

NOTARIES PUBLIC AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the notarization and authentication of documents.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions related to the notarization and authentication of documents; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

46-1-2, as last amended by Laws of Utah 2009, Chapter 315

46-1-3, as last amended by Laws of Utah 2009, Chapter 183

46-1-15, as repealed and reenacted by Laws of Utah 1998, Chapter 287

46-1-16, as last amended by Laws of Utah 2008, Chapter 47

46-1-18, as last amended by Laws of Utah 2007, Chapter 95

46-1-20, as last amended by Laws of Utah 2008, Chapter 47

REPEALS AND REENACTS:



28 46-1-5, as last amended by Laws of Utah 1998, Chapter 287

29 46-1-6, as last amended by Laws of Utah 2006, Chapter 21



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

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

33 **46-1-2. Definitions.**

34 As used in this chapter:

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

39 (2) "Commission" means:

40 (a) to empower to perform notarial acts; ~~and~~ or

41 (b) the written document that gives authority to perform ~~those~~ notarial acts~~[-]~~,
42 including the Certificate of Authority of Notary Public issued by the lieutenant governor to a
43 notary.

44 (3) "Copy certification" means a notarial act in which a notary certifies that a
45 photocopy is an accurate copy of a document that is neither a public record nor publicly
46 recorded.

47 (4) "Electronic signature" ~~[has the same meaning as provided under]~~ means the same as
48 that term is defined in Section 46-4-102.

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

53 (6) "Notarial act" ~~and~~ or "notarization" ~~mean any~~ means an act that a notary is
54 ~~empowered~~ authorized to perform under this ~~section~~ chapter.

55 (7) "Notarial certificate" means the part of, or attachment to, a notarized document ~~[for~~
56 ~~completion by the notary and bearing the notary's signature and seal.]~~ that:

57 (a) is completed by the notary;

58 (b) bears the notary's signature and seal; and

59 (c) states the location, date, and facts to which the notary attests.

60 (8) "Notarial language" means the writing that constitutes a notarial act described in

61 Section 46-1-6.

62 [~~(8)~~] (9) "Notary" means any person commissioned to perform notarial acts under this
63 chapter.

64 [~~(9)~~] (10) "Oath" or "affirmation" means a notarial act in which a notary certifies that a
65 person made a vow or affirmation in the presence of the notary on penalty of perjury.

66 [~~(10)~~] (11) "Official misconduct" means a notary's performance of any act prohibited or
67 failure to perform any act mandated by this chapter or by any other law in connection with a
68 notarial act.

69 [~~(11)~~ "Personal knowledge of identity"]

70 (12) "Personally known" means familiarity with an individual resulting from
71 interactions with that individual over a period of time sufficient to eliminate every reasonable
72 doubt that the individual has the identity claimed.

73 [~~(12)~~] (13) (a) "Satisfactory evidence of identity" means identification of an individual
74 based on:

75 (i) valid personal identification with the individual's photograph, signature, and
76 physical description issued by the United States government, any state within the United States,
77 or a foreign government;

78 (ii) a valid passport issued by any nation; or

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

81 (b) "Satisfactory evidence of identity" does not include:

82 (i) a driving privilege card under Subsection 53-3-207(10); or

83 (ii) another document that is not considered valid for identification.

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

85 **46-1-3. Qualifications -- Application for notary required.**

86 (1) Except as provided in Subsection (3), the lieutenant governor shall commission as a
87 notary any qualified person who submits an application in accordance with this chapter.

88 (2) [~~A person qualified~~] An individual who applies for a notarial commission shall:

89 (a) be at least 18 years of age [~~or older~~];

90 (b) lawfully reside in ~~[this state 30 days immediately preceding the filing]~~ the state for
91 at least 30 days immediately before the individual applies for a notarial commission [and];

92 (c) if the individual receives a notarial commission, maintain permanent residency
93 [thereafter] in the state after receiving the notarial commission;

94 ~~[(e)]~~ (d) be able to read, write, and understand English;

95 ~~[(d)]~~ (e) submit an application to the lieutenant governor, containing no significant
96 misstatement or omission of fact ~~[and include at least],~~ that includes:

97 ~~[(i) a statement of the applicant's personal qualifications, the applicant's residence~~
98 ~~address, a business address in this state, and daytime telephone number;]~~

99 ~~[(ii) the applicant's age and date of birth;]~~

100 ~~[(iii) all criminal convictions of the applicant, including any pleas of admission and~~
101 ~~nolo contendere;]~~

102 (i) the individual's name as it will appear on the commission;

103 (ii) an affirmation that the individual meets the requirements of this section;

104 (iii) the individual's residential address, business address in the state, and daytime
105 telephone number;

106 (iv) the individual's date of birth;

107 (v) an indication of all criminal convictions the individual has received, including a
108 plea of admission or no contest;

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

112 ~~[(v) the acknowledgment of a passing score by the applicant on a written examination~~
113 ~~administered under Subsection (5);]~~

114 ~~[(vi) a declaration by the applicant; and]~~

115 ~~[(vii) an application fee determined under Section 63J-1-504;]~~

116 (vii) an indication that the individual has passed the examination administered under
117 Subsection (5); and

118 (viii) payment of the application fee administered under Section 63J-1-504; and

119 ~~[(e)]~~ (f) be a Utah resident or have permanent resident status under Section 245 of the
120 Immigration and Nationality Act~~[- and].~~

- 121 ~~[(f) be endorsed by two residents of the state who are over the age of 18.]~~
 122 (3) The lieutenant governor may deny an application based on:
 123 (a) the applicant's conviction for a crime involving dishonesty or moral turpitude;
 124 (b) any revocation, suspension, or restriction of a notarial commission or professional
 125 license issued to the applicant by this or any other state;
 126 (c) the applicant's official misconduct while acting in the capacity of a notary; or
 127 (d) the applicant's failure to pass the written examination.

128 (4) A person commissioned as a notary by the lieutenant governor may perform
 129 notarial acts in any part of this state for a term of four years, unless the person resigned or the
 130 commission is revoked or suspended under Section 46-1-19.

131 (5) ~~[Each]~~ (a) An applicant for a notarial commission shall take [a written] an
 132 examination approved by the lieutenant governor [and submit the examination to a testing
 133 center designated by the lieutenant governor for purposes of scoring the examination. The] at a
 134 testing center approved by the lieutenant governor.

135 (b) A testing center [designated by the lieutenant governor] at which an applicant takes
 136 an examination under Subsection (5)(a) shall issue [a written] an acknowledgment to the
 137 applicant indicating whether the applicant passed or failed the examination.

138 Section 3. Section 46-1-5 is repealed and reenacted to read:

139 **46-1-5. Recommissioning.**

140 An individual who applies for recommissioning as a notary is required to:

- 141 (1) submit a new application under Subsection 46-1-3(2)(e);
 142 (2) retake and pass the examination described in Subsection 46-1-3(5);
 143 (3) submit a new bond; and
 144 (4) comply with the provisions of this chapter.

145 Section 4. Section 46-1-6 is repealed and reenacted to read:

146 **46-1-6. Powers and limitations.**

147 (1) A commissioned notary may perform the following acts:

- 148 (a) an acknowledgment;
 149 (b) a copy certification;
 150 (c) a jurat; and
 151 (d) an oath or affirmation.

152 (2) A commissioned notary may not:
 153 (a) perform an act that is not described in Subsection (1); or
 154 (b) perform an act described in Subsection (1) if the signer is not in the presence of the
 155 notary at the time the notary completes the notarization.

156 Section 5. Section **46-1-15** is amended to read:

157 **46-1-15. Safekeeping and custody of journal.**

158 If a notary maintains a journal[;]:

159 (1) the notary shall[;] keep the journal in the notary's exclusive custody; and

160 ~~[(1) safeguard the journal and all other notarial records as valuable public documents~~
 161 ~~and may not destroy the documents; and]~~

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

164 (2) the notary's employer may not require the notary to surrender the journal upon
 165 termination of the notary's employment.

166 Section 6. Section **46-1-16** is amended to read:

167 **46-1-16. Official signature -- Official seal -- Seal impression.**

168 (1) In completing a notarial act, a notary shall sign on the notarial certificate exactly
 169 and only the name indicated on the notary's commission.

170 (2) (a) A notary shall keep an official notarial seal that is the exclusive property of the
 171 notary and that may not be used by any other person.

172 (b) Upon the resignation, revocation, or expiration of a notarial commission, the seal
 173 shall be destroyed.

174 (c) Each notarial seal obtained by a notary on or after July 1, 2003, shall use purple ink.

175 (3) (a) A new seal shall be obtained for any new commission or recommission.

176 (b) A new seal shall be obtained if the notary changes the notary's name of record at
 177 any time during the notary's commission.

178 (c) The seal impression shall be affixed near the notary's official signature on a notarial
 179 certificate and shall include a sharp, legible, and photographically reproducible ink impression
 180 of the notarial seal that consists of:

181 (i) the notary public's name exactly as indicated on the notary's commission;

182 (ii) the words "notary public," "state of Utah," and "my commission expires on

183 (commission expiration date)";

184 ~~[(iii) for a notary seal issued on or after July 1, 2008, the notary's commission number,~~
 185 ~~exactly as indicated on the notary's commission;]~~

186 ~~[(iv)]~~ (iii) a facsimile of the great seal of the state; and

187 ~~[(v)]~~ (iv) a rectangular border no larger than one inch by two and one-half inches
 188 surrounding the required words and seal.

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

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

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

196 (a) the notary signs the ~~[acknowledgment]~~ notarial language in permanent ink; and

197 (b) the following appear below or immediately adjacent to the notary's signature:

198 (i) the notary's ~~[full]~~ name and commission number appears exactly as indicated on the
 199 notary's commission;

200 (ii) the words "A notary public commissioned in Utah"; and

201 (iii) the expiration date of the notary's commission.

202 (7) A notary acknowledgment on an electronic message or document is considered
 203 complete without the imprint of the notary's seal if the following information appears
 204 electronically within the message:

205 (a) the notary's ~~[full]~~ name and commission number appearing exactly as indicated on
 206 the notary's commission; and

207 (b) the words "notary public," "state of Utah," and "my commission expires on _____
 208 (date)".

209 Section 7. Section **46-1-18** is amended to read:

210 **46-1-18. Liability.**

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

213 (2) (a) A surety for a notary's bond may be liable to any person for damages

214 proximately caused to that person by the notary's misconduct in performing a notarization, but
 215 the surety's liability may not exceed the penalty of the bond or of any remaining bond funds
 216 that have not been expended to other claimants.

217 (b) Regardless of the number of claimants under Subsection (2)(a), a surety's total
 218 liability may not exceed the penalty of the bond.

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

220 (a) a notary to ~~perform an act in violation of Section 46-1-9 or Section 46-1-11]~~
 221 violate a provision of this chapter; or

222 (b) the employer of a notary to solicit the notary to ~~perform a notarial act in violation]~~
 223 violate a provision of this chapter.

224 Section 8. Section **46-1-20** is amended to read:

225 **46-1-20. Change of name or address -- Bond policy rider.**

226 (1) Within 30 days ~~of a change in]~~ after the day on which a notary changes the notary's
 227 name, the notary shall provide to the lieutenant governor:

228 (a) the notary's new name, including official documentation of the name change; and

229 (b) a bond policy rider obtained in accordance with Subsection (2).

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

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

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

233 (c) return ~~[a]~~ the bond policy rider;

234 (d) destroy the original ["Certificate of Authority of Notary Public"] commission;

235 ~~[(d)]~~ (e) pay a \$5 fee; and

236 ~~[(e)]~~ (f) destroy the old official seal.

237 (3) A notary is not required to change the notary's name by adopting the surname of the
 238 notary's spouse.

239 ~~[(3)]~~ (4) Within 30 days of [a change in the notary's address] the day on which a
 240 notary's residential or business address changes, the notary shall provide the notary's new
 241 residential or business address to the lieutenant governor.