

State of Maine

Department of the Secretary of State



Notary Public Handbook and Resource Guide

IMPORTANT INFORMATION

For questions concerning Notary Public laws or rules or apostilles/authentications:

Department of the Secretary of State

Division of Corporations, UCC and Commissions(207) 624-7752

E-mail address: cec.notaries@maine.gov

Website address: www.Maine.gov/sos/cec/notary/index.html

Mailing address: 101 State House Station, Augusta, ME 04333-0101

Physical location: 111 Sewall St., Burton Cross State Office Building, 4th fl., Augusta, ME 04330

Searchable index of Notaries Public/Dedimus Justices: www.Maine.gov/online/notary/search

For questions concerning wedding procedures or other vital record documents:

Department of Human Services

Office of Data, Research and Vital Statistics.....(207) 287-3181

Website address: www.Maine.gov/dhhs/boh/phs/odrvs/vital-records/index.shtml

Independent professional organization serving Notaries Public in the State of Maine:

Informed Notaries of Maine(207) 619-0806

Address: PO Box 707, Auburn, ME 04212-0707

E-mail address: president@informednotariesofmaine.org

Website address: <http://www.informednotariesofmaine.org/>

Independent private businesses serving Notaries Public nationwide:

American Association of Notaries....(713) 644-2299

Address: P.O. Box 630601, Houston, TX 77263

E-mail address: sales@usnotaries.com

Web site address: www.notarypublicstamps.com

American Society of Notaries(850) 671-5164

Address: P.O. Box 5757, Tallahassee, FL 32314-5707

E-mail address: info@asnnotary.org

Web site address: www.asnnotary.org

National Notary Association(800) 876-6827

Address: 9350 De Soto Avenue, PO Box 2402, Chatsworth, CA 91313-2402

E-mail address: services@nationalnotary.org

Website address: www.nationalnotary.org

United States Notary Association(800) 587-2588

Address: One Gateway Ctr, Ste 402, 420 Ft. Duquesne Blvd., Pittsburgh, PA 15222-1499

E-mail address: usna@enotary.org

Website address: www.enotary.org

A Message from the Secretary of State

Dear Citizen,

Thank you for your interest in becoming a Notary Public in the State of Maine. You are to be commended for your desire to serve the public.

Notaries Public have duties and responsibilities that confer upon them the trust and faith of the public. Notaries Public are authorized to perform certain official duties that are critical to those who need them.

Because the work of Notaries Public is so important, please make sure you take the time to review this guide carefully. It is critical for you to understand the obligations of being a Notary Public and for you to perform those duties in a manner that merits the trust, confidence and respect appropriate to the office.

The Department of the Secretary of State works closely with Notaries Public in Maine and the staff in the department's Division of Corporations, UCC and Commissions will be happy to assist you. While we cannot offer you legal advice, we can answer questions about practical or administrative issues and provide other support to you. Please do not hesitate to contact our office by calling (207) 624-7752; by writing to our office at the Bureau of Corporations, Elections and Commissions, 101 State House Station, Augusta, ME 04333-0101; by visiting our website at www.maine.gov/sos/cec or by sending an email to CEC.Notaries@Maine.gov.

Once commissioned as a Notary Public, it is the responsibility of the Notary Public to maintain a level of education appropriate for conducting notarial duties. Our office encourages you to attend workshops on a yearly basis to remain current and avoid conducting inappropriate or flawed notarizations.

The Informed Notaries of Maine (INM) is a state-wide association of Notaries Public dedicated to providing educational opportunities in a workshop format for Notaries Public in Maine. These workshops provide newly commissioned Notaries Public with the proper rules and procedures for notarizing documents and updates on law changes.

The acts of Maine's well-informed and capable Notaries Public clearly benefit the State and its people. As our State benefits, I hope you, too, will find your commission to be personally rewarding. Public participation is key to our democracy and I thank you for your willingness to become not only an involved citizen, but also a conscientious public official.

Sincerely,



Matthew Dunlap
Secretary of State

Foreword

Historically, Notaries Public predate the Roman empire; their development coincides with that of written and recorded communication. As the ability to read and write was rare, the earliest Notaries Public served primarily as scribes to assist the illiterate. The decline of the Roman empire saw a corresponding reduction in the volume and importance of written communication. It wasn't until the dawning of the Renaissance that Notaries Public were once again called upon to perform important societal functions. Over the centuries, many a great author, poet and historian supplemented their incomes with fees collected from the provision of literacy services.

American pioneer history is replete with examples of notarial assistance. Among them: the processing of land or mining claims, the authentication of public or private documents, and the reading and writing of general correspondence. Since that time, the official duties and significance of American Notaries Public have expanded considerably, largely through statutes enacted by the states. More than simply a scribe, the Notary Public of today acts as a liaison between the government and its citizens, facilitating the authorization of numerous transactions.

Presently, there are over two and one half million Notaries Public in the United States; approximately 29,000 serve the State of Maine. All Notaries Public share a common endeavor: to justify their public's trust by providing a vital public service in the fairest and most professional way possible. We appreciate your commitment to serve the people of Maine, and wish you the best of luck in the execution of your duties.

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SECTION I.

BECOMING A NOTARY PUBLIC

Q. What qualifications must a person have to become a Notary Public in Maine?

- A. A Notary Public must be a resident of the State of Maine who is at least 18 years of age and can demonstrate proficiency in the English language. The applicant must then be recommended for the commission by a registered Maine voter who can attest to the applicant's ability to perform the duties required of a Notary Public. The Municipal Clerk or Registrar of Voters of the applicant's municipality must also verify the applicant's residency by signing and sealing the application form. If the applicant has been convicted of a crime for which imprisonment may be a penalty, the applicant is ineligible for appointment for the following reasons: awaiting sentencing, free pending the appeal of the conviction, incarcerated or under probation or parole. Conviction of certain crimes involving dishonesty renders a person ineligible for 10 years following release, the termination of probation or if the applicant was not incarcerated, after the date of the conviction. Additionally, if the applicant has been or is now currently a Notary Public in another state or jurisdiction and the applicant's commission has been suspended or revoked for official misconduct during the 5 year period preceding the date of application, the applicant is not eligible for appointment.

Q. Can a New Hampshire resident become a Maine Notary Public?

- A. Yes, a resident of New Hampshire can apply for a Maine Notary Public commission. The New Hampshire resident must be regularly employed or carry on a trade or business in Maine in order to be commissioned as a Notary Public in Maine.

Q. How does a person become a Notary Public in Maine?

- A. **For a Maine resident:** The current application (form Notary-ME) is available on the Department of the Secretary of State's website at www.maine.gov/sos/cec/notary/notaries.html. The application is a fillable Adobe Acrobat form and can be completed on-screen, printed from a local printer and returned to the Bureau of Corporations, Elections and Commissions, Notary Public Section, together with the \$50.00 application fee. If the Secretary of State determines that the applicant is suitable to serve, commission paperwork is issued and mailed directly to the applicant.

- A. **For a New Hampshire resident:** The current application (form Notary-NH) is available on the Department of the Secretary of State's website at www.maine.gov/sos/cec/notary/notaries.html. The application is a fillable Adobe Acrobat form and can be completed on-screen, printed from a local printer and returned to the Bureau of Corporations, Elections and Commissions, Notary Public Section, together with the \$50.00 application fee. If the Secretary of State determines that the applicant is suitable to serve, commission paperwork is issued and mailed directly to the applicant. The application also includes special affidavits to verify employment or business in Maine.

Q. May an applicant for a commission as Notary Public perform duties and services as soon as the commission is received?

- A. No. An applicant is not permitted to act as a Notary Public at the time the commission is first issued. Under the provisions of the Maine Constitution, the applicant must first qualify by swearing an oath of office before a **Dedimus Justice**. The oath of office may be administered by **any** Dedimus Justice in the State of Maine.

Upon appointment, each appointee will receive a Certificate of Qualification (oath of office form) and a notice describing the process of being sworn into office. The date of the applicant's appointment appears on the front of the Certificate of Qualification and the notice accompanying this document.

The applicant must take the oath of office before a Dedimus Justice within **30 days** of the date of the applicant's appointment. After administering the oath of office, the Dedimus Justice will complete the Certificate of Qualification.

To find a Dedimus Justice, please contact the Division of Corporations, UCC and Commissions at (207) 624-7752, or visit our website at www.maine.gov/sos/cec/notary/index.html and select Notary/Dedimus Search.

The applicant must then return the completed Certificate of Qualification to the Department of the Secretary of State within **45 days** of the date of the applicant's appointment. It is the responsibility of the applicant, **not** the Dedimus Justice, to ensure that the Certificate of Qualification physically arrives on time with the Secretary of State. It is recommended that the use of "return receipt requested" mail or hand delivery be used to ensure the timely recording of the oath of office.

Important Note: If the applicant for the office of Notary Public is not sworn into office by a Dedimus Justice within 30 days and/or the Certificate of Qualification is not received by the Secretary of State within 45 days of the date of appointment, the commission is suspended and the applicant must contact the Secretary of State's office to obtain a new Certificate of Qualification to achieve a valid appointment. Therefore, an applicant should not order notarial supplies with the commission date on it until the applicant receives the Certificate of Office. If an applicant fails to qualify for any reason, the commission date will change when the new appointment is processed.

Upon receipt of the properly completed Certificate of Qualification, the appointee's Certificate of Office will be mailed. This is the only evidence that the Secretary of State has received your oath of office form in a timely manner.

Q. How long is the Notary Public's commission (term of office) and what is the reappointment procedure when the term has ended?

A. For a Maine resident: Seven (7) years. At the end of the seven year term, the Notary Public will have the option of applying for a renewal of this commission. Starting in May, 2008, all persons eligible to renew their commissions must complete the renewal process online, including passing a 30 question examination and verification of Maine residency. Please visit our website at www.maine.gov/sos/cec/notary/notaries.html to link to the online renewal application. Additionally, the online application will allow commissioned Notaries to update their contact information with our office.

In order for a notice of renewal to reach the Notary Public at the time of renewal, the mailing address and email address of the Notary Public must be kept up-to-date with the Secretary of State. Application for the renewal of a commission does not automatically continue the commission of the Notary Public. As indicated above, starting in May, 2008, renewals must be completed online. To access this online application, a Notary Public must provide their name as it appears in our records, their date of birth and their commission expiration date.

The new online application will include an examination on Maine notarial law and practices as well as questions relating to criminal convictions which would prevent a person from being reappointed. Payment will be only by credit card. At the end of the online process, the renewal application, the Oath of Office form and a document providing instructions to complete the renewal process will be available in an Adobe pdf file to download. An email confirmation will also be mailed with links to these documents.

To complete the renewal process, the applicant for renewal must (this process is similar to the initial appointment process):

1. Have the application of renewal validated for residency by the applicant's municipal clerk or registrar of voters;
2. Appear before a Maine Notary Public to affirm that the application was completed by the named applicant;
3. Appear before a Dedimus Justice to take their oath of office; and
4. Return the application for renewal and the Certificate of Qualification (oath of office) by the filing deadline as provided in the informational coversheet to the Secretary of State's office.

Once the Secretary of State receives the completed application for renewal, the application will be reviewed for completeness. Additionally, the Secretary of State reserves the right under law to refuse to make the appointment if the applicant for renewal has been convicted of crimes inconsistent with the office of Notary Public. If the Secretary determines that the re-appointment will not be made, a refund of the commission fee will be issued to the applicant. Once the Secretary of State determines the applicant is eligible for reappointment, the new Certificate of Office will be mailed to the applicant.

For a New Hampshire resident: Four (4) years. At the end of the four year term, the Notary Public will have the option of applying for a renewal of this commission using the online renewal system as described above.

SECTION II. POWERS AND DUTIES

Q. What are the general powers of a Notary Public?

- A.** Some of the commonly exercised powers of a Notary Public include the administration of oaths or affirmations; certification of an affidavit or an acknowledgment of instruments related to real estate transfers; certification of copies of private documents; and solemnization of marriages.

There is no single act called "notarization." However, there are specific guidelines related to each function which Notaries Public are authorized to perform. For example: when a document has been drawn up stating a person has "sworn and subscribed" before a Notary Public, that person must have taken an oath and must have signed that document in the presence of the Notary Public. If the Notary Public has questions concerning proper notarial practices, the Secretary of State's office is available to provide information or resources to assist the Notary Public.

Q. Can a Notary Public who is commissioned by the State of Maine use that commission outside the State?

A. No. A Notary Public commissioned by the State of Maine may only use the commission in the State of Maine. Additionally, a Notary Public from another state, province, or country, other than New Hampshire (see page 1) cannot act as a Notary Public in the State of Maine.

A Maine Notary Public commission is only for use inside the State of Maine. This does not limit the Notary Public's authority to notarize documents that may have been created or originated in another state or country and the notarization is being done in Maine.

Q. Are Notaries Public required to maintain embossing or ink seals or stamps?

A. No. It is optional for Notaries Public in the State of Maine to own or use an embossing or ink seal or a stamp with their name and expiration date. However, use of a notary seal is recommended by the Secretary of State.

Q. If a Notary Public wishes to own and use an embossing or ink seal, are there any special rules for this seal?

A. Yes. An embossing or ink seal must have the Notary Public's name exactly as it appears on the Certificate of Office which is the way the Notary Public must always sign documents. The seal must also have the words "Notary Public" and contain either the words "Maine" or "ME" or the Great Seal of the State of Maine. The Secretary of State recommends the use of the words rather than the Great Seal, as it is easier to identify the state of the notary public commission.

Please keep in mind that using an embossing or ink seal does not eliminate the other requirements for a proper notarization such as a statement of what the Notary Public has done (an Acknowledgment or Jurat statement), the official signature of the Notary Public, the commission expiration date and the date when the notarization was performed.

An embossing or ink seal may be purchased from a local stationery store, office supply store or a printing shop. It is both the option and the responsibility of the Notary Public to purchase the embossing seal because the State of Maine does not supply it.

Q. What records must a Notary Public keep?

A. Effective July 14, 1994, pursuant to [4 MRSA Section 955-B](#), Notaries Public commissioned in and for the State of Maine were **no longer** required to maintain or keep records of all acts they performed while acting in their capacity as Notaries Public. **However, a Notary Public shall make and keep a record of every marriage performed** (see [19-A MRSA Section 654](#)). **Additionally, the Notary Public must keep a log of petitions for which they administered the circulator's oath, listing the title of the petition, the name of the circulator taking the oath, the date of the oath and the number of petition forms signed and verified by the circulator that day.** (see [21-A, section 902](#))

The Secretary of State **strongly recommends** that Notaries Public maintain a record of all notarial acts. Not only is it a good way to keep track of individual acts; it also provides protection for both the Notary Public and the person requesting the notarial service. Additionally, a detailed record of the notarial transaction is useful in the event a Notary Public may be asked to provide documentation to a competent authority (a court of law for example) or testify in or provide a certified copy of the record to some legal proceeding. If the Notary Public decides to maintain records, these records are to remain in the exclusive custody of the Notary Public. The Notary Public may not surrender the records to another Notary Public or to an employer. The records may be inspected in the presence of the Notary Public by any individual whose identity is personally known to the Notary Public (or is proven on the basis of satisfactory evidence) and who specifies the notarial act to be examined.

When the Notary Public is removed or resigns from office, the records may be sent to the Secretary of State.

If a record book (also referred to as a notarial register or journal) is used, each notarial act should be recorded with at least the following:

- a. the date and time of day of the notarial act;
- b. the type of notarial act;
- c. the type, title, or a description of the document or proceeding;
- d. the signature, printed name, and address of each principal;
- e. the evidence of identity of each principal, in the form of either:
 1. a statement that the person is “personally known” to the notary public;
 2. a notation of the type of identification document, its issuing agency, its serial or identification number, and its date of issuance or expiration; or
 3. the signature, printed name and address of each credible witness swearing or affirming to the person’s identity;
- f. the fee, if any, charged for the notarial act;
- g. the address where the notarization was performed if not the notary public’s business address; and
- h. any other information that the notary public deems to be necessary to fulfill the requirements under this section.

As part of any record keeping and to protect private information, a Notary Public must not record a Social Security or credit card number in the journal. The Secretary of State also strongly recommends that a Notary Public record in the journal any time that the Notary Public refused to act and the circumstances surrounding that refusal.

A notarial journal of a Notary Public may be in any form that meets the following physical requirements:

- a. The cover and pages inside the cover shall be bound together by any binding method that is designed to prevent the insertion or removal of the cover or a page;
- b. Each page shall be consecutively numbered from the beginning to the end of the journal. If a journal provides two pages on which to record the required information about the same notarial act, then both pages may be numbered with the same number or each page may be numbered with a different number. A page number shall be preprinted;

- c. A notarial journal of a Notary Public should contain on the inside of the front cover or on the first page the following information in any order:
 - 1. The name of the Notary Public;
 - 2. The Notary Public's commission expiration date;
 - 3. The Notary Public's residence or business street or mailing address; The earliest date the journal may be destroyed, which shall be seven years after expiration of the last commission in which entry was made in the journal; and
 - 4. That, in the event of the death of the Notary Public, the journal must be delivered or mailed to the Secretary of State;
- d. The meaning of any not commonly abbreviated word or symbol used in recording a notarial act in the notarial journal;
- e. The signature of the notary public;
- f. At the respective time of entry, the dates of the first and last notarial acts recorded in the notarial journal.

Many office supply stores, stationery stores or Notary Public supply companies sell record books which are suited or specifically designed for Notary Public records. The Informed Notaries of Maine (INM) sells an approved record book, register or journal for this purpose. See INM's website at <http://www.informednotariesofmaine.org/>.

The Secretary of State strongly believes that record keeping is the best way to ensure the proper conduct of notaries public, both to help protect them and to prevent fraud.

A notary public is protected when a record book is maintained. By keeping basic information about the acts that they perform, a notary public is able to defend his or her actions. If the notary public is ever asked to provide evidence of an act performed in or out of court, the notary public can simply refer to the record book. The notary public will have clear and concise documentation that proper procedures were followed when the transaction was completed. Accurate record keeping is especially important when a number of years have lapsed since the notarial act was performed. If the notary public did not maintain a record of a particular act or acts, a claim against the notary public's actions would be strengthened. An independent record of a notarial act is protection from a variety of issues relating to loss, wrongdoing on the part of the notary public or the signer of the document, or possible law suits.

All levels of law enforcement see the need for this record keeping requirement – it aids in investigations especially for mortgage fraud. A record book of notarial acts will also help to reduce fraud. Although it might seem that the document itself should be a sufficient record of the act, problems have arisen when the document was fraudulent or was altered after the notarization occurred. In these cases, when there is a separate, permanently bound, chronological record of the notarization, it is possible to uncover fraud in the document itself.

Q. Should a finger or thumb print be included as part of a notarial record?

- A. No. Maine law does not allow nor does it require, as some other states do, a Notary Public to record a finger or thumb print in a notarial record book or journal. The Secretary of State strongly recommends that Notaries Public **do not** undertake finger printing in any way until Maine law determines the need for this process as part of standard notarial practice.

Q. What are proper procedures and other general guidelines for notarial acts?

A. To protect both a Notary Public and the people the Notary Public serve, all Notaries Public should follow these procedures.

1. Require personal appearance. Personal appearance is required by Maine law. To perform a notarization, the signer must personally **and physically** appear before the Notary Public. In an acknowledgement, there is no need for the Notary Public to witness the actual signing of the document, but on a jurat or affidavit, when the words “subscribed before me” or other similar language are present, the signer must sign in the presence of the Notary Public. **Never** deviate from this requirement of personal appearance. No exceptions. A notarization cannot be done via video conferencing or similar video technology.

2. Make sure the signer provides proper identification. Identification credentials must have a photograph to properly identify the signer. The Secretary of State strongly encourages Notaries Public to accept only government issued credentials. All credentials accepted by Notaries Public for identification purposes should still be valid. Other non-governmental issued credentials may be easily falsified and might impact the validity of the transaction.

Credit cards or social security cards are not “good” forms of identification, as these items do not contain physical descriptions of the holder.

3. Make certain the signers of the document have an understanding of what they are signing. While competency is both a complex medical and legal issue, it is incumbent upon a Notary Public to have a strong belief that the person understands the consequences of signing the document. Before the document is signed, the Notary Public should spend an appropriate amount of time to ascertain whether the person understands what they are signing. If the signer is unsure, confused or is possibly being unduly influenced to sign, the Notary Public **should not act**; instead referring the signer to an attorney or other professional to assist them would be appropriate and in the best interest of the signer.

4. Scan the document for any blanks that may exist. There is no need for the Notary Public to read or know every item contained in the document; the Notary Public must only be certain that the part of the document which is to be signed by the Notary Public is true. Because blanks may affect the validity of a document, Notaries Public should advise the signer of the document to carefully understand the consequences of leaving blanks in a document and its impact on the validity of the document. Ultimately, the signer must make the final decision in this area. If blanks are left, the Notary Public should note such in the record book. Never use “white out” products to alter a document. If language needs to be altered, the signer should cross out or line through the language and initial all altered areas in the document.

5. Signature of person appearing before you. On a notarial certificate that requires the person appearing before you to sign the document, the Notary Public needs to actually witness the signature being applied to the document. If the person already signed and dated the document, the Notary Public must require the person to sign and date the document again in the Notary’s presence. Never allow the person to trace over their previous signature; rather, the person should just re-sign above or below the first signature.

As a Notary Public, you might encounter a document that needs to be signed by multiple persons. If this is the case, it is imperative that as part of the notarial certificate, you include the name of the person(s) appearing before you.

6. **Completion of the notarial certificate.** The final piece of a notarial act is the notarial certificate - a combination of elements that are required to properly complete the notarial act. They are as follows:

A. **Choosing the form for the document – jurat or acknowledgment.** Every document that will be notarized must include a notarial certificate; determining the type of notarial certificate will depend on the type of document presented to the Notary Public and the needs of the signer.

A document that needs to be notarized may be invalid without some statement by the Notary Public. A Notary Public must never sign a document without some notarial statement of the action taken. A Notary Public must never sign blank or false certificates as well.

If the document does not have a notarial statement, one must be added. Clearly, the best type of notarial statement is the Jurat. Why? The jurat requires both the physical signing of the document in the presence of the Notary Public **and** administration of an oath or affirmation by the Notary Public to the signer stating the facts of the document. An acknowledgement does not contain these important “safety” features. The following chart demonstrates this fact:

Notary Public must:	Jurat	Acknowledgment
Require the personal appearance of the signer	Yes	Yes
Verify the identity of the signer	Yes	Yes
Require the signer to acknowledge that he/she signed the document	No	Yes
Administer an oath or affirmation to the signer	Yes	No
Watch the signer sign the document physically and manually	Yes	No

The form of the certificate is essential because it contains key information about the notarial act. For the proper format for a **Jurat or Acknowledgement statement** – see pages 20-22.

Often, the document already has some notarial certificate as part of the document. If that is the case, the Notary Public should make sure that the statement to be signed makes sense and is true. There are certain risks associated with signing a notarial statement when the Notary Public does not understand the overall content. A Notary Public should never sign a notarial certificate on a document that has been written in a language that is not understandable by the Notary Public. So, if the notarial statement is in another language and cannot be translated into English, what should occur? The Secretary of State would advise referring the customer to another Notary Public fluent in that language. The Secretary of State maintains information

on Notaries Public who are fluent in many languages. If a customer is looking for a Notary Public who is fluent in Spanish, for example, the customer can go to the Secretary of State website at www.maine.gov/sos/cec/notary/index.html to use the Notary/Dedimus Search feature to locate a Notary Public that is fluent in Spanish.

- B. Administer the oath or affirmation that is printed on the document, if applicable.** An oath or affirmation **must** be administered for **each** document containing a jurat. When administering an oath or affirmation, the Notary Public should require the signer to raise their right hand – we have all seen this done on television and in movies – and repeat the required oath or affirmation. The signer needs to verbally acknowledge the oath or affirmation as well.
- C. Date all notarizations.** Often, a notarial statement has a place to insert a date, but regardless, a notarial statement date is necessary. The notarial statement date should be the same date, in the case of a jurat, as the signer’s dated signature.
- D. Documents must be originally signed by Notary Public.** The signature of the Notary Public **must** match the name and signature that is on file with the Secretary of State and must be originally signed. The use of a rubber stamped signature is not permitted under Maine law. The Secretary of State’s office often must certify the action of a Notary Public, and if the names and signature do not match, the document for certification may be rejected by the Secretary of State. The Notary Public must ensure the name on file is current at all times. If a name change occurs, the Notary Public must continue to use the name on file until such time that the Secretary of State has recorded the change of name on the commission file.
- E. Commission information.** In addition to the signature of the Notary Public and in order for a document to be self authenticating on its face (a person looking at the notarization knows the notarization is valid), the Notary Public must print or type the name (as it appears on the records of the Secretary of State’s office) and the commission expiration date directly beneath their signature. For example:

John V. Doe
Notary Public, State of Maine
My Commission expires on January 24, 2013

This information does not need to be handwritten, to the contrary, the Secretary of State recommends purchasing a stamp that includes this information so that it is legible to read.

- F. Affixing seals.** As noted above, Maine law does not require a Notary Public to use or maintain a seal. The Secretary of State recommends that a seal be used on documents that will be leaving Maine. Many other jurisdictions, which include most U.S. states, require the use of an embossing or ink seal to validate the authenticity of the document based on the presence of the seal. When affixing the seal, embossed or inked, the Notary Public should use care as to not obstruct information on the document. The seal should be affixed next to the Notary Public’s signature. The seal should not be used for any other purposes other than in the usual course of the duties as a Notary Public.

Special note for Notaries Public that perform wedding ceremonies – the use of a seal (embossing or ink) on the original marriage license is prohibited by rule by the Maine Office of Vital Records.

7. **Record the notarial act.** As noted above, Maine law does not require records to be kept for every notarial act, only marriages. But, the Secretary of State strongly encourages the use of a notarial journal for all notarial acts.

If a Notary Public does not carefully and conscientiously fulfill the duties of the office, the Notary Public could possibly be sued if someone is harmed by any action or failure to perform an act. If the Notary Public willfully and knowingly violates an official duty, the Notary Public may be liable to anyone injured if the violation of duty is the direct and immediate cause of injury.

In the course of conducting the duties as a Notary Public, the Notary Public must never discriminate because of a person's race, color, sex, sexual orientation, physical or mental disability, religion, creed, age, ancestry or national origin.

Remember, "innocence" is not always a defense. If an injured party can prove a careful Notary Public would not have made the mistake and the injury would not have occurred if due care had been taken, a court may likely find in favor of the injured party.

Notaries Public may not practice law unless they are duly authorized members of the Maine Bar. **Any advice given - no matter how clear or obvious it may appear - could be considered to be legal advice, and if anyone claims to have been misled by it, a lawsuit could result.** Notaries Public should not draft a legal document. The primary responsibility of a Notary Public is to administer an oath, if required, and witness the signing of the documents.

Notaries Public are officials representing the State of Maine. Notaries Public risk personal liabilities if they take short cuts. **Employers cannot alter official duties.** No matter what demands may be made upon Notaries Public by constituents or employers; they must always limit their actions to those which fall within their authority **even if the employer has paid the commission fee.** The notarial seal, stamp and record book/journal is the property of the Notary Public as well without regard to who paid for these notarial supplies or commission – including an employer. An employer does have the right to regulate when a Notary Public can perform notarial acts during employment hours.

Notaries Public should not use their office or seal to promote or endorse a product, service, or contest. Notaries Public must make sure all notarial acts they may perform are valid; Notaries Public must not make meaningless or frivolous notarizations.

If, while performing any notarial act, questions arise concerning the eligibility to perform an act, DO NOT ACT!!

Q. Can a Notary Public use a credible witness to verify the identity of a person unknown to the Notary Public or who does not have a government issued identification card?

A. As a general guideline, the Secretary of State strongly recommends that a Notary Public only use this credible witness process with a witness that is personally known to the Notary Public. The Notary Public should unconditionally trust this person to take their word on the identity of another.

This would not be the first option to exercise by the Notary Public; instead, if appropriate, require the signer to acquire proper identification, for example.

If a Notary Public uses this witness process, the notarial certificate should reflect that a credible witness was used in the language of the notarial certificate.

Q. Can a Notary Public serve as a witness on a document and as the Notary Public for the signer?

A. As a general guideline, the Office of the Attorney General has advised the Secretary of State that a Notary Public should not act both as a witness and as a Notary Public for the same transaction. In this advisory, the AG's office indicated that generally there needs to be two different people involved in this process.

Q. What are the general guidelines for performing a notarial act for a person who is visually or hearing impaired or physically disabled?

A. Applying basic principles and guidelines as discussed above for any notarial act, our office does not see any reason why a Notary Public cannot notarize documents for persons with visual, hearing or physical limitations.

Situation: Person has a physical disability and is unable to sign in the traditional way, but may use a signature stamp or be able to make some type of mark.

Recommended procedure: In addition to the other standard notarial procedures, and as a Notary Public would require of anyone signing in a Notary Public's presence, the Notary Public must observe the individual affix his or her mark or signature stamp to the document. Our office has been advised that there should be no difference in legal effect between that and having the person handwrite a signature in the Notary Public's presence. Either way, the Notary Public should be able to attest that the person signed in their presence and is who the person purports to be.

Situation: Person is visually impaired.

Recommended procedure: If the signer is unable to read the document, then, in addition to the other standard notarial procedures, our office recommends that the Notary Public read the document to the signer to verify that the document about to be signed is the same one the signer is expecting to sign. The Notary Public should not explain the contents of the document to the signer as this is beyond the role of a Notary Public and could be construed as the unauthorized practice of law.

Situation: Person is hearing impaired.

Recommended procedure: If the signer is unable to communicate with the Notary Public due to a hearing impairment, then it is advisable for the Notary Public to find someone fluent in American Sign Language (ASL) who can assist communications. The objective is to assure that the Notary Public is able to have the same type of exchange they would have with any hearing person who appeared before them to take an oath or sign a document that had to be notarized.

A list of Maine Notaries Public who are fluent in ASL is available by searching on our website at

<http://www.maine.gov/online/notary/search/>. While it is not necessary to use another Notary Public, this resource is available if it is otherwise difficult to locate someone fluent in ASL.

Additionally, the Maine Department of Labor, Bureau of Rehabilitation Services, Division of Deafness, maintains a list of approved ASL interpreters on their website at <http://www.maine.gov/rehab/dod/interpreting.htm>.

Q. Can a Notary Public certify or attest a photocopy of a birth certificate or other documents issued by governmental agencies?

A. No. A Notary Public cannot “certify” or “attest” that a copy is a true copy of a government issued document. These public record documents include, but are not limited to, vital record documents (birth, marriage, and death certificates), or court records. Only the issuing governmental agency can certify a document's authenticity. In order to obtain a certified copy, the individual must obtain it from the agency that controls the original document. (For school diplomas and transcripts, a notarized sworn statement or acknowledgment from a school official stating the document is a true copy is acceptable.)

Q: Can a Notary Public refuse to act?

A: Generally speaking, no. However, there may be circumstances that a Notary Public should not act – a person does not have any government issued identification and is not personally known to the Notary Public; a person does not understand the meaning of the document they are signing; a person is being unduly influenced to sign; the document contains false statements; or a person signing or to be married is intoxicated at that time. These are just some of the factors that could influence a Notary Public’s decision to refuse to perform a notarial act. Additionally, a Notary Public can refuse if the Notary Public is not available at the time requested to perform the notarial act. Ultimately, a Notary Public should use great care in determining the reasonableness of a request to perform a notarial act.

As mentioned earlier in this handbook, but again worth discussing here, a Notary Public must never discriminate because of a person’s race, color, sex, sexual orientation, physical or mental disability, religion, creed, age, ancestry or national origin.

Q. What fees may a Notary Public charge?

A. There is no schedule of fees that a Notary Public must charge. The only statutory reference to fees is found in [4 MRSA Section 958](#) which specifies a charge of \$1.50 in the course of a lawsuit to provide for the notification of parties, making of a certificate and recording the proceedings. For other services, the Notary Public may determine the fees to be charged. Given the fact the citizens of the State of Maine are placing trust in Notaries Public when seeking their services, it would be most inappropriate to charge fees which are unreasonable or unfair.

If a Notary Public charges for services, the Notary Public should establish a fee structure or schedule so that persons seeking their services will have some predictability or assurance on the fee.

Q. Can Notaries Public advertise their services?

- A.** Yes. There is no prohibition to advertise notarial services; however, Maine law does require certain information and statements when advertising notarial services in languages other than English.

Below is an excerpt from [4 MRSA §960](#) relating to this requirement:

“...A notary public who is not an attorney admitted to and in good standing before the bar [association] of the State [of Maine] and who advertises notary services in a language other than English must include in the advertisement a notice that includes:

- A. Information on the fees that the notary may charge; and
- B. The following statement:

“I AM NOT AN ATTORNEY LICENSED TO PRACTICE
LAW IN MAINE AND MAY NOT GIVE LEGAL
ADVICE ABOUT IMMIGRATION OR ANY OTHER
LEGAL MATTER OR ACCEPT FEES FOR LEGAL
ADVICE.”

The notice must be in both English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio, television or any other audio medium, the statement may be modified, but must include substantially the same message.

...An advertisement for notary services may not include a literal translation of the phrase “Notary Public” into any language other than English if the literal translation implies that the notary public is an attorney licensed to practice in the State or in any jurisdiction of the United States. For purposes of this subsection [of Maine law], “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.”

Important note: Although this section of law relates to advertising in languages other than English, as a matter of good practice for advertising in English, Notaries Public should use similar language since many different nationalities make up the population in Maine and even advertising in English may confuse persons not completely comfortable with English. The legislative intent of this law was to ensure that Notaries are not confused with attorneys since in other countries, Notaries Public are in fact attorneys or judges.

Many Maine Notaries Public advertise themselves as a Justice of the Peace. Why? Because persons coming to Maine to be married are looking for this person to perform their marriage ceremony since their state probably has an official called a Justice of the Peace who performs marriage ceremonies. While this may be true in another state, a Maine Notary Public cannot advertise their services as a Justice of the Peace – because they are not one and a Justice of the Peace in Maine does not have the authority to perform marriage ceremonies.

Q. Must attorneys apply for Notary Public commissions?

A. No. Attorneys have “all of the powers of” and are “authorized to do all acts which may be done by” Notaries Public ([4 MRSA Section 1056](#)). However, attorneys may apply for Notary Public commissions if they wish to officially hold the office of Notary Public. If an attorney does not apply, an attorney is not authorized to sign using the title “Notary Public”.

Q. What is the role of the Notary Public in the election petition process?

A. The circulator of a citizen’s initiative or people’s veto petition must sign the petition and verify by oath or affirmation before a notary public or other person authorized by law to administer oaths or affirmations that the circulator personally witnessed all of the signatures to the petition and that to the best of the circulator’s knowledge and belief each signature is the signature of the person whose name it purports to be. After administering the oath to the circulator, the notary public or other authorized person must sign the notarial certificate on the petition while in the presence of the circulator. After the petition is signed and verified in this manner, the petition must be submitted to the registrar for certification.

The notary public or other authorized person who administered the oath to the circulator must keep a log of petitions for which that person administered the circulator’s oath, listing the title of the petition, the name of the circulator taking the oath, the date of the oath and the number of petition forms signed and verified by the circulator that day.

A notary public or other person authorized by law to administer oaths or affirmations is prohibited from notarizing or certifying a petition under Title 21-A MRSA Section 902:

- a. If employed or compensated by a petition organization for any purpose other than notarial acts;
- b. If providing services or offering assistance to a ballot question committee established to influence the ballot measure for which the petitions are being circulated or employed by or receiving compensation from such a ballot question committee for any purpose other than notarial acts; or
- c. If a treasurer, principal officer, primary fundraiser or primary decision maker to a ballot question committee established to influence the ballot measure for which petitions are being circulated.

The Secretary of State may invalidate a petition if the Secretary of State is unable to verify the notarization of that petition.

The Secretary of State will accept any reports of suspected fraudulent signature gathering process.

Q. What is the role of the Notary Public in the absentee voting process?

A. The Notary Public is one of the officials who may act as a witness for “third-person” ballots in the absentee voting process (see [21-A MRSA Section 754-A, sub-section 2](#)). Other authorized persons are the clerk or deputy clerk of a municipality, a clerk of courts or two other individuals. A Maine absentee voter who has a ballot delivered or returned by a “third-person” (a person other than the clerk or an immediate family member of the voter) must complete the ballot in the presence of a Notary Public or the authorized persons named above.

If you, acting in the capacity of a Notary Public, are called upon to participate in this process, you must be aware of the following laws:

1. A Notary Public who is a candidate or an immediate family member of a candidate cannot obtain, deliver or witness another person's absentee ballot.
2. Before marking the ballot, the voter must show it to the Notary Public who must examine it to be certain that it is unmarked. If the ballot has been previously marked, it cannot be used.
3. Except as provided below (in #5), there may be no communication between the voter and the Notary Public concerning the persons or issues for whom the voter will cast their ballot.
4. The voter must mark the ballot according to the instructions on the ballot in such a way as to make it impossible for anyone to see how he or she has voted. The voter must seal the ballot in the return envelope and then complete the affidavit on the envelope in the presence of the Notary Public who must sign the witness certification. The role of the Notary Public is solely to verify that the ballot was unmarked, the voter cast the ballot in the Notary Public's presence and sealed the ballot in the return envelope. The Notary Public should never be concerned with the way the voter cast the ballot.
5. A voter who is unable to read or mark the ballot because of physical disability, illiteracy or religious faith may request another person, other than the voter's employer or agent of that employer or officer or agent of the voter's union, to assist the voter in reading or marking the ballot. The voter or the aide must mark the ballot in the presence of one of the following witnesses: Notary Public, clerk of a municipality, clerk of courts or another individual. The voter, or the aide at the voter's request, shall complete and sign the affidavit in the presence of the witness, who shall sign the witness certificate. The aide must complete and sign the certification for aides on the outside of the envelope. If possible, the Notary Public should not be the aide, but should act as the witness.

If you expect to be called on to witness absentee ballots, you should be familiar with the Maine Election Laws ([21-A MRSA](#)). Getting it wrong here can have significant issues for the integrity of the election process and possibly invalidate the vote cast by the voter. Exercise extreme care in this area.

Questions about a Notary Public's role in the election process can be directed to a Municipal Clerk, the Division of Elections in the Department of the Secretary of State 624-7650 or by email to CEC.Elections@Maine.gov.

Q. May a Maine Notary Public perform marriage ceremonies?

A. Yes. Only Maine, South Carolina and Florida allow Notaries Public to perform marriages.

Q. What rules or procedures should a Notary Public be aware of pertaining to marriage ceremonies?

There are specific rules or procedures that govern performing marriage ceremonies that are discussed below, but generally, the same procedures for this type of notarial act should be used as with any other notarial act. These include but are not limited to proper identification of the persons appearing before you to be married, including the witnesses.

Generally, Notaries Public should be aware of the process of obtaining a marriage license since these questions are often posed to them. However, since rules and procedures for the issuance of a marriage license can change, the Secretary of State recommends that a Notary Public refer questions relating to marriage licenses to a municipal clerk's office.

1. Two people may be married only if they have obtained the proper license from a municipal office in Maine and both understand the significance of marriage and express their will to be married at the marriage ceremony. A Notary Public does not need to be concerned with the procedures relating to the issuance of the license since Maine law governs this for the issuing agency – municipal clerk. However, if a Notary Public becomes aware of a situation where fraud was committed to get a license issued, the Notary Public should immediately notify the issuing municipality and not perform the marriage ceremony.
2. If the persons to be married have residences in different towns in Maine, they must record their Notice of Intentions in the office of the clerk of the town in which at least one of them resides. If one is from outside Maine and the other is a Maine resident, they must file in the Maine resident's municipality.
3. If both parties to a marriage reside outside of Maine and they want to be married in Maine, they must file their Notice of Intentions with any municipal clerk in Maine.
4. There is no waiting period before a license can be granted. Blood tests are not required.
5. Once the couple has obtained the license, they are then free to marry anywhere in the state of Maine. The license is only valid for 90 days (not three months) from the filing date. The couple to be married must have the required license with them at the time of the ceremony. Please review the "License Valid Until" item to ensure that the license presented is still valid. Do not perform a ceremony with an expired license, but refer the couple to the municipal clerk to obtain a new license.
6. Two people must witness the marriage ceremony. The witnesses are in addition to the person performing the ceremony and the couple to be married. Witnesses do not have to be of legal age; however, they must be old enough to fully understand the seriousness of the event.
7. The license must be signed by the Notary Public who performed the wedding ceremony as well as both witnesses in appropriate spaces on the license. In addition to the signatures, the license must also include the printed names of the Notary Public and the witnesses. The Notary Public must, as with any other notarial act, require appropriate forms of identification for the persons to be married as well as the witnesses. In the case of underage witnesses, the Notary Public should use whatever means appropriate to identify these persons since they probably do not have any proper identification.

The Notary Public must provide the commission expiration date, not the commission appointment date, on the license. Do not apply a notarial seal, embossed or ink, to the marriage license since it may interfere with the legibility of the document and/or cut the paper.

8. A Notary Public is required to make and keep a record of all marriages performed (see [19-A MRSA, section 654](#)). The Office of Data, Research and Vital Statistics does recommend that the Notary Public not only make a written record in a notary record book/journal, but also to keep a copy of the actual signed marriage license. Note: Keeping a copy of the marriage license is not required by law.
9. The Notary Public must return the completed license to the municipal clerk who issued it within seven working days after the marriage ceremony. The license should never be given to the married couple after the ceremony - it is the responsibility of the Notary Public to return the license to the clerk who issued it. This is the only paperwork necessary for solemnizing a marriage. If the license cannot be hand carried back to the issuing municipal clerk, the Secretary of State recommends delivering the license so that Notary Public receives confirmation of receipt – certified or return-receipt request mail.

According to the Department of Human Services, Office of Data, Research and Vital Statistics, **all licenses must be completed in black ink.**

10. If the Notary Public wishes to provide the couple with a marriage certificate immediately following the ceremony, attractive forms are often available at office supply or stationery stores. The Notary Public may either complete one of these forms for the couple or prepare a form for the marriage certificate; this is optional.

Please make sure that the couple understands that this certificate is a “keepsake” and may not be used for legal purposes. As soon as the Notary Public completes and returns the license to the clerk who issued it, the couple may obtain a certified copy of the official marriage license from the municipality that issued the license or from the Department of Human Services, Office of Data, Research and Vital Statistics in Augusta.

If questions should arise concerning any aspect of the marriage process or marriage laws in the State of Maine, the Department of Human Services, Office of Data, Research and Vital Statistics is the state agency that handles information for this particular area. The contact telephone number for this office is **(207) 287-3181**.

Couples planning to be married may choose to write their own wedding ceremonies, which is permissible under Maine law. It is also permissible for couples to involve other persons in the ceremony besides the Notary Public. As a Notary Public, you are authorized to “solemnize” the marriage or to “perform the marriage ceremony”, but Maine law does not prescribe any particular form or content for a marriage ceremony. It is okay to have others involved in the ceremony; however, the Notary Public is the officiant of the marriage and must without exception perform the exchanging of the vows, make the pronouncement of marriage and sign the marriage license.

The following is a brief form of a civil marriage ceremony:

Official: As an expression of your mutual desires and purpose of being joined in marriage, you will please join hands.

(Addressing the man by name): Do you take this woman to be your lawfully wedded wife, promising to love, honor and cherish her, and in all respects to be a faithful

husband so long as you both shall live?

Answer: I do.

Official: *(Addressing the woman by name):* Do you take this man to be your lawfully wedded husband, promising to love, honor and cherish him, and in all respects to be a faithful wife, so long as you both shall live?

Answer: I do.

(Rings may then be placed on the fingers.)

Official: Since you have entered into this honorable estate of matrimony by mutual promises, by virtue of the authority vested in me by the State of Maine, I now pronounce you husband and wife.

SECTION III. CONFLICTS OF INTEREST

Q. Are there times when a Notary Public may not act?

A. Yes. A Notary Public must not act in any official capacity if there is any interest which may affect impartiality. One important aspect to this general “conflict of interest” principle is the rule that one may not act if one is a “party to the instrument” or also referred to as the “beneficial interest” rule.

Q. What is the meaning of the expression “party to the instrument”?

A. A Notary Public is a “party to the instrument” in any transaction if the completion of the transaction will directly benefit the Notary Public, whether financially or in any other way.

The Maine law governing this issue can be found in [4 MRSA Section 954](#). The following is an excerpt which lists some of the situations in which a Notary Public is permitted to act:

“Any notary public who is a stockholder, director, officer or employee of a bank or other corporation **may** take the acknowledgment of any party to any written instrument executed to or by such corporation, or may administer an oath to any other stockholder, director, officer, employee or agent of such corporation, or may protest for non-acceptance or nonpayment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such bank or other corporation....”

It goes on to describe some of the cases in which a Notary Public is presumed to have an interest. In these cases, it is unlawful for a person commissioned as a Notary Public to serve as a Notary Public.

“... It shall be unlawful for any notary public to take the acknowledgment of an instrument by or to the bank or other corporation of which he is a stockholder, director, officer or employee where such notary public is party to such instrument, either individually or as a representative of such bank or other corporation, or to protest any negotiable instrument owned or held for collection by such bank or other

corporation where such notary public is individually a party to such instrument.”

Please note the statute does not provide a full list of cases in which a Notary Public may act nor does it list all cases in which a person may not act. It merely attempts to make the law clear in an area which has been a source of many court cases.

In summary, Notaries Public may serve the day to day transactions of their employers or company with which they may be associated, with two exceptions. They may not serve if the transaction will benefit them directly (other than their usual salaries or bonuses) and they may not serve if they are also acting as a representative of any party (including their own company) in the transactions.

It is also important to note, although, not specifically cited by law, a Notary Public cannot “notarize” a document bearing their name, or as mentioned above, which would make the Notary Public a “party to the instrument.”

Q. May a Notary Public perform official duties for family members?

- A. [Title 4, Section 954-A](#) defines which family relationships are prohibited. “A Notary Public shall not perform any notarial act for any person if that person is the Notary Public's spouse, parent, sibling, child, spouse's parent, spouse's sibling, spouse's child or child's spouse, except that a Notary Public may solemnize the marriage of the Notary Public's parent, sibling, child, spouse's parent, spouse's sibling or spouse's child. Additionally, the intention of this law also includes those relationships formed by virtue of remarriage and not by blood, commonly described by using the prefix “step” or “half” are also considered a conflict of interest.

In 2004, Maine law (see [Title 22, Section 2710](#)) created a new relationship called a registered domestic partner. Although not considered a spouse under this law, registered domestic partners have similar rights as married persons under law. Therefore, the Secretary of State believes that Notaries Public cannot perform notarial acts for registered domestic partners and the relationships to the registered domestic partners.

Other relationships, not defined above, may be allowed under law; however, the Notary Public should use great care when performing any notarial acts for other relatives. The appearance of a potential conflict of interest can be as damaging to the transaction and/or a Notary Public’s reputation as the actual conflict. Most persons do not understand or know that there are laws governing this type of conflict of interest, so they assume the Notary Public has acted improperly. Because of this perception, the Secretary of State strongly recommends that Notaries Public do not perform any notarial act for any family member regardless whether the law prohibits it or not.

Q. Are there any public offices which a Notary Public may not hold?

- A. No. According to a September 27, 1989, decision from then Attorney General James E. Tierney which cited the United States Supreme Court case of *Bernal v. Fainter*, 467 U.S. 216, 225, 226 (1984) and the State of Maine case of *Howard v. Harrington*, 114 Me. 443 (1916), the duties of a Notary Public are “essentially clerical and ministerial,” and are not “invested with policy making responsibility or broad discretion in the execution of public policy that requires routine exercise of authority over individuals.” Between the years, 1905 and 1981, the office of the Notary Public had assigned to it certain judicial functions; these duties have subsequently been assigned to another civil officer – the Justice of the Peace.

SECTION IV. AUTHORITY OF THE SECRETARY OF STATE

The Secretary of State is the statutory appointing authority for Notaries Public in the State of Maine. Authority to appoint to this office can be found in [4 MRSA Section 82](#).

The Secretary of State may suspend, revoke or refuse to renew the commission of a notary public in the State based on any of the following grounds:

- a. The notary public has performed in an improper manner any duty imposed upon the notary public by law;
- b. The notary public has performed acts not authorized by law;
- c. The notary public is in violation of section 954-A or section 960;
- d. The notary public has been convicted of a crime as defined by rules adopted by the Secretary of State. To view the rules adopted by the Secretary of State for this purpose, go to www.maine.gov/sos/cec/rules/29/250/250c700.doc
- e. The notary public has allowed another person to use that notary public's commission.

SECTION V. OTHER INFORMATION AND RESOURCES

Q. What are the offices and duties of a Justice of the Peace and a Dedimus Justice?

- A. Beginning in 1981, the office of Justice of the Peace, as it was traditionally known, was phased into the office of Notary Public under the title Notary Public. The process was completed in 1988.

The title **Justice of the Peace** has subsequently been given to what was formerly referred to as "Complaint Justice." The qualifications to be appointed to this office are as follows: must be an attorney-at-law who is licensed to practice law in the State of Maine and who has been appointed to this position by the Chief Judge of the District Court. The duties of a Justice of the Peace include the issuing of search warrants, the endorsing of certificates of commitment of the mentally ill, and the receiving of complaints and issuing process for the arrest of persons charged with offenses.

A **Dedimus Justice** is an official appointed by the Governor for the **exclusive** purpose of swearing or affirming people into various offices such as that of Notary Public. A Dedimus Justice has **no other** authority under Maine law.

SAMPLE ACKNOWLEDGMENT AND AFFIDAVIT FORMS

One of the most important responsibilities of the Notary Public is to complete acknowledgment and affidavit forms. A certificate of acknowledgment should be written on the same document as the instrument acknowledged. If this is not possible, the certificate should fully and accurately describe the instrument acknowledged and should be securely attached to that instrument.

An **acknowledgment** is a formal admission made in person before a proper officer by someone who has executed an instrument. The person must state that the instrument was personally and freely executed. (The word "acknowledgment" is also used to refer to a certificate completed by the officer before whom an instrument is acknowledged.) It is always good practice to require a person acknowledging an instrument to sign a dated entry in a record book stating that the acknowledgment of the specific instrument was performed.

In [4 MRSA Sections 1011-1019](#), there can be found a variety of acknowledgments; the Uniform Recognition of Acknowledgments Act offers uniform methods by which notarial acts may be done and recognized as such, although these are not the only ways in which documents may be notarized.

SAMPLE ACKNOWLEDGMENT FORM

Date _____

State of Maine

County of _____

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).

(Signature of Notary Public)

Name of Notary Public (*printed name*)

Notary Public, State of Maine

My commission expires: _____

The above sample is an individual short form based on [4 MRSA Section 1016](#). Rather than having to print this or similar statements for each document, a number of Notaries Public have found it more convenient to have a stamp with the form of the acknowledgment on it, thereby having only to fill in the county, date, name of the person acknowledged, their own signature and their own date of commission expiration.

An **affidavit** is essentially an oath or affirmation reduced to writing. In addition to the statement sworn to by the maker of the affidavit, it contains a “Jurat” a certificate signed by the officer who takes the affidavit. The Jurat should state the time and place of the making of the affidavit, but it is good practice for both the affiant and the official to initial and date every correction and every page in an affidavit containing more than one page. Though Maine law does not require a Notary Public to use or maintain a seal, the Secretary of State recommends that a seal be used.

SAMPLE JURAT FORM FOR AN AFFIDAVIT

State of Maine

County of _____

I, (*insert name of person*), do swear (affirm), under penalty of perjury, state (*insert fact to be affirmed*).

Signature of person making affidavit.

Sworn to and subscribed before me this (*insert day, month and year*).

(Signature of Notary Public)

Name of Notary Public (*printed name*)

Notary Public, State of Maine

My commission expires: _____

OATHS AND SWORN STATEMENTS

An **oath**, generally, is any statement which a person makes signifying that he or she is bound in conscience to do or refrain from doing an act. Intentional falsehoods made while “under oath” before a person qualified to take oaths are punishable as false swearing. Examples of oaths are those administered to individuals who will testify in court or who will give depositions out of court.

When a Notary Public takes a sworn statement, an oath must be administered to each person sworn and must, in effect, ask each person “do you swear” to the truth of the statement? It is important to note that there must be a verbal response from the oath taker in the presence of the Notary Public.

Commonly, oaths make reference to God. Some individual religious beliefs prevent the “swearing” of oaths using a reference to God; substitution of the word “affirm” for “swear” in any oath usually makes the statement acceptable, and the resulting affirmation may be substituted freely for a sworn oath without making reference to God.

SAMPLE OATHS

- “Do you (swear/affirm) under penalty of law that what you are about to say will be true (so help you God)?”
- “Do you (swear/affirm) under penalty of law that you have read and understood _____ and that to the best of your knowledge and belief it is true (so help you God)?”
- Do you (swear/affirm) under penalty of law that you have executed this (insert type of document executed) _____ and that it is your free act and deed (so help you God)?”

COMMONLY USED TERMS

Q. What is meant by the following terms?

A. Acknowledgment – a formal admission made in person before a proper official by someone who has executed an instrument. The person must state the instrument was personally and freely executed.

Affiant – the signer of an affidavit.

Affidavit – a written or printed statement made under oath before a notary public or other persons authorized to administer oaths.

Credible Witness – when the signer of an instrument does not have identification or is not personally known to the notary, another person (called the credible witness) who knows the signer can swear under oath as to the identity of the signer. We strongly recommend that this credible witness be personally known to the notary.

Depose – the act of making or taking a deposition.

Deposition – evidence given under oath and recorded for use in court at a later date

Instrument – document used to formally document various types of transactions.

Jurat – notarial statement that certifies the signer's personal appearance, witnesses the signer signing the document, administers an oath, and positively identifies the signer.

Known To Me – statement by notary public as a substitute for identification to prove the identity of the person appearing before the notary public; the person is personally known to the notary public.

MRSA – the abbreviation “Maine Revised Statutes Annotated,” which is a collection of laws of the State of Maine. The first number that precedes MRSA refers to the title, and the second number refers to the section of the law in that title. The § is the symbol for section. (Example – 5 MRSA §8). Copies are available at most, although not all, libraries in the State of Maine and can be found online at www.mainelegislature.org/legis/statutes/.

Notarial Certificate - The notarial certificate is always signed, and often sealed by the notary public. The notarial certificate commonly appears at the end of a document or is attached to the document as a separate sheet. The most familiar notarial certificate language (acknowledgement or jurat) reads substantially like: “Acknowledged before me by (Signer’s Name) this (date) day of (month), (year)” or “Sworn to and subscribed before me this (date) day of (month), (year).”

Oath - spoken, solemn promise to God that is made before a Notary in reference to a jurat or as a notarial act in its own right.

Personal Appearance – physically in the same space, being face to face in the same room.

ss – the abbreviation for the Latin term of “scilicet”. Often used in a document that refers to “statement of venue” or location of the execution of the document.

Swore – the act of taking an oath.

Subscribed – signed.

Venue – the actual location that an official act (notarization) takes place.

CHANGES OF NAME, ADDRESS OR OTHER CONTACT INFORMATION

If a change occurs in the legal, mailing, physical (if applicable), email address or other information contained in the file for a Notary Public Commission, the Notary Public must notify the Secretary of State. By administrative rule, this change must be filed with the Secretary of State within 10 days.

Starting in May, 2008, renewals, changes of name, address or other contact information can be done using the online renewal system, called **Maine’s Total Notary Solution**. The link to renew a Notary Public commission or update commission information can be found on our Notary Public web page at www.maine.gov/sos/cec/notary/notaries.html.

If a change occurs to the name of the Notary Public on file with the Secretary of State, the Notary Public must notify this office. A change of name might occur because of marriage, divorce, or other reasons. If a name change occurs, the Notary Public must continue to use the name on file with the Secretary of State for notarial acts until the name has been changed and an acknowledgment of the change has been received by the Notary Public from the Secretary of State.

If a Notary Public's legal residence or name has changed, a new Certificate of Office will be sent to acknowledge the changes. If the Notary Public maintains an embossing or ink seal or a stamp with the commission name and expiration date, they must be replaced to reflect the change of name.

RENEWAL OF COMMISSION

The Secretary of State sends a notice of renewal approximately six weeks before a commission expires. The notice is sent either by regular mail or to the email address of record. If a change of address (mailing or email) occurred without notice to our office, the notice of renewal may not be deliverable and; therefore, the commission may expire. Additionally, addresses must be kept current in the event the Secretary of State must contact the Notary Public. As noted earlier in this handbook, the renewal process must be done online. See pages 2-3 for more information on this mandatory online renewal process.

LOSS OF NOTARY PUBLIC COMMISSION CERTIFICATE

If a Notary Public Commission Certificate has been lost or destroyed, a duplicate may be requested in writing to our office at the address listed on the inside front cover. The fee for a duplicate certificate is \$10.00 and payment should be in the form of a check, money order, Visa or MasterCard. For payment by check or money order, the payment should be made payable to the Secretary of State.

SPECIAL CERTIFICATES – AUTHENTICATION OR APOSTILLE

For documents going out of the State of Maine, either to other states or foreign countries, authentications or Apostilles may be required. Authentications are often called “legalizations,” sometimes “incumbencies” or “certifications”; an Apostille is a form of authentication appropriate to countries which have signed the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. They are often needed in adoptions, extraditions, and certain business transactions. The Secretary of State is responsible for completing requests from the public for these special certificates. The essence of these documents is an official statement that an office-holder held a particular office at a particular time. In order to be able to issue authentications, our office keeps on file the qualification document for the particular official -- the Oath of Office taken by the official. Officials covered include Maine Notaries Public, high level appointees such as Commissioners, members of boards and commissions, Dedimus Justices, legislators, Constitutional Officers, and certain county-level offices.

Authentications are most often part of a chain of proof that involves a number of documents. To simplify this process, the Hague Convention established a system that allows Secretaries of State to be the last officials in the chain. The Apostille that is issued by our office for Hague Convention countries is simply a special form of authentication.

The Secretary of State provides special certifications on vital record documents (birth, marriage, divorce or death records) issued by municipal, court and state officials. Additionally, special certifications are provided for any documents certified by notaries public.

Q. What is the role of the Notary Public relating to special certifications issued by the Secretary of State?

- A.** Individuals seeking to adopt children from foreign countries have an enormous amount of paperwork to prepare for their adoption dossier. Many of these documents are prepared and notarized by officials at adoption agencies; however, many are not and this is where a Notary Public may be asked for assistance.

There are a number of documents that are contained in adoption dossiers such as a letter from a physician or an employer; a photocopy of a U.S. passport or tax return; or an arrangement of photographs of the adoptive parents' home and family. These are just some of the types of documents that you might encounter. **Caution:** When these documents are presented to Notaries Public, Notaries Public must not alter the way in which they would ordinarily act – require personal appearance of the signer, identify the signer and administer some type of oath must be done, for example.

What does a Notary Public do in those cases when they are asked to notarize a pre-signed letter from a physician or employer and where you cannot require the personal appearance of the original signer? Based on this scenario, the Notary Public could not act since the Notary Public cannot require the personal appearance of the signer of the statement. So, what can a Notary Public do to assist?

Resolution: The Secretary of State strongly recommends that the person who holds the “original” document add some statement that speaks to the validity of the document, rather than the Notary Public making a copy of the document and adding true copy certification language. Maine law is silent on whether a Notary Public should make a copy of an original document and attest to its authenticity; therefore, to fall on the side of caution, the following is a preferable resolution. This example of the following affidavit and jurat should be either printed on the document or attached to it:

I, (insert name of person appearing before the Notary Public), do swear that this is a true and exact copy of the (insert type of document) and that the original (insert type of document) remains in my possession.

(insert signature) _____
(insert printed name of person)
(insert date)

State of Maine
County of (insert county where document is executed)

Sworn to and subscribed before me this (insert date) by (insert name of individual appearing before you).

(insert Notary Public signature) _____
(insert Notary Public printed name)
Notary Public
State of Maine

My commission expires on (insert date)

For any document going outside this country, the Secretary of State strongly recommends the use of an embossing or ink seal.

RESOURCES FOR INFORMATION OR ASSISTANCE

Staff in the Department of the Secretary of State is an excellent source of information, but they can not provide legal advice. If a Notary Public has the need of legal advice, a lawyer or legal professional should be consulted. It should always be remembered, **unless a Notary Public is also a Maine Bar certified attorney-at-law, a Notary Public may not give legal advice or practice any aspect of the legal profession.**

It is not possible for the Secretary of State to contact every Notary Public in the State of Maine in the event of a change in the laws which govern the actions of Notaries Public. However, all law and rule changes are published in the legal sections of the major newspapers in Maine and can be found on the Department's website. All Notaries Public are strongly urged to take the time to scan the legal sections of one of these newspapers or view this information on our website so they may be, at all times, professionally literate.

The Secretary of State does collect email addresses for all Notaries Public during the initial application and renewal process. By providing and keeping an email address on file with the Secretary of State, the Secretary of State can use that email address to contact Notaries Public about changes in notarial law, rules or standard practices. Many libraries in Maine, though not all, have copies of the Maine Revised Statutes. The laws of Maine are also available on the State of Maine and the Maine State Legislature website at www.mainelegislature.org/legis/statutes/.

Many organizations have professional associations, to encourage better practices and education. In April of 1993, the **Informed Notaries of Maine (INM)** was formed as a private, professional association for Notaries Public in the State of Maine. Unlike many national organizations which deal with Notaries Public from many different states and territories in the United States, this group is expressly dedicated to issues, practices and education of Notaries Public in the State of Maine. They offer a source of reference, support and information for Maine Notaries Public. For more information concerning membership in this organization, contact INM. (See inside front cover for contact information) Membership in this organization is optional and separate from the statutory fee associated with a Notary Public Commission issued by the Secretary of State. However, our office does urge all Maine Notaries Public to participate in this fine organization which benefits all Notaries Public in Maine. INM also has publications available to assist you in your activities as a Notary Public.

TAX TREATMENT OF NOTARIAL FEES RECEIVED BY NOTARIES PUBLIC

Payments received for services performed by a notary public are taxable income and should be reported on Schedule C (Form 1040), *Profit or Loss From Business*, or Schedule C-EZ (Form 1040), *Net Profit From Business*. However, these payments are not subject to self-employment tax.

When a notary public shows the income on Schedule C it will flow over to Form 1040 and be taxed with other income. Self employment tax is like social security tax. Normally, a self-employed

person would also take the Schedule C figure and put it on Schedule SE (Form 1040), *Self-Employment Tax*, to compute the self-employment tax which is added to the income tax. A notary public may or may not be required to file a Schedule SE, depending on whether there is other self-employment income.

For more information, see the separate instructions for Schedule SE, under the section for “Income and Losses Not Included in Net Earnings From Self Employment” and IRS Publication 525, *Taxable and Nontaxable Income*, under section “Miscellaneous Income” and then under “Other Income” for more details or contact a tax professional.

REFERENCES

Notaries Public in the State of Maine are governed by Articles V and VI of the Constitution of the State of Maine, by statutory law as embodied in Maine Revised Statutes Annotated (MRSAs), and by rules promulgated by the Department of the Secretary of State through the Administrative Procedure Act (A.P.A.). The following is an index from the Maine Revised Statutes Annotated listing by subject areas relating to Notaries Public. This index is updated through the laws enacted by the 123rd Maine Legislature through 2007.

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Administrative Rules
Adopted by the Maine Secretary of State
for
Rules Governing Eligibility and Procedures for Appointment
and Renewal of Commissions of Notaries Public

Go to the Secretary of State's website at www.maine.gov/sos/cec/rules/29/250/250c700.doc for the full and up to date version of these administrative rules.

NOTES

The Notary Public Handbook and Resource Guide
is published by the
Department of the Secretary of State
Bureau of Corporations, Elections and Commissions

Rev. 11/1/2017