



State of Hawaii
Notary Public Manual
Revised 1986

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Foreward

The purpose of this manual is to acquaint the reader with the duties, functions and responsibilities of a Notary Public in Hawaii. This is not an official text. Accordingly, it is advisable in order to obtain a comprehensive understanding of Hawaii laws regarding notaries public that one read the following pertinent sections of the Hawaii Revised Statutes, as amended: 456-1 to 456-19, 502-41 to 502-84, 603-1, 621-12 and 621-13.

Introduction

A Notary Public is a public officer whose functions include:

- Administering oaths
- Witnessing the signing of documents
- Attesting to the identity of the signers of a document
- Noting protests
- Taking acknowledgments of documents.

Although a notary public may be commissioned to perform services in connection with work for his employer, the notary is nonetheless a public officer and as such is required to provide notarial service to the general public. A government notary whose fees and bond are waived, however, is limited by law to performing notarial services pertaining to the business of the government, except where the occasion is deemed by the head of the department of the governmental unit to be one of urgent necessity and convenience.

GENERAL INFORMATION

Qualification

In Hawaii, to be eligible for a notary public commission, the applicant must be:

1. A U. S. citizen, or a national or permanent resident alien of the U. S. who diligently seeks citizenship upon becoming eligible for U. S. citizenship;
2. A Hawaii resident; and
3. At least 18 years old.

Application

Application for a notary public commission is made on forms provided by the Attorney General.

After approval of an applicant by the Attorney General, the applicant is required to take a written closed-book examination covering such statutory laws and rules that apply to notaries public, as well as practical aspects of a notary's practice, and a notary's duties and responsibilities. The passing score is 72 points or 80 percent.

Appointment and Tenure

The term of office of a notary public is four years from the date of his commission, unless he is sooner removed by the Attorney General for cause after due hearing. The commission of a notary may be revoked by the Attorney General where any change occurs in a notary's office, occupation, residence or employment, which, in the judgment of the Attorney General, renders the holding of the commission by the notary to no longer be necessary for the public good and convenience. Each notary is required, upon any change in his office, occupation, residence, employment or name, to forthwith report such change in writing to the Attorney General.

The Attorney General is required by law to charge and collect a fee of \$40.00 for the issuance of an original commission and \$40.00 for the renewal of a commission. Checks should be made out to "State Director of Finance."

Official Oath

Every person appointed as a notary is required, before entering office, to take and subscribe an oath for the faithful discharge of his duties. The oath is filed in the Office of the Attorney General.

Notarial Seal

Each notary is required to obtain on his own and constantly keep an engraved seal of office or a rubber stamp facsimile seal which shall clearly show, when embossed, stamped, or impressed upon a document, the notary's name, and the words, "notary public" and "State of Hawaii." He shall authenticate all of his official acts, attestations, certificates and instruments by impressing his seal thereon. In the absence of the seal, the notarization is ineffectual.

Upon resignation, expiration of term of office without reappointment, or removal from or abandonment of office, the notary shall deliver his seal to the Attorney General for the purpose of defacement or destruction. Upon the death of the notary, the notary's employer or personal representative shall deliver the seal to the Attorney General. Failure to comply with this requirement within ninety days of the date of death, resignation, expiration of term of office without reappointment, or removal from or abandonment of office may result in the imposition of a fine of not more than \$200.

Official Signature

A notary signs his official signature in the same manner as it appears on his seal. E.g., if his name appears as "John Doe" on his seal, he signs in the same form, i.e., "John Doe" and not "J. Doe". A notary must always add to his official signature the typed or printed name of the notary in addition to a statement showing the date of expiration of his commission as a notary public.

Filing Copy of Commission; Authentication of Acts

Every person appointed and commissioned a notary must forthwith file a literal or photostatic copy of his commission, an impression of his seal, and a specimen of his official signature with the clerk of the circuit court of the circuit in which the notary resides. Each person may also, at his option, file the above-named documents with the clerk of any other circuit court. Thereafter, any clerk, when requested, shall certify to the official character and acts of any such notary whose commission, impression of seal and specimen of official signature is so filed in his office (a process called authentication). (Authentication is usually required when a document notarized by a local notary public is sent to another state or country. Such state or country may require evidence that the notary who notarized the document is a duly commissioned officer of the State of Hawaii.)

Official Bond

Every notary is required to execute an official surety bond in the sum of \$1,000, before entering upon the duties of his office. The obligee of the bond is the State of Hawaii. The bond shall contain the condition that the notary will well, truly and faithfully perform all the duties of his office which are then or may thereafter be required, prescribed, or defined by law or by any rule or regulation made under the express or implied authority of any statute, and all duties and acts undertaken, assumed, or performed by the notary by virtue of his color of office.

The surety on the bond must be a surety company authorized to do business in the State of Hawaii.

The bond must be approved by a judge of the circuit court. After approval, it is filed with the office of the clerk of the circuit court of the judicial circuit in which the notary resides.

In the event of official misconduct or neglect of a notary or breach by a notary of any of the conditions of his bond, he and the surety shall be liable to the party injured thereby for all damages sustained. The injured party has a right to sue in his own name on the bond and prosecute the action to final judgment and execution.

Notarial Record Book

Every notary shall keep a record book in which he shall personally record at length all acts, protests, depositions, and other things, by him noted or done in his official capacity. Inasmuch as the duties of a notary are personal to him, it would be improper for a notary to delegate the recording functions to another person. Each record shall set forth the type, date, and time of day when the notary acted in his official capacity; the parties to the instrument; the persons acknowledging, verifying, etc. the instrument before him, the date of the instrument; and some memorandum as to the nature of the instrument being notarized. It is also a good idea for a notary to have each constituent appearing before him sign in his record book. Such a signature arms a notary with proof that the constituent actually appeared before him personally. Further, if the notary does not personally know the constituent, it is a good idea for the notary to record in his record book the type of identification and card number that the notary examined to satisfy himself of the constituent's identity.

The records of each notary are required to be filed with the clerk of the circuit court of the judicial circuit in which the notary resides upon the notary's resignation, death, expiration of each term of office, or removal from or abandonment of office. Upon the death of a notary, the notary's employer or personal representative shall deliver the notary's record book to the clerk of the circuit court. Failure to comply with this requirement within ninety days of the date of death, resignation, expiration of any term of office, or removal from or abandonment of office may result in the imposition of a fine not less than \$50 nor more than \$500.

Government Notary Public

The head of a government department may designate one or more of his subordinates to be a notary public, who, upon duly qualifying and receiving his commission as a government notary shall perform, without charge, notarial services in all matters of business pertaining to the State of Hawaii, any political subdivision thereof, or the United States. In short, a government notary public performs his notarial duties relative to government matters.

A government notary public must qualify and pass a written examination before receiving a commission.

A government notary public need not:

1. pay any fee to the clerk of any circuit court for filing a copy of his commission;
2. pay any fee to the attorney general for the issuance of his commission or its renewal; or
3. furnish and file an official bond unless such bond is required by the head of the department in which the notary is subordinate, in which event, the expense of furnishing any such bond shall be borne by the department concerned.

A government notary public shall not receive any fee for his services. However, where the occasion, in the judgment of the head of the department is one of urgent necessity and convenience, he may, but shall not be compelled to, administer oaths or take acknowledgments in non-governmental matters, in which case the prescribed fees shall be demanded and received as government realizations and deposited into the State general fund. Furthermore, if a notary employed by a government pays the fees prescribed by law and files at his own expense the required bond, he may demand and receive the fees prescribed by law for services rendered by him in matters not pertaining to the public business.

DUTIES & LIABILITIES

Obligations and Limitations

A notary must perform his official duties with integrity, diligence and skill. His duty is not confined to the one to whom he directly renders his service, but extends to all persons who may be affected by his act. 66 C.J.S. Notaries§ 10.

It is of the utmost importance that the individual who is to have a document notarized personally appear before the notary public. A notarization over the telephone is absolutely forbidden.

A notary's powers and duties are personal to him and should never, under any circumstances, be delegated. In other words, a notary should never allow a clerk or deputy to perform a notarial act for him.

A notary who is not a licensed attorney may not engage in the practice of law. If a notary attempts to assist someone in the preparation of legal papers such as contracts, deeds, powers of attorney, wills, or bills of sales, such acts may constitute the unauthorized practice of law.

One who has a beneficial interest in a document, no matter how small or nominal his interest therein, cannot act as a notary public relative to that document. Therefore, one partner cannot as a notary public take the oath of his co-partner in a matter in which the partnership has an interest. However, in Hawaii by statute, a notary, although an officer, employee, shareholder or director of a corporation, trust company, bank, or building and loan association, may take the acknowledgement of any party to any written instrument executed to or by the corporation, trust company, bank or association, or administer an oath to any shareholder, director, officer, employee, or agent of the corporation, trust company, bank or association, or protest nonacceptance or nonpayment of bills of exchange, or negotiable instruments which may be owned or held for collection by the corporation, trust company, bank or association; provided, that it is unlawful for any notary to take the acknowledgement of any party to an instrument, or to protest any negotiable instrument, where the notary is individually a party to the instrument.

Mere relationship to a party does not disqualify a notary. Thus, a wife, who is a notary public, may notarize her husband's documents, provided she does not derive a beneficial interest therefrom. A notary cannot notarize his own signature under any circumstances.

A notary should never notarize a document unless he is absolutely satisfied after reading through the notarial certificate, that whatever he is certifying to is true and correct. For example, if the notarial certificate indicates that a corporate seal is affixed to the instrument being notarized, the notary should check to be sure the seal is attached.

As a general rule, a notary should never notarize a document that has been written in a foreign language unless he has a thorough understanding of the foreign language in which the document is written. Similarly, a notary should not notarize a document written in English if the parties to the document who appear before the notary speak a foreign language unfamiliar to the notary. In the latter instance, the notary should refer the parties to another notary who speaks the foreign language, or to the foreign consulate, or to an attorney.

If a party who appears before a notary is blind, senile, a minor, a person of unsound mind, or does not seem to understand the nature or importance of the document he is signing, the notary should either seek counsel from his own attorney or advise the party who appears incompetent to see an attorney. Serious consequences could arise if a person is declared incompetent at the time an instrument was signed and notarized.

If a person appearing before a notary cannot sign his name, the notary must exercise extreme caution and should perhaps seek the advice of an attorney. It is a rare occasion today when a person who is capable of becoming a party to an important instrument is unable to write his name. After consulting an attorney (the notarization forms will have to be redrafted by the attorney to reflect that the person is signing by a mark), the notary must satisfy himself of the identity of the person appearing before him.

Obligations and Limitations *(continued)*

Some evidence of identity should be required by the notary. The notary should then ascertain whether the person thoroughly understands the nature and content of the document to be notarized. (Usually in such instances the attorney will require the presence of at least two impartial witnesses to witness the signing by mark, and the notarial certificate will be drafted to reflect their presence.) Thereafter, the person places his mark on the document and the notary indicates that it is the mark of the person in question.

Example: X (mark of John Doe).

Civil and Criminal Liability

A notary who wilfully and knowingly breaches his official duty is liable to one injured thereby. A notary is also liable for a negligent performance of duty resulting in an injury.

In the event of a breach of notarial duties, the notary may be also subject to criminal liability. For example, a notary could be found guilty of the following:

1. Extortion - the wresting of anything of value from another by duress, menace, force, or by any undue exercise of power.
2. Forgery - the fraudulent making or altering of a writing, with the intent to deceive another and prejudice him in some right.
3. Perjury - making, in an official proceeding, under an oath required or authorized by law, a false statement which the person does not believe to be true.
4. Subornation - the wilful and corrupt procuring of another to commit perjury.

POWERS AND FUNCTIONS

Jurisdiction

A notary public commissioned in the State of Hawaii can only perform his duties in the State of Hawaii. Under no circumstance can he act in another state or country.

Because a notarial certificate usually requires a notary to indicate thereon the venue or location of the notarial act, a notary should be aware that the State is divided into four judicial circuits (Sec. 603-1, H. R. S.), for venue-purposes, as follows:

1. The first judicial circuit is the island of Oahu and all other islands belonging to the State not hereinafter mentioned; [Designated venue "City and County of Honolulu"]
2. The second judicial circuit includes the islands of Maui, Molokai, Lanai, Kahoolawe and Molokini; [Designated venue "County of Maui"]
3. The third judicial circuit is the island of Hawaii; [Designated venue "County of Hawaii"]
4. The fifth judicial circuit includes the islands of Kauai and Niihau. [Designated venue "County of Kauai"]

Date of Notarial Act

The notary must indicate on the notarized document the date of his notarial act. In Hawaii, it is permissible to perform notarial services on a Sunday or a holiday. Thus, if the notary performs official services on Independence Day, which is a national holiday, he indicates on the document as the date of his act "July 4, 19__."

Changes on Document

Before notarizing any document, the notary public should inspect the document and ascertain whether there are interlineations, erasures or other changes. If there are changes, he should call them to the attention of the person who is to acknowledge the document. If the changes are approved, the notary public places his initials in the margin of the document opposite each interlineation, erasure or change. (For the protection of the notary, it is also advisable to have the constituent initial each interlineation, erasure or change.)

No document containing interlineations, erasures or other changes will be recorded by the registrar of the State Bureau of Conveyances unless they are initialed by the notary.

Administering an Oath or Affidavit

Every notary may administer oaths in all cases in which oaths are by law authorized or required to be taken or administered, or in which the administering of an oath may be proper. (Sec. 456-13, H. R. S.)

An **oath** is a solemn pledge made by a person (often referred to as the "affiant") with an appeal to God or a Supreme Being to attest to the truth of his statement. When an affiant's conscience will not permit him to use the term "swear", an affirmation is permissible. The affiant should not be forced to "swear." Instead, the notary should substitute the term "affirm" for the term "swear." In all cases, whether it is an oath or affirmation, the notary should respect the solemnity of the oath and require the affiant either to raise his hand or to place it on the Bible before administering the oath.

An example of an oath or affirmation taken by public officers is the following: "You do solemnly swear or affirm that you will support and defend the Constitution of the United States and the Constitution of the State of Hawaii, and that you will faithfully discharge your duties to the best of your ability."

The person to whom the oath has been administered answers "I do."

An **affidavit** is a written or printed statement of facts, made voluntarily, and under oath or affirmation of the party making it, taken before an officer who has authority to administer an oath. In other words, it is an oath that has been put in writing and signed by the affiant. Before administering an oath in connection with an affidavit, the notary should require the affiant to raise his hand or place it on the Bible. An example of an oath that can be administered is as follows:

"You do solemnly swear or affirm that the statements made in this affidavit are the truth, the whole truth, and nothing but the truth, so help you God."

The applicant answers "I do." The notary then adds his certification (known as the "jurat") which states that the person appeared before him, and signed the affidavit. The notary then signs the jurat, prints or stamps his commission expiration date, and impresses his official seal.

TAKING AN ACKNOWLEDGMENT

An acknowledgment is a formal declaration before an authorized official by a person who has executed a formal or legal written document that the execution of the document was is free act and deed. The fundamental purpose of the acknowledgment is to insure the authenticity and voluntariness of the signature. Before certifying an acknowledgment, a notary must either have personal knowledge of the individual who makes it, or be satisfied of his identity by thorough precaution (e.g., checking identification cards). The written evidence of an Acknowledgment is the certificate of the notary, which states in substance that the person named therein was known to and appeared before him and acknowledged the instrument to be his free act and deed.

The general form of a certificate of acknowledgement includes the following parts:

1. The venue.
2. The date of the notarial act, which is the date the notary signs the certificate of acknowledgement. This is a very important date and the notary should always be certain that he is inserting the correct date.
3. The body of the acknowledgement, in which will be included:
 - (a) A statement relative to the presence of the signer.
Example: "... personally appeared before me..."
(If a person whose signature is notarized did not actually appear before the notary, the notary could be found guilty of perjury for signing a false statement.)
 - (b) The identity of the signer or signers. There is usually a blank space provided for the notary to fill in the name of the signer. The notary should insert the name carefully, making sure that the name on the document or instrument agrees exactly with the name inserted in the certificate. If the signer's middle name is spelled out in the instrument, the notary should spell it out in the certificate and make sure that the party signs his full name exactly as it appears on the document.
 - (c) Identification of the signer. Example: "...to me known to be the person described in and who executed the foregoing instrument ..." A notary must thus either have personal knowledge of the signer or be satisfied of his identity through precaution. For example, a notary can check identification cards to match pictures and signatures. It is a good idea also for a notary to request the party to sign his name in the notary's record book, to compare signatures.
 - (d) A statement of voluntary acknowledgement.
Example: "...and acknowledged that he executed the same as his free act and deed." The notary should always ask the signer to admit, recognize or acknowledge that he is aware of the terms and existence of the instrument he has signed, and that he signed the same freely and willingly.
4. Testimonium Clause. Example: "In witness whereof, I have hereunto set my hand and official seal." The notary then signs his official signature, impresses his seal and fills in his commission expiration date.

The following is an example of a certificate of individual acknowledgement:

STATE OF HAWAII }
 } SS.
COUNTY OF MAUI }

On this ____ day of _____, 19____, before me personally appeared John Doe, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Witness my hand and seal.

(SEAL)

(Signature of Notary Public)

My commission expires: (expiration date)

The following is an example of a certificate of corporate acknowledgement:

STATE OF HAWAII }
 } SS.
COUNTY OF HAWAII }

On this ____ day of _____, 19____, before me personally appeared John Doe and James Smith, to me personally, who being by me duly sworn, did say that they are the President and Secretary, respectively, of XYZ Corporation, and that the seal affixed to the instrument is the corporate seal of the corporation, and that the instrument was signed and sealed in behalf of the corporation by authority of its board of directors, and John Doe and James Smith acknowledged the instrument to be the free act and deed of the corporation.

(SEAL)

(Signature of Notary Public)

My commission expires: (expiration date)

If the corporation has no corporate seal, the notary should line out and initial "the seal affixed to the instrument is the corporate seal of the corporation" and add "and the corporation has no corporate seal."

Schedule of Fees

- Section 456-17, Hawaii Revised Statutes, provides that a general notary public is entitled to receive the following fees for his notarial services:

Schedule of Fees	
For noting the protest of mercantile paper	\$5.00
(Noting of a "protest" in this case is a formal written statement made by the notary public under his seal of office, that at the request of a holder of a mercantile paper [negotiable paper, such as bills, notes, checks, etc.], he presented said mercantile paper to A for payment on a certain date, but that such payment was refused for certain reasons, whereupon the notary notified certain parties of the refusal. Protests of mercantile paper are usually done by banks and other financial institutions).	
For each notice and certified copy of protest	\$5.00
(Besides protests of mercantile paper, there is a protest connected with maritime law. A maritime protest is a written statement made by the master of a vessel, attested by a notary, to the effect that damages suffered by the ship in her voyage were caused by storms or other perils of the sea without any negligence or misconduct on his part.)	
For noting any other protest	\$5.00
For every notice thereof and certified copy of said protest	\$5.00
For every deposition or official certificate or copy thereof	\$5.00
(A "deposition" is the testimony of a witness taken not in open court and reduced to writing and duly authenticated; it is usually intended to be used at trial or in preparation for trial.)	
For administration of oath, including the certificate of such oath	\$5.00
(for original plus four copies)	
For affixing the certificate of such oath to every duplicate original instrument beyond four	\$2.50
For taking any acknowledgement (original plus one duplicate original)	\$5.00
(for each party signing)	
For affixing the certificate of such acknowledgement to every duplicate original beyond the first copy	\$2.50
(for each person making the acknowledgement)	
For administration of oath of loyalty	No charge
(An "oath of loyalty" in most instances is taken by one who is employed by or serves in the State or county governments.)	

The charges for official services must be limited to the prescribed fees. An overcharge is deemed to be a violation of law. The notary may make further charges for unofficial services, but the charging of a round

sum for notarial and other services together is not permissible. A notary may charge less than the statutory fees for his acts.

A notary who charges for his official services must secure a State gross income tax license. Fees collected by the notary are subject to the State general excise tax.