

**A
MANUAL
FOR
NOTARIES
PUBLIC**

Prepared by
**Judges' Committee on
Notaries Public**

Appointed by
**The Court of Common Pleas
of Butler County**

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PREFACE

A commission of a Notary Public is not a license to practice law. A notary is a public officer of the State of Ohio created by the Legislature. This pamphlet contains some of the pertinent laws pertaining to Notaries Public, and answers the most commonly asked questions regarding powers and procedures. Please keep it as a reference.

THE STATUTES

Section numbers refer to Ohio Revised Code.

147.01 Appointment of notaries public; state-wide commission; revocation

Sec. 147.01. The governor may appoint and commission as notaries public as many persons as he considers necessary, who are citizens of the State of Ohio and are of the age of eighteen or over. A notary public shall be appointed and commissioned as a notary public for the state. The governor may revoke a commission issued to a notary public upon presentation of satisfactory evidence of official misconduct or incapacity.

147.02 Certification of qualifications

Before the appointment of a notary public is made, the applicant shall produce to the governor a certificate from a judge of the court of common pleas, in his home county, court of appeals, or supreme court, that he is of good moral character, a citizen of the county in which he resides, and, if it is the fact, that the applicant is an attorney at law qualified and admitted to practice in this state, and possessed of sufficient qualifications and ability to discharge the duties of the office of notary public. No judge shall issue such certificate until he is satisfied from his personal knowledge that the applicant possesses the qualifications necessary to a proper discharge of the duties of the office, or until the applicant has passed an examination under such rules and regulations as the judge may prescribe. If the applicant is admitted to the practice of law in this state, this fact shall also be certified by the judge in his certification.

147.03 Term of Office; Oath.

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

A citizen of this state admitted to the practice of law by the Ohio Supreme Court shall hold his office as a notary public as long as such citizen is a resident of this state, is in good standing before the Ohio Supreme Court, and the commission is not revoked. Before entering upon the duties of his office he shall deposit with the secretary of state the certificate provided for in section 147.02 of the Revised Code and shall take and subscribe an oath to be indorsed on his commission.

A notary public who violates the oath required by this section shall be removed from office by the court of common pleas of the county in which he resides, upon complaint filed and substantiated in such court, and the court shall thereupon certify such removal to the governor. The person so removed shall be ineligible for reappointment to the office of notary public.

Each citizen of this state holding office as a notary public on October 24, 1961, shall continue in such office until the expiration of his term and he shall thereafter hold office pursuant to this section.

147.04 Seal and register of notaries public

Sec. 147.04. Before entering upon the discharge of his duties, a notary public shall provide himself with the seal of a notary public. The seal shall consist of the coat of arms of the state within a circle one inch in diameter and shall be surrounded by the words "notary public," "notarial seal," or words to that effect, **AND** the words "State of Ohio." The seal may be either a type that will stamp ink onto a document or one that will emboss it. The name of the notary public may appear on the seal, or be printed, typewritten, or stamped in legible, printed letters near his signature on each document signed by him. A notary public shall also provide himself with an official register in which shall be recorded a copy of every certificate of protest and copy of note, which seal and record shall be exempt from execution. Upon the death, expiration of term without reappointment, or removal from office of any notary public, his official register shall be deposited in the office of the county recorder of the county in which he resides. (See page 11)

147.05 Commission to be recorded; fee

Sec. 147.05. Before entering upon the duties of his office, a notary public shall leave his commission with the oath indorsed thereon with the clerk of the court of common pleas of the county in which he resides. The commission shall be recorded by the clerk in a book kept for that purpose. The clerk shall indorse on the margin of the record and on the back of the commission the time he received it for record, and make a proper index to all commissions recorded by him. For recording and indexing such commission, the fee of the clerk shall be as provided for in division (S) of section 2303.20 of the Revised Code.

147.06 Certified Copy of Commission To Be Evidence

Upon application, the clerk of the court of common pleas shall make a certified copy of a commission and the indorsements thereon, under the seal of the court, which certified copy shall be prima-facie evidence of the matters and facts therein contained. For a certified copy of a commission the clerk shall be entitled to receive a fee of two (\$2.00) dollars.

147.07 Powers; jurisdiction

Sec. 147.07. A notary public may, throughout the state, administer oaths required or authorized by law, take and certify depositions, take and certify acknowledgements of deeds, mortgages, liens, powers of attorney, and other instruments of writing, and receive, make, and record notarial protests. In taking

depositions, he shall have the power that is by law vested in judges of county courts to compel the attendance of witnesses and punish them for refusing to testify. Sheriffs and constables are required to serve and return all process issued by notaries public in the taking of depositions.

(See page 6 for explanation.)

147.08 Fees of Notaries Public.

A notary public is entitled to the following fees:

(A) For the protest of a bill of exchange or promissory note. (See statutes).

(B) For recording an instrument required to be recorded by a notary public. (See statutes).

(C) For taking and certifying acknowledgments of deeds, mortgages, liens, power of attorney, and other instruments of writing, the same fees as are allowed by law under O.R.C. 2303.20 to clerks of courts of common pleas for like services: two dollars (\$2.00).

(D) For taking and certifying an affidavit: one dollar and fifty cents (\$1.50).

(E) For taking and certifying a deposition. (See statutes). O.R.C. 2319.27.

147.10 Notary Public Acting After Commission Expires.

No notary public shall do or perform any act as a notary public knowing that his term of office has expired.

147.11 Forfeiture.

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

147.13 Removal For Receiving Excess Fees.

A notary public who charges or receives for an act or service done or rendered by him a fee greater than the amount prescribed by law, or who dishonestly or unfaithfully discharges any of his duties as notary public, shall be removed from his office by the court of common pleas of the county in which he resides, upon complaint filed and substantiated in such court, and the court shall thereupon certify such removal to the governor. The person so removed shall be ineligible for reappointment to the office of notary public.

147.14 Removal From Office For Certifying Affidavit Without Administering Oath.

No notary public shall certify to the affidavit of a person without administering the oath of affirmation to such person. (See Powers of Notaries: Jurisdiction, part 1.) A notary public who violates this section shall be removed from office by the court of common pleas of the county in which the conviction was had. The court shall thereupon certify such removal to the governor. The person so removed shall be ineligible to reappointment for a period of three years.

5301.01 Acknowledgment of Deeds, Mortgages and Leases

A deed, mortgage, land contract as referred to in division (B) (2) of section 317.08 of the Revised Code, or lease of any interest in real property and a memorandum of trust as described in division (A) of section 5301.255 of the Revised Code must be signed by the grantor, mortgagor, vendor or lessor, and such signing must be acknowledged by the grantor, mortgagor, vendor, or lessor in the case of a deed, mortgage, land contract, or lease or shall be signed by the settler and trustee in the case of a memorandum of trust. Such signing must be acknowledged by the grantor, mortgagor, vendor or lessor before a person authorized by law to take acknowledgements, who shall certify the acknowledgement and subscribe his name to the certificate of such acknowledgement. (A Notary Public is authorized to take acknowledgements; see Powers of Notaries: Jurisdiction, part 2.)

147.37 Fees for Commissions.

Sec. 147.37. Each person receiving a commission as notary public, except a citizen of this state admitted to the practice of law by the Ohio supreme court, shall pay a fee of FIFTEEN (\$15.00) dollars. Each person receiving a commission as a notary public who is a citizen of this state admitted to the practice of law by the Ohio Supreme Court, shall pay a fee of FIFTEEN (\$15.00) Dollars.

**POWERS OF NOTARIES: JURISDICTION
(O.R.C. 147.07)**

A Notary Public shall have power throughout the State of Ohio:

1. To Administer Oaths.

An Oath is a declaration by a person before an officer authorized by law, such as a notary public, to take an oath that what he has said or is about to say is true or a promise that he will faithfully perform certain acts. To be a proper and legal oath, the declaration must be substantiated by an appeal to God to witness the sincerity of the statement, accompanied by some outward act demonstrating this appeal, such as raising the right hand or placing it on the Bible.

Example: "Do you solemnly swear that what you are about to say or have said is true, so help you God?"

If the person for religious reasons refuses to take an oath, you are permitted to substitute an AFFIRMATION which eliminates the appeal to God.

Example: "Do you solemnly swear and affirm that what you have said or are about to say is true under the pains and penalties of perjury?"

Affidavit.

An affidavit is a written statement of facts, the truth of which is sworn to before a person authorized to administer oaths, and followed by an official statement of the person taking the oath that the affidavit was signed and sworn to, or affirmed, in his presence.

Example:

State of Ohio : ss AFFIDAVIT
County of Butler :

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

(Signed) John Doe

Sworn to before me and signed in my presence this day of
, 20

(Signed) Mary Doe

(Seal)

My commission expires Mary Roe, Notary Public
Month — Day — Year State of Ohio

2. To Take and Certify Acknowledgements to Deeds, Mortgages, Liens, Powers of Attorney and other Such Instruments of Writing.

The law of the State of Ohio requires that signatures to certain legal instruments, in order to be recorded in the County Recorder's Office, must be acknowledged before a person authorized by law to take acknowledgments (as a Notary Public). A person "acknowledges" his signature by bringing the unsigned instrument to the notary, signing it in his presence, and then acknowledging to the notary that the signature of the instrument is his, and that he signed it voluntarily without duress **OR** by bringing the signed instrument before the notary and acknowledging that he did sign the instrument. The notary then certifies, on the same sheet of paper, that the instrument has been acknowledged in his presence.

Example:

State of Ohio : ss
County of Butler :

Before me, a Notary Public in and for said county, personally appeared the above named Joe Doe who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

In Testimony Whereof, I have hereunto affixed my name and official seal, this _____ day
of _____, 20

(Signed) Mary Doe
(Print or Stamp Name)

(Seal)
My commission expires
Month — Day — Year

Naturally, a notary cannot truthfully certify that John Doe appeared before him, unless he is reasonably certain that the person who signed the instrument actually is John Doe. If the signer is not known to the notary, proof of his identity must be presented. This proof may be satisfied by a third person known to the notary who introduces John Doe to him.

Nor can a notary certify that John Doe "appeared before him" if the instrument is brought to the notary by a third person. It bears repeating that the only way a signature can be acknowledged is if the person who signs or signed the instrument appears before the Notary and acknowledges his signature and the notary public has satisfied himself as to the identity of the person signing the instrument.

Some notaries are inclined to take this, their most frequently used function, rather lightly. They forget that they are liable, personally, to anyone who suffers damage through their negligence. The courts have found a notary public guilty of negligence who has certified the acknowledgement of a person who has misrepresented himself, when the notary failed to ask for proof of identity. In fact, in Ohio, anyone who with intent to defraud, falsely impersonates another before a Notary Public, is guilty of a felony.

There is a reason why acknowledgements are so important. When a signed instrument is presented in Court as evidence in a case, proof of its execution must be given. This is usually done by securing the person who signed the document as a witness, and asking him on the stand whether or not he executed the instrument. However, papers that have been acknowledged before a Notary Public need not be proven. The notary's certification is considered sufficient to show the authenticity of the signature. This responsibility, then, is no small, unimportant matter.

Some additional Facts About Acknowledgements.

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

An Ohio notary cannot notarize an instrument when he is out of the physical boundaries of the State of Ohio. He may not witness the signature and take the acknowledgement in another State, then make the certification in his own State. All three acts must take place within the limits of his jurisdiction. The acknowledgment certification must state the location (county and state) where the instrument was acknowledged.

A notary may take the acknowledgement of a relative, even a wife or husband, if he himself has no interest in the transaction.

A notary may act as a witness to and notarize the same instrument.

A notary may take the acknowledgement of a person who cannot sign his name. Such person signs the instrument by marking an "X" in the presence of two witnesses, one of which may be the notary.

Example:

In the presence of:	His
Richard Roe (Signed)	JOHN X DOE
Mary Roe (Signed)	Mark

An acknowledgement is invalid that does not show the official capacity of the person so taking it (Notary Public) and the State for which he is commissioned.

A notary should remember that he acknowledges the "signature" merely and need not concern himself with the contents of the instrument. This does not mean, however, that a notary may acknowledge a signature on a blank or partly blank piece of paper. He should insist that all blanks are filled in. Blank spaces not used in a legal instrument should have a line in ink drawn through them, so that no one can add to the terms of the instrument after it is signed.

Deeds, Mortgages and Powers of Attorney.

A deed or mortgage of real estate is required by law to be acknowledged before a notary public, who certifies the acknowledgement on the same sheet on which the instrument is written. The same provision applies to leases for a term of more than three years.

Example:

(After the last provision of the deed...)
In witness whereof, the grantor has hereunto set his hand and seal.

(Signed) William Seller

State of Ohio :
County of Butler :

I hereby certify that on the _____ day
20____, before me a Notary Public, in and for said state, personally
appeared William Seller, the grantor in the foregoing instrument
and acknowledged the signing thereof to be his voluntary act and
deed for the uses and purposes therein mentioned.

(Signed) Mary Roe

Commission exp month — day — year
Mary Roe, Notary Public
State of Ohio

(Seal)

Only the grantor (or person relinquishing ownership) need sign a deed; the mortgagor (or borrower giving security) need sign the mortgage; and the lessor (or landlord) need sign the lease. Grantees, Mortgages and lessees signatures do not appear on these instruments although legally they are "parties" to the instrument. (Lessees in some leases, however, make promise with regard to the property. In these cases they, too, would sign the lease, but their signatures need not be acknowledged.)

If the grantor or mortgagor is married, the husband or wife must also sign and acknowledge the instrument, but need not subscribe the instrument or acknowledge it at the same time as his spouse, or even before the same notary public.

A power of attorney for conveyance, mortgage or lease of real estate must be signed, witnessed, acknowledged and certified in the same manner as deeds, mortgages and leases for terms of more than three years.

3. It is suggested that you refrain from taking and certifying depositions and refrain from receiving, making and recording notarial protests. These are technical matters and should be performed by an attorney of law.

4. Protests of negotiable instruments.

Various Negotiable Instruments Defined.

Bill of Exchange or Draft: A bill of exchange or draft is an unconditional order in writing signed by one person and addressed to another, requiring the person to whom it is addressed to pay on demand or at a fixed date a sum of money to order, or to the bearer.

Example:
\$50.00

Middletown, Ohio
Month — Day — Year

Five days after date (or after sight) pay to John Doe, or order,
Fifty Dollars, value received.

To John Jones

Richard Roe

Draft payable at sight or at a certain date after sight, or at any other date not fixed, must be presented to the drawee for acceptance in order that the date for payment shall be determined. This is called "presentment for acceptance."

Checks are simply drafts drawn on a deposit of funds in a bank.

The person making the draft or checks is the **drawer** (Richard Roe); the one upon whom it is drawn, the **drawee** (John Jones), or in the case of a check, the bank, who if they accept it, are the **acceptor**.

Promissory Note: A promissory note that is negotiable is an unconditional promise in writing by the maker that he will pay, on demand, or on a specified date a sum of money to the bearer, or order.

Example:
\$50.00

Middletown, Ohio
Hamilton, Ohio

Ninety days after date, I promise to pay John Black or order, Fifty Dollars, value received.

Richard Roe

The signer of the note is called the **maker** (Richard Roe); the person to whom it is payable, the **payee** (John Black). If John Black assigns his interest in the note, he signs his name on the back and becomes an **indorser**, and the person to whom he assigns it, the **indorsee**.

Under Ohio law, when the holder of a bill of exchange or note presents it properly to the Maker, Drawer or Acceptor on the day it falls due, and the payment is refused, the instrument is said to be "dishonored." In order to get payment, then, from the Drawer or Indorser, a "notice of dishonor" must be given to the Drawer or Indorser.

The reason for the "notice of dishonor" is that the contract made by the Drawer and Indorser holds him liable only if payment or acceptance is refused after presentment for payment, and only if he receives notice of the dishonor. This notice may be given by the holder of the bill or note, or by someone in his behalf, (for instance, a Notary Public). It may be oral, or in writing, and may be given personally or by mail. If the notice of dishonor is not received by the Drawer or Indorser within one day after the dishonor (if residing in the same place as the Notary Public) he is discharged from all liability on the instrument.

The contract of the Maker and Acceptor is different. It holds them liable even if the bill or note is not presented for payment on the day after it falls due. (A drawee is never liable until he has accepted the bill). In addition to the notice of dishonor, if the instrument were made outside of Ohio, a "protest" of the non-acceptance or non-payment must be made on the day of the dishonor.

PROTEST

A notarial protest is a solemn declaration under the hand and seal of a Notary Public stating that he, at a certain time, presented the bill or note for payment or acceptance, that it was refused and that the notice of the dishonor was given to the Drawers or Indorsers. Its purpose is merely to furnish formal evidence of the dishonor of a bill or note by showing that all the necessary requisites have been complied with to hold the Drawers and Indorsers liable on the instrument. It is received in Court as *prima facie* evidence of the facts stated therein.

The usual procedure in protests of negotiable instruments is thus: (1) the holder, or one authorized by him, presents the instrument for acceptance of payment and is refused, (2) he gives the instrument to a notary, who again formally makes demand for its payment or acceptance, (3) if payment or acceptance is again refused, the notary gives notice of the dishonor to the Drawers and Indorsers immediately, and (4) fills out the formal Certificate of Protest (a form which may be obtained at any legal stationers) and attaches the bill or note to it. He then records a copy of the Certificate of Protest and the instrument in his official register.

Since the use of a Certificate of Protest is much easier than obtaining evidence of dishonor, the Courts allow a protest form to be used also in cases involving Ohio negotiable instruments. This is allowed, but is not required, as in the case of foreign instruments.

It is impossible in this small guidebook to cover all the statutes dealing with the protests of negotiable instruments. The law describes what constitutes proper presentment, protest, and notice of dishonor. When a notary is called upon to protest a negotiable instrument, it is suggested that he acquaint himself with the statutes that are applicable.

CHANGE OF NAME

If, by marriage or otherwise, a notary changes his or her name, he or she may use the new name, but must indicate the name in which the commission was issued in parenthesis after it. **Example:** Mary Roe married John Doe. She would sign Mary Doe (Roe).

AUTHENTICATION

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

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