

NOTARIES PUBLIC REVISION

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Katherine Bryson

AN ACT RELATING TO THE NOTARIES PUBLIC REFORM ACT; PROVIDING DEFINITIONS; AMENDING AND RENUMBERING PROVISIONS REGARDING OATHS, POWERS, AND LIMITATIONS; PROVIDING PROHIBITED CONDUCT; PROVIDING FOR JOURNAL ENTRIES, STORAGE, AND INSPECTION; SETTING REQUIREMENTS FOR AN OFFICIAL SIGNATURE AND USE OF THE ENGLISH LANGUAGE; AND PROVIDING FOR NOTARY'S LIABILITY, REVOCATION, AND RESIGNATION.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

46-1-2, as last amended by Chapter 106, Laws of Utah 1990

46-1-3, as last amended by Chapter 43, Laws of Utah 1995

46-1-4, as last amended by Chapters 106 and 286, Laws of Utah 1990

46-1-5, as repealed and reenacted by Chapter 222, Laws of Utah 1988

46-1-12, as enacted by Chapter 222, Laws of Utah 1988

ENACTS:

46-1-20, Utah Code Annotated 1953

46-1-21, Utah Code Annotated 1953

46-1-22, Utah Code Annotated 1953

REPEALS AND REENACTS:

46-1-6, as last amended by Chapter 313, Laws of Utah 1994

46-1-7, as repealed and reenacted by Chapter 222, Laws of Utah 1988

46-1-8, as last amended by Chapter 54, Laws of Utah 1993

46-1-9, as repealed and reenacted by Chapter 222, Laws of Utah 1988

46-1-10, as last amended by Chapter 54, Laws of Utah 1993

46-1-11, as enacted by Chapter 222, Laws of Utah 1988

46-1-13, as last amended by Chapter 54, Laws of Utah 1993

46-1-14, as enacted by Chapter 222, Laws of Utah 1988

46-1-15, as enacted by Chapter 222, Laws of Utah 1988

46-1-16, as enacted by Chapter 222, Laws of Utah 1988

46-1-17, as enacted by Chapter 222, Laws of Utah 1988

46-1-18, as enacted by Chapter 106, Laws of Utah 1990

46-1-19, as enacted by Chapter 54, Laws of Utah 1993

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **46-1-2** is amended to read:

46-1-2. Definitions.

As used in this chapter:

(1) "Acknowledgment" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily for its stated purpose.

(2) "Commission" means to empower to perform notarial acts and the written authority to perform those acts.

~~[(2)]~~ (3) "Copy certification" means a notarial act in which a notary certifies that a photocopy is an accurate copy of a document that is neither a public record nor publicly ~~[recordable]~~ recorded.

~~[(3)]~~ (4) "Jurat" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has made, in the notary's presence, a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the signed document.

(5) "Notarial act" and "notarization" mean any act that a notary is empowered to perform under this section.

~~[(4)]~~ (6) "Notarial certificate" ~~[and "certificate" mean]~~ means the part of or attachment to a notarized document for completion by the notary and bearing the notary's signature and seal.

(7) "Notary" means any person commissioned to perform notarial acts under this chapter.

~~[(5)]~~ (8) "Oath" ~~[and] or~~ "affirmation" ~~[mean]~~ means a notarial act ~~[or part thereof]~~ in which

a notary certifies that a person made a vow or affirmation in the presence of the notary on penalty of perjury.

(9) "Official misconduct" means a notary's performance of any act prohibited or failure to perform any act mandated by this chapter or by any other law in connection with a notarial act.

~~[(6)]~~ (10) "Personal knowledge of identity" means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(11) "Satisfactory evidence of identity" means identification of an individual based on:

(a) at least two current documents, one issued by a federal or state government with the individual's photograph, signature, and physical description, and the other by an institution, business entity, or federal or state government with at least the individual's signature; or

(b) the oath or affirmation of a credible person who is personally known to the notary and who personally knows the individual.

Section 2. Section **46-1-3** is amended to read:

46-1-3. Qualifications -- Commissioning -- Jurisdiction and term.

(1) Except as provided in ~~[this section]~~ Subsection (3), the director of the Division of Corporations and Commercial Code shall commission as a notary any qualified person who submits an application in accordance with this chapter.

(2) ~~[To be]~~ A person qualified for a notarial commission~~[, a person]~~ shall:

(a) be 18 years of age or older;

(b) ~~[be a resident of]~~ lawfully reside in this state 30 days immediately preceding the filing for a notarial commission and maintain permanent residency thereafter;

(c) be able to read ~~[and],~~ write, and understand English;

(d) submit an application to the Division of Corporations and Commercial Code containing no significant misstatement or omission of fact and include at least:

(i) a statement of the applicant's personal qualifications, the applicant's residence address, a business address in this state, daytime telephone number, and voter precinct number;

(ii) the applicant's age and date of birth;

(iii) all criminal convictions of the applicant, including any pleas of admission and nolo contendere;

(iv) all issuances, denials, revocations, suspensions, restrictions, and resignations of a notarial commission or other professional license involving the applicant in this or any other state;

(v) an examination written by the applicant;

(vi) a declaration by the applicant; and

(vii) an application fee determined under Section 63-38-3.2;

(e) be a registered voter in Utah or have permanent resident status under Section 245 of the Immigration and Nationality Act; and

(f) be endorsed by two registered voters of the state.

(3) ~~[An]~~ The director of the Division of Corporations and Commercial Code may deny an application [for a notarial commission may be denied] based on:

(a) the applicant's conviction for a ~~[criminal offense]~~ crime involving dishonesty or moral turpitude;

(b) any revocation, suspension, or restriction of a notarial commission or professional license issued to the applicant by this or any other state; or

(c) the applicant's official misconduct while acting in the capacity of a notary ~~[public]~~.

(4) ~~[Each notary public shall be commissioned]~~ A person commissioned as a notary by the Division of Corporations and Commercial Code may perform notarial acts in any part of this state for [the] a term of four years, unless the person resigned or the commission is revoked or suspended under Section [46-1-16] 46-1-19[, or resigned].

Section 3. Section **46-1-4** is amended to read:

46-1-4. Bond.

(1) A notarial commission may not become effective until a constitutional oath of office and a \$5,000 bond has been filed with and approved by the Division of Corporations and Commercial Code. The bond shall be executed by a licensed surety for a term of four years commencing on the commission's effective date and terminating on its expiration date, with payment of bond funds to any person conditioned upon the notary's misconduct while acting in the scope of his commission.

(2) The bond required under Subsection (1) may be executed by the Office of Risk Management for notaries public employed by a state office or agency.

Section 4. Section **46-1-5** is amended to read:

46-1-5. Recommissioning.

An applicant for recommissioning as a notary shall submit a new application and bond and comply with the provisions of this chapter.

Section 5. Section **46-1-6** is repealed and reenacted to read:

46-1-6. Powers and limitations.

A notary may perform the following notarial acts within the state:

(1) acknowledgments;

(2) copy certifications;

(3) jurats; and

(4) oaths or affirmations.

Section 6. Section **46-1-7** is repealed and reenacted to read:

46-1-7. Disqualifications.

A notary may not perform a notarial act if the notary:

(1) is a signer of or named in the document that is to be notarized except as provided in Section 75-2-504;

(2) will receive directly from a transaction connected with a financial transaction in which the notary is named individually as a principal; or

(3) will receive directly from a real property transaction in which the notary is named individually as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor, or lessee.

Section 7. Section **46-1-8** is repealed and reenacted to read:

46-1-8. Impartiality.

(1) A notary may not influence a person to enter into or to refuse to enter into a lawful transaction involving a notarial act by the notary.

(2) A notary shall perform notarial acts in lawful transactions for any requesting person who

tenders the appropriate fee specified in Section 46-1-12.

Section 8. Section **46-1-9** is repealed and reenacted to read:

46-1-9. False or incomplete certificate.

A notary may not:

(1) execute a certificate containing a statement known by the notary to be false or materially incomplete; or

(2) perform any notarial act with intent to deceive or defraud.

Section 9. Section **46-1-10** is repealed and reenacted to read:

46-1-10. Testimonials prohibited.

A notary may not endorse or promote any product, service, contest, or other offering if the notary's title or seal is used in the endorsement or promotional statement.

Section 10. Section **46-1-11** is repealed and reenacted to read:

46-1-11. Unauthorized practice of law.

(1) A nonattorney notary may not provide advice or counsel to another person concerning legal documents or legal proceedings, including immigration matters.

(2) (a) A nonattorney notary who advertises notarial services in any language other than English shall include in the advertisement a notice that the notary public is not an attorney. The notice must include the fees that a notary may charge pursuant to Section 46-1-12 and the following statement:

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

(b) The notice shall be in English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message.

(c) Literal translation of the phrase "Notary Public" into any language other than English is prohibited if the literal translation implies that the notary is a licensed attorney. In this Subsection (2)(c), "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.

Section 11. Section **46-1-12** is amended to read:

46-1-12. Fees and notice.

(1) The maximum fees that may be charged by a notary [public] for notarial acts are for:

~~[(1)] (a) acknowledgments, \$5 per signature;~~

~~[(2)] oaths or affirmations without a signature, \$5 per person;]~~

(b) certified copies, \$5 per page certified;

~~[(3)] (c) jurats, \$5 per signature; and~~

~~[(4)] certified copies, \$5 per page certified.]~~

(d) oaths or affirmations without a signature, \$5 per person.

(2) A notary may charge a travel fee, not to exceed the approved federal mileage rate, when traveling to perform a notarial act if:

(a) the notary explains to the person requesting the notarial act that the travel fee is separate from the notarial fee in Subsection (1) and is neither specified nor mandated by law; and

(b) the notary and the person requesting the notarial act agree upon the travel fee in advance.

(3) A notary shall display an English-language schedule of fees for notarial acts and may display a nonEnglish-language schedule of fees.

(4) (a) The fee of a notary shall not exceed \$5 per individual for each set of forms relating to a change of that individual's immigration status.

(b) The fee limitation in Subsection (4)(a) shall apply whether or not the notary is acting as a notary but does not apply to a licensed attorney, who is also a notary rendering professional services regarding immigration matters.

Section 12. Section **46-1-13** is repealed and reenacted to read:

46-1-13. Journal may be kept.

A notary may keep, maintain, and protect as a public record, and provide for lawful inspection a chronological, permanently bound official journal of notarial acts, containing numbered pages.

Section 13. Section **46-1-14** is repealed and reenacted to read:

46-1-14. Entries in journal.

(1) For every notarial act, the notary may record in the journal at the time of notarization the following information including:

(a) the date and time of day of the notarial act;

(b) the type of notarial act;

(c) a description of the document or proceeding;

(d) the signature and printed name and address of each person for whom a notarial act is performed;

(e) the evidence of identity of each person for whom a notarial act is performed, in the form of either:

(i) a statement that the person is "personally known" to the notary; or

(ii) a description of the identification document, its issuing agency, its serial or identification number, and its date of issuance or expiration; and

(iii) the signature and printed name and address of a credible witness swearing or affirming to the person's identity; and

(f) the fee, if any, charged for the notarial act.

(2) A notary may record in the journal the circumstances in refusing to perform or complete a notarial act.

Section 14. Section **46-1-15** is repealed and reenacted to read:

46-1-15. Inspection of journal -- Safekeeping and custody of journal.

If a notary maintains a journal, the notary shall:

(1) safeguard the journal and all other notarial records as valuable public documents and may not destroy the documents; and

(2) keep the journal in the exclusive custody of the notary, not to be used by any other notary or surrendered to an employer upon termination of employment.

Section 15. Section **46-1-16** is repealed and reenacted to read:

46-1-16. Official signature -- Official seal -- Seal impression.

(1) In completing a notarial act, a notary shall sign on the notarial certificate exactly and

only the name indicated on the notary's commission.

(2) A notary shall keep an official notarial seal that is the exclusive property of the notary and that may not be used by any other person. Upon the resignation, revocation, or expiration of a notarial commission, the seal shall be destroyed.

(3) A new seal shall be obtained for any new commission or recommission. A new seal shall be obtained if the notary changes the notary's name or address of record at any time during the notary's four-year commission. The seal impression shall be affixed near the notary's official signature on a notarial certificate and shall include a sharp, legible, and photographically reproducible ink impression of the notarial seal that consists of:

- (a) the notary public's name exactly as indicated on the commission;
- (b) the words "notary public," "state of Utah," and "my commission expires (commission expiration date)";
- (c) the address of the notary's business or residence;
- (d) a facsimile of the great seal of the state of Utah; and
- (e) a rectangular border no larger than one inch by two and one-half inches surrounding the required words and seal.

(4) An embossed seal impression that is not photographically reproducible may be used in addition to, but not in place of, the photographically reproducible seal required in this section.

(5) The notarial seal shall be affixed in a manner that does not obscure or render illegible any information or signatures contained in the document or in the notarial certificate.

(6) A notary acknowledgment on an annexation, subdivision, or other transparent map or plat is considered complete without the imprint of the notary's official seal if:

- (a) the notary signs the acknowledgment in permanent ink; and
- (b) the following appear below or immediately adjacent to the notary's signature:
 - (i) the notary's full name;
 - (ii) the words "A notary public commissioned in Utah"; and
 - (iii) the expiration date of the notary's commission.

Section 16. Section **46-1-17** is repealed and reenacted to read:

46-1-17. Obtaining a seal.

(1) A vendor may not provide a notarial seal, either inking or embossing, to a person claiming to be a notary, unless the person presents a photocopy of the person's notarial commission, attached to a notarized declaration substantially as follows:

Application for Notary Seal

I, _____ (name of person requesting seal), declare that I am a notary public duly commissioned by the state of Utah with a commission starting date of _____, a commission expiration date of _____, and a commission number of _____. As evidence, I attach to this paper a photocopy of my commission.

(2) A vendor who provides a notarial seal in violation of this section is guilty of a class B misdemeanor.

Section 17. Section **46-1-18** is repealed and reenacted to read:

46-1-18. Liability.

(1) A notary may be liable to any person for any damage to that person proximately caused by the notary's misconduct in performing a notarization.

(2) A surety for a notary's bond may be liable to any person for damages proximately caused to that person by the notary's misconduct in performing a notarization, but the surety's liability may not exceed the penalty of the bond or of any remaining bond funds that have not been expended to other claimants. Regardless of the number of claimants, a surety's total liability may not exceed the penalty of the bond.

(3) It is a class B misdemeanor, if not otherwise a criminal offense under this code, for:

(a) a notary to perform an act in violation of Section 46-1-9; or

(b) the employer of a notary to solicit the notary to perform a notarial act in violation of this chapter.

Section 18. Section **46-1-19** is repealed and reenacted to read:

46-1-19. Revocation or suspension.

The Division of Corporations and Commercial Code may revoke or suspend a notarial commission on any ground for which an application for a notarial commission may be denied under

Section 46-1-3.

Section 19. Section **46-1-20** is enacted to read:

46-1-20. Change of name or address.

(1) Within 30 days after the change of the notary's name or address, the notary shall provide to the Division of Corporations and Commercial Code a bond policy rider.

(2) To obtain a bond policy rider, the notary shall:

(a) notify the surety for the notary's bond;

(b) obtain a bond policy rider reflecting both the old and new name of the notary or the old and new address of the notary;

(c) return a bond policy rider, the original "Certificate of Authority of Notary Public";

(d) pay a \$5 fee; and

(e) destroy the old official seal.

Section 20. Section **46-1-21** is enacted to read:

46-1-21. Resignation.

(1) A notary who resigns a notarial commission shall provide to the Division of Corporations and Commercial Code a notice indicating the effective date of resignation.

(2) A notary who ceases to reside in this state or who becomes unable to read and write as provided in Section 46-1-3 shall resign the commission.

(3) A notary who resigns shall destroy the official seal and certificate.

Section 21. Section **46-1-22** is enacted to read:

46-1-22. Notice not invalidated.

If a notarial act is performed contrary to or in violation of this chapter, that fact does not of itself invalidate notice to third parties of the contents of the document notarized.