

PLEASE STUDY THIS MANUAL AND THE APPENDIX.
BE SURE YOU UNDERSTAND THE CONTENTS.

WILLIAMS COUNTY COMMON PLEAS COURT

MANUAL FOR
NOTARY PUBLIC EXAMINATION

Revised March, 2012

A notary public must know and understand several matters, if the notary public is to perform legally and effectively as a public official. These matters may be categorized as follows:

I. Qualifications and Appointment

All the laws relating to the notary's qualifications for the office and the mechanics by which the appointment to the office is secured are found in Sections 147.01 through Section 147.06 of the Ohio Revised Code. See Appendix. This information is summarized below.

A. Summary of Notary's Qualifications

An Ohio notary public receives his or her commission from the Secretary of State of Ohio. The governor issued commissions until mid-2001, and the governor still signs the commissions, along with the Secretary of State, who now issues them. The commission is valid throughout the state. It can be revoked for official misconduct or incapacity. Otherwise, the notary commission of someone who is not an attorney at law is valid for five (5) years.

To receive a notary commission, a non-attorney must be at least 18 years old, and a citizen of the state. In addition, the notary applicant must present the Ohio Secretary of State with a certificate from a judge. The judge's certificate must state that the applicant is of good moral character. The judge signing the certificate can be a judge of the Court of Common Pleas of the county in which the applicant resides, or a judge of an Ohio Court of Appeals, or a justice of the Ohio Supreme Court. The judge can require the applicant to pass an exam to receive the certificate, as the Court of Common Pleas judge does in Williams County. The Williams County Court Administrator administers that examination for the Judge of Williams County Court of Common Pleas.

B. Procedures for Appointment of Notary

To make application to become a new notary, the applicant will contact the Williams County Court Administrator at 419-636-3436 or via e-mail at kcoller@wmsco.org to obtain the applications along with the notary manual with appendix. Once the notary manual has been reviewed, the applicant will contact the Court Administrator to schedule a convenient time to take the exam. The exam consists of 25 multiple choice questions that must be passed with a score of 75% or better. Once the applicant passes the exam, the applicant will provide the Court Administrator with the completed Secretary of State Application for Appointment and notary application. The total cost for the manual, applications, exam and Secretary of State processing fee is \$23.00. If paying by check, please make payable to the "Judge's Notary Committee". The Court Administrator then sends the letter to the Secretary of State, requesting that the Secretary of State send the applicant a commission.

After an applicant receives his or her commission, but before he or she can use it, the applicant must take an oath, which is endorsed on the commission. In Williams County, that oath must be taken at the office of the Clerk of the Court of Common Pleas. The Clerk records the commission, and receives a \$5.00 fee for so doing. If a certified copy of a notary commission is needed, it can be obtained from the clerk for \$2.00. As a part of the Secretary of State's processing of the applications, the Secretary of State also maintains a record of notary commissions.

Each notary must obtain a seal. The seal may be either a stamp or an embosser. An embosser crimps the paper, the stamp inks it. The seal consists of the Ohio state seal within a circle one inch in diameter. It shall be surrounded by the words "notary public", "notary seal" or words to that effect, the name of the notary public, and words "State of Ohio". The notary's name may be omitted from the seal if the name is legibly printed, stamped or typewritten near the notary's signature. The seal is not required to have a county name on it, as an Ohio notary commission is good in any Ohio county.

Each notary must also have an official register for certificates of protest of notes. However, in current practice, a notary will rarely, if ever, be called upon to register a certificate of protest.

C. Renewal and Name Change

To renew a notary public commission, the notary must contact the Williams County Court Administrator at 419-636-3436 or via e-mail at kcoller@wmsco.org before the existing commission expires. To renew an existing notary in good standing, you will need to complete a renewal application along with the Secretary of State application. The total cost to renew your notary including the applications and Secretary of State processing fee is \$18.00. If paying by check, please make payable to the "Judge's Notary Committee". The procedure on receiving the renewed commission is the same as upon receiving the original commission.

If a notary legally changes his or her name by marriage, divorce or any other reason, he or she may:

1. Continue to use his or her existing commission after a name change. At the normal renewal date, the notary would change his or her name. However, the notary must sign their new name but indicate the name in which the commission was issued in parentheses or with the words “formerly known as” after the new name on each document notarized; or
2. Amend their notary by going to the Secretary of State website at <http://www.sos.state.oh.us/SOS/recordsIndexes/Notary/info.aspx>. Under Notary Commission, click on Amending Notary Information. In the middle of the page is an Application to Amend Notary Public Information. Please print the .pdf, complete and forward to the Ohio Secretary of State with payment pursuant to the directions set forth online.

II. Powers, Jurisdiction and Fees

The powers and jurisdiction and fees of the notary public which may be found in Sections 147.07 and Section 147.08 of the Ohio Revised Code. See Appendix. This information is summarized below.

Summary of Powers, Jurisdictions and Fees

An Ohio notary’s jurisdiction (area in which notary has power to act) is statewide. Thus, an Ohio notary has power to act anywhere in the State of Ohio, but not in any other state. Notaries have the following powers:

1. to administer oaths and affirmations (for how to do this, see section V below)
2. to take and certify depositions. A deposition is sworn testimony, by a witness, usually in a court case, in response to an attorney’s questions, but outside a formal court hearing. The parties to a court case may agree to the time and place for a deposition, or the witness can be subpoenaed. A notary public has the power to subpoena a witness for a deposition, and to punish the witness for refusing to testify. A notary subpoena is served on the witness by a sheriff, constable, or police officer.
3. take and certify acknowledgments of writings, such as deeds and powers of attorney (for how to do this see section V below)
4. receive, make and record Notarial Protests (extremely rare)

A notary may charge the following fees:

1. For a protest (rare): \$1.00 plus actual and necessary travel expenses
2. For recording an instrument required to be recorded: \$0.10 per 100 words
3. For taking depositions: See Revised Code Section 2319.27 (Appendix)
4. For taking an affidavit: \$1.50
5. For taking and certifying acknowledgments of written documents such as deeds: \$2.00

III. Penalties:

The Ohio Revised Code sets forth statutory penalties which a notary may incur for acting as a notary public after the commission expires or if the notary public charges excess fees and the statutory penalties for certifying an affidavit without administering the oath or affirmation, and the statutory penalties for violation of the notary oath. These penalties may be found in Ohio Revised Code (ORC) Section 147.03 and 147.1 through Section 147.14. See Appendix and chart below.

Offense	Penalty
Performing any act as a notary public knowing one's term of office has expired	a. Forfeiture of not more than \$500 and permanent ineligibility for reappointment (R.C. § 147.11) b. Fined not more than \$500 (R.C. § 147.99)
Receiving a fee greater than prescribed by law	Removal from office and permanent ineligibility for reappointment (R.C. § 147.13)
Dishonestly or unfaithfully discharging duties as notary public	Removal from office and permanent ineligibility for reappointment (R.C. § 147.13)
Certifying affidavit without administering oath	a. Removal from office and ineligible for reappointment for three (3) years (R.C. § 147.14) b. Fined not more than \$100 or imprisoned not more than thirty (30) days or both (R.C. § 147.99)

It should be noted that the Court of Common Pleas can remove a notary from office for violation of the notary oath, certifying an affidavit without administering the oath or dishonestly or unfaithfully discharging notary duties or receiving excess fees. A person who believes a notary has done one of those things may file a complaint with the Court of Common Pleas. The court then holds a hearing. If it is proven at the hearing that the notary acted improperly, the court removes the notary and notifies the Secretary

of State of the removal. A notary who has been removed from office for violation of the oath, charging excess fees or dishonestly or unfaithfully discharging notary duties can never be reappointed as a notary in Ohio. A notary who has been removed for certifying an affidavit without administering the oath is eligible to be reappointed as an Ohio notary after three (3) years.

IV. Civil Liability

A notary public may incur civil liability for failure to perform the duties of a notary honestly, skillfully and with reasonable diligence.

An Ohio Court has required a Lancaster-area notary public to pay money damages to a man whose signature was forged. The man's wife, a total stranger to the notary public, had misrepresented to the notary public that the signer was her husband. The notary acknowledged to the signers' signatures without asking for any identification. The notary was liable to the man, whose signature had been forged, for the damages caused by the incorrect notarization.

V. Summary of Duties

A notary public may be called upon, among other things, to administer an oath, take an acknowledgment, or to attest a person's signature. It is important that the notary understand the difference between each of these duties.

A. Oaths and Affirmations

An oath is a pledge, given by the person taking the oath, that that person's attestation or promise is made under an immediate sense of responsibility to God for the truth of what is stated or the faithful performance of what is undertaken. Any person who has conscientious scruples against taking an oath may make an affirmation instead of an oath. A notary may administer either an oath or an affirmation.

A notary public will be called upon to administer an oath (or affirmation) to persons who may be signing a variety of documents that may require an oath. The most common document will be in the form of an affidavit.

An affidavit is a declaration in writing, signed by the person making the affidavit (called the affiant), and sworn to before an officer authorized by law to administer oaths (such as a notary). There are three parts to an affidavit: the caption, the body and the conclusion. The caption includes the title of the affidavit and the name of the state and county where the affidavit is being executed (called the venue). The body includes any introductory statement and the material to which the affiant will swear. The conclusion includes the signature of the affiant, signature of the notary, notary's seal and jurat (the part of the document in which the notary recites that the document was sworn to before the notary.)

When a document is presented to a notary public for the administration of an oath, the notary should read the document to determine what will be required of the notary and to note whether there are any blanks in the instrument. The notary should request that all blanks be filled in before administering the oath. If all blanks are not filled in completely, the notary should not administer the oath until the blanks have been filled.

Once the blanks, if any, are filled and the person to whom the oath is being administered has signed the documents, the notary public administers the oath. There is no set form, but the paragraph below can be used:

After the affiant raises his or her right hand the affiant is asked: "Do you solemnly swear that the matters set forth and the answers given to the questions asked in the affidavit (or name of other document, if not an affidavit) you have just signed are true?" The correct answer is "I do." The notary should insist that the answer be given before completing the jurat.

In the event the affiant has conscientious or religious scruples against giving an oath, an affirmation may be taken instead of an oath. To take an affirmation, the notary should ask the affiant, "Do you affirm that the matters set forth and the answers given to the questions asked in the affidavit you have just signed are true?"

The jurat, that part of the affidavit in which the notary states that it was sworn to before the notary, is then completed. The notary signs and dates the jurat and places the notarial seal in the proper place. If the notary's name does not appear on the seal it should be typed, printed or stamped by legible printed letters near the notary's signature.

A sample jurat looks like this: "Sworn to and subscribed before me this 25th day of November, 2000 by Albert Affiant" _____, Notary Public.

B. Acknowledgments

An acknowledgment is a formal declaration before a public officer, such as a notary, by the person who has signed the instrument, that the signing of the instrument was his or her voluntary act and deed. Sample forms for acknowledgments appear in the appendix, at O.R.C. Section 147.53.

An acknowledgment is required on deeds, mortgages, land contracts, leases or any other document involving an interest in real estate. State law determines what documents require acknowledgments. Notaries public are authorized to take acknowledgments.

The notary should first read the acknowledgment to ascertain what is required of the notary. In addition, the notary must certify that the person acknowledging the

instrument appeared before the notary and acknowledged that he or she executed the instrument and that the execution was voluntary. The notary must also certify that the person acknowledging the instrument was known to the notary or that the notary has satisfactory evidence the person acknowledging the instrument was the person described in and who executed the instrument.

C. Auto Titles

Notaries public are frequently asked to take acknowledgments of titles to automobiles or other motor vehicles. Auto titles have two spaces for acknowledgments. The first acknowledgment, about halfway down the back of the title, is for the notary to acknowledge the seller's signature. On new titles, it reads "Sworn to and subscribed in my presence by _____ this _____ day of _____, _____. My commission expires _____ year _____ Notary _____." All blanks in the acknowledgment itself **and above** the notary's signature must be filled in before the notary signs this acknowledgment. This includes the price, date of sale, name and address of both transferee (buyer) and seller, and the odometer (mileage) certification. If all blanks are not completed, you must refuse to notarize the title. In the event you notarize a title without all blanks completed, you will be ordered to appear before the Judge to show cause for your failure to do so, resulting in possible fines or removal from office.

The second acknowledgment is for the notary to acknowledge the signature of the buyer (applicant) at the bottom of the title under "Application for Certificate of Title". Before the notary signs this acknowledgment, all of the blanks in the acknowledgment and on the title must be filled in. This includes the blanks above the first acknowledgment, the first acknowledgment and all blanks below it, such as the buyer's acknowledgment of odometer certification, the applicant's (buyer's) name, address and social security number, the purchase price, the condition of the vehicle, and any lien information.

It is illegal for an individual ("the first buyer") to buy, then immediately sell, a vehicle without taking the title into the first buyer's name.

D. Attestation

Attestation is merely the act of witnessing the execution of a paper and signing one's name on the instrument as a witness.

Some instruments, such as a deed, must be both acknowledged and witnessed. This requirement is now rare, as Ohio law was changed effective February 1, 2002 to eliminate the requirement for witnesses on deeds, mortgages and most documents involving real estate. If witnesses were required or requested, the notary may both take the acknowledgment and act as a witness providing that the notary signs twice, once as the notary in the proper place for the notary and once as a witness in the proper place for witnesses.

This has been a brief statement covering the practice of performing the duties of a notary public. A notary should be familiar with the Ohio statutes governing notaries public and in particular the section of the Ohio Revised Code reproduced in the appendix at the end of this manual.

E. Warnings for Notaries

In addition, the following warnings are given to assist notaries public in the proper performance of their duties:

1. Read the affidavit, or other document, you may be called upon to notarize or acknowledge, to be certain of the requirements for the proper execution of the document.

2. Do not administer an oath or take an acknowledgment if the instrument being sworn to or acknowledged contains blanks. Insist that the blanks be filled and the instrument completed.

3. Do refuse to administer the oath if there are any suspicious circumstances. Refuse to take an acknowledgment if you do not know the person whose acknowledgment is to be taken or if you do not have satisfactory evidence that the person acknowledging is the person described in and who executed the instrument. You should be alert for any suspicious circumstances.

4. Do not administer an oath or take an acknowledgment if the person to whom the oath is administered is not in your presence. For example, do not administer an oath or take an acknowledgment over the telephone. Remember the common form of jurat is: "Sworn to before me and subscribed in my presence this _____ day of _____, 20____." The jurat means exactly what it says.

5. Do not administer an oath or take an acknowledgment on any instrument to which you are a party or in which you have an interest.

6. Do sign your name. Do not use a stamp without signing the document as well. Section 147.04 of the Ohio Revised Code provides that the name of the notary public may be in printed letters on the seal or it may be printed, typewritten or stamped in legible printed letters near the notary's signature on each document signed by the notary.

7. Do not, unless you are an attorney at law, perform any act or service which constitutes the practice of law as defined by the Ohio courts. It is contrary to law to draft deeds, contracts and any other legal papers at your own discretion and charge a fee for that service. If you have any questions consult your own attorney.

8. Remember, it is the notary public's responsibility to see that the powers which have been vested in the notary are exercised properly. As a notary public you are "a public official appointed under authority of law with the power, among other things, to administer oaths, certify affidavits, take acknowledgments, take depositions, perpetuate testimony, and protest negotiable instruments." (Anderson's Manual for Notaries Public, Sixth Edition, Page 7.)

BIBLIOGRAPHY

The Publisher's Staff. *Anderson's Manual for Notaries Public*. Sixth Edition. Anderson Publishing Company. 1991