

NOTARIES PUBLIC AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Notaries Public Reform Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies provisions related to the notarization of documents;
- ▶ removes the authority of the Office of Risk Management to execute a bond for a notary;
- ▶ clarifies reapplication requirements for an individual whose notarial commission expires;
- ▶ provides standard language for a notarial certificate;
- ▶ allows a licensed escrow agent who is also a notary public to notarize certain documents the licensed escrow agent signs; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 46-1-2, as last amended by Laws of Utah 2009, Chapter 315
- 29 46-1-3, as last amended by Laws of Utah 2009, Chapter 183
- 30 46-1-4, as last amended by Laws of Utah 2003, Chapter 136
- 31 46-1-7, as last amended by Laws of Utah 2008, Chapter 102
- 32 46-1-15, as repealed and reenacted by Laws of Utah 1998, Chapter 287
- 33 46-1-16, as last amended by Laws of Utah 2008, Chapter 47
- 34 46-1-18, as last amended by Laws of Utah 2007, Chapter 95
- 35 46-1-20, as last amended by Laws of Utah 2008, Chapter 47
- 36 46-4-205, as last amended by Laws of Utah 2006, Chapter 21

37 ENACTS:

38 46-1-6.5, Utah Code Annotated 1953

39 REPEALS AND REENACTS:

40 46-1-6, as last amended by Laws of Utah 2006, Chapter 21

41 REPEALS:

42 46-1-5, as last amended by Laws of Utah 1998, Chapter 287



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

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

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

47 As used in this chapter:

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

52 (2) "Commission" means:

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

54 (b) the written document that gives authority to perform ~~those~~ notarial acts~~[-]~~,
55 including the Certificate of Authority of Notary Public that the lieutenant governor issues to a
56 notary.

57 (3) "Copy certification" means a notarial act in which a notary certifies that a
58 photocopy is an accurate copy of a document that is neither a public record nor publicly

59 recorded.

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

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

66 (6) "Notarial act" [~~and~~] or "notarization" [~~mean any~~] means an act that a notary is
67 [~~empowered~~] authorized to perform under [~~this section~~] Section 46-1-6.

68 (7) "Notarial certificate" means [~~the part of or attachment to a notarized document for~~
69 ~~completion by the notary and bearing the notary's signature and seal.~~] the affidavit described in
70 Section 46-1-6.5 that is:

71 (a) a part of or attached to a notarized document; and

72 (b) completed by the notary and bears the notary's signature and seal.

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

75 (9) "Oath" or "affirmation" means a notarial act in which a notary certifies that a person
76 made a vow or affirmation in the presence of the notary on penalty of perjury.

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

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

81 (11) "Personally known" means familiarity with an individual resulting from
82 interactions with that individual over a period of time sufficient to eliminate every reasonable
83 doubt that the individual has the identity claimed.

84 (12) (a) "Satisfactory evidence of identity" means identification of an individual based
85 on:

86 (i) valid personal identification with the individual's photograph, signature, and
87 physical description [~~issued by~~] that the United States government, any state within the United
88 States, or a foreign government issues;

89 (ii) a valid passport [~~issued by~~] that any nation issues; or

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

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

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

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

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

96 **46-1-3. Qualifications -- Application for notarial commission required -- Term.**

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

99 (2) ~~[A person qualified]~~ To qualify for a notarial commission an individual shall:

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

101 (b) lawfully reside in ~~[this state 30 days immediately preceding the filing]~~ the state for
102 at least 30 days immediately before the individual applies for a notarial commission ~~[and~~
103 ~~maintain permanent residency thereafter]~~;

104 (c) be able to read, write, and understand English;

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

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

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

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

112 (i) the individual's:

113 (A) name as it will appear on the commission;

114 (B) in-state residential address;

115 (C) in-state business address;

116 (D) daytime telephone number; and

117 (E) date of birth;

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

119 (iii) an indication of any criminal convictions the individual has received, including a
120 plea of admission or no contest;

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

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

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

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

128 (v) an indication that the individual has passed the examination described in
 129 Subsection (5); and

130 (vi) payment of an application fee that the lieutenant governor establishes in
 131 accordance with Section 63J-1-504; and

132 ~~[(e) be a Utah resident or]~~

133 (e) (i) be a United States citizen; or

134 (ii) have permanent resident status under Section 245 of the Immigration and
 135 Nationality Act[; and].

136 ~~[(f) be endorsed by two residents of the state who are over the age of 18.]~~

137 (3) The lieutenant governor may deny an application based on:

138 (a) the applicant's conviction for a crime involving dishonesty or moral turpitude;

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

141 (c) the applicant's official misconduct while acting in the capacity of a notary; or

142 (d) the applicant's failure to pass the ~~[written]~~ examination described in Subsection (5).

143 (4) (a) ~~[A person commissioned]~~ An individual whom the lieutenant governor
 144 commissions as a notary [by the lieutenant governor] may perform notarial acts in any part of
 145 [this] the state for a term of four years, unless the person [resigned] resigns or the commission
 146 is revoked or suspended under Section 46-1-19.

147 (b) (i) After an individual's commission expires, the individual may not perform a
 148 notarial act until the individual obtains a new commission.

149 (ii) An individual whose commission expires and who wishes to obtain a new
 150 commission shall submit a new application, showing compliance with the requirements of this
 151 section.

152 (5) (a) Each applicant for a notarial commission shall take ~~[a written]~~ an examination
153 ~~[approved by]~~ that the lieutenant governor approves and submit the examination to a testing
154 center ~~[designated by]~~ that the lieutenant governor designates for purposes of scoring the
155 examination.

156 (b) The testing center ~~[designated by]~~ that the lieutenant governor designates shall
157 issue a written acknowledgment to the applicant indicating whether the applicant passed or
158 failed the examination.

159 (6) (a) A notary shall maintain permanent residency in the state during the term of the
160 notary's notarial commission.

161 (b) A notary who does not maintain permanent residency under Subsection (6)(a) shall
162 resign the notary's notarial commission in accordance with Section 46-1-21.

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

164 **46-1-4. Bond.**

165 ~~[(1)]~~ A notarial commission ~~[may not become]~~ is not effective until:

166 (1) the notary named in the commission takes a constitutional oath of office and files a
167 \$5,000 bond ~~[has been filed with and approved by]~~ with the lieutenant governor~~[-]~~ that:

168 (a) ~~[The bond shall be executed by]~~ a licensed surety executes for a term of four years
169 ~~[commencing]~~ beginning on the commission's effective date and ~~[terminating on its]~~ ending on
170 the commission's expiration date[-with]; and

171 (b) conditions payment of bond funds to any person ~~[conditioned]~~ upon the notary's
172 misconduct while acting in the scope of ~~[his]~~ the notary's commission~~[-]~~; and

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

175 (2) the oath and bond are approved by the lieutenant governor.

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

177 **46-1-6. Powers and limitations.**

178 (1) A notary may perform the following acts:

179 (a) a jurat;

180 (b) an acknowledgment;

181 (c) a copy certification; and

182 (d) an oath or affirmation.

183 (2) A notary may not:
 184 (a) perform an act as a notary that is not described in Subsection (1); or
 185 (b) perform an act described in Subsection (1) if the person for whom the notary
 186 performs the notarial act is not in the physical presence of the notary at the time the notary
 187 performs the act.

188 Section 5. Section **46-1-6.5** is enacted to read:

189 **46-1-6.5. Form of notarial certificate for document notarizations.**

190 A correctly completed affidavit in substantially the following form, that is included in
 191 or attached to a notarized document, is sufficient for the completion of a notarization under this
 192 Title 46, Chapter 1, Notaries Public Reform Act:

193 (1) for a jurat:
 194 "State of Utah
 195 §
 196 County of _____

197 Subscribed and sworn to before me (notary public name), on this (date) day of (month),
 198 in the year (year), by (name of document signer).

199 (Notary Seal) _____
 200 Notary Signature";

201 (2) for an acknowledgment:
 202 "State of Utah
 203 §
 204 County of _____

205 On this (date) day of (month), in the year (year), before me (name of notary public), a
 206 notary public, personally appeared (name of document signer), proved on the basis of
 207 satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to in this document,
 208 and acknowledged (he/she/they) executed the same.

209 (Notary Seal) _____
 210 Notary Signature"; and

211 (3) for a copy certification:
 212 "State of Utah
 213 §

214 County of _____

215 On this (date) day of (month), in the year (year), I certify that the preceding or attached
216 document is a true, exact, and unaltered photocopy of (description of document), and that, to
217 the best of my knowledge, the photocopied document is neither a public record nor a publicly
218 recorded document.

219 (Notary Seal) _____

220 Notary Signature".

221 Section 6. Section 46-1-7 is amended to read:

222 **46-1-7. Disqualifications.**

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

224 (1) is a signer of the document that is to be notarized except in case of a self-proved
225 will as provided in Section 75-2-504; [or]

226 (2) is named in the document that is to be notarized except in the case of a:

227 (a) [in the case of a] self-proved will as provided in Section 75-2-504; [or]

228 (b) [in the case of a] licensed attorney that is listed in the document only as
229 representing a signer or another person named in the document; or

230 (c) licensed escrow agent, as defined in Section 31A-1-301, acting as the title insurance
231 producer in signing ~~Ĥ~~→ [real property] ←~~Ĥ~~ closing documents;

232 (3) will receive [~~directly~~] direct compensation from a transaction connected with a
233 financial transaction in which the notary is named individually as a principal; or

234 (4) will receive [~~directly~~] direct compensation from a real property transaction in which
235 the notary is named individually as a grantor, grantee, mortgagor, mortgagee, trustor, trustee,
236 beneficiary, vendor, vendee, lessor, or lessee.

237 Section 7. Section 46-1-15 is amended to read:

238 **46-1-15. Inspection of journal -- Safekeeping and custody of journal.**

239 (1) If a notary maintains a journal, the notary shall:

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

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

244 (a) keep the journal in the notary's exclusive custody; and

245 (b) ensure that the journal is not used by any other person for any purpose.

246 (2) The notary's employer may not require the notary to surrender the journal upon
 247 termination of the notary's employment.

248 Section 8. Section **46-1-16** is amended to read:

249 **46-1-16. Official signature -- Official seal -- Seal impression.**

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

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

254 (b) Upon the resignation, revocation, or expiration of a notarial commission, [~~the seal~~
 255 ~~shall be destroyed~~] the notary shall destroy the notary's seal.

256 (c) Each notarial seal obtained by a notary [~~on or after July 1, 2003~~] shall use purple
 257 ink.

258 (3) (a) [~~A new seal shall be obtained for any~~] A notary shall obtain a new seal:

259 (i) when the notary receives a new commission [or recommission.]; or

260 [~~(b) A new seal shall be obtained~~]

261 (ii) if the notary changes the notary's name of record at any time during the notary's
 262 commission.

263 [~~(c) The~~] (b) A notary shall affix the seal impression [shall be affixed] near the
 264 notary's official signature on a notarial certificate and shall include a sharp, legible, and
 265 photographically reproducible ink impression of the notarial seal that consists of:

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

267 (ii) the words "notary public," "state of Utah," and "my commission expires on
 268 (commission expiration date)";

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

271 (iv) a facsimile of the great seal of the state; and

272 (v) a rectangular border no larger than one inch by two and one-half inches surrounding
 273 the required words and seal.

274 (4) [~~An~~] A notary may use an embossed seal impression that is not photographically
 275 reproducible [may be used] in addition to, but not in place of, the photographically

276 reproducible seal required in this section.

277 (5) ~~[The]~~ A notary shall affix the notarial seal ~~[shall be affixed]~~ in a manner that does
278 not obscure or render illegible any information or signatures contained in the document or in
279 the notarial certificate.

280 (6) A notary may not use a notarial seal independent of a notarial certificate.

281 ~~[(6)]~~ (7) [A notary acknowledgment] A notarial certificate on an annexation,
282 subdivision, or other map or plat is considered complete without the imprint of the notary's
283 official seal if:

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

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

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

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

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

290 ~~[(7)]~~ (8) [A notary acknowledgment] A notarial certificate on an electronic message or
291 document is considered complete without the imprint of the notary's seal if the following
292 information appears electronically within the message:

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

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

297 Section 9. Section **46-1-18** is amended to read:

298 **46-1-18. Liability.**

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

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

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

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

308 (a) a notary to [~~perform an act in violation of Section 46-1-9 or Section 46-1-11~~]

309 violate a provision of this chapter; or

310 (b) the employer of a notary to solicit the notary to [~~perform a notarial act in violation~~]

311 violate a provision of this chapter.

312 Section 10. Section **46-1-20** is amended to read:

313 **46-1-20. Change of name or address -- Bond policy rider.**

314 (1) Within 30 days [~~of a change in~~] after the day on which a notary changes the notary's

315 name, the notary shall provide to the lieutenant governor:

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

317 (b) a bond policy rider that a notary obtains in accordance with Subsection (2).

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

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

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

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

322 destroy the original ["Certificate of Authority of Notary Public";] commission; and

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

324 (e) destroy the old official seal.

325 (3) A notary is not required to change the notary's name by adopting the surname of the

326 notary's spouse.

327 [~~(3)~~] (4) Within 30 days of [~~a change in the notary's address~~] the day on which a

328 notary's residential or business address changes, the notary shall provide the notary's new

329 residential or business address to the lieutenant governor.

330 Section 11. Section **46-4-205** is amended to read:

331 **46-4-205. Notarization and acknowledgment.**

332 (1) If a law requires a signature or record to be notarized, acknowledged, verified, or

333 made under oath, the requirement is satisfied by following the procedures and requirements of

334 Subsection ~~46-1-16~~(~~7~~)(8).

335 (2) The electronic signature of the person authorized to perform the acts under

336 Subsection (1), and all other information required to be included by other applicable law, shall

337 be attached to or logically associated with the signature or record.

338 Section 12. **Repealer.**
339 This bill repeals:
340 Section **46-1-5, Recommissioning.**

Legislative Review Note
Office of Legislative Research and General Counsel