final conviction for a violation of a law concerning the regulation of the conduct of notaries public in this or another state;
   5. the imposition on the notary public of an administrative, criminal, or civil penalty for a violation of a law or rule prescribing the duties of a notary public; or
   6. performing any notarization when the person for whom the notarization is performed did not personally appear before the notary at the time the notarization is executed.

FEES POSTED

Section 603.008 of the Government Code requires a Notary Public to keep posted the fees that a notary is authorized by law to charge.
A county judge, clerk of a district or county court, sheriff, justice of the peace, constable, or notary public shall keep posted at all times in a conspicuous place in the respective offices a complete list of fees the person may charge by law.

**FEE BOOK**

Section 603.006 of the Government Code requires a Notary Public who charges a fee for notary services to keep a fee book.

An officer who by law may charge a fee for a service shall keep a fee book and shall enter in the book all fees charged for services rendered.

**TO ITEMIZE COSTS**

Section 603.007 of the Government Code states that a Notary Public must itemize or be prepared to itemize the fees that the notary charges for performing notarial services.

A fee under this chapter is not payable to a person until a clerk or officer produces, or is ready to produce, a bill in writing containing the details of the fee to the person who owes the fee. The bill must be signed by the clerk or officer to whom the fee is due or who charges the fee or by the successor in office or legal representative of the clerk or officer.

**FEES**

Tex. Gov't. Code Ann. § 406.024 sets out the maximum fees a Notary Public, or their employer, may charge for notary public services. A Notary Public who charges more than the maximum set out below subjects the notary to possible criminal prosecution and suspension or revocation of the notary’s notary public commission by the Secretary of State’s office. Notaries Public may charge the following fees:

**Notaries Public may charge the following fees:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee</th>
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</thead>
<tbody>
<tr>
<td>Protesting a bill or note for non-acceptance or non-payment, register and seal</td>
<td>$4.00</td>
</tr>
<tr>
<td>Each notice of protest</td>
<td>$1.00</td>
</tr>
<tr>
<td>Protesting in all other cases</td>
<td>$4.00</td>
</tr>
<tr>
<td>Certificate and seal to a protest</td>
<td>$4.00</td>
</tr>
<tr>
<td>Taking the acknowledgment or proof of any deed or other instrument in writing, for registration, including certificate and seal:</td>
<td></td>
</tr>
<tr>
<td>(1) for the first signature</td>
<td>$6.00</td>
</tr>
<tr>
<td>(2) for each additional signature</td>
<td>$1.00</td>
</tr>
<tr>
<td>Administering an oath or affirmation with certificate and seal</td>
<td>$6.00</td>
</tr>
<tr>
<td>All certificates under seal not otherwise provided for</td>
<td>$6.00</td>
</tr>
<tr>
<td>Copies of all records and papers in the Notary Public’s office, for each page</td>
<td>$.50</td>
</tr>
<tr>
<td>Taking the depositions of witnesses, for each 100 words</td>
<td>$.50</td>
</tr>
<tr>
<td>Swearing a witness to a deposition, certificate, seal, and other business connected with taking the deposition</td>
<td>$6.00</td>
</tr>
<tr>
<td>All notarial acts not provided for</td>
<td>$6.00</td>
</tr>
</tbody>
</table>

**QUESTIONS FREQUENTLY ASKED**

The following section consists of questions Notaries Public often have about their office. If you have any questions about notarizing a document you should contact the maker of the document, the Notary Public Unit of the Secretary of State’s office, or an attorney.
1. MAY I NOTARIZE MY SPOUSE’S SIGNATURE?

2. MAY I NOTARIZE FOR MY SPOUSE’S BUSINESS?

3. MAY I NOTARIZE FOR MY RELATIVES?
   The basic rules are: the act of taking and certifying acknowledgments cannot be performed by a notary public financially or beneficially interested in the transaction; and one who is a party to an instrument, cannot act as a notary public. There is no specific prohibition against a notary public notarizing another spouse's signature or a notary public notarizing for a spouse's business. The facts in each situation will determine whether such action is proper.

4. MAY I ALTER OR CHANGE THE INSTRUMENT I NOTARIZE?
   To answer this question, a distinction must be made between the instrument and the acknowledgment. A Notary Public is not authorized to change, alter or draft any instrument. However, a Notary Public may correct the certificate of acknowledgment to reflect the proper facts. For example, if an acknowledgment is taken in Webb County and the certificate shows Marion County, the certificate may be corrected as follows:

   The State of Texas -  
   County of Marion Webb

   Before me, (Notary Public’s name), a Notary Public, on this day personally ... etc.

5. MAY I PERFORM NOTARIAL ACTS IN OTHER COUNTIES?
   Yes. A notary public has statewide jurisdiction and may perform notarial acts in any county in the state of Texas.

6. MAY I PERFORM FUNCTIONS OTHER THAN THOSE OUTLINED IN TEX. GOV’T. CODE §406.016 AND MAY I CHARGE FEES IN EXCESS OF THOSE AUTHORIZED IN TEX. GOV’T. CODE § 406.024?
   No. A notary public’s authority is limited to those acts authorized in §406.016. A Notary Public may not charge more than the prescribed fees for performance of notarial acts.

7. WHAT IF THERE IS A DIFFERENCE BETWEEN THE DATE THE INSTRUMENT IS SIGNED AND THE DATE THE ACKNOWLEDGMENT IS ACTUALLY TAKEN?
   To answer this question, an example is given. If an instrument ends with the wording: "Signed and executed at Tyler, Smith County, Texas, this 25th day of October, 2001," and the party whose name appears on such instrument appears before the Notary Public on October 27th, 2001, the Notary Public would fill in the acknowledgment with the true and correct date when the signer personally appeared before the Notary Public.

8. MAY I TAKE AN ACKNOWLEDGMENT OVER THE TELEPHONE?
   No. The person whose signature is notarized must personally appear before the notary at the time the notarization is performed.

9. MAY I CHANGE MY NAME FROM THE NAME SHOWN ON MY NOTARY PUBLIC COMMISSION?
   Yes. A Notary Public may change the name on their commission by sending the Secretary of State a name change application, your current certificate of commission, a rider or endorsement from the insurance agency or surety, and a $20.00 filing fee. The above four elements must be sent at the same time. For an instruction sheet, please contact the Notary Public Unit at (512) 463-5705.
10. MAY I MAKE A CERTIFIED COPY OF A BIRTH CERTIFICATE OR A MARRIAGE LICENSE:

No. Birth certificates and marriage licenses are recordable documents. A recordable document is one that is recorded with some type of entity whether it be the Secretary of State's Office, a court of law, a county clerk, or the Bureau of Vital Statistics. Certified copies may be obtained by contacting such entities.

A non-recordable document is one that has not been nor will ever be recorded with any type of entity. For instance, a letter is not recorded with anyone but there are times the sender of the letter would like to obtain a certified copy of that letter for his or her file.

11. MAY A NOTARY PUBLIC DETERMINE WHICH TYPE OF NOTARIAL CERTIFICATE SHOULD BE ATTACHED TO A DOCUMENT?

No. A Notary Public who is not an attorney should only complete a notarial certificate which is already on the document or type a certificate of the maker's choosing. If a notary public is brought a document without a certificate and decides which certificate to attach, that notary public would be "practicing law." However, a notary public is provided copies of sample notarial certificates with his or her notary commission. A person for whom a notarization is performed may choose the notarial certificate, and the notary may add such certificate to the document.

12. SHOULD A NOTARY PUBLIC RELY ONLY ON A CREDIT CARD IN DETERMINING THE IDENTIFICATION OF A SIGNER?

No. If the signer is not personally known by the Notary Public or identified by a credible witness, the Notary Public must use an identification card issued by a governmental agency or a passport issued by the United States to identify the signer.

13. IS A NOTARY REQUIRED TO ADMINISTER AN OATH TO A DEPONENT SERVED DEPOSITION UPON WRITTEN QUESTIONS?

Yes. The deposition officer ("notary public") must record the testimony of the witness under oath in response to the written questions and prepare, certify and deliver the deposition transcript in accordance with Rule 203 of the Texas Rules of Civil Procedure.

PROHIBITED ACTS

THE SECTION BELOW PROVIDES A NOTARY PUBLIC WITH A LIST OF PROHIBITED ACTS THAT A NOTARY PUBLIC MAY NOT DO IN CARRYING OUT THE DUTIES OF THE NOTARY'S OFFICE. IF A NOTARY PUBLIC PERFORMS ANY OF THE FOLLOWING ACTS, THE NOTARY MAY BE SUBJECT TO POSSIBLE CRIMINAL PROSECUTION, CIVIL LIABILITY, AND THE REVOCATION OR SUSPENSION OF THE NOTARY'S NOTARY PUBLIC COMMISSION.

A Notary Public may not:

1. perform acts, which constitute the practice of law;
2. prepare, draft, select, or give advice concerning legal documents;
3. use the phrase "notario" or "notario publico" to advertise notary services;
4. overcharge for notary public services;
5. notarize a document without the signer being in the notary's presence;
6. notarize the notary's own signature;
7. issue identification cards;
8. sign a notarial certificate under any other name than the one under which the notary was commissioned; or
9. certify copies of documents recordable in the public records.
NOTARIAL DEFINITIONS

ACKNOWLEDGMENT: A formal declaration before an authorized official, such as a notary public, by someone who signs a document and confirms that the signature is authentic. Also, the certificate of the officer on such instrument indicating that the document has been so acknowledged.

AFFIDAVIT: A voluntary declaration of facts, written down and sworn to or affirmed by the declarant ("affiant") before a Notary Public or other officer having the authority to administer an oath.

AFFIRMATION: The act of affirming the truth of a document, not an oath. "I solemnly affirm and declare the foregoing to be a true statement..." Note that an affidavit may appear in two forms: a sworn affidavit with oath, or an affirmed affidavit with affirmation. Each has the same legal import.

JURAT: A certification added to an affidavit or document stating when, where and before whom such affidavit was made.

OATH: A solemn declaration, accompanied by a swearing to God or a revered person or thing, that one's statement is true or that one will be bound to a promise. The person making the oath implicitly invites punishment if the statement is untrue or the promise is broken.

PROTEST: A Notary Public’s written statement that, upon presentment for payment or acceptance, a negotiable instrument was neither paid nor accepted.

VERIFICATION: A formal declaration by which one swears to or affirms the truth of the statements in a document. Also, the statement of a Notary Public that the person appearing before the notary has been properly identified as being the person purported to be appearing.

SAMPLE FORMS

In the following examples a personalized seal means: the words "Notary Public, State of Texas" around a star of five points, the Notary Public’s name, and the date the Notary Public’s commission expires.

ACKNOWLEDGMENTS

I. Form for Ordinary Certificate of Acknowledgment

State of Texas
County of ______________

Before me, (insert the name and character of the officer), on this day personally appeared ____________, known to me (or proved to me on the oath of __________ or through (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this __________ day of __________, (year).

__________________________ (Personalized Seal)

Notary Public’s Signature
II. Short Forms

A. For a natural person acting in his/her own right:

State of Texas  
County of _______________

This instrument was acknowledged before me on (date) by (name or names of person or persons acknowledging).

______________________               (Personalized Seal)  
Notary Public's Signature

B. For a natural person as principal acting by attorney-in-fact:

State of Texas  
County of _______________

This instrument was acknowledged before me on (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

______________________               (Personalized Seal)  
Notary Public's Signature

C. For a partnership acting by one or more partners:

State of Texas  
County of _______________

This instrument was acknowledged before me on (date) by (name of acknowledging partner or partners), partner(s) on behalf of (name of partnership), a partnership.

______________________               (Personalized Seal)  
Notary Public’s Signature

D. For a corporation:

State of Texas  
County of _______________

This instrument was acknowledged before me on (date) by (name of officer), (title of officer) of (name of corporation acknowledging), a (state of incorporation) corporation, on behalf of said corporation.

______________________               (Personalized Seal)  
Notary Public’s Signature
E. For a public officer, trustee, executor, administrator, guardian, or other representative:

State of Texas
County of _______________

This instrument was acknowledged before me on (date) by (name of representative) as (title of representative) of (name of entity or person represented).

______________________            (Personalized Seal)
Notary Public’s Signature

F. Form of Certificate for Proof by Witness

State of Texas
County of _______________

Before me, (insert the name and character of the officer), on this day personally appeared ____________________, known to me (or proved to me on the oath of _______________), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw _______, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same.)

Given under my hand and seal of office this __________ day of __________, (year).

______________________            (Personalized Seal)
Notary Public’s Signature

JURAT

State of Texas
County of _______________

Sworn to and subscribed before me on the _________ day of _______________, (year), by (name of signer).

______________________            (Personalized Seal)
Notary Public’s Signature
VERIFICATIONS

Form 1:

State of Texas
County of _______________

_______________, personally appeared before me, and being first duly sworn
declared that he/she signed this application in the capacity designated, if any, and
further states that he/she has read the above application and the statements therein
contained are true.

______________________            (Personalized Seal)
Notary Public’s Signature

Form 2:

State of Texas
County of _______________

Before me, a notary public, on this day personally appeared _______________,
known to me to be the person whose name is subscribed to the foregoing document
and, being by me first duly sworn, declared that the statements therein contained are
true and correct.

______________________            (Personalized Seal)
Notary Public’s Signature

OATH OR AFFIRMATION

State of Texas
County of _______________

I, (affiant), do solemnly swear (or affirm), that I will faithfully execute the duties of the
office of _______________ of the State of Texas, and will to the best of my
ability preserve, protect, and defend the Constitution and laws of the United States
and of this State, so help me God.

_____________________
Signature of Affiant

Sworn to and subscribed before me by (affiant) on this __________ day of
_______________, (year).

______________________            (Personalized Seal)
Notary Public’s Signature
STATEMENT OF OFFICER

State of Texas
County of _______________

I, (affiant), do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

_____________________
Signature of Affiant

Sworn to and subscribed before me by (affiant) on this __________ day of ________________, (year).

______________________ (Personalized Seal)
Notary Public’s Signature

DEPOSITION

Certificate to Deposition Upon Written Questions

State of Texas
County of _______________

(Plaintiff)

v.

(Defendant)

In the _________________ Court
of _________________ County, Texas
Cause No. __________

I hereby certify that the foregoing answers of __________, the witness forenamed, were signed and sworn to before me on (date), by said witness.

______________________ (Personalized Seal)
Notary Public’s Signature
PROTESTS

(Insert bill or note or copy thereof)

United States of America  
State of Texas  
County of _______________

Be it known that on the __________ day of __________, (year), at the request of (name), of __________, I, (Notary Public’s name), a Notary Public duly commissioned and sworn, residing in __________ County, Texas, did present the original (instrument), hereto attached, for $__________, with accrued interest thereon of $__________, dated __________, and demanded payment (or acceptance) thereof, which was refused.

Whereupon I, at the request of the aforesaid __________, did protest, and by these presents do protest, as well against the drawer, maker, endorsers, and acceptors of said instruments as against all others whom it may concern, for exchange, costs, charges, damages, and interest already incurred and hereinafter to be incurred by reason of non-payment thereof. I further certify that on (date), notice in writing of the foregoing presentment, demand, refusal and protest was given by (persons and status) by depositing notices thereof in the post office at __________, Texas, postage paid, directed as follows: ____________________. I further certify that notices were left as follows:

Notice left for _______________ at _______________
Notice left for _______________ at _______________

Each of the named places the reputed place of residence of the person for whom the notice was left.

In testimony whereof I have hereunto set my hand and affixed my seal of office at __________, Texas, on __________ day of __________, (year).

__________________________ (Personalized Seal)
Notary Public’s Signature

(List fees and expenses to include postage)
State of Texas  
County of ________________

On this _________ day of ________, (year), I certify that the preceding or attached document, and the duplicate retained by me as a notarial record, are true, exact, complete, and unaltered photocopies made by me of (description of document), presented to me by the document’s custodian, ________________, (*held in my custody as a notarial record) and that, to the best of my knowledge, the photocopied document is neither a public record nor a publicly recordable document, certified copies of which are available from an official source other than a notary.

______________________   (Personalized Seal)  
Notary Public’s Signature

* This phrase would be inserted and the preceding phrase, “presented to me by the document’s custodian”, would be deleted in the event a person was requesting a certified copy of the Notary Public’s journal.
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