

By His Excellency

MITT ROMNEY
GOVERNOR

REVISED EXECUTIVE ORDER NO. 455 (04-04)

STANDARDS OF CONDUCT FOR NOTARIES PUBLIC

WHEREAS, notaries public promote, serve, and protect the public interest by acting as independent witnesses in a variety of situations;

WHEREAS, notaries public currently lack specific guidance as to the nature and scope of their duties;

WHEREAS, it is important to foster ethical conduct among notaries public;

NOW, THEREFORE, I, Mitt Romney, Governor of the Commonwealth, by virtue of the authority vested in me as Supreme Executive Magistrate, Part 2, c. 2, § I, Art. I, do hereby order as follows:

Section 1: Applicability.

(a) This executive order shall apply to all notaries public, including notaries public who received their commission before the effective date of this executive order. These standards will be considered by the Governor in the selection, appointment, reappointment and removal of notaries public from their commissions.

(b) All notaries public shall comply with this Executive Order by May 15, 2004.

(c) Nothing in this Executive Order supercedes the provisions of any court rule, including court forms, Massachusetts General Law, including but not limited to, chapter 183, section 42 or the forms set forth in the appendix thereto, or chapter 192, section 2, any Federal statute, or any regulation adopted pursuant to a Massachusetts or Federal statute.

(d) The provisions of this Executive Order shall not apply to the Massachusetts National Guard or other Reserve Component Commands when conducting mobilization exercises and Soldier Readiness Processing.

Section 2: Definitions.

As used in this executive order and set forth in bold for ease of reference, the following words shall have the following meanings:

"Acknowledgment" shall mean a notarial act in which an individual, at a single time and place:

- (a) appears in person before the notary public and presents a document;
- (b) is identified by the notary public through satisfactory evidence of identity; and
- (c) indicates to the notary public that the signature on the document was voluntarily affixed by the individual for the purposes stated within the document and, if applicable, that the individual had authority to sign in a particular representative capacity.

"Affirmation" shall mean a notarial act, or part thereof, that is legally equivalent to an oath in which an individual, at a single time and place:

- (a) appears in person before the notary public;
- (b) is identified by the notary public through satisfactory evidence of identity; and
- (c) makes a vow of truthfulness or fidelity under the pains and penalties of perjury without invoking a deity.

"Copy certification" shall mean a notarial act in which a notary public:

- (a) is presented with a document;
- (b) copies or supervises the copying of the document using a photographic or electronic copying process;
- (c) compares the document to the copy; and
- (d) determines that the copy is accurate and complete.

"Credible witness" means an honest, reliable, and impartial person who personally knows an individual appearing before a notary and takes an oath or affirmation from the notary to vouch for that individual's identity.

"**Journal of notarial acts**" or "**journal**" shall mean a permanently bound book that creates and preserves a chronological record of notarizations performed by a notary public.

"**Jurat**" means a notarial act in which an individual, at a single time and place:

- (a) appears in person before the notary public and presents a document;
- (b) is identified by the notary public through satisfactory evidence of identity;
- (c) signs the document in the presence of the notary public; and
- (d) takes an oath or affirmation before the notary vouching for the truthfulness or accuracy of the signed document.

"**Notarial act**" and "**notarization**" shall mean any act that a notary public is empowered to perform under this executive order.

"**Notary public**" or "**notary**" shall mean any person commissioned to perform official acts pursuant to Article IV of the Articles of Amendment of the Massachusetts Constitution.

"**Oath**" shall mean a notarial act, or part thereof, which is legally equivalent to an affirmation, and in which an individual, at a single time and place:

- (a) appears in person before the notary;
- (b) is identified by the notary through satisfactory evidence of identity; and
- (c) makes a vow of truthfulness or fidelity under the pains and penalties of perjury by invoking a deity.

"**Official misconduct**" shall mean:

- (a) a notary's performance of any act prohibited, or failure to perform any act mandated, by this executive order, or by any other law, in connection with a notarial act; or
- (b) a notary's performance of an official act in a manner found to be grossly negligent or against the public interest.

"**Personal knowledge of identity**" shall mean familiarity with an individual resulting from interactions with that individual over a period of time sufficient to ensure beyond doubt that the individual has the identity claimed.

"Principal" shall mean a person whose signature is notarized, or a person taking an oath or affirmation from the notary.

"Regular place of work or business" shall mean a place where one spends most of one's working or business hours.

"Satisfactory evidence of identity" shall mean identification of an individual based on at least one current document issued by a Federal or State government agency bearing the photographic image of the individual's face and signature; or on the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to the notary and who personally knows the individual; or identification of an individual based on the notary public's personal knowledge of the identity of the principal. For a person who is not a United States citizen, "satisfactory evidence of identity" shall mean identification of an individual based on a valid passport, or another government-issued document evidencing the individual's nationality or residence, that bears a photographic image of the individual's face and signature. For a person who is a Vermont or New Jersey resident, until January 1, 2008, "satisfactory evidence of identity" may include identification of an individual based on a valid driver's license that does not contain a photograph that is presented along with other documentary proof of identity that ensures beyond question that the person has the identity claimed.

"Signature witnessing" shall mean a notarial act in which an individual, at a single time and place:

- (a) appears in person before the notary public and presents a document;
- (b) is identified by the notary public through satisfactory evidence of identity; and
- (c) signs the document in the presence of the notary public.

Section 3: Qualifications of Applicants.

(a) A person qualified for a notary public commission shall:

- (1) be at least 18 years of age; and
- (2) reside legally or conduct business on a regular basis within in Massachusetts.

(b) In the Governor's discretion, an application may be denied based on:

- (1) submission of an official application containing a material misstatement or omission of fact;
- (2) the applicant's felony conviction or misdemeanor conviction that resulted in a prison sentence;
- (3) the applicant's conviction of a misdemeanor with probation or a fine, or conviction for drunk driving;
- (4) the applicant's admission of facts sufficient to warrant a finding of guilt of any crime;
- (5) a finding or admission of liability against the applicant in a civil lawsuit based on the applicant's deceit;
- (6) revocation, suspension, restriction, or denial of a notarial commission or professional license by this or any other state; or
- (7) any other reasons that, within the Governor's discretion, would make the applicant unsuitable to hold the commission as a notary public.

Section 4: Duration of Commission.

As set forth in Article IV of the Articles of Amendment to the Constitution of the Commonwealth, a person commissioned as a notary public may perform notarial acts in any part of the commonwealth for a term of seven years, unless the commission is earlier revoked or the notary resigns.

Section 5: Scope and Description of Duties.

(a) A notary public may perform the following notarial acts:

- (1) **acknowledgments;**
- (2) **oaths and affirmations;**
- (3) **jurats;**
- (4) **signature witnessings;**
- (5) **copy certifications;**
- (6) issuance of summonses for witnesses as set forth in section 1 of chapter 233;
- (7) issuance of subpoenas; and

(8) witness the opening of a bank safe, vault, or box as set forth in section 32 of chapter 167.

(b) In completing a notarial act, a notary shall sign his or her name exactly as it appears on the notary's commission.

(c) A notary shall keep an official notarial seal or stamp that is the exclusive property of the notary, which may not be used by any other person.

(1) A notary public shall obtain a new seal or stamp if the notary public renews his or her commission, receives a new commission, or changes his or her name.

(2) The notarial seal or stamp shall include: the notary public's name exactly as indicated on the commission; the words "notary public," "Commonwealth of Massachusetts" or "Massachusetts", and "my commission expires on [commission expiration date]" or "commission expires on [commission expiration date]" or "commission expires [commission expiration date]"; and a facsimile of the great seal of the Commonwealth of Massachusetts.

(3) Each new notarial seal that uses ink shall, after the date of this Executive Order, use black ink.

(4) A notary public may satisfy the requirements of this section by using a stamp and a seal that together include all of the information required by this section.

(d) A notary shall take the **acknowledgment** of the signature or mark of persons acknowledging for themselves or in any representative capacity by using substantially the following form:

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

(as partner for _____, a partnership)

(as _____ for _____, a corporation)

(as attorney in fact for _____, the principal)

(as _____ for _____, (a) (the) _____)

_____ (official signature and seal of notary)

(e) A notary shall use a **jurat** certificate in substantially the following form in notarizing a signature or mark on an affidavit or other sworn or affirmed written declaration:

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his) (her) knowledge and belief.

_____ (official signature and seal of notary)

(f) A notary shall **witness a signature** in substantially the following form in notarizing a signature or mark to confirm that it was affixed in the notary's presence without administration of an oath or affirmation:

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document in my presence.

_____ (official signature and seal of notary)

(g) A notary shall **certify a copy** by using substantially the following form:

On this ____ day of _____, 20__, I certify that the (preceding) (following) (attached) document is a true, exact, complete, and unaltered copy made by me of _____ (description of the document), presented to me by _____.

_____ (official signature and seal of notary)

(h) A notary public may certify the affixation of a signature by mark on a document presented for notarization if:

(1) the principal affixes the mark in the presence of the notary public and of 2 witnesses unaffected by the document;

(2) both witnesses sign their own names beside the mark;

(3) the notary writes below the mark: "Mark affixed by (name of signer by mark) in the presence of (names and addresses of witnesses) and undersigned notary pursuant to Executive Order No. 455; and

(4) the notary public notarizes the signature by mark through an **acknowledgment, jurat, or signature witnessing.**

(i) The notary public may sign the name of a principal who is physically unable to sign or make a mark on a document presented for notarization if:

- (1) the principal directs the notary to do so in the presence of 2 witnesses who are unaffected by the document;
- (2) the principal does not have a demeanor that causes the notary public to have a compelling doubt about whether the principal knows the consequences of the transaction requiring the notarial act;
- (3) in the notary public's judgment, the principal is acting of his or her own free will;
- (4) the notary public signs the principal's name in the presence of the principal and the witnesses;
- (5) both witnesses sign their own names beside the signature;
- (6) the notary public writes below the signature: "Signature affixed by notary public in the presence of (names and addresses of principal and 2 witnesses)"; and
- (7) the notary public notarizes the signature through an **acknowledgment, jurat, or signature witnessing**.

(j) This section does not require a notary public to use the forms set forth above if the form of an acknowledgment, jurat, signature witnessing, or copy certification is required or allowed by the provisions of any court rule or court forms; a Massachusetts General Law, including but not limited to, chapter 183, section 42 or the forms set forth in the appendix thereto, or chapter 192, section 2; any Federal statute; or any regulation adopted pursuant to any such Massachusetts or Federal statute.

(k) This section does not require a notary public to use the forms set forth above if the form of acknowledgment, jurat, signature witnessing, or copy certification if a document contains an alternative form from another State if the document is to be filed or recorded in, or governed by the laws of, that other State.

(l) This section does not require a notary public to use the forms set forth above if the form of acknowledgment, jurat, signature witnessing, or copy certification appears on a printed form that contains an express prohibition against altering that form.

Section 6: Prohibited Acts.

(a) A notary public shall not perform a notarial act if:

- (1) the principal is not in the notary's presence at the time of notarization;

(2) the principal is not identified by the notary through **satisfactory evidence of identity**;

(3) the principal has a demeanor that causes the notary public to have a compelling doubt about whether the principal knows the consequences of the transaction or document requiring the notarial act;

(4) in the notary public's judgment, the principal is not acting of his or her own free will;

(5) the notary public is a party to or is named in the document that is to be notarized, except that a notary public may notarize a document if the notary public is named in the document for the sole purpose of receiving notices relating to the document and except that a notary public who is licensed as an attorney in the Commonwealth of Massachusetts and is named as an executor, trustee or in any fiduciary capacity in a document or employees of such attorney may perform notarial acts concerning such document;

(6) the notary public will receive as a direct result of the notarial act any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees set forth in section 41 of chapter 262 of the General Laws or has any financial interest in the subject matter of the document. For example, this section shall not preclude a notary public who is licensed as an attorney in the Commonwealth of Massachusetts or any employee of such attorney from notarial acts concerning any document where the attorney receives a legal fee for professional legal services rendered in connection with such document.

(7) the notary public is a spouse, domestic partner, parent, guardian, child, or sibling of the principal, including in-law, step, or half relatives, except where such persons witness a will or other legal document prepared by the notary public who is an attorney licensed in the Commonwealth of Massachusetts.

(b) A notary public shall not refuse to perform a notarial act solely based on the principal's race, advanced age, gender, sexual orientation, religion, national origin, health, disability, or status as a non-client or non-customer of the notary public or the notary public's employer.

(c) A notary public shall not influence a person either to enter into or avoid a transaction involving a notarial act by the notary public, except that the notary public may provide advise relating to that transaction if section 9(b) applies.

(d) A notary public shall not execute a certificate containing information known or believed by the notary public to be false.

(e) A notary public shall not affix an official signature or seal on a notarial certificate that is incomplete.

(f) A notary public shall not provide or send a signed or sealed notarial certificate to another person with the understanding that it will be completed or attached to a document outside of the notary public's presence.

(1) In connection with a commercial, non-consumer transaction, a notary public may deliver a signed, sealed, or signed and sealed notarial certificate to an attorney with the understanding that: (i) the attorney will attach the certificate to a document outside of the notary's presence; (ii) the attorney will hold such notarial certificate in escrow; and (iii) the attorney informs the notary public that the attorney will obtain the approval of the principal, or principals, involved before attaching the certificate to the document.

(g) A notary public shall not notarize a signature on a blank or incomplete document, except as provided in 6(f)(1) above

(h) A notary public shall not perform any official act with the intent to deceive or defraud.

(i) A notary public shall not claim to have powers, qualifications, rights, or privileges that the office of notary public does not provide, including the power to counsel on immigration matters.

(j) A notary public shall not use the term "notario" or "notario publico" or any equivalent non-English term in any business card, advertisement, notice, or sign.

Section 7: Limitations of Discretion.

A notary shall perform any notarial act described in this executive order for any person requesting such an act who tenders the fee set forth in section 41 of chapter 262 of the General Laws unless:

(a) the notary public knows or has good reason to believe that the notarial act or the associated transaction is unlawful;

(b) the principal has a demeanor that causes the notary public to have a compelling doubt about whether the principal knows the consequences of the transaction or document requiring the notarial act;

(c) the act is prohibited by this executive order or other applicable law; or

(d) the number of notarial acts requested practicably precludes completion of all acts at once, in which case the notary public shall arrange for later completion of the remaining acts.

Section 8: Underlying Document.

(a) A notary public has neither the duty nor the authority to investigate, ascertain, or attest to the lawfulness, propriety, accuracy, or truthfulness of a document or transaction involving a notarial act.

(b) Failure of a document to contain the forms of acknowledgment, jurat, signature witnessing, or copy certification, or otherwise to comply with the requirements set forth in this Executive Order shall not have any effect on the validity of the underlying document.

(c) Failure of a document to contain the forms of acknowledgment, jurat, signature witnessing, or copy certification set forth in this Executive Order should not be the basis of refusal to accept the document for filing, recordation, registration, or acceptance by a third party.

Section 9: Prohibition Against the Unauthorized Practice of Law.

(a) A non-attorney notary public shall not assist a non-attorney in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act, rendering legal advice, or otherwise engage in the practice of law.

(b) This section does not preclude a notary public who is duly qualified, trained, or experienced in a particular industry or professional field from selecting, drafting, completing, or advising on a document or certificate related to a matter within that industry or field.

(c) A notary public who is not an attorney licensed to practice law in Massachusetts, or who is not directly supervised by an attorney, shall not conduct a real estate closing and shall not act as a real estate closing agent. A notary public who is employed by a lender may notarize a document in conjunction with the closing of his or her employer's real estate loans.

Section 10: Advertising Disclaimer Required.

A non-attorney notary public who advertises notarial services in a language other than English shall include in the advertisement, notice, letterhead, or sign the following, prominently displayed in the same language the statement: "I am not an attorney and have no authority to give advice on immigration or other legal matters."

Section 11: Official Journal.

(a) A notary shall keep, maintain, protect, and provide for lawful inspection a chronological official **journal of notarial acts** that is a permanently bound book with numbered pages, except as otherwise provided in this section.

(b) A notary public shall keep no more than one active journal at the same time.

(c) For every notarial act except for the issuance of summons or subpoenas, or the administration of an oral oath, the notary public shall record in the journal at the time of the notarization the following:

(1) the date and time of the notarial act, proceeding, or transaction;

(2) the type of notarial act;

(3) the type, title, or a description of the document, transaction, or proceeding. If multiple documents are signed by the same principal in the course of a transaction or during a single date (i.e. real estate closings, mortgage discharges, state laboratory drug analysis certificates, etc.), a single journal entry shall be sufficient;

(4) the signature, printed name, and address of each principal and witness;

(a) If a principal or witness tells the notary that he or she is a battered person, the notary shall make a note in the journal that the person's address shall not be subject to public inspection.

(5) description of the **satisfactory evidence of identity** of each person including:

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

(i) If the identification number on the document is the person's Social Security number, instead of including the number, write in the words "Social Security number" or the acronym "SSN";

or

(b) a notation if the notary identified the individual on the oath or affirmation of a credible witness or based on the notary's personal knowledge of the individual;

(6) the fee, if any, charged for the notarial act; and

- (7) the address where the notarization was performed.
- (d) A notary public shall not record a Social Security or credit card number in the journal.
- (e) A notary public shall record in the journal the circumstances for not completing a notarial act.
- (f) A journal shall be recommended as the best practice, but not required, for a notary public who is an attorney licensed to practice law in the Commonwealth of Massachusetts or employed by such attorney. This Executive Order shall not be construed in any way to impair or infringe in any way on the attorney-client privilege or the attorney work product doctrine.

Section 12: Inspection of the Official Journal.

- (a) The journal may be examined without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order, or surrendered at the direction of the Governor's Office. Nothing in this section shall prevent a notary public from seeking appropriate judicial protective orders.
- (b) A notary public shall safeguard the journal and all other notarial records and surrender or destroy them only by rule of law, by court order, or at the direction of the Governor's Office.
- (c) When not in use, the journal shall be kept in a secure area under the exclusive control of the notary public, and shall not be used by any other notary nor surrendered to an employer upon termination of employment.

Section 13: Duties at the End of the Commission.

When a notary commission expires, is resigned, or is revoked, the notary shall:

- (a) as soon as reasonably practicable, destroy or deface all notary seals and stamps so that they may not be used; and
- (b) retain the notarial journal and records for seven years after the date of expiration, resignation, or revocation.

Section 14: Change of Name or Address.

Within 10 days after the change of a notary public's residence, business, mailing address, or name, the notary shall send to the Office of the Secretary of State a signed notice of the change, giving both the old and new information.

Section 15: Revocation of Commission.

A notary public's commission may be revoked for **official misconduct** as defined by this Executive Order, or for other good cause, as determined by the Governor with the consent of the Governor's Council as set forth in Article XXXVII of the Articles of Amendments to the Massachusetts Constitution.

Given at the Executive Chamber in Boston this
fourteenth day of May in the year our Lord two
thousand four, and of the Independence of the
United states of America two hundred and twenty
seven.

MITT ROMNEY, GOVERNOR

SECRETARY OF THE COMMONWEALTH
WILLIAM FRANCIS GALVIN

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS