NOTARY PUBLIC BASICS

Presented by
Business & Commercial Services
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Course Outline

- Notary application, renewal, & changes in personal information
- Notary Supplies
- Powers & duties of a notary public
- Notarial Acts
- Prohibited Acts & Penalties
- Conclusion
What is a Notary Public

Acts as an official and unbiased witness to the identity of a person who appears before the notary
Notary Supplies
Notary Seal

Rubber Stamp or Metal Embosser must include:

- Your name as written in your official signature
- The name of your county of commission
- The words “Notary Public” and “Arkansas”
- Expiration date of your commission
- Notary Commission Number
- Must be capable of photocopy
- Must be in blue or black ink
Notary Seal Examples
What Is Wrong With This Seal?
Notary Seal Prohibitions

- Great Seal of the State of Arkansas
- Outline of Arkansas
Seal & Bond

- Employer cannot take a seal or stamp or cancel the surety bond purchased on behalf of the employee.

- Notary must obtain a new seal when renewing commission, changing name or moving to new county.
Facsimile Signature

- Used in lieu of the manual signature and seal
- Not appropriate for deeds or real estate documents
- Notary must file with the Secretary of State’s office to use
Notary Register or Journal

- Admissible as evidence in court
- May be paper or electronic
- Not required by law
**Notary Register or Journal**

Suggested Format:

1. Date of notarial act
2. Type of act performed and document involved
3. Name and address of each person whose signature was notarized
4. Signature of each person whose signature was notarized
5. A “notes” section of personal annotations
6. Itemized list of fees collected
Powers and Duties
Jurisdiction

- Statewide
- Notaries residing in adjoining states but working in Arkansas
Expiration or Resignation of Commission

Expiration: Follow normal renewal steps previously listed

Resignation: Send written notice of resignation to Secretary of State and the Circuit Clerk’s office; destroy notary stamp or seal
Powers & Duties of Notaries

- Administering Oaths
- Taking Acknowledgements
- Certifying Affidavits
- Certifying Depositions
- Attesting to Photocopies
Identification

- Proof of Identity
- Unbiased Witness
- Personally Knows
- Personally Appears
- Witness the Signature
Administering Oaths

A formal statement in which the person swears (or affirms):

- That the statement or group of statements is the truth; or
- That the testimony he/she will give will be the truth; or
- That he/she will faithfully perform the duties of a corporate office
Oath of Office for Corporate Officials

State of Arkansas  
County of (where you are physically standing)  

“I, _____, hereby enter into the position of _______ on behalf of _______ corporation. I affirm that I will fulfill these duties to the best of my ability and perform in accordance with the law and in the best interest of the corporation.”

__________________________
Signature

Subscribed and sworn before me this ___ day of ____, 20__.

__________________________
Notary Signature  
[NOTARY SEAL]

__________________________
My commission expires
Taking Acknowledgements

- An acknowledgement is a formal statement by a person that a document is his/her own act

- In the Acknowledgement statement a notary is verifying who is signing the document and when and where the signing takes place
Acknowledgement Certificate

State of Arkansas
County of (where you are physically standing)

On this the _____ day of _____, 20 ___, before me, ______ (name of notary), the undersigned notary, personally appeared (names(s) of signer(s)) known to me (or satisfactorily proven) to be the person whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained. In witness whereof I have hereunto set my hand and official seal.

__________________________  [NOTARY SEAL]
Notary Public

__________________________
My commission expires

27.
Acknowledgement Certificate

- The first line of the acknowledgement should be the printed name of the **notary public witnessing the signature**

- The second line should include the **printed name of the signer of the application**
**Acknowledgement Certificate**

- Notary’s signature must match the signature as it appears on the Notary commission certificate & stamp

- The County should reflect where the notarization occurred, which is not always the county where the notary is commissioned
Certifying Affidavits

- A written statement to which a person (the “Affiant”) makes an oath, swearing that the statements are true and complete

- Affidavits are often used in court cases
Affidavits

I, ________ (name of Affiant) being duly sworn, depose and say as follows:

1. Written statement
2. Written statement

Signature of Affiant

State of Arkansas
County of (where you are physically standing)
Acknowledged before me, this ___ day of _____, 20____.

________________________________________
Notary Public [NOTARY SEAL]

My commission expires
Deposition

- Oral testimony given by a witness and reduced to writing for use in legal proceedings

- Depositions must be attested by a certified court reporter or they will not be accepted by Arkansas courts

- Notaries who are not court reports should not accept depositions as an act of the notarial office
Photocopies

Must supervise or make the copy yourself and include a statement of such.

- **Permissible**: school records, medical records, other documents
- **Exclusions**: vital records, public records
Attesting to Photocopies

State of Arkansas
County of (where you are physically standing)

I (name of notary public), certify this is a true and perfect copy of the original document (insert document type), presented to me on this ____ day of ____, 20 ____.

________________________  [NOTARY SEAL]
Notary Public

________________________
My commission expires
Apostilles & Certifications

• Required for documents to be used in foreign countries (not within the US)
• Based on a country’s participation in the 1961 Hague Convention
• Must be translated in English prior to notarization
• Must still be reviewed and processed by the Secretary of State’s office
Before Notarizing A Document

- Identify the signer(s)
- Notary verifies that the signer(s):
  - Understand the nature of the document they are about to sign
  - Appear to be acting of their own free will
  - Use letters or characters that are understood by both the signer(s) and notary
  - Communicate directly with the notary in a language understood by both the client(s) and notary
Acknowledgement Certificate

- Notary’s signature must match the signature as it appears on the Notary commission certificate & stamp

- The County should reflect where the notarization occurred, which is not always the county where the notary is commissioned
A Notary Cannot Notarize:

- Their own signature
- A document to which the notary is a party
- A document from which the notary would gain direct or indirect financial benefit
A Notary Can Notarize:

- A handwritten document
  - Acknowledgement statement may also be handwritten
- A document in a foreign language
  - Translations required for Apostille or Certification
- Be cautious notarizing a relative’s document
  - There might be direct or indirect financial benefit

Note: notaries are generally not concerned with the contents of a document, just the identity of the signer
Incomplete Notarial Certificates

A Complete Notarial Certificate
- Information on the number of witnesses required
- Description of the document to be signed
- Date and time
- Signature of the notary public

Refusing to Perform A Notarial Act
- The signer does not appear to understand the purpose of the document
- The signer does not appear to be signing of his or her own free will
- The signer appears to be under duress or coercion

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A Complete Notarial Certificate

State of Arkansas
County of ________

On this the ____ day of ____, 20 ____, before me, ______ (name of notary), the undersigned notary, personally appeared (names(s) of signer(s)) known to me (or satisfactorily proven) to be the person whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained. In witness whereof I have hereunto set my hand and official seal.

__________________________
Notary Public

__________________________
My commission expires

[NOTARY SEAL]
A Complete Notarial Certificate

- The official signature of the notary public as on file with the Secretary of State’s Office.
- The official seal of the notary in compliance with Arkansas notary law.
Incomplete Notarial Certificates

- Information contained within the notarial certificate is known or believed to be known by the notary public to be false

- Notary public affixes a signature or seal on the certificate that is not compliant
Incomplete Notarial Certificates

• An official seal or signature on the notarial certificate is executed at a time when the principal or signer was not present

• A signed or sealed notarial certificate is executed with the understanding it will be completed or attached to a document outside the presence of the notary
Refusing to Perform A Notarial Act

- Arkansas law now allows for a notary to refuse to perform a notarial act for any [lawful] reason

- The revised law also lists four main reasons a notary may refuse to notarize a document
Refusing to Perform A Notarial Act

- The signer does not appear to understand the nature of the transaction that requires the notarial act

- The signer does not appear to be acting of his or her own free will
Refusing to Perform A Notarial Act

- The signer lacks the ability to sign the notarial document using letters or characters of a language that is understood by the notary public

- The signer and notary are not able to communicate directly in a language understood by both the signer and notary
Special Notarial Circumstances

- Signature by Mark
- Physically Unable to Sign

Signature by Mark
- A person with a disability or a minor may affix a mark to execute the document.

Physically Unable to Sign
- A person unable to sign or read due to physical incapacity or mental incapacity may affix a mark to execute the document.

Notary Fees
- In 2020, the average notary fee for a criminal record check was $25.00.
Special Notarial Circumstances

- Signature by Mark
- Physically Unable to Sign
Signature by Mark

Signature by mark is legal when:

• The person making the mark lacks the ability to write or sign his/her name

• The mark is made in the presence of one (1) disinterested witness
Signature by Mark

Signature by mark is legal when:

- A statement is included in the notarial certificate attesting to the signature being made by mark in the presence of a witness

- “Mark affixed by (Name of signor by mark) in the presence of (name(s) of witnesses)”
Physically Unable to Sign

If a signer is physically unable to sign their name or make a mark, a disinterested third party may sign their name on their behalf when:

- The principal signer directs the disinterested third party to sign their name in the presence of two (2) other disinterested witnesses
- The signature is done in the presence of the two (2) disinterested witnesses and the notary public
- Each disinterested witness signs their name beside the signature
Physically Unable to Sign

If a signer is physically unable to sign their name or make a mark, a disinterested third party may sign their name on their behalf when:

- A statement concerning the above act is included in the notarial statement

- “Signature affixed by [name of third party] at the direction and in the presence of [name of principal unable to sign or make a mark] and also in the presence of [names of two witnesses]”
Notary Fees

- In 2017, the $5 (plus round-trip mileage) cap was removed
- Notaries may now charge a “reasonable amount”
- Fee must be disclosed to and agreed upon by the client PRIOR to the notarial act taking place
Prohibited Acts & Penalties
Prohibited Acts

21-14-111. Unlawful act – Penalty
It is unlawful for any notary public to witness any signature on any instrument unless the notary public either:

• Witnesses the signing of the instrument and personally knows the signer or is presented proof of the identity of the signer; or

• Recognizes the signature of the signer by virtue of familiarity with the signature (not for real estate records)
Prohibited Acts

21-14-111. Unlawful act – Penalty

- Any notary public violating this section shall be guilty of a Class A misdemeanor

- For purposes of this section, “personally knows” means having an acquaintance, derived from association with the individual, which establishes the individual's identity with at least a reasonable certainty
Prohibited Acts

4-109-103. Notario Publico

Requires Notaries Public advertising as “notario” or “notario publico” to post the following notice in both English and Spanish:

“I am not a licensed attorney and cannot engage in the practice of law. I am not a representative of any governmental agency with authority over immigration or citizenship, and I cannot offer legal advice or other assistance regarding immigration.”
Penalty/Revocation

The Secretary of State may investigate possible violations upon a signed complaint from any person.

- Result in a Class A misdemeanor punishable by a fine of up to $1,000 or up to 1 year in jail
- Result in the denial or revocation of a notary public commission
- Other legal concerns
Notary Public Basics
Presented by Business and Commercial Services

- Notary Supplies
- Notary Application, Renewal, and Changes in Personal Information
- Powers and Duties
- Notarial Acts
- Incomplete Notarial Certificates
- Prohibited Acts & Penalties
- Conclusion
- Special Notarial Circumstances

NOTARY PUBLIC BASICS
Conclusion
2019 Legislation

Targeted for nonresident spouses of military personnel. The law has added the following requirements:

(a) Nonresident spouse of a United States military service member employed or operating a business in Arkansas;
(b) One (1) copy of a United States Department of Defense DD Form 1173 or a United States Department of Defense DD Form 1173-1, otherwise known as a Uniformed Services Identification and Privilege Card, shall be included with his or her application under this subsection;
eNotarization

- “Enhanced” notarization
- Commission runs concurrent with traditional notary
- Fee, class, exam
- Still requires physical proximity & ID verification
- Solution provider required
Please refer to
https://bcs.sos.arkansas.gov/
for a guide to the online portal, the Arkansas Notary Public Handbook, and other information
David Easley

Arkansas Secretary of State John Thurston
www.sos.arkansas.gov

Notary Public Administrator
David.easley@sos.Arkansas.gov
501-682-3541
Notary Application, Renewal, and Changes in Personal Information
Qualifications & Requirements

- Resident of Arkansas, or border state and employed in Arkansas, or nonresident spouse of US military member employed or operating a business in Arkansas
- U.S. Citizen or Permanent Resident Alien
- 18 Years of Age
- Read and Write English
- No Revocation in the Past 10 Years
- No Felony Convictions
- Have reviewed the law concerning notaries and understands the duties
Application & Renewal Process

1. Obtain a $7,500 surety bond for county of residence
2. Complete the required application & exam on online portal
3. Mail copy of bond, notarized application, and filing fee
4. Oaths of Commission returned to applicant
5. File bond and oath with Circuit Clerk
6. Return file marked oath to the Secretary of State’s office
7. After receiving certificate of commission & ID card from Secretary of State, order seal/stamp
8. 10-year term – apply for renewal 60 days before commission expires
✓ Applicant’s name and signature must exactly match name on the bond

✓ Applications containing signatures corrected or changed with liquid paper are not acceptable
Surety Bond

- $7,500
- Protects the State
- Copy of bond sent to state and the Circuit Clerk’s office
- Errors and Omissions Insurance Policy (optional) protects the Notary Public
On-Line Portal

- Create a free user account at bcs.sos.arkansas.gov
- Test and forms are completed electronically
- Print and mail forms & fees to Secretary of State
On-Line Portal

- What information is made public?
  - Name, county of commission, 10 year commission date range, bonding agent, and e-mail address if you ‘opt in’
  - Notary completes “Notary Public Amendment” to report changes of address, email, or name
  - Notary renewals and eNotary applications are also completed on the portal
On-Line Portal
Notary Public Commission

- County of commission is county where notary public resides
- Not valid until applicant receives certificate of commission and identification card from Secretary of State
- Must be transferred when county of residence changes (notify both county clerks)
- Notary must resign commission if moving out of state
Changes in Personal Information

• Report changes of address or name on “notary amendment” and mail to Secretary of State’s office within 30 days:

  Certified copy of marriage license, divorce decree or court order, and the amendment form (online portal)

• Update information with the Circuit Clerk(s) and bonding agent if county changes; purchase new seal for county or name change.