

66 C.J.S. Notaries Summary

Corpus Juris Secundum December, 2019 Update
Notaries
John A. Glenn, J.D.

Correlation Table

Summary

Scope:

This title discusses notaries public, their appointment, qualification, and tenure of office. Their rights, powers, duties, and liabilities are also discussed.

Treated Elsewhere:

Acknowledgments, generally, see C.J.S., Acknowledgments §§ 1 et seq.

Affidavits, generally, see C.J.S., Affidavits §§ 1 et seq.

Clerks of Courts, see C.J.S., Courts §§ 327 to 351

Depositions, generally, see C.J.S., Depositions §§ 1 et seq.

Form, sufficiency, and necessity of seals, generally, see C.J.S., Seals §§ 1 et seq.

Oaths and affirmations, generally, see C.J.S., Oaths and Affirmations §§ 1 et seq.

Officers and public employees, generally, see C.J.S., Officers and Public Employees §§ 1 et seq.

Research References:

Westlaw Databases

- All Federal & State Cases (ALLCASES)
- All Federal Cases (ALLFEDS)
- American Law Reports (ALR)
- West's A.L.R. Digest (ALRDIGEST)

- Federal Rules (US-RULES)

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Research References

A.L.R. Library

- A.L.R. Index, Notaries Public
- West's A.L.R. Digest, Notaries 1 to 3, 8, 9

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66 C.J.S. Notaries § 1

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I. In General

§ 1. Definition, nature, and existence of office

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West's Key Number Digest

- West's Key Number Digest, Public Employment  5

A notary or notary public is a public officer whose function it is to attest and certify, by his or her hand and official seal, certain classes of documents in order to give them credit and authenticity in foreign jurisdictions, to take acknowledgments of and certify deeds and other conveyances, and to perform certain official acts, chiefly in commercial matters.

A notary or notary public is a public officer¹ whose function it is to attest and certify, by his or her hand and official seal, certain classes of documents in order to give them credit and authenticity in foreign jurisdictions, to take acknowledgments of deeds and other conveyances, and certify them, and to perform certain official acts, chiefly in commercial matters.²

A notary public is also defined as an official who is authorized by the state or federal government to administer oaths³ and to attest to the authenticity of signatures.⁴

CUMULATIVE SUPPLEMENT

Statutes:

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 1, rules may be adopted to implement this Uniform Law.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 10(a) provides that a notarial act may be performed in this state by: (1) a notary public of this state; or (2) a judge, clerk, or deputy clerk of a court of this state; or (3) an individual licensed to practice law in this state; or (4) any other individual authorized to perform the specific act by the law of this state.

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—Villanueva v. Brown, 103 F.3d 1128 (3d Cir. 1997).
N.C.—NationsBank of North Carolina, N.A. v. Parker, 140 N.C. App. 106, 535 S.E.2d 597 (2000).
N.Y.—Bell v. Department of State, Div. of Licensing Services, 34 A.D.3d 1022, 823 N.Y.S.2d 635 (3d Dep't 2006).
- 2 N.J.—Kip v. People's Bank & Trust Co., 110 N.J.L. 178, 164 A. 253 (N.J. Ct. Err. & App. 1933).
- 3 Ill.—In re Estate of Alfaro, 301 Ill. App. 3d 500, 234 Ill. Dec. 759, 703 N.E.2d 620 (2d Dist. 1998).
N.M.—Matter of Martinez' Estate, 99 N.M. 809, 664 P.2d 1007 (Ct. App. 1983).
- 4 Ill.—In re Estate of Alfaro, 301 Ill. App. 3d 500, 234 Ill. Dec. 759, 703 N.E.2d 620 (2d Dist. 1998).
Mo.—Rokusek v. Security Title Ins. Co., 2007 WL 1814294 (Mo. Ct. App. E.D. 2007), transfer denied, (Aug. 13, 2007).
N.M.—Matter of Martinez' Estate, 99 N.M. 809, 664 P.2d 1007 (Ct. App. 1983).

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66 C.J.S. Notaries § 2

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I. In General

§ 2. Definition, nature, and existence of office—Ministerial office

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment [§ 5](#)

The office of notary is a public office, and, in general, the office is ministerial and not judicial.

The office, at one time merely that of a scribe or scrivener,¹ has become a public office.² It has been held to be a state office³ and not a county office,⁴ but it has also been regarded as a county office.⁵

In general, the office is ministerial and not judicial;⁶ but it has been held with respect to particular acts that notaries act judicially,⁷ and in the absence of constitutional restriction the legislature may expressly confer judicial functions on them.⁸ In the absence of a statute a notary is unknown to the criminal law.⁹

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Footnotes

- 1 Ala.—Carroll v. State, 58 Ala. 396, 1877 WL 1391 (1877).
- 2 U.S.—Jii v. Rhodes, 577 F. Supp. 1128 (S.D. Ohio 1983).
Del.—State ex rel. Biggs v. Corley, 36 Del. 135, 172 A. 415 (1934).
- 3 Or.—Butts v. Purdy, 63 Or. 150, 125 P. 313 (1912).
- 4 Ga.—Overton v. Gandy, 170 Ga. 562, 153 S.E. 520 (1930).
- 5 Ark.—Lanier v. Norfleet, 156 Ark. 216, 245 S.W. 498 (1922).
- 6 Neb.—In re Butler, 76 Neb. 267, 107 N.W. 572 (1906).
- 7 U.S.—Stirneman v. Smith, 100 F. 600 (C.C.A. 8th Cir. 1900).
- 8 N.C.—Harris v. Watson, 201 N.C. 661, 161 S.E. 215, 79 A.L.R. 441 (1931).

§ 2. Definition, nature, and existence of office—Ministerial office, 66 C.J.S. Notaries § 2

9 Neb.—Richards v. State, 22 Neb. 145, 34 N.W. 346 (1887) (overruled in part on other grounds by, Horbach v. City of Omaha, 49 Neb. 851, 69 N.W. 121 (1896)).

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66 C.J.S. Notaries § 3

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I. In General

§ 3. Eligibility and disqualification

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment ~~69~~, 103, 105, 110, 232(1)

The eligibility of notaries is largely controlled by legislation or constitutional provision.

The eligibility of notaries is largely a matter of legislation or constitutional provision.¹ A statutory provision requiring a notary applicant to be of "good moral character" is not unconstitutionally vague.² Moreover, under statute, one convicted of a felony and certain misdemeanors may be disqualified from holding the office of notary unless he or she receives a pardon.³ A constitutional or statutory ineligibility nullifies the appointment or election,⁴ but where the statute merely forbids a person to take or hold office during a certain disqualification, his or her election or appointment may be valid, and he or she may take office upon qualifying.⁵ A constitutional prohibition may be either express⁶ or implied.⁷

While infants may or may not be disqualified by the constitution or by statute from holding the office of notary, a minor has been held eligible to the office at common law,⁸ and, in the absence of any disqualifying provision, he or she may be a notary.⁹

A state statute requiring that a notary public be a United States citizen is unconstitutional.¹⁰

Some statutes prescribe state residency requirements for notaries public,¹¹ and such statutes have been held to be constitutional.¹²

A statute providing that an applicant for the office of notary public must have been registered to vote for a prescribed period has been held unconstitutional.¹³

CUMULATIVE SUPPLEMENT

Statutes:

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 22(a), an applicant for a commission as a notary public who does not hold a commission in this state must pass an examination administered by the commissioning officer or agency or an entity approved by the commissioning officer or agency. The examination must be based on the course of study described in Rev. Unif. Law on Notarial Acts (2010) § 22(b).

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 23(a), the commissioning officer or agency may deny, refuse to renew, revoke, suspend, or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public. The provision continues to list a nonexclusive list of grounds.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 23(b), if the commissioning officer or agency denies, refuses to renew, revokes, suspends, or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with this state's administrative procedure act.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 23(c), the authority of the commissioning officer or agency to deny, refuse to renew, suspend, revoke, or impose conditions on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 25(a), a commission as a notary public does not authorize an individual to: (1) assist persons in drafting legal records, give legal advice, or otherwise practice law; (2) act as an immigration consultant or an expert on immigration matters; (3) represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters; or (4) receive compensation for performing any of the activities listed herein.

A notary public may not engage in false or deceptive advertising. Rev. Unif. Law on Notarial Acts (2010) § 25(b). As to other restrictions upon advertising by notaries public, see Rev. Unif. Law on Notarial Acts (2010) § 25(d).

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 25(c), a notary public, other than an attorney licensed to practice law in this state, may not use the term "notario" or "notario publico."

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 25(e), except as otherwise allowed by law, a notary public may not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.

[END OF SUPPLEMENT]

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Footnotes

1

Ark.—Lanier v. Norfleet, 156 Ark. 216, 245 S.W. 498 (1922).

Appointment prior to amendment

Notary appointed prior to effective date of Notary Public Law amendments imposing an educational requirement was statutorily exempted from completing otherwise required course in notary education,

although the amendments generally required persons seeking reappointment to comply with the Act section including education requirement along with other requirements.

Pa.—Tritt v. Cortes, 578 Pa. 317, 851 A.2d 903 (2004).

2

Pa.—Gombach v. Department, Bureau of Com'ns, Elections & Legislation, 692 A.2d 1127 (Pa. Commw. Ct. 1997) (rejection of notary application, following applicant's conviction for income tax evasion, was not an abuse of discretion).

3

Wis.—Swan v. LaFollette, 231 Wis. 2d 633, 605 N.W.2d 640 (Ct. App. 1999).

Constitutional

Statute conditioning appointment of a convicted felon as a notary on receipt of executive pardon or certificate of good conduct from parole board is not unconstitutional as the statutory scheme does not work an irrational or permanent bar.

N.Y.—Sinclair v. Division of Licensing of Dept. of State, 96 A.D.2d 1130, 467 N.Y.S.2d 719 (3d Dep't 1983).

4

Pa.—Com. v. Pyle, 18 Pa. 519, 1852 WL 5808 (1852).

5

Pa.—Com. v. Pyle, 18 Pa. 519, 1852 WL 5808 (1852).

6

Ohio—State ex rel. Atty. Gen. v. Adams, 58 Ohio St. 612, 51 N.E. 135 (1898).

7

Mass.—In re Opinion of the Justices, 165 Mass. 599, 43 N.E. 927 (1896).

8

U.S.—U.S. v. Bixby, 9 F. 78 (D. Ind. 1881).

9

U.S.—U.S. v. Bixby, 9 F. 78 (D. Ind. 1881).

Tex.—Freeman v. Port Arthur Rice & Irrigation Co., 188 S.W. 444 (Tex. Civ. App. Beaumont 1916).

10

U.S.—Bernal v. Fainter, 467 U.S. 216, 104 S. Ct. 2312, 81 L. Ed. 2d 175 (1984).

Ala.—Babcooke v. Duncan, 486 So. 2d 431 (Ala. 1986).

11

U.S.—Cook v. Miller, 914 F. Supp. 177 (W.D. Mich. 1996).

12

U.S.—Cook v. Miller, 914 F. Supp. 177 (W.D. Mich. 1996).

13

N.H.—Opinion of the Justices, 131 N.H. 443, 554 A.2d 466 (1989).

66 C.J.S. Notaries § 4

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§ 4. Appointment and qualification

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West's Key Number Digest

- West's Key Number Digest, Public Employment 69, 103, 105, 110, 232(1)

The appointment of notaries is regulated by constitution or statute, and an appointment which is not in the mode so prescribed is inoperative.

The appointment of notaries is regulated by constitution or statute,¹ and an appointment which is not in the mode so prescribed is inoperative.² Where a commission is required to be signed by the appointing power, the issuance of a commission is essential to the completeness of the appointment.³ Where the statute requires appointees to qualify within a specified time, failure to do so within the period limited nullifies the appointment.⁴

A statute providing for the appointment of notaries by the governor has been held to impose on the governor the mandatory duty to appoint notaries when the need therefor arises,⁵ but such a statute has been held to be discretionary as to the person who shall be appointed⁶ no matter how meritorious the application may be.⁷

The burden is on one asserting a notary's authority to show that he or she was legally appointed⁸ and proof that no order of appointment appears of record as required by statute is at least prima facie evidence that the notary was without authority.⁹

Limitations on number.

A statutory limitation on the number of notaries to be appointed in a particular county is invalid where no rational basis for the limitation exists.¹⁰

CUMULATIVE SUPPLEMENT

Statutes:

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 10(c) provides that the signature and title of a notarial officer described in § 10(a)(1), (2), or (3) conclusively establish the authority of the officer to perform the notarial act.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 21(a), an individual qualified under Rev. Unif. Law on Notarial Acts (2010) § 21(b) may apply to the commissioning officer or agency for a commission as a notary public. The applicant shall comply with and provide the information required by rules established by the commissioning officer or agency and pay any application fee. As to the applicant's requirements, see Rev. Unif. Law on Notarial Acts (2010) § 21(b). Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 21(f), a commission to act as a notary public authorizes the notary public to perform notarial acts.

As to the requirement of a database of notaries public, see Rev. Unif. Law on Notarial Acts (2010) § 24.

[END OF SUPPLEMENT]

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Footnotes

- 1 Cal.—Hollman v. Warren, 32 Cal. 2d 351, 196 P.2d 562 (1948).
- 2 Ga.—De Graffenreid v. Allen, 172 Ga. 249, 157 S.E. 280 (1931).
- 3 Ga.—De Graffenreid v. Allen, 172 Ga. 249, 157 S.E. 280 (1931).
- 4 Ala.—City of Birmingham v. Edwards, 201 Ala. 251, 77 So. 841 (1918).
- 5 Tex.—Faubion v. State, 104 Tex. Crim. 78, 282 S.W. 597 (1926).
- 6 Cal.—Hollman v. Warren, 32 Cal. 2d 351, 196 P.2d 562 (1948).
- 7 Pa.—Harding v. Pinchot, 306 Pa. 139, 159 A. 16 (1932).
- 8 Pa.—Harding v. Pinchot, 306 Pa. 139, 159 A. 16 (1932).
- 9 Ga.—Perry v. Kennon, 16 Ga. App. 545, 85 S.E. 821 (1915).
- 10 Ga.—Perry v. Kennon, 16 Ga. App. 545, 85 S.E. 821 (1915).
- 11 Cal.—Hollman v. Warren, 32 Cal. 2d 351, 196 P.2d 562 (1948).

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66 C.J.S. Notaries § 5

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§ 5. Appointment and qualification—Oath and bond

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 69, 103, 105, 110, 232(1)

A notary is usually required to take an oath of office and give a bond for the faithful performance of his or her duty.

Usually a notary is required by statute to qualify by taking an oath of office and by giving a bond with sureties for the discharge of his or her duties.¹ Where not otherwise provided by statute, the condition of the bond should be the faithful performance of his or her duty.²

Although the bond may run to the people or state,³ or some public officer,⁴ the people, state, or officer are only nominal parties, the real obligee or beneficiary being the person who may suffer loss or injury from the official misdoings of the notary.⁵ Since the real obligee or beneficiary cannot be known in advance, the surety cannot be discharged in the absence of an act or consent of the obligee, except in pursuance of some statute,⁶ and in the absence of such provision the giving of a new bond during the term of the old one does not release the surety on the latter.⁷ Where a bond is requisite, it must be approved as provided by the statute.⁸

CUMULATIVE SUPPLEMENT

Statutes:

As to the requirement of the oath of the notary public, see Rev. Unif. Law on Notarial Acts (2010) § 21(c).

As to the requirement of the bond of the notary public, see Rev. Unif. Law on Notarial Acts (2010) § 21(d).

Cases:

Trial court did not abuse its discretion, in proceedings on state's petition for finding that removal of public official from office pending his appeal from criminal conviction was in public interest, in setting amount of bond to be executed by individual designated to replace official at \$5,000, given that official would be statutorily entitled to amount equal to compensation received by such individual if his conviction was overturned, such amount would be offset against his damages and costs, and official presented no evidence establishing his damages and costs in event his conviction was overturned. V.T.C.A., Local Government Code § 87.017(c). *In re Evans*, 401 S.W.3d 921 (Tex. App. Dallas 2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 La.—*Stork v. American Sur. Co. of New York*, 109 La. 713, 33 So. 742 (1903).
- 2 Cal.—*Tevis v. Randall*, 6 Cal. 632, 1856 WL 883 (1856).
- 3 Cal.—*Tevis v. Randall*, 6 Cal. 632, 1856 WL 883 (1856).
- 4 La.—*Globe Indem. Co. v. O'Connor*, 147 La. 195, 84 So. 585 (1919).
- 5 La.—*Globe Indem. Co. v. O'Connor*, 147 La. 195, 84 So. 585 (1919).
- 6 La.—*Globe Indem. Co. v. O'Connor*, 147 La. 195, 84 So. 585 (1919).
- 7 La.—*Globe Indem. Co. v. O'Connor*, 147 La. 195, 84 So. 585 (1919).
- 8 Cal.—*Newby v. Bacon*, 58 Cal. App. 337, 208 P. 1005 (1st Dist. 1922).

66 C.J.S. Notaries § 6

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§ 6. Appointment and qualification—Inclusion in other office

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West's Key Number Digest

- West's Key Number Digest, Public Employment 69, 103, 105, 110, 232(1)

Under some statutes, certain other public offices may include that of notary so that one holding such an office is ex officio a notary.

Under some statutes, certain other public offices may include that of notary so that one holding such an office is ex officio a notary,¹ and in such case the authority is quite as ample as though he or she were a notary by direct appointment.²

The conferring of notarial powers on other officers does not necessarily abolish the office of notary.³

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Footnotes

- 1 Tex.—Wilson v. Simpson, 68 Tex. 306, 4 S.W. 839 (1887).
- 2 Miss.—Hodges v. Mills, 139 Miss. 347, 104 So. 165 (1925).
- 3 Tex.—Gilleland v. Drake, 36 Tex. 676, 1872 WL 7602 (1872).

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66 C.J.S. Notaries § 7

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§ 7. Term of office and removal

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 69, 103, 105, 110, 232(1)

Under some statutes, a notary continues in office after expiration of the term until he or she is removed or a successor is appointed.

Under some statutes, a notary continues in office after expiration of the term until he or she is removed or a successor is appointed.¹

Although the appointment is for a definite term, the death of a notary terminates the office held by him or her² and does not create a vacancy for the balance of the term³ and of the charges against him or her.⁴ In order to support a judgment of removal for misconduct or malfeasance, clear and satisfactory evidence is required.⁵ It has also been said that to sustain a determination revoking a notary license, there must be substantial evidence in the record to support it.⁶ Under some statutes, an order revoking a notary public commission must be accompanied by findings of fact and conclusions of law,⁷ and the order must include a ruling on each finding proposed by a party.⁸

Under statute, a court has the authority to review an administrative order revoking a notary public's commission,⁹ and if there has been an abuse of discretion, the order can be set aside.¹⁰ An administrative ruling with respect to the revocation of a notary's commission is entitled to great weight.¹¹

CUMULATIVE SUPPLEMENT

Statutes:

The Rev. Unif. Law on Notarial Acts (2010) § 21(c) governs the term of the notary public.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 28, a commission as a notary public in effect on the effective date of this act continues until its date of expiration. A notary public who applies to renew a commission as a notary public on or after the effective date of this act is subject to and shall comply with this act. A notary public, in performing notarial acts after the effective date of this act, shall comply with this act.

[END OF SUPPLEMENT]

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Footnotes

- 1 Ga.—Smith & Bondurant v. Meador, 74 Ga. 416, 1885 WL 1881 (1885).
- 2 Cal.—People v. Edleman, 152 Cal. 317, 92 P. 846 (1907).
- 3 Cal.—People v. Edleman, 152 Cal. 317, 92 P. 846 (1907).
- 4 **Notice of different charge**
Failure of Secretary to inform notary that he was charged with violating notary public law by notarizing transaction in which he had pecuniary interest violated notary's due process right to notice of charges against him, and, thus, revocation of notary public commission had to be vacated; charge of failure to witness signature before notarizing document did not inform notary with reasonable certainty of substance of accusations lodged against him in order for him to prepare defense.
Pa.—Pennsy v. Department of State, 141 Pa. Commw. 27, 594 A.2d 845 (1991).
- 5 Ohio—In re Hayman, 10 Ohio C.D. 815, 1899 WL 706 (Ohio Cir. Ct. 1899).
Unlawful practice of law
Secretary of State could not properly revoke paralegal's commission as notary public based upon her alleged unlawful practice of law, since evidence regarding same was practically nonexistent.
N.Y.—Yankopoulos v. State, 103 A.D.2d 95, 478 N.Y.S.2d 633 (1st Dep't 1984).
- 6 N.Y.—Bell v. Department of State, Div. of Licensing Services, 34 A.D.3d 1022, 823 N.Y.S.2d 635 (3d Dep't 2006).
- 7 W.Va.—Varney v. Hechler, 189 W. Va. 655, 434 S.E.2d 15 (1993).
- 8 W.Va.—Varney v. Hechler, 189 W. Va. 655, 434 S.E.2d 15 (1993).
- 9 Colo.—Dodge v. Meyer, 793 P.2d 639 (Colo. App 1990).
- 10 Colo.—Dodge v. Meyer, 793 P.2d 639 (Colo. App 1990).
- 11 N.Y.—Yankopoulos v. State, 103 A.D.2d 95, 478 N.Y.S.2d 633 (1st Dep't 1984).

66 C.J.S. Notaries § 8

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§ 8. Term of office and removal— Constitutional or statutory provisions

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 69, 103, 105, 110, 232(1)

Generally, the vacation, suspension, removal, or forfeiture of the office of notary is controlled by constitutional or statutory provision.

A notary's office may be vacated by constitution or statute,¹ but it will not be held by implication that a new constitutional or statutory provision abolishes the office of those previously appointed.² A vacancy may result from the suspension or removal of a notary for cause, which is a matter of constitutional or statutory provision,³ or from abandonment of the office and removal to another county,⁴ and a statute may provide for forfeiture of the office under certain circumstances.⁵ Lack of good moral character and the inability to perform the duties and responsibilities of a notary public constitute "good cause" within meaning of statute providing that a designated state officer may reject an application for notary public commission or revoke the commission for good cause.⁶

It has been said that a notary public's right to remain in office is to be measured not only by his or her activities as such but also by his or her trustworthiness and competence exhibited in other areas in which the public is concerned.⁷

Proceedings.

Under constitutional or statutory provision, a notary public is entitled to notice of a revocation hearing.⁸

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Footnotes

1 La.—Cragg v. Westmore, 13 La. Ann. 344, 1858 WL 5299 (1858).
2 Tex.—Gilleland v. Drake, 36 Tex. 676, 1872 WL 7602 (1872).
3 La.—State v. Laresche, 28 La. Ann. 26, 1876 WL 8824 (1876).
4 Pa.—Perez v. Bureau of Com'n, 854 A.2d 998 (Pa. Commw. Ct. 2004).
5 Ark.—Lanier v. Norfleet, 156 Ark. 216, 245 S.W. 498 (1922).
6 N.Y.—People v. Wadhams, 176 N.Y. 9, 68 N.E. 65 (1903).
7 Pa.—Perez v. Bureau of Com'n, 854 A.2d 998 (Pa. Commw. Ct. 2004).
8 N.Y.—Bell v. Department of State, Div. of Licensing Services, 34 A.D.3d 1022, 823 N.Y.S.2d 635 (3d Dep't
2006).
First-class mail
Posting notice of hearing to revoke license as notary public by certified mail was not equivalent to posting by
"first class mail" as required by statute, and, thus, posting notice by certified mail did not constitute proper
service under statute, absent actual receipt.
Colo.—Dodge v. Meyer, 793 P.2d 639 (Colo. App 1990).

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66 C.J.S. Notaries § 9

Corpus Juris Secundum December, 2019 Update
Notaries
John A. Glenn, J.D.

I. In General

§ 9. Notaries de facto

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 69, 103, 105, 110, 232(1)

A person acting as a notary under color of authority with public acquiescence is, in general, a notary de facto, whose position is dependent on a continuous exercise of the functions of the office.

Generally, a person acting as a notary under color of authority with public acquiescence is held to be a notary de facto,¹ and as to the public and third persons his or her acts are valid and cannot be attacked collaterally.²

The principle that ineligibility to hold an office does not prevent the ineligible incumbent, if in possession under color of right and authority, from being an officer de facto,³ has been applied to one who is appointed and acts in good faith as a notary but who is ineligible or disqualified to act as such by reason of interest⁴ or by acceptance of another office, even though his or her office as notary is thereby "vacated" under the statute,⁵ or to one whose commission is defective⁶ or who is holding over after expiration of the term.⁷ This principle has also been applied to one who has failed to file a bond,⁸ take the oath of office,⁹ or otherwise comply with directory provisions of the statute.¹⁰

In general, no one can be a notary de facto without color of authority.¹¹ Moreover, for the acts of a de facto notary to be valid, the office involved must exist as a de jure office, and the notary must be in actual physical possession of office.¹² It is well settled that a mere usurper is not an officer de facto,¹³ and the position depends on a continuing exercise of the functions of the office, a single official act not being enough.¹⁴ Such notary must also act in good faith before he or she can be a de facto officer.¹⁵ Whether or not a notary is a de facto officer depends on the facts in each case.¹⁶

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Footnotes

- 1 Ark.—Brown v. Anderson, 210 Ark. 970, 198 S.W.2d 188 (1946).
- 2 Ark.—Brown v. Anderson, 210 Ark. 970, 198 S.W.2d 188 (1946).
Ga.—Piedmont Hosp., Inc. v. Draper, 205 Ga. App. 160, 421 S.E.2d 543 (1992).
- 3 As to this principle, see C.J.S., Officers and Public Employees § 343.
- 4 Ark.—Brown v. Anderson, 210 Ark. 970, 198 S.W.2d 188 (1946).
- 5 W.Va.—Old Dominion Building & Loan Ass'n v. Sohn, 54 W. Va. 101, 46 S.E. 222 (1903).
- 6 Mo.—Hamilton v. Pitcher, 53 Mo. 334, 1873 WL 7733 (1873).
- 7 Ala.—Williams v. State, 23 Ala. App. 365, 125 So. 690 (1930).
Tenn.—First Nat. Bank of Sweetwater v. Fowler, 8 Tenn. App. 128, 1928 WL 2090 (1928).
- 8 La.—Succession of Galway, 483 So. 2d 662 (La. Ct. App. 5th Cir. 1986).
- 9 La.—Buckley v. Seymour, 30 La. Ann. 1341, 1878 WL 8595 (1878).
- 10 Ill.—People v. Severinghaus, 313 Ill. 456, 145 N.E. 220 (1924).
- 11 La.—Succession of Wafer, 715 So. 2d 672 (La. Ct. App. 2d Cir. 1998).
Tex.—Faubion v. State, 104 Tex. Crim. 78, 282 S.W. 597 (1926).
- 12 La.—Succession of Wafer, 715 So. 2d 672 (La. Ct. App. 2d Cir. 1998).
- 13 Ala.—Cary v. State, 76 Ala. 78, 1884 WL 509 (1884).
- 14 Ala.—Williams v. State, 23 Ala. App. 365, 125 So. 690 (1930).
Tenn.—First Nat. Bank of Sweetwater v. Fowler, 8 Tenn. App. 128, 1928 WL 2090 (1928).
- 15 La.—In re Succession of Sampognaro, 890 So. 2d 704 (La. Ct. App. 2d Cir. 2004) (disbarred attorney believed he was qualified to act as a notary).
Tenn.—First Nat. Bank of Sweetwater v. Fowler, 8 Tenn. App. 128, 1928 WL 2090 (1928).
- 16 Tenn.—First Nat. Bank of Sweetwater v. Fowler, 8 Tenn. App. 128, 1928 WL 2090 (1928).

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66 C.J.S. Notaries § 10


Corpus Juris Secundum December, 2019 Update
Notaries
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I. In General

§ 10. Certificates

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Notaries  9

A certificate of a notary duly authenticated is evidence of those things to which the notary is authorized to certify. It may be contradicted or impeached by other competent evidence, but clear and convincing proof is required.

A certificate of a notary duly authenticated is evidence of those things to which the notary is authorized to certify,¹ but, when not so authorized or required by law, it carries no presumption of authenticity.² As to the admissibility and effect of certificates as evidence, the law of the forum governs, without respect to their requisites or the effect given to them by the law of the place where the notary was appointed or his or her power under that law to make them.³

Contradicting, impeachment, and amendment.

It has been held that a notary may not contradict such notary's own certificate,⁴ but there is also authority to the contrary.⁵ It may be contradicted or impeached by other competent evidence,⁶ but clear and convincing proof⁷ by disinterested witnesses⁸ is required. The notary may explain an error appearing on the face of the certificate⁹ and may refer to the paper to refresh his or her memory as to the true tenor and nature of the oath administered.¹⁰ A notary's certificate may in general be supplemented by other evidence;¹¹ and, in a proper case, by leave of court, it may be amended or an additional certificate may be made,¹² as where further authentication is required.¹³

Paraph.

A paraph may constitute the official signature of a notary.¹⁴ It guarantees the genuineness of the paper or document with which it is identified,¹⁵ but a paraph on the face of a note secured by a mortgage does not guarantee either the rank of the mortgage or the value of the property mortgaged.¹⁶

CUMULATIVE SUPPLEMENT

Statutes:

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 15(a), a notarial act must be evidenced by a certificate. As to the requirements of the certificate, see Rev. Unif. Law on Notarial Acts (2010) § 15(a).

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 15(d), by executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in Rev. Unif. Law on Notarial Acts (2010) § 4 to 6.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 15(e), a notarial officer may not affix the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 15(f), if a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record. If the commissioning officer or agency has established standards pursuant to Rev. Unif. Law on Notarial Acts (2010) § 27 for attaching, affixing, or logically associating the certificate, the process must conform to the standards.

As to a short form certificate, see Rev. Unif. Law on Notarial Acts (2010) § 16.

[END OF SUPPLEMENT]

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Footnotes

- 1 N.Y.—Case v. People, 76 N.Y. 242, 1879 WL 10617 (1879).
- 2 Ala.—Hill v. Norris, 2 Ala. 640, 1841 WL 260 (1841).
N.Y.—Myerowich v. Emigrant Industrial Sav. Bank, 170 N.Y.S. 38 (App. Term 1918), judgment modified on other grounds, 184 A.D. 668, 172 N.Y.S. 540 (1st Dep't 1918).
- 3 Ind.—Midland Steel Co. v. Citizens' Nat. Bank of Kokomo, 34 Ind. App. 107, 72 N.E. 290 (1904).
- 4 Idaho—First Nat. Bank v. Glenn, 10 Idaho 224, 77 P. 623 (1904).
- 5 Okla.—Effenberger v. Durant, 1916 OK 493, 57 Okla. 445, 156 P. 212 (1916).
- 6 Nev.—Picetti v. Orcio, 57 Nev. 52, 58 P.2d 1046 (1936), on reh'g, 57 Nev. 52, 67 P.2d 315 (1937).
- 7 Ill.—Gritten v. Dickerson, 202 Ill. 372, 66 N.E. 1090 (1903).
Nev.—Picetti v. Orcio, 57 Nev. 52, 58 P.2d 1046 (1936), on reh'g, 57 Nev. 52, 67 P.2d 315 (1937).
Or.—In re Witherill's Estate, 178 Or. 253, 166 P.2d 129 (1946).
- 8 Ill.—Gritten v. Dickerson, 202 Ill. 372, 66 N.E. 1090 (1903).
- 9 U.S.—U.S. v. Neale, 14 F. 767 (C.C.E.D. Va. 1883).
- 10 U.S.—U.S. v. Neale, 14 F. 767 (C.C.E.D. Va. 1883).
- 11 Ind.—Dickerson v. Turner, 12 Ind. 223, 1859 WL 4841 (1859).

- 12 Ill.—Goldie v. McDonald, 78 Ill. 605, 1875 WL 8543 (1875).
 W.Va.—Bohn v. Zeigler, 44 W. Va. 402, 29 S.E. 983 (1898).
- 13 W.Va.—Bohn v. Zeigler, 44 W. Va. 402, 29 S.E. 983 (1898).
 Further authentication, see § 19.
- 14 La.—Harz v. Gowland, 126 La. 674, 52 So. 986 (1910).
- 15 La.—Harz v. Gowland, 126 La. 674, 52 So. 986 (1910).
- 16 La.—Citizens' Bank & Trust Co. v. Walker, 9 La. App. 143, 119 So. 487 (2d Cir. 1926).

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66 C.J.S. Notaries § 11


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I. In General

§ 11. Certificates—Validity

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Notaries  9

A notary's certificate, in order to be effective as such, must comply with legal requirements pertaining to matters of substance, but unsubstantial defects in matters of form will not render the certificate invalid.

A notary's certificate, in order to be effective as such, must comply with legal requirements pertaining to matters of substance,¹ but unsubstantial defects in matters of form will not render the certificate invalid.²

The absence of, or a defect in, the date of a certificate does not make it void³ nor does omission to state the place of the notary's residence⁴ or failure to state the date of expiration of the notary's commission,⁵ although these are statutory requisites. Unless otherwise provided by statute, a jurat need not state the personal presence of affiant before the notary at the time of the swearing, but this fact will be presumed from the official statement that the affidavit was sworn to.⁶

The absence of a statement of venue has been held not fatal, in view of the presumption that a notary has acted within his or her proper jurisdiction,⁷ but it has also been held that a statement of venue is an essential requisite and it must appear on the face of the certificate that the notary acted in the territory for which he or she was commissioned.⁸ It has been held to be sufficient that the venue appear in the caption of the instrument to which the notary's certificate is attached,⁹ or in the body of the certificate,¹⁰ or that the seal bear the name of the county in which the notary is authorized to act.¹¹

In the absence of statute, the title of the officer need not be recited in the body of the certificate where it is appended to the officer's signature,¹² nor need the certificate name the county and state in which the notary is commissioned to act, where a proper venue appears.¹³ A statutory requirement that official signatures of notaries public for the state at large shall indicate that notaries are for the state at large has been held to be directory and not mandatory.¹⁴

CUMULATIVE SUPPLEMENT

Statutes:

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 15(b), if a notarial act regarding a tangible record is performed by a notary public, an official stamp must be affixed to or embossed on the certificate. If a notarial act is performed regarding a tangible record by a notarial officer other than a notary public and the certificate contains the information specified in Rev. Unif. Law on Notarial Acts (2010) § 15(a)(2) to (4), an official stamp may be affixed to or embossed on the certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in Rev. Unif. Law on Notarial Acts (2010) § 15(a)(2) to (4), an official stamp may be attached to or logically associated with the certificate. A certificate of a notarial act is sufficient if it meets the requirements of Rev. Unif. Law on Notarial Acts (2010) § 15(a) to (c).

[END OF SUPPLEMENT]

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Footnotes

- 1 Okla.—In re Initiative Petition No. 142, State Question No. 205, 1936 OK 209, 176 Okla. 155, 55 P.2d 455 (1936).
- 2 Neb.—Sheridan County v. McKinney, 79 Neb. 223, 115 N.W. 548 (1908).
- 3 Ind.—Updegraff v. Palmer, 107 Ind. 181, 6 N.E. 353 (1886).
- La.—Union Bank of Louisiana v. Penn, 7 Rob. 79, 1844 WL 1365 (La. 1844).
- 4 Wash.—Griffin v. Catlin, 25 Wash. 474, 65 P. 755 (1901).
- 5 Neb.—Sheridan County v. McKinney, 79 Neb. 223, 115 N.W. 548 (1908).
- 6 Iowa—Black v. Minneapolis & St. L.R. Co., 122 Iowa 32, 96 N.W. 984 (1903).
- 7 Iowa—Milligan v. Zeller, 197 Iowa 79, 196 N.W. 793 (1924).
- 8 Ill.—Montag v. Linn, 19 Ill. 399, 1857 WL 5731 (1857).
- 9 Mich.—Smith v. Runnells, 94 Mich. 617, 54 N.W. 375 (1893).
- Mo.—Remington Sewing Mach. Co. v. Cushen, 8 Mo. App. 528, 1880 WL 9493 (1880).
- 10 Tex.—Kane v. Sholars, 41 Tex. Civ. App. 154, 90 S.W. 937 (1905).
- 11 Iowa—Milligan v. Zeller, 197 Iowa 79, 196 N.W. 793 (1924).
- 12 Iowa—Smith v. Sherman, 113 Iowa 601, 85 N.W. 747 (1901).
- 13 Iowa—Smith v. Sherman, 113 Iowa 601, 85 N.W. 747 (1901).
- 14 Ga.—Southern Sec. Co. v. American Discount Co., 55 Ga. App. 736, 191 S.E. 258 (1937).

66 C.J.S. Notaries § 12

Corpus Juris Secundum . December, 2019 Update
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I. In General

§ 12. Seals

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Notaries 8

In accordance with statutory provisions, the official acts of a notary, in all or certain specified cases, must be authenticated by an official seal, but, where a statute provides for authentication of notarial acts without requiring a seal, the seal is not necessary.

In accordance with statutory provisions, the official acts of a notary, in all or certain specified cases, must be authenticated by an official seal, and in the absence of a seal, such acts are void or ineffectual;¹ but where a statute provides for authentication of notarial acts without requiring a seal, the seal is not necessary.²

Where a notary is required to possess a seal as a condition precedent to the right to act and he or she does not affix the seal at the time of executing a certificate, the court will not presume that the notary had a seal at such time, although it was thereafter affixed,³ but in the absence of any such requirement, the seal may be affixed at any time.⁴ Where no objection is raised to the absence or insufficiency of a notarial seal, it will be deemed waived.⁵

The need of a notary's seal for the purpose of admitting documents in evidence depends on the law of the forum.⁶ In the absence of proof, it will be presumed by the court of one state that the laws of a foreign state relating to the necessity of a seal are the same as its own.⁷

CUMULATIVE SUPPLEMENT

Statutes:

As to the requirement that, under the Revised Uniform Law on Notarial Acts, if a notarial act regarding a tangible record is performed by a notary public, an official stamp must be affixed to or embossed on the certificate, see § 11.

[END OF SUPPLEMENT]

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Footnotes

- 1 Neb.—Welton v. Atkinson, 55 Neb. 674, 76 N.W. 473 (1898).
- 2 Nev.—State v. Van Patten, 26 Nev. 273, 66 P. 822 (1901).
- 3 Ind.—Milner v. State, 122 Ind. 355, 24 N.E. 156 (1890).
- 4 Iowa—Rindskoff Bro. & Co. v. Malone, 9 Iowa 540, 1859 WL 530 (1859).
- 5 Ala.—Donegan v. Wood, 49 Ala. 242, 1873 WL 809 (1873).
- 6 Ill.—Ramsay's Estate v. People, for Use of Trustees of Illinois Asylum for Insane Criminals, 197 Ill. 594, 64 N.E. 555 (1902).
- 7 Mo.—Gharst v. St. Louis Transit Co., 115 Mo. App. 403, 91 S.W. 453 (1905).
Neb.—Welton v. Atkinson, 55 Neb. 674, 76 N.W. 473 (1898).

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66 C.J.S. Notaries § 13

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I. In General

§ 13. Seals—Requisites

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Notaries 8

The requisites of a notary's seal are fixed and controlled by the law of the locality from which the notary's authority is derived.

The requisites of a notary's seal are fixed and controlled by the law of the locality from which the notary's authority is derived.¹ Statutory provisions concerning the emblems, devices, and legends to be borne by the seal have been held to be only directory, and want of compliance therewith has been held not to vitiate the seal or the certificate,² but other statutes have been held to require compliance with their terms as a prerequisite to the validity of the seal or the certificate.³

Slight variations from the legal requirements as to the form of a seal may not invalidate the notarial certificate as long as there is substantial compliance,⁴ and it has been said to be the seal itself, not the name, words, or device on it, that gives authenticity.⁵

In the absence of any statutory requirement to the contrary, it seems that no device or words indicative of the notary's official character are essential to the seal,⁶ nor is the name of the county for which the notary was appointed,⁷ but the name of the state may be required by statute.⁸ Likewise, in the absence of a statutory provision, the notary's name need not be a part of the seal,⁹ but the name may be a statutory requisite.¹⁰

When its form is not otherwise prescribed by statute, the seal may consist of an impression on paper¹¹ with intent to make a seal¹² or an impression in ink, in the form of a seal, on the paper.¹³

Where a notarial seal is required, one which is not notarial is ineffective¹⁴ and a private seal cannot be used in such case.¹⁵ In the absence of proof, the courts of one state will presume the requirements of another state concerning the form and contents of notarial seals to be the same as in their own jurisdiction.¹⁶

The place of the seal, with respect to the certificate, would appear to be immaterial.¹⁷

Faint or defaced seal.

Where it appears that a proper seal had been duly affixed, it is effective to authenticate the instrument, although it has since become faint and partially defaced¹⁸ or obliterated¹⁹ or has entirely disappeared.²⁰

CUMULATIVE SUPPLEMENT

Statutes:

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 17, the official stamp of a notary public must: (1) include the notary public's name, jurisdiction, commission expiration date, and other information required by the commissioning officer or agency; and (2) be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

As to the notary public's responsibilities regarding his or her stamping device, see Rev. Unif. Law on Notarial Acts (2010) § 18.

Cases:

The Notary Public Act contains no requirement that the seal of a notary who resigns his commission be preserved or destroyed. S.H.A. 5 ILCS 312/1–101 et seq. *Vancura v. Katris*, 238 Ill. 2d 352, 345 Ill. Dec. 485, 939 N.E.2d 328 (2010).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*In re Phillips*, 19 F. Cas. 507, No. 11098 (W.D. Mich. 1876).
- 2 Ark.—*Sonfield v. Thompson*, 42 Ark. 46, 1883 WL 1131 (1883).
- 3 N.Y.—*Richard v. Boller*, 51 How. Pr. 371, 1876 WL 11167 (N.Y.C.P. 1876).
- 4 Ky.—*Stearns v. Chenault*, 15 Ky. L. Rptr. 347, 23 S.W. 351 (Ky. 1893).
- 5 U.S.—*In re Phillips*, 19 F. Cas. 507, No. 11098 (W.D. Mich. 1876).
- 6 U.S.—*In re Phillips*, 19 F. Cas. 507, No. 11098 (W.D. Mich. 1876).
- 7 Ind.—*Lange v. State*, 95 Ind. 114, 1884 WL 10359 (1884).
- 8 Iowa—*Stephens v. Williams*, 46 Iowa 540, 1877 WL 655 (1877).
- 9 Cal.—*Lewis v. Booth*, 3 Cal. 2d 345, 44 P.2d 560 (1935).
- 10 Iowa—*Neese v. Farmers' Ins. Co.*, 55 Iowa 604, 8 N.W. 450 (1881).
- 11 Tex.—*Stooksberry v. Swan*, 21 S.W. 694 (Tex. Civ. App. 1893), *aff'd*, 85 Tex. 563, 22 S.W. 963 (1893).
- 12 U.S.—*Orr v. Lacy*, 18 F. Cas. 834, No. 10589 (C.C.D. Mich. 1847).
- 13 U.S.—*The Gallego*, 30 F. 271 (E.D. N.Y. 1887).
- 14 Tex.—*McKellar v. Peck*, 39 Tex. 381, 1873 WL 7564 (1873).
- 15 Ill.—*Mason, for Use of Mason v. Brock*, 12 Ill. 273, 1850 WL 4365 (1850).
- 16 Iowa—*Hewitt v. Morgan*, 88 Iowa 468, 55 N.W. 478 (1893).

§ 13. Seals—Requisites, 66 C.J.S. Notaries § 13

- 17 Minn.—Osgood v. Sutherland, 36 Minn. 243, 31 N.W. 211 (1886).
18 Ala.—Bradley v. Northern Bank of Alabama, 60 Ala. 252, 1877 WL 1424 (1877).
19 Ky.—Stearns v. Chenault, 15 Ky. L. Rptr. 347, 23 S.W. 351 (Ky. 1893).
20 Tex.—Stooksberry v. Swan, 21 S.W. 694 (Tex. Civ. App. 1893), aff'd, 85 Tex. 563, 22 S.W. 963 (1893).

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66 C.J.S. Notaries § 14

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I. In General

§ 14. Seals—Purpose

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Notaries 8

The purpose of the seal is to authenticate the document to which it is affixed. It is at least prima facie evidence of the notary's official character.

The purpose of the notarial seal is to authenticate the document to which it is duly affixed.¹ It has been said to be at least prima facie evidence of the notary's official character² and of the notary's signature³ and to be self-proving,⁴ but this is not always true of a foreign notary's seal.⁵

Where the certificate recites that the notary is duly authorized to act in the county named in the certificate of venue but the seal indicates that the notary is commissioned for a different county or state, the seal will overcome the recitals and the certificate is invalid.⁶

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Footnotes

- 1 Ga.—Brooks v. State, 63 Ga. App. 575, 11 S.E.2d 688 (1940).
- 2 Ga.—Brooks v. State, 63 Ga. App. 575, 11 S.E.2d 688 (1940).
Tenn.—In re Marsh, 12 S.W.3d 449 (Tenn. 2000).
- 3 Iowa—Stephens v. Williams, 46 Iowa 540, 1877 WL 655 (1877).
- 4 Cal.—Pardee v. Schanzlin, 3 Cal. App. 597, 86 P. 812 (3d Dist. 1906).
- 5 Ga.—Charles v. Foster, 56 Ga. 612, 1876 WL 3303 (1876).
W.Va.—Bohn v. Zeigler, 44 W. Va. 402, 29 S.E. 983 (1898).
- 6 Iowa—In re Sale of Liquors in Val. Junction, 169 Iowa 692, 150 N.W. 86 (1914).

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66 C.J.S. Notaries § 15


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I. In General

§ 15. Records

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Notaries 9

Under statutes which require notaries to keep records of all, or certain, of their official acts, the record is a public one, and the benefit of it is secured to those concerned by issuing a certified copy or transcript.

Under statutes which require notaries to keep records of all, or certain, of their official acts, the record is a public one,¹ and the benefit of it is secured to those concerned by issuing a certified copy or transcript,² which is evidence of the facts officially recorded.³ The custody and disposition of the notary's records, in case of the notary's death, removal, or the expiration of the notary's term, must comply with the statute.⁴ A notary's records, not treated as official, are admitted on due proof, as original memoranda made in regular course,⁵ and it has been held that they may be used to refresh the memory of the notary when the notary testifies as a witness.⁶

A statute providing for the recording of certain notarial acts in the notary's book has no application to other acts,⁷ and an entry of record not authorized or required by the statute constitutes nothing more than a private record of the notary.⁸

CUMULATIVE SUPPLEMENT

Statutes:

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 19(a), a notary public, other than an individual licensed to practice law in this state, must maintain a journal in which the notary public chronicles all notarial acts that the notary public performs. The notary public must retain the journal for 10 years after the performance of the last notarial act chronicled in the journal. As to the required format of the journal, see Rev. Unif. Law on Notarial Acts (2010) § 19(b), (c).

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 19(d), if a notary public's journal is lost or stolen, the notary public promptly shall notify the commissioning officer or agency on discovering that the journal is lost or stolen.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 19(e), on resignation from, or the revocation or suspension of, a notary public's commission, the notary public shall retain the notary public's journal in accordance with Rev. Unif. Law on Notarial Acts (2010) § 19(a) and inform the commissioning officer or agency where the journal is located.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 19(f), instead of retaining a journal as provided in Rev. Unif. Law on Notarial Acts (2010) § 19(a), (e), a current or former notary public may transmit the journal to the commissioning officer or agency, or the official archivist of this state, or a repository approved by the commissioning officer or agency.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 19(g), on the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal must transmit it to the commissioning officer or agency, or the official archivist of this state, or a repository approved by the commissioning officer or agency.

[END OF SUPPLEMENT]

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Footnotes

- 1 Mass.—Opinion of the Justices, 150 Mass. 586, 23 N.E. 850 (1890).
- 2 U.S.—The Gallego, 30 F. 271 (E.D. N.Y. 1887).
- 3 Mass.—Opinion of the Justices, 150 Mass. 586, 23 N.E. 850 (1890).
- 4 Mass.—Opinion of the Justices, 150 Mass. 586, 23 N.E. 850 (1890).
- 5 U.S.—Nicholls v. Webb, 21 U.S. 326, 5 L. Ed. 628, 1823 WL 2472 (1823).
- 6 U.S.—Lindenberger v. Beall, 19 U.S. 104, 5 L. Ed. 216, 1821 WL 2160 (1821).
- 7 Tenn.—Union City & Obion County Bar Ass'n v. Waddell, 30 Tenn. App. 263, 205 S.W.2d 573 (1947).
- 8 Tenn.—Union City & Obion County Bar Ass'n v. Waddell, 30 Tenn. App. 263, 205 S.W.2d 573 (1947).

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66 C.J.S. Notaries § 16

Corpus Juris Secundum December, 2019 Update
Notaries
John A. Glenn, J.D.

I. In General

§ 16. Compensation

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Notaries 357

Statutes fixing the fees of notaries must be strictly construed, and notaries' charges for official services must be limited to the prescribed fees.

Statutes fixing the fees of notaries must be strictly construed,¹ and notaries' charges for official services must be limited to the prescribed fees.² They may make further charges for unofficial services,³ but the charging of a round sum for notarial and other services together is not permissible.⁴ Under some statutes, the failure of notary publics to record their notarial acts in a notary journal precludes them from collecting notary charges.⁵ In general, a de facto notary can recover no fees.⁶

A notary is entitled to the fees fixed by statute,⁷ and no person has the right to require the notary's services for less than the amounts prescribed by statute.⁸ Unless the notarial act is required by, and done in fulfillment of, a contract against public policy, it is lawful for a notary to waive or remit a fee after it has been earned.⁹

Services carrying no fees.

A notary is not entitled to a fee for an act done for the notary by a person not duly authorized.¹⁰ A notary cannot recover statutory fees for doing unnecessary and useless acts which the notary had no occasion and was not requested to perform¹¹ or for doing notarial acts in an improper manner, such as administering an oath in a form or mode different from that required by statute.¹²

CUMULATIVE SUPPLEMENT

Cases:

Georgia notary fee statute, which set a maximum fee a notary could charge for each notarial service at \$4 and required disclosure of the fee before performing the service, did not create a private civil cause of action to recover fees that borrowers allegedly paid to mortgage lender in excess of the statutory cap. West's Ga.Code Ann. § 45-17-11. *Anthony v. American Gen. Financial Services, Inc.*, 626 F.3d 1318 (11th Cir. 2010).

[END OF SUPPLEMENT]

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Footnotes

- 1 Mo.—*Laclede Land & Improvement Co. v. Morten*, 183 Mo. App. 637, 167 S.W. 658 (1914).
- 2 N.C.—*Price & Lucas Cider & Vinegar Co. v. Carroll*, 124 N.C. 555, 32 S.E. 959 (1899).
Discretion of court
Under some statutes the fees of notaries public for making inventories under appointment of the court are to be fixed in the discretion of the court.
- 3 La.—*Perkins v. Perkins*, 426 So. 2d 239 (La. Ct. App. 1st Cir. 1983).
- 4 Ky.—*Reuscher v. Attorney General*, 30 Ky. L. Rptr. 109, 97 S.W. 397 (Ky. 1906).
- 5 La.—*Succession of Alexander*, 130 La. 7, 57 So. 534 (1912).
- 6 Mo.—*Finnegan v. Old Republic Title Co. of St. Louis, Inc.*, 246 S.W.3d 928 (Mo. 2008).
- 7 Pa.—*Black v. City of Pittsburgh*, 266 Pa. 97, 109 A. 616 (1920).
- 8 U.S.—*Pack v. U.S.*, 41 Ct. Cl. 414, 1906 WL 876 (1906).
As to de facto notaries, see § 9.
- 9 N.Y.—*Merzbach v. City of New York*, 163 N.Y. 16, 57 N.E. 96 (1900).
- 10 U.S.—*Ohio Nat. Bank of Washington v. Hopkins*, 8 App. D.C. 146, 1896 WL 14771 (App. D.C. 1896).
- 11 N.J.—*Gittleman v. City of Newark*, 132 N.J.L. 328, 40 A.2d 639 (N.J. Ct. Err. & App. 1945).
- 12 Va.—*Nelson v. Fotherall*, 34 Va. 179, 1836 WL 1739 (1836).
- Ohio—*Parrill & Boyles v. Wood, Bacon & Co.*, 2 Ohio Dec. Rep. 381, 2 West. L. Monthly 555, 1860 WL 3952 (Ohio Dist. Ct. 1860).
- N.Y.—*Bookman v. City of New York*, 200 N.Y. 53, 93 N.E. 190 (1910).

66 C.J.S. Notaries § 17

Corpus Juris Secundum December, 2019 Update
Notaries
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I. In General

§ 17. Compensation—Additional services

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Notaries 357

Although there is no express agreement concerning fees, where notarial services are performed by an employee in addition to the regular services required by his or her employment, the employee is entitled to recover the statutory fees for the notarial services.

Although there is no express agreement concerning fees, where notarial services are performed by an employee in addition to the regular services required by his or her employment, the employee is entitled to recover the statutory fees for notarial services rendered to the employer¹ or to recover fees collected by the employer for notarial services rendered to third persons.²

However, a notary may be estopped by his or her conduct to assert a claim for the fees against his or her employer,³ and acceptance of a salary as payment in full for all services rendered may waive the right to recover the fees.⁴ The mere fact that the employee turns over the fees collected as notary to a special fund as required by a rule of the employer⁵ or acquiesces in the retention of the fees in a special fund by the employer⁶ does not constitute a waiver of the fees by the employee.

An agreement by a notary to waive or to assign to his or her employer part or all of his or her fees for future notarial services in return for regular employment or a stipulated salary has been held void as against public policy⁷ at least where the agreement permits the employer to retain the fees collected from third persons.⁸

However, it has been held that the employee is not entitled to recover the statutory fees where, after the fees have been earned, the waiver or assignment has been voluntarily renewed by acceptance of the salary agreed on⁹ at least when the sum so accepted for notarial and other services is greater than the amount of fees earned,¹⁰ or where the notary's official acts were performed in the course of the services for which the notary was employed, the earnings therefore belonging to the employer.¹¹

It has, however, also been held that, where fees for notarial services have been collected by the employer, acceptance of a salary by the employee does not constitute an estoppel or a waiver of the right to the fees,¹² and where the salary is no more than a fair compensation for other work performed, it will not be allowed as a credit against the amount due for fees.¹³

Government employees.

A city ordinance which attempts to deprive a notary employed by the city of fees and to substitute a fixed salary has been held to be void as conflicting with the statute fixing notaries' fees, and a notary affected may recover the statutory fees from the city.¹⁴

An employee of the state who is also a notary may properly charge and collect, for such employee's personal use, notarial fees from persons requesting notarial acts, where the duties of his or her employment do not include notarial acts.¹⁵

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Footnotes

- 1 Ky.—Archer v. Dorman, 263 Ky. 105, 91 S.W.2d 1007 (1936).
- 2 Cal.—Bliss v. Richardson, 12 Cal. App. 2d 380, 55 P.2d 591 (3d Dist. 1936).
- 3 N.J.—Weart v. First Nat. Bank, 115 N.J.L. 128, 178 A. 758 (N.J. Ct. Err. & App. 1935).
- 4 N.J.—Gittleman v. City of Newark, 132 N.J.L. 328, 40 A.2d 639 (N.J. Ct. Err. & App. 1945).
- 5 Cal.—Bliss v. Richardson, 12 Cal. App. 2d 380, 55 P.2d 591 (3d Dist. 1936).
- 6 Cal.—Bliss v. Richardson, 12 Cal. App. 2d 380, 55 P.2d 591 (3d Dist. 1936).
- 7 U.S.—Ohio Nat. Bank of Washington v. Hopkins, 8 App. D.C. 146, 1896 WL 14771 (App. D.C. 1896).
- 8 Ill.—Pitsch v. Continental & Commercial Nat. Bank of Chicago, 305 Ill. 265, 137 N.E. 198, 25 A.L.R. 164 (1922).
- 9 N.J.—Kip v. People's Bank & Trust Co., 110 N.J.L. 178, 164 A. 253 (N.J. Ct. Err. & App. 1933).
- 10 Mo.—McNulty v. Kansas City, 201 Mo. App. 562, 198 S.W. 185 (1917).
- 11 Ky.—Second Nat. Bank v. Ferguson, 114 Ky. 516, 24 Ky. L. Rptr. 1298, 71 S.W. 429 (1903).
- 12 Mo.—Leach v. Hannibal & St. J.R. Co., 86 Mo. 27, 1885 WL 7331 (1885).
- 13 N.J.—Kip v. People's Bank & Trust Co., 110 N.J.L. 178, 164 A. 253 (N.J. Ct. Err. & App. 1933).
- 14 N.Y.—Kress v. Manufacturers Trust Co., 250 A.D. 93, 293 N.Y.S. 646 (1st Dep't 1937), judgment aff'd, 275 N.Y. 493, 11 N.E.2d 312 (1937).
- 15 N.Y.—Kress v. Manufacturers Trust Co., 250 A.D. 93, 293 N.Y.S. 646 (1st Dep't 1937), judgment aff'd, 275 N.Y. 493, 11 N.E.2d 312 (1937).
- 16 Mo.—Wood v. City of Kansas City, 162 Mo. 303, 62 S.W. 433 (1901).
- 17 Okla.—Riggs v. Leininger, 1929 OK 245, 137 Okla. 138, 278 P. 344 (1929).

66 C.J.S. Notaries II Refs.

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Notaries

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II. Functions, Powers, and Duties

Topic Summary Correlation Table

Research References

A.L.R. Library

- A.L.R. Index, Notaries Public
- West's A.L.R. Digest, Notaries 4 to 6

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66 C.J.S. Notaries § 18

Corpus Juris Secundum December, 2019 Update
Notaries
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II. Functions, Powers, and Duties

§ 18. Generally

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 232(3), 845, 865

At common law, the powers and functions of a notary are simply commercial and are confined to those which arise in the dealings of merchants, but under statutes a notary's functions and powers quite generally have a wider scope.

At common law, the powers and functions of a notary are simply commercial¹ and are confined to those which arise in the dealings of merchants,² but under statutes a notary's functions and powers quite generally have a wider scope.³ The acts of a notary falling within the rules of the law merchant are respected under the law of nations, but any acts performed by the notary beyond the purview of the law merchant must be authorized by statute.⁴

A statute defining the powers of a notary is to be construed according to its plain, natural, and practical meaning.⁵ The powers enumerated in a statute governing notaries are not the discretionary powers commonly associated with persons such as brokers, intermediaries, and attorneys.⁶ A notary acting in his or her official capacity in certifying to the subscription of an instrument acts in an incidental capacity as a witness.⁷

The acts of a notary are presumed to be performed correctly,⁸ and a notary is presumed to have carried out his or her duties as required by law.⁹

The mere employment of a notary public to perform a notarial act does not constitute the notary the agent of the person paying him or her,¹⁰ but, where a notary does an act which is no part of the notary's official function, the notary acts, not as a notary, but as the agent of the one who employs him or her,¹¹ and the principal is liable for the notary's default.¹²

A notary has the right to execute a notarial certificate at the instance of a person who has been committed as an insane person.¹³

CUMULATIVE SUPPLEMENT

Statutes:

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 4(a), a notarial officer may perform a notarial act authorized by this act or by law of this state other than this act.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 4(b), a notarial officer may not perform a notarial act with respect to a record to which the officer or the officer's spouse or civil partner is a party, or in which either of them has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 8(a), a notarial officer may refuse to perform a notarial act if the officer is not satisfied that: (1) the individual executing the record is competent or has the capacity to execute the record; or (2) the individual's signature is knowingly and voluntarily made. Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 8(b), a notarial officer may also refuse to perform a notarial act unless refusal is prohibited by law other than this act.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 26, except as otherwise provided in Rev. Unif. Law on Notarial Acts (2010) § 4(b), the failure of a notarial officer to perform a duty or meet a requirement specified in this act does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this act does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this state other than this act or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

[END OF SUPPLEMENT]

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Footnotes

- 1 Ala.—Dawsey v. Kirven, 203 Ala. 446, 83 So. 338, 7 A.L.R. 1658 (1919).
- 2 Tex.—Kumpe v. Gee, 187 S.W.2d 932 (Tex. Civ. App. Amarillo 1945).
- 3 Tex.—Kumpe v. Gee, 187 S.W.2d 932 (Tex. Civ. App. Amarillo 1945).
- 4 Tex.—Kumpe v. Gee, 187 S.W.2d 932 (Tex. Civ. App. Amarillo 1945).
- 5 Wash.—State v. Howard, 91 Wash. 481, 158 P. 104 (1916).
- 6 **Depositary**
Statute does not suggest that notary is regarded by legislature as depositary or custodian of proceeds of parties.
La.—Roth v. B & L Enterprises, Inc., 420 So. 2d 1094 (La. 1982).
- 7 N.Y.—In re Douglas' Will, 193 Misc. 623, 83 N.Y.S.2d 641 (Sur. Ct. 1948).
- 8 Tenn.—In re Marsh, 12 S.W.3d 449 (Tenn. 2000).
- 9 N.Y.—Feldman v. Feldman, 280 A.D.2d 276, 720 N.Y.S.2d 117 (1st Dep't 2001).
- 10 Okla.—Ely Walker Dry Goods Co. v. Smith, 1916 OK 907, 69 Okla. 261, 160 P. 898 (1916).
- 11 Pa.—Hamburger Bros. & Co. v. Third Nat. Bank & Trust Co. of Scranton, 333 Pa. 377, 5 A.2d 87 (1939).
Receipt of funds
Even though notary may typically be entrusted with proceeds from real estate transactions, by receiving funds, notary is acting on behalf of parties to act of sale and not in his official capacity as notary.
La.—Roth v. B & L Enterprises, Inc., 420 So. 2d 1094 (La. 1982).
- 12 N.J.—Davey v. Jones, 42 N.J.L. 28, 1880 WL 7697 (N.J. Sup. Ct. 1880).
N.Y.—Ayrault v. Pacific Bank, 47 N.Y. 570, 1872 WL 9764 (1872).

66 C.J.S. Notaries § 19


Corpus Juris Secundum December, 2019 Update
Notaries
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II. Functions, Powers, and Duties

§ 19. Authentication

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment  865

A notary, by setting the marks of his or her official sanction on certain kinds of documents, gives them the force of evidence and perpetuates as evidence the facts authenticated therein.

A notary, by setting the marks of his or her official sanction on certain kinds of documents, gives them the force of evidence¹ and perpetuates as evidence the facts authenticated therein.² A notary's certificate is prima facie evidence of such matters only as the notary is authorized by law to certify,³ and generally it is prima facie evidence of those facts only as to which the notary would be competent to testify.⁴ The probative force of notarial acts does not apply to descriptive averments contained in such acts.⁵

Self-proving certificates.

At common law, notaries' certificates, under their official seal, of marine protests and protests of foreign bills of exchange, are "self-proving," that is, they need no other authentication,⁶ but generally they are not evidence in other cases unless made so by statute.⁷

Generally, certificates of notaries as to certain matters other than marine protests and protests of foreign bills, as well as to such protests, are made evidence by statute without further authentication than the notarial seal.⁸ Under some statutes, a foreign notary must certify under seal as to his or her authority.⁹

Further authentication.

In the absence of provisions to the contrary, a foreign notary's jurat must usually be authenticated by another official.¹⁰ In accordance with the provisions of some statutes, a foreign notary's certificate must be authenticated¹¹ and, where the

authentication is not in compliance with the statute, the notarial certificate is ineffectual.¹² The omission of a proper authentication of a notary's certificate may be cured by amendment.¹³

CUMULATIVE SUPPLEMENT

Statutes:

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 5 sets forth the requirements for certain notarial acts: (a) a notarial officer who takes an acknowledgment of a record must determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual; (b) a notarial officer who takes a verification of a statement on oath or affirmation must determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual; (c) a notarial officer who witnesses or attests to a signature must determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed; (d) a notarial officer who certifies or attests a copy of a record or an item that was copied must determine that the copy is a full, true, and accurate transcription or reproduction of the record or item; and (e) a notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in U.C.C. § 3-505(b).

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 9, if an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 10(b), the signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 20(a), a notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected. As to the notification required with respect to an electronic record, see Rev. Unif. Law on Notarial Acts (2010) § 20(b).

[END OF SUPPLEMENT]

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Footnotes

- 1 La.—Succession of Tete, 7 La. Ann. 95, 1852 WL 3557 (1852).
- 2 Conn.—Barber v. International Co. of Mexico, 73 Conn. 587, 48 A. 758 (1901).
- 3 Tex.—Wood v. St. Louis Southwestern Ry. Co. of Texas, 43 Tex. Civ. App. 590, 97 S.W. 323 (1906).
- 4 Wis.—Adams v. Wright, 14 Wis. 408, 1861 WL 1595 (1861).
- 5 La.—New Orleans Typothetae v. Cox Printing & Pub. Co., 1 La. App. 28, 1923 WL 2848 (Orleans 1923).
- 6 Mass.—Opinion of the Justices, 150 Mass. 586, 23 N.E. 850 (1890).
- 7 Ill.—Trevor v. Colgate, 181 Ill. 129, 54 N.E. 909 (1899).
- 8 Ala.—Alabama Nat. Bank v. Chattanooga Door & Sash Co., 106 Ala. 663, 18 So. 74 (1895).
- 9 Ill.—Trevor v. Colgate, 181 Ill. 129, 54 N.E. 909 (1899).

§ 19. Authentication, 66 C.J.S. Notaries § 19

- 10 W.Va.—Bohn v. Zeigler, 44 W. Va. 402, 29 S.E. 983 (1898).
11 Ill.—Ferris v. Commercial Nat. Bank, 158 Ill. 237, 41 N.E. 1118 (1895).
12 N.Y.—Turtle v. Turtle, 31 A.D. 49, 52 N.Y.S. 857 (1st Dep't 1898).
13 W.Va.—Bohn v. Zeigler, 44 W. Va. 402, 29 S.E. 983 (1898).
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66 C.J.S. Notaries § 20

Corpus Juris Secundum : December, 2019 Update

Notaries

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II. Functions, Powers, and Duties

§ 20. Place in which notary may act

Topic Summary : References : Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 232(3), 845, 865

The power of a notary to perform notarial functions is limited to the jurisdiction in which the commission issued.

The power of a notary to perform notarial functions is limited to the jurisdiction in which the commission issued,¹ and an act done outside the territorial limits of the notary's jurisdiction is void.² While it has been held that a notary may act as such only within the county or other political division for which he or she is appointed,³ in accordance with statutory provisions extending the territorial area of jurisdiction, a notary may act anywhere in the state, in all or certain classes of matters,⁴ but notary cannot act beyond the limits of the state.⁵

In the absence of a showing to the contrary, a notary will generally be presumed to have acted within his or her jurisdiction,⁶ and it has been said that the court will take judicial notice of the county for which the notary was appointed,⁷ except where the statute requires the full title of the notary to be set forth.⁸ However, in a criminal prosecution for perjury before a notary, the burden is on the state to show that the notary had authority to act in the place where the perjury is charged to have been committed.⁹ In the absence of any showing to the contrary, it will be presumed that the territorial jurisdiction of a notary of a foreign state is the same as it would be under the laws of the state where it is brought into question.¹⁰

A statute regarding execution of notarial acts in the office of the notary has been held to be directory only.¹¹

CUMULATIVE SUPPLEMENT

Statutes:

§ 20. Place in which notary may act, 66 C.J.S. Notaries § 20

The signature and title of a notarial officer described in Rev. Unif. Law on Notarial Acts (2010) § 11(a)(1) or (2) (Notarial Act in Another State), or § 12(a)(1) or (2) (Notarial Act Under Authority of Federally Recognized Indian Tribe), or under federal law (Rev. Unif. Law on Notarial Acts (2010) § 13(a)) conclusively establish the authority of the officer to perform the notarial act.

The signature and title of an individual performing a notarial act in another state (Rev. Unif. Law on Notarial Acts (2010) § 11(b)), or under the authority of and in the jurisdiction of a federally recognized Indian tribe (Rev. Unif. Law on Notarial Acts (2010) § 12(b)), or under federal law (Rev. Unif. Law on Notarial Acts (2010) § 13(a)) are prima facie evidence that the signature is genuine and that the individual holds the designated title.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 14, an apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 14(b), if a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state. "foreign state" is defined by Rev. Unif. Law on Notarial Acts (2010) § 14(a) as a government other than the United States, a state, or a federally recognized Indian tribe.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 14(c), if the title of office and indication of authority to perform notarial acts in a foreign state appears in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 14(d), the signature and official stamp of an individual holding an office described in § 14(c) are prima facie evidence that the signature is genuine and the individual holds the designated title.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 14(f), a consular authentication issued by an individual designated by the United States Department of State as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

A notarial act performed in another state (Rev. Unif. Law on Notarial Acts (2010) § 20(a)), or under the authority and in the jurisdiction of a federally recognized Indian tribe (Rev. Unif. Law on Notarial Acts (2010) § 12(a)), or under federal law (Rev. Unif. Law on Notarial Acts (2010) § 13(a)) has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by: (1) a notary public of that state; (2) a judge, clerk, or deputy clerk of a court of that state; or (3) any other individual authorized by the law of that state to perform the notarial act.

[END OF SUPPLEMENT]

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Footnotes

- 1 Neb.—In re Interest of Fedalina G., 272 Neb. 314, 721 N.W.2d 638 (2006).
- 2 Neb.—Byrd v. Cochran, 39 Neb. 109, 58 N.W. 127 (1894).
- 3 Tenn.—Manis v. Farmers Bank of Sullivan County, 170 Tenn. 656, 98 S.W.2d 313 (1936).
- 4 Ga.—Southern Sec. Co. v. American Discount Co., 55 Ga. App. 736, 191 S.E. 258 (1937).
- 5 Del.—Harris v. Burton, 4 Del. 66, 4 Harr. 66, 1843 WL 421 (Super. Ct. 1843).

§ 20. Place in which notary may act, 66 C.J.S. Notaries § 20

- 6 Tex.—Garza v. Serrato, 699 S.W.2d 275 (Tex. App. San Antonio 1985), writ refused n.r.e., (Feb. 19, 1986).
Ark.—Georgia State Sav. Ass'n v. Marrs, 178 Ark. 18, 9 S.W.2d 785 (1928).
Ind.—Voigt v. Mergenthaler Linotype Co., 213 Ind. 325, 12 N.E.2d 498 (1938).
Iowa—Milligan v. Zeller, 197 Iowa 79, 196 N.W. 793 (1924).
N.Y.—Feldman v. Feldman, 280 A.D.2d 276, 720 N.Y.S.2d 117 (1st Dep't 2001).
Tenn.—Manis v. Farmers Bank of Sullivan County, 170 Tenn. 656, 98 S.W.2d 313 (1936).
7 Iowa—Black v. Minneapolis & St. L.R. Co., 122 Iowa 32, 96 N.W. 984 (1903).
8 Iowa—Greenwood v. Jenswold, 69 Iowa 53, 28 N.W. 433 (1886).
9 Ky.—Com. v. Schwieters, 122 Ky. 874, 29 Ky. L. Rptr. 417, 93 S.W. 592 (1906).
10 Mo.—Silver v. Kansas City, St. L. & C. Ry. Co., 21 Mo. App. 5, 1886 WL 5020 (1886) (overruled in part
on other grounds by, Hofheimer v. Losen, 24 Mo. App. 652, 1887 WL 1561 (1887)).
11 La.—Desonier v. Hebert, 177 So. 423 (La. Ct. App. 1st Cir. 1937).

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66 C.J.S. Notaries § 21

Corpus Juris Secundum December, 2019 Update
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II. Functions, Powers, and Duties

§ 21. Disabling interest

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 865

The general rule is that a notary cannot certify to or act in a matter in which the notary has a personal interest.

The general rule is that a notary cannot certify to or act in a matter in which the notary has a personal interest,¹ although the contrary doctrine has also been announced.² The nature of an interest which will disable a notary to act cannot be stated in any general rule but must be determined in each case from the peculiar facts and circumstances of that case.³ An important consideration is whether the notary would take a direct benefit from the act.⁴ The courts will not search for indirect and remote benefits to work disqualification, especially where the rights of third persons intervene.⁵ Where a notary has no personal interest in the transaction at the time of the notarial act, subsequent acquisition of an interest in the transaction does not destroy the validity of the notarial act.⁶

Applications of rule.

The rule that a notary cannot certify to or act in a manner in which the notary has a personal interest has been applied to invalidate the acknowledgment of a deed, mortgage, or other instrument taken before a notary who is a party thereto or beneficially interested therein.⁷ Plaintiff in an action who is also a notary is disqualified from taking the affidavit of service of notice on the defendant.⁸

Ordinarily, unless otherwise provided by statute, general employment or employment as agent or attorney in a matter gives a notary no such interest as to invalidate an official act done by the notary.⁹ The affidavits of sureties to an appeal bond may be taken by a notary who is the principal¹⁰ or a cosurety.¹¹ A notary who is an officer but not a stockholder in a corporation is not disqualified from certifying a document in its favor.¹²

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Footnotes

- 1 Mo.—State ex rel. Nelson v. Hammett, 240 Mo. App. 307, 203 S.W.2d 115 (1947).
- 2 Ky.—Sousley v. Citizens' Bank of Nepton, 168 Ky. 150, 181 S.W. 960 (1916).
- 3 Mich.—La Fromboise v. Porter, 261 Mich. 483, 246 N.W. 193 (1933).
Neb.—Horbach v. Tyrrell, 48 Neb. 514, 67 N.W. 485 (1896).
- 4 Ala.—City of Birmingham v. Simmons, 222 Ala. 111, 130 So. 896, 74 A.L.R. 766 (1930).
Mich.—La Fromboise v. Porter, 261 Mich. 483, 246 N.W. 193 (1933).
- 5 Mich.—La Fromboise v. Porter, 261 Mich. 483, 246 N.W. 193 (1933).
- 6 La.—Dreyfous v. Papalia, 143 La. 530, 78 So. 843 (1916).
- 7 N.C.—Lance v. Tainter, 137 N.C. 249, 49 S.E. 211 (1904).
- 8 Iowa—Empire Real Estate & Mortgage Co. v. Beechley, 137 Iowa 7, 114 N.W. 556 (1908).
- 9 Ala.—City of Birmingham v. Simmons, 222 Ala. 111, 130 So. 896, 74 A.L.R. 766 (1930).
- 10 Wash.—McLean v. Roller, 33 Wash. 166, 73 P. 1123 (1903).
- 11 Wash.—Spokane & I. Lumber Co. v. Loy, 21 Wash. 501, 58 P. 672 (1899).
- 12 Fla.—Florida Sav. Bank & Real-Estate Exchange v. Rivers, 36 Fla. 575, 18 So. 850 (1896).
Neb.—Horbach v. Tyrrell, 48 Neb. 514, 67 N.W. 485 (1896).

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66 C.J.S. Notaries § 22


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II. Functions, Powers, and Duties

§ 22. Particular powers and functions

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment  232(3), 845, 865

A notary has power at common law to note and extend marine protests and independently of statute, a notary may present foreign bills of exchange and protest them, but a protest of commercial paper other than a foreign bill of exchange is not a notarial act at common law.

A notary has power at common law to note and extend marine protests.¹ Independently of statute, a notary may present foreign bills of exchange and protest them,² but a protest of commercial paper other than a foreign bill of exchange is not a notarial act at common law.³

Giving notice of dishonor is not a notarial function at common law;⁴ by the law merchant, the notary to whom a bill is given for presentment may, as agent of the holder, give notice but in so doing, the notary acts unofficially.⁵ Paraphing a note is a notarial function.⁶

Extraordinary powers.

In accordance with express constitutional or statutory provisions, extraordinary powers of a judicial nature may be conferred on a notary,⁷ and a notary may be a judicial officer.⁸

It has, however, been held that, in the absence of constitutional permission, statutes conferring judicial powers on notaries are unconstitutional.⁹ Moreover, the power of a notary to punish for a contempt depends on statute and is not inherent.¹⁰

Partitions.

The functions of a notary appointed to effect a partition are purely ministerial, and the notary must simply follow the judgment which ordered the partition and regulated the manner in which it is to be made.¹¹

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Footnotes

- 1 U.S.—The Gallego, 30 F. 271 (E.D. N.Y. 1887).
Mass.—Opinion of the Justices, 150 Mass. 586, 23 N.E. 850 (1890).
- 2 U.S.—Nicholls v. Webb, 21 U.S. 326, 5 L. Ed. 628, 1823 WL 2472 (1823).
Mass.—Opinion of the Justices, 150 Mass. 586, 23 N.E. 850 (1890).
- 3 Va.—Corbin v. Planters' Nat. Bank, 87 Va. 661, 13 S.E. 98 (1891).
- 4 W.Va.—Peabody Ins. Co. v. Wilson, 29 W. Va. 528, 2 S.E. 888 (1887).
- 5 Kan.—Swayze v. Britton, 17 Kan. 625, 1877 WL 929 (1877).
- 6 La.—Harz v. Gowland, 126 La. 674, 52 So. 986 (1910).
- 7 Ala.—Douglass v. State, 117 Ala. 185, 23 So. 142 (1898).
S.C.—Wingo v. Parker, 19 S.C. 9, 1883 WL 4854 (1883).
- 8 Ala.—Carroll v. State, 58 Ala. 396, 1877 WL 1391 (1877).
- 9 Mich.—Chandler v. Nash, 5 Mich. 409, 1858 WL 2323 (1858).
- 10 Ohio—Ex parte Martin, 141 Ohio St. 87, 25 Ohio Op. 225, 47 N.E.2d 388 (1943).
- 11 La.—Sicard v. Sicard, 426 So. 2d 299 (La. Ct. App. 4th Cir. 1983), writ denied, 433 So. 2d 163 (La. 1983).

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66 C.J.S. Notaries § 23

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II. Functions, Powers, and Duties

§ 23. Particular powers and functions—Administer oaths

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment ☞ 232(3), 845, 865

The power to administer oaths is not incidental to the office of notary, and a notary has only such authority to administer an oath as is conferred on the notary by constitution or statute.

The power to administer oaths is not incidental to the office of notary, and a notary has only such authority to administer an oath as is conferred on the notary by constitution or statute.¹ Such power may be given and regulated by statute,² but a grant to notaries of general authority to administer oaths does not affect the requirements of other statutes that oaths in particular cases be administered by other specified officers,³ as by a judge in arbitration matters⁴ or insolvency proceedings,⁵ or by a postal inspector in connection with mail frauds.⁶

Where the statute provides a particular form or mode of administering an oath, the notary must comply with such provisions.⁷ General power to take affidavits has been held to authorize the administration of an oath.⁸ The authority of a foreign notary to administer oaths is not to be presumed without proof.⁹

The act of a notary in administering an oath is a ministerial act.¹⁰

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Footnotes

- 1 Me.—Collette v. Hanson, 133 Me. 146, 174 A. 466 (1934).
Tenn.—Campbell v. Brady, 158 Tenn. 98, 11 S.W.2d 687 (1928).
Tex.—Kumpe v. Gee, 187 S.W.2d 932 (Tex. Civ. App. Amarillo 1945).
- 2 U.S.—U.S. v. Cameron, 282 F. 684 (D. Ariz. 1922).

Oath of office

Notary public has authority to administer oaths, including oath of office.

Tex.—*Gaitan v. State*, 905 S.W.2d 703 (Tex. App. Houston 14th Dist. 1995), petition for discretionary review refused, (Nov. 15, 1995).

Fla.—*First Nat. Bank v. Willingham*, 36 Fla. 32, 18 So. 58 (1895).

Ohio—*State v. Jackson*, 36 Ohio St. 281, 1880 WL 97 (1880).

Cal.—*Baker v. Everhart*, 65 Cal. 27, 2 P. 495 (1884).

U.S.—*U.S. v. Law*, 50 F. 915 (W.D. Va. 1892).

N.Y.—*Bookman v. City of New York*, 200 N.Y. 53, 93 N.E. 190 (1910).

Colo.—*People v. Pollock*, 65 Colo. 275, 176 P. 329 (1918).

Ind.—*Midland Steel Co. v. Citizens' Nat. Bank of Kokomo*, 34 Ind. App. 107, 72 N.E. 290 (1904).

Ill.—*People ex rel. Village of Grayslake v. Village of Round Lake Beach*, 242 Ill. App. 3d 750, 182 Ill. Dec. 527, 609 N.E.2d 1061 (2d Dist. 1993).

Mich.—*La Fromboise v. Porter*, 261 Mich. 483, 246 N.W. 193 (1933).

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66 C.J.S. Notaries § 24


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II. Functions, Powers, and Duties

§ 24. Particular powers and functions—Acknowledgments

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment  232(3), 845, 865

The effectiveness of an acknowledgment taken by a notary depends on compliance with the statutory provisions, and an acknowledgment not in compliance is void.

The effectiveness of an acknowledgment taken by a notary depends on compliance with the statutory provisions,¹ and an acknowledgment not in compliance is void.²

The power to take an effective acknowledgment relating to real property must be granted by the law of the state or county where the property is located.³ Unless otherwise provided by statute, authority to take acknowledgments of deeds is not limited to deeds conveying land lying within the county for which the notary is commissioned but includes conveyances of land wherever situated.⁴ By statute, a state may authorize acknowledgments of instruments relating to land situated within its boundaries to be taken abroad by notaries of foreign countries⁵ or in sister states⁶ but in the absence of such authority, an acknowledgment so taken is invalid.⁷

A general authority given to notaries to take acknowledgments does not extend to the taking of such as are, by statute, expressly or impliedly required to be taken before some other officer.⁸ An acknowledgment taken before a de facto notary is good.⁹ Statutory authority to take acknowledgments has been held to include¹⁰ and not to include¹¹ the power to take proof of subscribing witnesses.

Although the taking of an acknowledgment by a notary has been held to be a judicial act,¹² as a general rule, it is held to be ministerial in character.¹³ However, particular acts have been held to be judicial, such as taking testimony to identify an acknowledging party.¹⁴

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Footnotes

- 1 Ill.—Gould v. Howe, 131 Ill. 490, 23 N.E. 602 (1890).
- 2 Ill.—Long v. Cockern, 128 Ill. 29, 21 N.E. 201 (1889).
- 3 Tex.—Birdseye v. Rogers, 26 S.W. 841 (Tex. Civ. App. 1894).
- 4 Ga.—Austin v. Southern Home Building & Loan Ass'n, 122 Ga. 439, 50 S.E. 382 (1905).
- 5 Cal.—Mott v. Smith, 16 Cal. 533, 1860 WL 987 (1860).
- 6 Neb.—Omaha Real Estate & Trust Co. v. Reiter, 47 Neb. 592, 66 N.W. 658 (1896).
- 7 Tex.—Birdseye v. Rogers, 26 S.W. 841 (Tex. Civ. App. 1894).
- 8 Ill.—Gould v. Howe, 131 Ill. 490, 23 N.E. 602 (1890).
- 9 Mo.—Wilson v. Kimmel, 109 Mo. 260, 19 S.W. 24 (1892).
- 10 Fla.—Edwards v. Thom, 25 Fla. 222, 26 Fla. 433, 5 So. 707 (1889).
- 11 Tenn.—McGuire v. Gallagher, 95 Tenn. 349, 32 S.W. 209 (1895).
- 12 Pa.—Com. v. Haines, 97 Pa. 228, 1881 WL 13754 (1881).
- 13 Mont.—Musselshell Valley Farming & Livestock Co. v. Cooley, 86 Mont. 276, 283 P. 213 (1929).
- 14 Cal.—Ex parte Carpenter, 64 Cal. 267, 30 P. 816 (1883).

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66 C.J.S. Notaries § 25

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II. Functions, Powers, and Duties

§ 25. Delegation of authority

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 843, 844

In the absence of a statute or valid custom, a notary cannot delegate the notary's official authority.

In the absence of a statute or valid custom, a notary cannot delegate the notary's official authority,¹ even to another notary,² and a notarial act cannot be performed by the notary's clerk or deputy.³ The provision of a statute⁴ or a local custom or usage⁵ may sanction acts done by a clerk, but generally authorities are against such a local custom or usage.⁶

Where the practice is shown to exist, the certificate of a notary that notarial acts were done by a duly authorized delegate is itself presumptive evidence that they were done in accordance with the law⁷ but in the absence of such statute or custom, the certificate of a notary to an act done by another is hearsay and not evidence,⁸ and the certificate is false where the notary certifies to having done an act which in fact was done by the notary's clerk.⁹ When nothing to the contrary appears, it will be presumed that the official act set forth in the certificate was performed by the notary in person¹⁰ and that it was performed correctly.¹¹

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Footnotes

- 1 Mass.—Ocean Nat. Bank v. Williams, 102 Mass. 141, 1869 WL 5701 (1869).
- 2 Mo.—Commercial Bank v. Barksdale, 36 Mo. 563, 1865 WL 2606 (1865).
- 3 N.Y.—Gawtry v. Doane, 51 N.Y. 84, 1872 WL 10096 (1872).
- 4 La.—Buckley v. Seymour, 30 La. Ann. 1341, 1878 WL 8595 (1878).
- 5 N.Y.—Commercial Bank of Kentucky v. Varnum, 49 N.Y. 269, 1872 WL 9909 (1872).
- 6 Mo.—Miltnerberger v. Spaulding, 33 Mo. 421, 1863 WL 2856 (1863).

§ 25. Delegation of authority, 66 C.J.S. Notaries § 25

- 7 Mo.—Miltenerger v. Spaulding, 33 Mo. 421, 1863 WL 2856 (1863).
- 8 Mo.—Commercial Bank v. Barksdale, 36 Mo. 563, 1865 WL 2606 (1865).
- 9 Miss.—Smith v. Gibbs, 10 Miss. 479, 2 S. & M. 479, 1844 WL 3256 (1844).
- 10 N.Y.—McAndrew v. Radway, 34 N.Y. 511, 1866 WL 5588 (1866).
- 11 Tenn.—In re Marsh, 12 S.W.3d 449 (Tenn. 2000).

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66 C.J.S. Notaries § 26

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II. Functions, Powers, and Duties

§ 26. Duties

Topic Summary | References | Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment ~~232~~(3), 845, 865

Notaries must perform their official duties with integrity, diligence, and skill.

Notaries must perform their official duties with integrity, diligence, and skill.¹ A notary's duty is not confined to the one to whom the notary directly renders service, but it extends to all persons who may be affected by his or her act.² A notary is not an insurer³ but is held to the care and diligence of a reasonably prudent person⁴ and a notary's liability, if any, must be based on negligence, willful misconduct, or corruption.⁵ It is the notary's duty to become informed of the facts to which the notary intends to certify and not to rely on hearsay.⁶ A notary's official duty does not extend beyond the limits of the place for which the notary is appointed.⁷

Bank account.

In the absence of statute, it has been held that a notary is not required to maintain a bank account in his or her official capacity and deposit therein funds received.⁸

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Footnotes

- 1 Cal.—Hungate v. Indemnity Ins. Co. of North America, 129 Cal. App. 133, 18 P.2d 64 (4th Dist. 1933).
Ky.—Aetna Casualty & Surety Co. v. Commonwealth, 233 Ky. 142, 25 S.W.2d 51 (1930).
- 2 Ky.—American Sur. Co. of New York v. Boden, 243 Ky. 805, 50 S.W.2d 10 (1932).
- 3 Ky.—Aetna Casualty & Surety Co. v. Commonwealth, 233 Ky. 142, 25 S.W.2d 51 (1930).

Validity of documents

Notary is not required to give inspection for legal flaws and guaranty validity of every document which he or she notarizes when hired only in his or her capacity as a notary and not as a drafter or guarantor of validity of such documents.

La.—Dale v. Carriere, 537 So. 2d 346 (La. Ct. App. 4th Cir. 1988), writ denied, 538 So. 2d 615 (La. 1989).

Okla.—Clapp v. Miller, 1923 OK 140, 89 Okla. 38, 213 P. 854 (1923).

As to a notary's liability based on negligence, willful misconduct, or corruption, see § 28.

Iowa—Gage v. Dubuque & P.R. Co., 11 Iowa 310, 1860 WL 380 (1860).

U.S.—U.S. v. Bixby, 9 F. 78 (D. Ind. 1881).

La.—Stork v. American Sur. Co. of New York, 109 La. 713, 33 So. 742 (1903).

As to place where notary may act, see § 20.

La.—Posey v. Habans, 9 Orleans App. 225 (La. Ct. App., Orleans 1912).

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66 C.J.S. Notaries § 27

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II. Functions, Powers, and Duties

§ 27. Duties—Certification of instruments

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 232(3), 845, 865

Duties of notaries include the duty of certifying to instruments acknowledged by parties who appear before them and in performing this duty, the notary must exercise reasonable care.

Duties of notaries include the duty of certifying to instruments acknowledged by parties who appear before them,¹ and in performing this duty the notary must exercise reasonable care.²

In certifying an acknowledgment, a notary must either have personal knowledge of the individual who makes it or be satisfied of the individual's identity by thorough precaution.³ It is not easy to give a definition of what will constitute personal knowledge,⁴ but in general the acquaintance must be of sufficient duration and intent so that the notary has reasonable grounds on which to base the recital in the certificate touching the identity of the acknowledging party,⁵ and ordinarily a mere introduction by a third person is not sufficient.⁶

If a stranger is introduced by a respectable person, it is generally safe to assume that he or she is what he or she professes to be, but it is obvious that a notary who assumes any such fact does so at his or her own risk.⁷ However, it has been said as a matter of law that, if the introduction proceeds from a person in whom the notary has full confidence, it actually conveys knowledge to the notary's conscience and the notary may properly give the certificate.⁸

The statutes may provide a means by which the notary shall may be assured of the identity of parties, where the notary does not have personal knowledge⁹ and, if the notary in good faith complies therewith and takes all precautions, it would seem that the notary would be relieved of liability, even though the party proves to be an imposter.¹⁰ In case of doubt as to the identity of a party whose name appears on an instrument acknowledged before a notary, the presumption is that the notary complied with the provisions of the law relative to being satisfied of the party's identity.¹¹

Where the instrument contains a description of the person, it is the notary's duty to identify the person by that description as far as it goes.¹² A notary is not required to nor does a notary certify that the person who signs an instrument is the owner of the land or property therein described.¹³

CUMULATIVE SUPPLEMENT

Statutes:

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 6, if a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 7(a), a notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 7(b), a notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual: (1) by means of: (A) a passport, driver's license, or government issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act; or (B) another form of government identification issued to an individual, which is current or expired not more than three years before performance of the notarial act, contains the signature or a photograph of the individual, and is satisfactory to the officer; or (2) by a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver's license, or government issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act.

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 7(c), a notarial officer may require an individual to provide additional information or identification credentials necessary to assure the officer of the identity of the individual.

[END OF SUPPLEMENT]

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Footnotes

- 1 Cal.—Thomas v. Speck, 47 Cal. App. 2d 512, 118 P.2d 365 (2d Dist. 1941).
- 2 Ariz.—City Consumer Services, Inc. v. Metcalf, 161 Ariz. 1, 775 P.2d 1065 (1989).
Wash.—Ehlers v. United States Fidelity & Guar. Co., 87 Wash. 662, 152 P. 518 (1915).
- 3 Ariz.—City Consumer Services, Inc. v. Metcalf, 161 Ariz. 1, 775 P.2d 1065 (1989).
N.J.—In re H___ C___, Jr., 81 N.J. Eq. 8, 85 A. 336 (Ch. 1912).
A.L.R. Library
Admissibility, in action against notary public, of evidence as to usual business practice of notary public of identifying person seeking certificate of acknowledgment, 59 A.L.R.3d 1327.
- 4 Mo.—State, to Use of Kleinsorge v. Meyer, 2 Mo. App. 413, 1876 WL 9506 (1876).
- 5 Kan.—Bellport v. Harkins, 104 Kan. 543, 180 P. 220 (1919).
- 6 Okla.—State Nat. Bank v. Mee, 1913 OK 672, 39 Okla. 775, 136 P. 758 (1913).
- 7 Mo.—State ex rel. and to use of Dominick v. Farmer, 201 S.W. 955 (Mo. Ct. App. 1918).
- 8 N.J.—In re H___ C___, Jr., 81 N.J. Eq. 8, 85 A. 336 (Ch. 1912).
- 9 Cal.—Anderson v. Aronsohn, 181 Cal. 294, 184 P. 12, 10 A.L.R. 866 (1919).

§ 27. Duties—Certification of instruments, 66 C.J.S. Notaries § 27

- 10 Cal.—Anderson v. Aronsohn, 181 Cal. 294, 184 P. 12, 10 A.L.R. 866 (1919).
11 N.Y.—Kelly v. Kelly, 116 Misc. 195, 189 N.Y.S. 804 (Sup 1921).
12 Mo.—State ex rel. Mackey v. Thompson, 81 Mo. App. 549, 1899 WL 1774 (1899).
13 Cal.—Ross v. New Amsterdam Cas. Co., 56 Cal. App. 254, 205 P. 43 (1st Dist. 1922).

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66 C.J.S. Notaries III Refs.

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III. Liabilities

Topic Summary Correlation Table

Research References

A.L.R. Library

- A.L.R. Index, Notaries Public
- West's A.L.R. Digest, Notaries 10, 11

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66 C.J.S. Notaries § 28

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III. Liabilities

§ 28. Civil liability

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 914, 971

Generally, a notary who has been guilty of negligence or misconduct in the performance of the notary's official duties may be held liable to persons damaged.

Generally, a notary who has been guilty of negligence or misconduct in the performance of the notary's official duties may be held liable to persons damaged thereby,¹ and recovery may be had on the official bond of the notary,² but the notary may not be held liable where there was no injury³ or where the notary's wrongful or negligent act was not the proximate cause,⁴ or the cause in fact,⁵ of the damage suffered.

A notary is not an insurer⁶ and, if the notary is to be held liable, it must be on the ground of negligence, willful misconduct, or corruption.⁷ A notary is not liable for a mere mistake of law where the statutory provisions are vague and the notary has exercised due diligence to ascertain what the law is.⁸

CUMULATIVE SUPPLEMENT

Statutes:

Pursuant to the Rev. Unif. Law on Notarial Acts (2010) § 21(f), the commission as a notary public does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees.

Cases:

Notary public did not commit notarial misconduct in connection with real estate transaction that mortgagor alleged did not reflect terms of her oral agreement and resulted in her son's name fraudulently being added to deed and other closing documents, since mortgagor's statements, that she remembered signing only two of four closing documents and that her son did not sign or initial mortgage at closing, were insufficient to overcome presumption of due execution, acknowledgement was verification of fact of execution, not of contents of any document, and notary public did not have duty to ascertain whether mortgagor's signature was willingly and knowingly made or to halt closing. McKinney's Executive Law § 135. Jennings-Purnell v. Donner, 149 A.D.3d 499, 52 N.Y.S.3d 98 (1st Dep't 2017).

[END OF SUPPLEMENT]

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Footnotes

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La.—Collins v. Collins, 629 So. 2d 1274 (La. Ct. App. 5th Cir. 1993), writ denied, 635 So. 2d 1110 (La. 1994).

N.Y.—Marine Midland Bank, N.A. v. Stanton, 147 Misc. 2d 426, 556 N.Y.S.2d 815 (Sup 1990).

Ohio—Erie County United Bank v. Berk, 73 Ohio App. 314, 28 Ohio Op. 500, 56 N.E.2d 285 (6th Dist. Erie County 1943).

Pa.—Com., to Use of Miller, v. Doak, 352 Pa. 380, 42 A.2d 826 (1945).

Official misconduct defined

Official misconduct means wrongful exercise of power or wrongful performance of duty, with term "wrongful" meaning unauthorized, unlawful, abusive, negligent, reckless, or injurious.

W.Va.—Galloway v. Cinello, 188 W. Va. 266, 423 S.E.2d 875 (1992).

Statutory violation

The notary public statute can be violated negligently.

Ill.—Shelter Management XIX v. Much Shelist Freed Denenberg and Ament P.C., 303 Ill. App. 3d 1067, 237 Ill. Dec. 337, 709 N.E.2d 592 (1st Dist. 1998), as modified on denial of reh'g, (Apr. 16, 1999).

Negligent notarization of deed

Notary's negligence by notarizing deed harmed grantor by allowing the deed to be recorded fraudulently conveying his interest to tenant in common.

Cal.—Azouri v. Nayrouz, 2003 WL 21290905 (Cal. App. 2d Dist. 2003), unpublished/noncitatable, (June 5, 2003).

A.L.R. Library

Plaintiff's diligence as affecting his right to have defendant estopped from pleading the statute of limitations, 44 A.L.R.3d 760.

2

As to recovery on official bond, see § 30.

3

N.Y.—Laing v. Cantor, 1 A.D.3d 406, 769 N.Y.S.2d 541 (2d Dep't 2003).

4

Cal.—Kirk Corp. v. First American Title Co., 220 Cal. App. 3d 785, 270 Cal. Rptr. 24 (3d Dist. 1990).

Ind.—Beneficial Mortg. Co. of Indiana v. Powers, 550 N.E.2d 793 (Ind. Ct. App. 1990).

Miss.—Gulledge v. Shaw, 880 So. 2d 288 (Miss. 2004).

Mo.—Means v. Clardy, 791 S.W.2d 433 (Mo. Ct. App. W.D. 1990).

N.Y.—Amodei v. New York State Chiropractic Ass'n, 160 A.D.2d 279, 553 N.Y.S.2d 713 (1st Dep't 1990), order aff'd, 77 N.Y.2d 891, 568 N.Y.S.2d 900, 571 N.E.2d 70 (1991) and order aff'd, 77 N.Y.2d 890, 568 N.Y.S.2d 909, 571 N.E.2d 79 (1991).

W.Va.—Galloway v. Cinello, 188 W. Va. 266, 423 S.E.2d 875 (1992).

5

La.—Naquin v. Robert, 559 So. 2d 18 (La. Ct. App. 4th Cir. 1990), writ denied, 561 So. 2d 118 (La. 1990).

6

U.S.—Villanueva v. Brown, 103 F.3d 1128 (3d Cir. 1997).

7

U.S.—Villanueva v. Brown, 103 F.3d 1128 (3d Cir. 1997).

Iowa—Atlas Sec. Co. v. O'Donnell, 210 Iowa 810, 232 N.W. 121 (1930).

La.—Sunseri v. Eureka Homestead Soc., 179 So. 89 (La. Ct. App., Orleans 1938).

66 C.J.S. Notaries § 29

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III. Liabilities

§ 29. Civil liability—Statutes of limitation

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 914, 971

Where actions against notaries are subject to special statutes of limitation, a general statute of limitations is not applicable.

Actions against notaries as such or as public officers, are often subject to special statutes of limitation,¹ in which case a general statute of limitations is not applicable.²

Absent a special statute of limitations, the applicable prescriptive period for an action based on a notary's negligence is the prescriptive period for tort actions,³ and the applicable period for an action based on a notary's breach of an express warranty of result is the prescriptive period for actions on contracts.⁴

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Footnotes

- 1 Mo.—State ex rel. State Life Ins. Co. v. Faucett, 163 S.W.2d 592 (Mo. 1942).
- 2 Mo.—State ex rel. State Life Ins. Co. v. Faucett, 163 S.W.2d 592 (Mo. 1942).
- 3 La.—Succession of LaSalle v. Clark, 503 So. 2d 694 (La. Ct. App. 3d Cir. 1987), writ denied, 505 So. 2d 1146 (La. 1987).
Obligation to record sale
Applicable prescriptive period for notary's breach of legal obligation to record act of sale is one year.
La.—Anderson v. Hinrichs, 457 So. 2d 225 (La. Ct. App. 4th Cir. 1984), writ denied, 462 So. 2d 192 (La. 1984) and writ denied, 462 So. 2d 196 (La. 1984).
Negligence per se claim

Lenders' negligence per se claim against notaries public and notaries' employer, an investment company, for improperly notarizing their signatures on documents for loans that went into default, was governed by three-year statute of limitations applicable to actions upon a liability created by statute rather than by two-year statute of limitations applicable to actions upon a statute for a penalty.

Nev.—Torrealba v. Kesmetis, 178 P.3d 716 (Nev. 2008).

4

Promise to procure title insurance

La.—Anderson v. Hinrichs, 457 So. 2d 225 (La. Ct. App. 4th Cir. 1984), writ denied, 462 So. 2d 192 (La. 1984) and writ denied, 462 So. 2d 196 (La. 1984).

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66 C.J.S. Notaries § 30

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Notaries

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III. Liabilities

§ 30. Civil liability—On official bond

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 1021, 1023, 1024

Where a notary is required by statute to give a bond with sureties for the performance of the notary's official duties, the notary and the sureties will be liable to an action for any breach of the conditions of the bond, provided that such breach is a proximate cause of a loss or injury.

Where a notary is required by statute to give a bond with sureties for the performance of the notary's official duties, the notary and the sureties will be liable to an action for any breach of the conditions of the bond,¹ provided that such breach is a proximate cause of a loss or injury,² although it need not be the sole cause.³

The rule has been applied in the case of a defective⁴ or false certificate⁵ of acknowledgment; an acknowledgment, paraph, or jurat to an instrument forged by the notary⁶ or known by the notary to be forged;⁷ negligence in failing to identify an acknowledging party;⁸ and other acts of commission or omission.⁹ Under a bond conditioned that the notary shall "well and faithfully" discharge and perform the notary's official duties, not only good faith but also by the word "well," competency is required, for lack of which the notary and the sureties are liable;¹⁰ but, under a statute which renders liable a notary who knowingly misstates a material fact, mere negligence will not sustain a recovery.¹¹

It has been held that the rule does not apply where the official act complained of is a judicial one,¹² although even in the latter case, recovery has been sustained under general statutory provisions making notaries and their sureties liable for the former's "official misconduct or neglect."¹³

A notary has been held not liable on the bond for taking an affidavit where the notary knew that the affiant was swearing to falsehoods;¹⁴ nor is the notary so liable for properly taking the acknowledgment to a deed of a grantor who impersonated the owner of the land therein described.¹⁵

The obligation of the sureties on the bond is to be strictly construed.¹⁶ The bond does not cover acts or omissions which are not a part of the notary's official duty and in which the notary is merely the agent of the party employing him or her¹⁷ or acts only in an individual and private capacity.¹⁸ The fact that a notary is regularly employed does not deprive the notary of his or her official character or render the notary merely an agent of his or her employer so as to release the sureties on an official bond.¹⁹

A surety on a joint and several bond may be sued for a breach of its conditions without a prior adjudication against the principal,²⁰ nor need the principal be joined as a defendant in the action,²¹ at least where the principal is insolvent and action against the principal would be futile.²² A surety is not released from liability by the fact that the official bond signed by the sureties was joint only, instead of joint and several as required by the statute.²³

Persons entitled to recover.

As a general rule, sometimes by reason of express statutory provisions, anyone proximately or directly injured by a notary's official negligence or misconduct may recover on the notary's bond,²⁴ although he or she may not be a party to the instrument bearing the wrongful certificate.²⁵ The bond protects at least all persons who employ the notary officially.²⁶

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Footnotes

- 1 Cal.—Hemet Home Builders Ass'n v. Wells, 3 Cal. App. 2d 65, 39 P.2d 233 (4th Dist. 1934).
La.—Caruso v. Fidelity & Deposit Co. of Maryland, 199 So. 532 (La. Ct. App., Orleans 1941).
Mo.—State ex rel. Park Nat. Bank v. Globe Indem. Co., 332 Mo. 1089, 61 S.W.2d 733 (1933).
Pa.—Com., to Use of Miller, v. Doak, 352 Pa. 380, 42 A.2d 826 (1945).
A.L.R. Library
Plaintiff's diligence as affecting his right to have defendant estopped from pleading the statute of limitations, 44 A.L.R.3d 760.
- 2 U.S.—Davis v. Adoption Auto, Inc., 731 F. Supp. 1475 (D. Kan. 1990).
Mo.—Means v. Clardy, 791 S.W.2d 433 (Mo. Ct. App. W.D. 1990).
Pa.—Com., to Use of Ulshofer, v. Turner, 340 Pa. 468, 17 A.2d 352 (1941).
Wis.—Governor of Wisconsin ex rel. Kadin v. Bristol, 229 Wis. 95, 281 N.W. 686 (1938).
- 3 Ala.—Fogleman v. National Surety Co., 222 Ala. 265, 132 So. 317 (1931).
Ky.—Aetna Casualty & Surety Co. v. Commonwealth, 233 Ky. 142, 25 S.W.2d 51 (1930).
Ohio—Erie County United Bank v. Berk, 73 Ohio App. 314, 28 Ohio Op. 500, 56 N.E.2d 285 (6th Dist. Erie County 1943).
- 4 Cal.—Fogarty v. Finlay, 10 Cal. 239, 1858 WL 904 (1858).
- 5 Cal.—Hemet Home Builders Ass'n v. Wells, 3 Cal. App. 2d 65, 39 P.2d 233 (4th Dist. 1934).
Ky.—Aetna Casualty & Surety Co. v. Commonwealth, 233 Ky. 142, 25 S.W.2d 51 (1930).
Mo.—State ex rel. Park Nat. Bank v. Globe Indem. Co., 332 Mo. 1089, 61 S.W.2d 733 (1933).
Tenn.—State ex rel. First Trust & Sav. Bank v. Easley, 176 Tenn. 185, 140 S.W.2d 149 (1940).
- 6 Cal.—California Pacific Title & Trust Co. v. MacArthur, 1 Cal. App. 2d 323, 36 P.2d 413 (1st Dist. 1934).
- 7 Mo.—State ex rel. Nelson v. Hammett, 240 Mo. App. 307, 203 S.W.2d 115 (1947).
- 8 Neb.—Harrington v. Vogle, 103 Neb. 677, 173 N.W. 699 (1919).
A.L.R. Library
Admissibility, in action against notary public, of evidence as to usual business practice of notary public of identifying person seeking certificate of acknowledgment, 59 A.L.R.3d 1327.
- 9 La.—Stork v. American Sur. Co. of New York, 109 La. 713, 33 So. 742 (1903).

- 10 La.—Weintz v. Kramer, 44 La. Ann. 35, 10 So. 416 (1892).
11 Iowa—Browne v. Dolan, 68 Iowa 645, 27 N.W. 795 (1886).
12 Pa.—Com. v. Haines, 97 Pa. 228, 1881 WL 13754 (1881).
13 Cal.—Joost v. Craig, 131 Cal. 504, 63 P. 840 (1901).
14 Wash.—Saevoeff v. Steffen, 123 Wash. 225, 212 P. 158, 31 A.L.R. 918 (1923).
15 Cal.—Overacre v. Blake, 82 Cal. 77, 22 P. 979 (1889).
16 Pa.—Com., to Use of Ulshofer, v. Turner, 340 Pa. 468, 17 A.2d 352 (1941).
17 Ky.—Aetna Casualty & Surety Co. v. Commonwealth, 233 Ky. 142, 25 S.W.2d 51 (1930).
18 Mo.—State ex rel. Nelson v. Hammett, 240 Mo. App. 307, 203 S.W.2d 115 (1947).
Pa.—Com., to Use of Ulshofer, v. Turner, 340 Pa. 468, 17 A.2d 352 (1941).
19 La.—Lacour v. National Sur. Co., 147 La. 586, 85 So. 600, 18 A.L.R. 1295 (1920).
20 Mich.—People to Use of Doran v. Butler, 74 Mich. 643, 42 N.W. 273 (1889).
21 Mich.—People to Use of Doran v. Butler, 74 Mich. 643, 42 N.W. 273 (1889).
22 Mo.—State ex rel. Meinholtz v. American Surety Co. of New York, 254 S.W. 561 (Mo. Ct. App. 1923).
23 Cal.—Tevis v. Randall, 6 Cal. 632, 1856 WL 883 (1856).
24 Ky.—American Sur. Co. of New York v. Boden, 243 Ky. 805, 50 S.W.2d 10 (1932).
Mo.—State ex rel. Park Nat. Bank v. Globe Indem. Co., 29 S.W.2d 743 (Mo. Ct. App. 1930), aff'd, 332 Mo.
1089, 61 S.W.2d 733 (1933).
Tenn.—State ex rel. First Trust & Sav. Bank v. Easley, 176 Tenn. 185, 140 S.W.2d 149 (1940).
25 Tex.—Brittain v. Monsur, 195 S.W. 911 (Tex. Civ. App. Beaumont 1917), writ dismissed, (Jan. 23, 1918).
26 Ky.—Aetna Casualty & Surety Co. v. Commonwealth, 233 Ky. 142, 25 S.W.2d 51 (1930).

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66 C.J.S. Notaries § 31

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III. Liabilities

§ 31. Civil liability—Pleading, evidence, and trial

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment—914, 971, 1021, 1023, 1024

Rules of pleading, evidence, and trial which are applicable in civil actions generally apply in an action against a notary or a notary's sureties.

In accordance with rules of pleading applicable in civil actions, generally, in an action against a notary or a notary's sureties, plaintiff's petition or complaint must contain allegations of all the essential elements of the cause of action,¹ such as allegations of the notary's violation of an official duty,² and of the existence of loss or damage proximately caused by the notary's misconduct.³ Amendment of pleadings may be permitted.⁴

Plaintiff has the burden of proving the damages sustained,⁵ and a plaintiff who seeks to recover attorney's fees as an element of damages must show the value of the services and the necessity for the employment of the attorney.⁶ In an action founded on failure to identify parties acknowledging a conveyance, it must be proved who the real owners of the property are and that they did not sign the instrument.⁷ Where the evidence shows that the instrument is false and the certificate untrue, the burden is shifted to the notary to establish its verity⁸ or to show that the notary used reasonable care and skill in making the certificate.⁹

As against the sureties, the burden is on plaintiff to show that the wrong was committed or the loss occurred while they were sureties¹⁰ and that the act of the notary which caused the loss was official misconduct within the terms of the bond.¹¹

Rules of evidence applicable in civil actions generally apply in an action against a notary or a notary's sureties with respect to the admissibility¹² and weight and sufficiency¹³ of the evidence.

In accordance with the rules applicable in the trial of civil action, generally, questions of fact on which the evidence is conflicting are to be determined by the jury.¹⁴

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Footnotes

- 1 La.—Caruso v. Fidelity & Deposit Co. of Maryland, 199 So. 532 (La. Ct. App., Orleans 1941).
Wis.—Governor of Wisconsin ex rel. Kadin v. Bristol, 229 Wis. 95, 281 N.W. 686 (1938).
- 2 Mo.—State ex rel. Zuber v. Hunter, 46 S.W.2d 216 (Mo. Ct. App. 1932).
- 3 Cal.—MacBride v. Schoen, 121 Cal. App. 321, 8 P.2d 888 (4th Dist. 1932).
Wis.—Governor of Wisconsin ex rel. Kadin v. Bristol, 229 Wis. 95, 281 N.W. 686 (1938).
- 4 Mo.—State ex rel. State Life Ins. Co. v. Faucett, 163 S.W.2d 592 (Mo. 1942).
- 5 Mo.—State ex rel. Sappington v. American Sur. Co. of New York, 41 S.W.2d 966 (Mo. Ct. App. 1931).
- 6 Mo.—State ex rel. Sappington v. American Sur. Co. of New York, 41 S.W.2d 966 (Mo. Ct. App. 1931).
- 7 Wash.—Ehlers v. United States Fidelity & Guar. Co., 87 Wash. 662, 152 P. 518 (1915).
- 8 Cal.—Luttrell v. Columbia Cas. Co., 136 Cal. App. 513, 28 P.2d 1067 (1st Dist. 1934).
- 9 Cal.—Kleinpeter v. Castro, 11 Cal. App. 83, 103 P. 1090 (2d Dist. 1909).
- 10 La.—Spiro v. Connor, 7 Orleans App. 320 (La. Ct. App., Orleans 1910).
- 11 Pa.—Com., to Use of Ulshofer, v. Turner, 340 Pa. 468, 17 A.2d 352 (1941).
- 12 Tex.—Standard Accident Ins. Co. v. State, 57 S.W.2d 191 (Tex. Civ. App. Fort Worth 1933), writ dismissed and (disapproved of on other grounds by, Gulf Coast Inv. Corp. v. Lawyers Sur. Corp., 416 S.W.2d 779 (Tex. 1967)).
- 13 Cal.—Luttrell v. Columbia Cas. Co., 136 Cal. App. 513, 28 P.2d 1067 (1st Dist. 1934).
Forged signature
Trial record supported jury's conclusion that notary was negligent in executing the certificate of acknowledgment on quitclaim deed of joint tenancy property on which wife's signature was forged, where the only evidence notary possessed was stranger who purportedly signed deed was the wife was the husband's introduction of the stranger as his wife, husband and notary were only casual acquaintances, and notary did not bother to ask the purported wife for either identification or an acknowledgment of her signature.
Ariz.—City Consumer Services, Inc. v. Metcalf, 161 Ariz. 1, 775 P.2d 1065 (1989).
- 14 Ariz.—Means v. Clardy, 735 S.W.2d 6, 5 U.C.C. Rep. Serv. 2d 119 (Mo. Ct. App. W.D. 1987).

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66 C.J.S. Notaries § 32

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III. Liabilities

§ 32. Civil liability—Damages

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 914, 971, 1021, 1023, 1024

The measure of damages in an action against a notary or a notary's sureties is the loss proximately caused by the notary's wrongful act or omission.

The measure of damages in an action against a notary or a notary's sureties is the loss proximately caused by the notary's wrongful act or omission,¹ in some cases including interest from the date of the wrong or injury.² A notary's liability for damages includes noneconomic as well as economic damages.³

The bond is generally considered to be one of indemnity only,⁴ and there can be no recovery of substantial damages without a showing of actual injury,⁵ but it has been held that nominal damages are recoverable for any false or wrongful act of a notary, by anyone who had employed the notary officially, even when no actual pecuniary loss resulted,⁶ although on this point there is authority to the contrary.⁷

In order to show a substantial injury, a plaintiff must show that he or she has exhausted the remedy, if any, on the instrument bearing the false or wrongful certificate and that a loss still remains,⁸ but the plaintiff is not required to go beyond the remedies on the instrument and to sue other parties on the grounds of fraud.⁹

Costs.

In a successful action against a surety on a bond, the surety may be properly subjected to costs in addition to the amount of the bond.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Under the notary statute, a notary public, whose inherent function is to serve as an unprejudiced witness, must satisfy himself of the truth of a signer's identity; the specific manner in which the notary should do so is left to the notary, but the statute establishes that a notary who does so in a negligent or reckless manner has committed official misconduct and is liable for any damages so caused. S.H.A. 5 ILCS 312/7-104. *Hatchett v. W2X, Inc.*, 2013 IL App (1st) 121758, 373 Ill. Dec. 385, 993 N.E.2d 944 (App. Ct. 1st Dist. 2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 Iowa—Atlas Sec. Co. v. O'Donnell, 210 Iowa 810, 232 N.W. 121 (1930).
La.—Howard v. Wicker, 653 So. 2d 845 (La. Ct. App. 1st Cir. 1995).
Mass.—Strother v. Shain, 322 Mass. 435, 78 N.E.2d 495 (1948).
Mo.—State ex rel. and to Use of Wilkinson v. Central Sur. & Ins. Corp., 232 Mo. App. 748, 112 S.W.2d 607 (1937).
Return of purchase price
Notary who failed to obtain necessary tax certificate, thus breaching duty owed property purchaser, was liable only for return of purchase price rather than value of lost property as of date when purchaser learned of loss from tax sale.
La.—Jackson Title Corp. v. Swayne, 411 So. 2d 690 (La. Ct. App. 4th Cir. 1982).
- 2 **A.L.R. Library**
Measure of damages for false or incomplete certificate by notary public, 13 A.L.R.3d 1039.
- 3 Cal.—Hemet Home Builders Ass'n v. Wells, 3 Cal. App. 2d 65, 39 P.2d 233 (4th Dist. 1934).
- 4 Cal.—McComber v. Wells, 72 Cal. App. 4th 512, 85 Cal. Rptr. 2d 376 (4th Dist. 1999).
- 5 Iowa—Atlas Sec. Co. v. O'Donnell, 210 Iowa 810, 232 N.W. 121 (1930).
Mo.—State ex rel. and to Use of Wilkinson v. Central Sur. & Ins. Corp., 232 Mo. App. 748, 112 S.W.2d 607 (1937).
- 6 Mo.—State ex rel. and to Use of Wilkinson v. Central Sur. & Ins. Corp., 232 Mo. App. 748, 112 S.W.2d 607 (1937).
- 7 Mo.—State ex rel. Park Nat. Bank v. Globe Indem. Co., 29 S.W.2d 743 (Mo. Ct. App. 1930), aff'd, 332 Mo. 1089, 61 S.W.2d 733 (1933).
- 8 Cal.—McAllister v. Clement, 75 Cal. 182, 16 P. 775 (1888).
- 9 La.—Citizens' Bank & Trust Co. v. Walker, 9 La. App. 143, 119 So. 487 (2d Cir. 1926).
Mo.—State ex rel. Mackey v. Thompson, 81 Mo. App. 549, 1899 WL 1774 (1899).
- 10 Mo.—State ex rel. and to Use of Schaefer v. Korte, 13 S.W.2d 558 (Mo. Ct. App. 1929).
Status as litigant
Surety which executed official bond for notary could be subjected to costs for notary's negligence in addition to amount of bond based on surety's status as party litigant and not for breach of condition of bond.
Cal.—Harris v. Northwestern National Ins. Co., 6 Cal. App. 4th 1061, 8 Cal. Rptr. 2d 234 (2d Dist. 1992).

66 C.J.S. Notaries § 33

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III. Liabilities

§ 33. Criminal responsibility

Topic Summary : References : Correlation Table

West's Key Number Digest

- West's Key Number Digest, Public Employment 914, 971

In accordance with provisions of penal or criminal statutes relating to the office of notary, a notary may be punishable for misconduct in the performance of notarial functions or duties.

In accordance with provisions of penal or criminal statutes relating to the office of notary or to public officers, generally, a notary may be punishable for misconduct in the performance of notarial functions or duties.¹ Under various statutes, penalties are provided for making a false act,² a false certificate,³ or a false statement in a certificate.⁴ Similarly, penalties may be provided for false acknowledgment of a signature,⁵ for false assumption of office,⁶ for usurpation of office,⁷ for charging exorbitant fees,⁸ or for malpractice in office generally.⁹

In a prosecution for falsely pretending to be a notary, good faith is a defense, without regard to the reasonableness of the belief of authority.¹⁰ It has been held that two statutes, the one imposing a fine for breach of official duty, the other providing for the suspension of a notary for just cause, do not conflict, and the notary may be punished under either or both.¹¹

The general rules governing instructions in criminal prosecutions are applicable to prosecutions for offenses relating to notaries.¹²

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Footnotes

- 1 N.Y.—Albany County Sav. Bank v. McCarty, 149 N.Y. 71, 43 N.E. 427 (1896).
Tex.—Wise v. Cain, 212 S.W.2d 880 (Tex. Civ. App. Austin 1948), writ refused n.r.e..
Wis.—Maxwell v. Hartman, 50 Wis. 660, 8 N.W. 103 (1881).

- 2 La.—Succession of Tete, 7 La. Ann. 95, 1852 WL 3557 (1852).
3 N.Y.—Albany County Sav. Bank v. McCarty, 149 N.Y. 71, 43 N.E. 427 (1896).
4 Ky.—Mulholland v. Samuels, 71 Ky. 63, 8 Bush 63, 1871 WL 6590 (1871).
5 Fla.—Randall v. State, 491 So. 2d 1256 (Fla. Dist. Ct. App. 3d Dist. 1986).
6 Tex.—Brown v. State, 43 Tex. 478, 1875 WL 7577 (1875).
7 Ky.—Palmer v. Com., 122 Ky. 693, 29 Ky. L. Rptr. 219, 92 S.W. 588 (1906).
8 Ga.—Oliveira v. State, 45 Ga. 555, 1872 WL 2625 (1872).
9 Ga.—Lynes v. State, 46 Ga. 208, 1872 WL 2673 (1872).
10 Tex.—Brown v. State, 43 Tex. 478, 1875 WL 7577 (1875).
11 La.—State v. Laresche, 28 La. Ann. 26, 1876 WL 8824 (1876).

12 **Intent**

Trial court's instruction on intent requirement for false taking or receiving acknowledgment of signature by a notary public that defendant was required to have known that signature he had acknowledged was false, adequately covered intent issue, and defendant was not entitled to requested special instruction regarding specific intent.

Fla.—Randall v. State, 491 So. 2d 1256 (Fla. Dist. Ct. App. 3d Dist. 1986).

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