

HAWAII REVISED STATUTES

**DIVISION 2. BUSINESS
TITLE 25. PROFESSIONS AND OCCUPATIONS
CHAPTER 456. NOTARIES PUBLIC**

§456-A Definitions.

As used in this chapter, unless the context requires otherwise:

“Alter” means to change by means of erasure, obliteration, deletion, insertion of new content, or transposition of content.

“Personally knowing” means having an acquaintance, derived from association with the individual, which establishes the individual’s identity with at least a reasonable certainty.

“Proof of the signer’s signature and identity” means proof evidenced by production of a current identification card or document issued by the United States, this State, any other state, or a national government that contains the bearer’s photograph and signature. L 2008, c 175, pt of §2.

§456-B Powers and duties of the attorney general.

In addition to any other powers and duties authorized by law, the attorney general shall have all powers necessary or convenient to effectuate the purposes of this chapter, including, without limitation, the following powers:

- (1) Issue notary public commissions to applicants pursuant to this chapter;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91;
- (3) Suspend or revoke any commission for any cause prescribed by this chapter or for any violation of the rules adopted pursuant to this chapter, and refuse to issue any commission for any cause that would be grounds for suspension or revocation of a commission; and
- (4) Impose administrative fines for any cause prescribed by this chapter or for any violation of the rules adopted pursuant to this chapter. L 2008, c 175, pt of §2.

§456-C Failure to verify identity and signature.

(a) A person commits the offense of failure to verify identity and signature if the person is a commissioned notary public and knowingly notarizes a document and:

- (1) If a witness to the signing of the instrument, fails to verify the identity of the signer by personally knowing the signer or by comparing the personal appearance of the signer with satisfactory proof of the signer’s identity; or
- (2) If not a witness to the signing of the instrument, fails to verify the identity of the signer by personally knowing the signer or by comparing the personal appearance of the signer with satisfactory proof of the signer’s identity; or fails to verify the signature of the signer by recognizing the signature of the signer by personal familiarity with the signature, or by comparing the signature with satisfactory proof of the signer’s signature.

(b) Any person who violates this section shall be guilty of a misdemeanor and shall be sentenced in accordance with chapter 706.

(c) A conviction under this section shall result in the automatic revocation of the notary public’s commission. L 2008, c 175, pt of §2.

§456-D Failure to authenticate with a certification statement.

(a) A person commits the offense of failure to authenticate with a certification statement if the person is a commissioned notary public and knowingly notarizes a document and fails to include any of the following in the notary certification:

- (1) Date of notarization and signature of the notary public;
- (2) The printed name and stamp or seal of the notary public;
- (3) Identification of the jurisdiction in which the notarial act is performed;
- (4) Identification or description of the document being notarized, placed in close proximity to the acknowledgment or jurat; and
- (5) A statement of the number of pages and date of the document.

(b) Any person who violates this section shall be guilty of a misdemeanor and shall be sentenced in accordance with chapter 706.

(c) A conviction under this section shall result in the automatic revocation of the notary public's commission. L 2008, c 175, pt of §2.

§456-1 Appointment; renewal.

(a) The attorney general may, in the attorney general's discretion, appoint and commission such number of notaries public for the State as the attorney general deems necessary for the public good and convenience. The term of office of a notary public shall be four years from the date of the notary's commission, unless sooner removed by the attorney general for cause after due hearing; provided that after due hearing the commission of a notary public may be revoked or otherwise disciplined by the attorney general in any case where any change occurs in the notary's office, occupation, residence, or employment which in the attorney general's judgment renders the holding of such commission by the notary no longer necessary for the public good and convenience. Each notary shall, upon any change in the notary's office, occupation, residence, or employment, forthwith report the same to the attorney general.

(b) Each notary public shall be responsible for renewing the notary public's commission on a timely basis and satisfying the renewal requirements provided by law. The failure to renew a commission in a timely manner may cause the commission to be forfeited, if the attorney general finds that the failure was done knowingly; provided that a forfeited commission may be restored by the attorney general within one year after the date of forfeiture upon compliance with the commission renewal requirements provided by law and upon written application and payment of all applicable fees. [CC 1859, §1266; am L 1887, c 11, §1; RL 1925, §3174; am L 1929, c 3, §1; RL 1935, §5200; am L 1941, c 322, §1; am L 1943, c 173, pt of §1; RL 1945, §7661; am L 1953, c 30, §1; RL 1955, §168-1; am L 1959, c 4, §1; HRS §456-1; am L 1978, c 122, §1; gen ch 1985; am L 1998, c 290, §2]

§456-2 Qualifications; oath.

Every person appointed a notary public shall, at the time of the person's appointment, be a resident of the State, possess the other qualifications required of public officers and be at least eighteen years of age. Every person appointed to that office shall, before entering thereon, take and subscribe an oath for the faithful discharge of the person's duties, which oath shall be filed in the department of the attorney general. [CC 1859, §1267; RL 1925, §3175; RL 1935, §5201; am L 1941, c 322, §2; am L 1943, c 173, pt of §1; RL 1945, §7662; RL 1955, §168-2; am L 1965, c 248, §1; HRS §456-2; am L 1972, c 2, §22; am L 1976, c 146, §1; am L 1978, c 122, §2; gen ch 1985]

§456-3 Seal.

Every notary public shall constantly keep an engraved seal of office or a rubber stamp facsimile seal which shall clearly show, when embossed, stamped, or impressed upon a document, the notary's name, and the words, "notary public" and "State of Hawaii." The notary public shall authenticate all the notary's official acts, attestations, certificates, and instruments therewith, and shall always add to an official signature the typed or printed name of the notary and a statement showing the date that the notary's commission expires. Upon resignation, death, expiration of term of office without reappointment, or removal from or abandonment of office, the notary public shall immediately deliver the notary's seal to the attorney general who shall deface or destroy the same. If any notary fails to comply with this section within ninety days of the date of the notary's resignation, expiration of term of office without reappointment, or removal from or abandonment of office or if the notary's personal representative fails to comply with this section within ninety days of the notary's death, then the notary public or the notary's personal representative shall forfeit to the State not more than \$200, in the discretion of the court, to be recovered in an action to be brought by the attorney general on behalf of the State. [CC 1859, §1268; RL 1925, §3176; RL 1935, §5202; am L 1941, c 322, §3; RL 1945, §7663; RL 1955, §168-3; HRS §456-3; am L 1976, c 200, pt of §1; am L 1978, c 122, §3; am L 1984, c 127, §1; gen ch 1985; am L 1986, c 327, §1; am L 1998, c 290, §3]

§456-4 Filing copy of commission; authentication of acts.

Each person appointed and commissioned a notary public under this chapter shall forthwith file a literal or photostatic copy of the person's commission, an impression of the person's seal, and a specimen of the person's official signature with the clerk of the circuit court of the circuit in which the notary public resides. Each person appointed and commissioned a notary public under this chapter may also, at the person's option, file the above-named documents with the clerk of any other circuit court. Thereafter any clerk, when thereunto requested, shall certify to the official character and acts of any such notary public whose commission, impression of seal, and specimen of official signature is so filed in the clerk's office. [L 1941, c 322, pt of §4; RL 1945, §7664; RL 1955, §168-4; HRS §456-4; am L 1978, c 122, §4; am L 1982, c 45, §1; gen ch 1985]

§456-5 Official bond.

Each notary public forthwith and before entering upon the duties of the notary's office shall execute, at the notary's own expense, an official surety bond which shall be in the sum of \$1,000. Each bond shall be approved by a judge of the circuit court. The obligee of each bond shall be the State and the condition contained therein shall be that the notary public will well, truly, and faithfully perform all the duties of the notary's office which are then or may thereafter be required, prescribed, or defined by law or by any rule made under the express or implied authority of any statute, and all duties and acts undertaken, assumed, or performed by the notary public by virtue or color of the notary's office. The surety on any such bond shall be a surety company authorized to do business in the State. After approval the bond shall be deposited and kept on file in the office of the clerk of the circuit court of the judicial circuit in which the notary public resides. The clerk shall keep a book to be called the "bond record", in which the clerk shall record such data in respect to each of the bonds deposited and filed in the clerk's office as the attorney general may direct. [L 1941, c 322, pt of §4; RL 1945, §7665; am L 1955, c 104, §2; RL 1955, §168-5; HRS §456-5; am L 1978, c 122, §5; gen ch 1985; am L 1998, c 290, §4]

§456-6 Liabilities; limitations on; official bond.

(a) In the performance of a notarial act, a notary's liability shall be limited to a failure by the notary to perform properly the actions required for the jurat, acknowledgment, or other notarial act. The notary's liability shall not be based on statements in a notarized document apart from the notarial certificate.

(b) For the official misconduct or neglect of a notary public or breach of any of the conditions of the notary's official bond, the notary and the surety on the notary's official bond shall be liable to the party injured thereby for all the damages sustained. The party shall have a right of action in the party's own name upon the bond and may prosecute the action to final judgment and execution. [L 1941, c 322, pt of §4; RL 1945, §7666; RL 1955, §168-6; HRS §456-6; gen ch 1985; am L 1996, c 18, §1]

§456-7 Unauthorized practice as a notary public.

(a) A person commits the offense of unauthorized practice as a notary public if the person knowingly engages in or offers to engage in any duties of the office of a notary public without first complying with all of the following:

(1) Being appointed and commissioned as a notary public by the attorney general;

(2) Filing a copy of the person's commission, an impression of the person's seal, and a specimen of the person's official signature with the clerk of the circuit court of the circuit in which the person resides; and

(3) Executing an official surety bond pursuant to section 456-5.

(b) Any person who violates this section shall be guilty of a misdemeanor and shall be sentenced in accordance with chapter 706.

(c) Nothing in this section shall be construed to restrict or to do away with any liability for civil damages." [L 1941, c 322, pt of §4; RL 1945, §7667; RL 1955, §168-7; HRS §456-7; gen ch 1985; am L 2008, c 175, §4]

§456-8 Rules.

The attorney general, subject to chapter 91, may prescribe such rules as the attorney general deems advisable concerning the administration of this chapter, the appointment and duties of notaries public, the duties of other officers thereunder, and such measures as may be necessary to prevent the fraudulent use of a notarized document after placement of the notary's seal. The rules shall have the force and effect of law. The rules shall have the force and effect of law. [L 1941, c 322, pt of §4; RL 1945, §7668; RL 1955, §168-8; am L 1965, c 96, §110; HRS §456-8; gen ch 1985; am L 1998, c 290, §5; am L 2008, c 175, §5]

§456-9 Fees and administrative fines.

(a) The attorney general shall charge and collect the following fees for:

(1) Issuing the original commission, \$40; and

(2) Renewing the commission, \$40.

Notwithstanding the foregoing, the attorney general may establish and adjust fees pursuant to chapter 91.

(b) The court fees for filing a copy of a commission and for each certificate of authentication shall be specified by the supreme court.

(c) The attorney general may impose and collect the following administrative fines for a notary public's failure to:

(1) Maintain an official seal of one type, either a single engraved seal or a single rubber stamp facsimile seal, on which shall be inscribed the name of the notary public, and the words "notary public" and "State of Hawaii" only, \$20;

(2) Surrender the notary public's seal and certificate to the attorney general within

ninety days of resignation, removal from office, or the expiration of a term without renewal, \$200;

(3) Authenticate every acknowledgment or jurat with a certificate that shall be signed and dated by the notary, include the printed name and official stamp or seal of the notary, identify the jurisdiction in which the notarial act is performed, describe in close proximity to the acknowledgment or jurat the document being notarized, and state the number of pages and date of the document, \$500;

(4) Record all of the notary public's transactions as prescribed by section 456-15 and applicable rules, \$200;

(5) Surrender the notary public's record books to the attorney general within ninety days of the end date of the commission, resignation, or removal from office, \$500; and

(6) Notify the attorney general within ten days after loss, misplacement, or theft of the notary public's seal, stamp, or any record book, inform the appropriate law enforcement agency in the case of theft, and deliver a copy of the law enforcement agency's report of the theft to the attorney general, \$20.

(d) The foregoing moneys collected by the attorney general pursuant to this section shall be deposited into the notaries public revolving fund established by section 456-9.5, except that if that fund is terminated, the foregoing moneys shall thereafter be deposited with the director of finance to the credit of the general fund. [L 1941, c 322, pt of §4; RL 1945, §7669; am L 1953, c 30, §2; am L 1955, c 172, §1; RL 1955, §168-9; am L 1959, c 265, §17; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §456-9; am L 1976, c 146, §2; am L 1998, c 290, §6; am L 2008, c 175, §6]

§456-9.5) Notaries public revolving fund.

(a) There is established in the state treasury the notaries public revolving fund into which shall be deposited:

(1) All fees, administrative fines, charges, or other payments received pursuant to section 456-9;

(2) Penalties and fines for violations of section 456-3, 456-7, or 456-16;

(3) Appropriations made for deposit into the notaries public revolving fund; and

(4) Interest earned on money in the notaries public revolving fund.

(b) The notaries public revolving fund shall be administered by the department of the attorney general. Notwithstanding any law to the contrary, moneys in the notaries public revolving fund shall be used for personnel costs, the acquisition of equipment, and operating and administrative costs deemed necessary by the department of the attorney general to administer this chapter. The moneys in the fund may also be used to train personnel as the attorney general deems necessary, and for any other activity related to notaries public. [L 1998, c 290, §1; am L 2008, c 175, §7]

§456-10 Duties, by mercantile usage.

It shall be a notary public's duty, when requested, to enter on record all losses or damages sustained or apprehended, by sea or land, and also all averages, and such other matters as, by mercantile usage, appertain to the notary's office, and cause protest thereof to be made, duly and formally. [CC 1859, §1269; RL 1925, §3177; RL 1935, §5203; RL 1945, §7670; RL 1955, §168-10; HRS §456-10; gen ch 1985]

§456-11 Protests; negotiable paper.

All facts, extracts from documents, and circumstances, so noted, shall be signed and sworn to by all the persons appearing to protest. The notary public shall note, extend, and

record the protest so made; and shall grant authenticated copies thereof, under the notary's signature and notarial seal, to those who request and pay for the same. The notary shall also, in behalf of any person interested, present any bill of exchange, or other negotiable paper, for acceptance or payment to any party on whom the same is drawn or who may be liable therefor; and notify all indorsers or other parties to such bill or paper. The notary may, in general, do all the acts to be done by notaries public by the usages of merchants, or which are authorized by the laws of the State. [CC 1859, §1270; RL 1925, §3178; RL 1935, §5204; RL 1945, §7671; RL 1955, §168-11; HRS §456-11; gen ch 1985]

§456-12 Protest, evidence of what.

The protest of any foreign or inland bill of exchange, or promissory note or order, duly certified by any notary public, under the notary's hand and official seal, shall be legal evidence of the facts stated in the protest, as to the same, and also as to the notice given to the drawer or indorser in any court of law. [CC 1859, §1271; RL 1925, §3179; RL 1935, §5205; RL 1945, §7672; RL 1955, §168-12; HRS §456-12; gen ch 1985]

§456-13 May administer oath.

Every notary public may administer oaths in all cases in which oaths are by law authorized or required to be taken or administered, or in which the administering of an oath may be proper. All oaths administered before June 23, 1888, by notaries public are declared valid and binding. [L 1888, pt of c 6; RL 1925, §3180; RL 1935, §5206; RL 1945, §7673; RL 1955, §168-13; HRS §456-13]

§456-14 Notary connected with a corporation or trust company; authority to act.

It shall be lawful for any notary public, although an officer, employee, shareholder, or director of a corporation or trust company to take the acknowledgment of any party to any written instrument executed to or by the corporation or trust company, or to administer an oath to any shareholder, director, officer, employee, or agent of the corporation or trust company, or to protest for nonacceptance or nonpayment of bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by the corporation or trust company; provided it shall be unlawful for any notary public to take the acknowledgment of any party to an instrument, or to protest any negotiable instrument, where the notary is individually a party to the instrument. [L 1961, c 97, §1; Supp. §168-13.5; HRS §456-14]

§456-15 Record; copies as evidence.

Every notary public shall record at length in a book of records all acts, protests, depositions, and other things, by the notary noted or done in the notary's official capacity. For each official act, the notary shall enter in the book:

- (1) The type, date, and time of day of the notarial act;
- (2) The title or type and date of the document or proceeding;
- (3) The signature, printed name, and address of each person whose signature is notarized and of each witness;
- (4) Other parties to the instrument; and
- (5) The manner in which the signer was identified.

All copies or certificates granted by the notary shall be under the notary's hand and notarial seal, and shall be received as evidence of such transactions. [CC 1859, §1273; RL 1925, §3181; RL 1935, §5207; RL 1945, §7674; RL 1955, §168-14; HRS §456-15; gen ch 1985; am L 1995, c 141, §2]

§456-16 Disposition of records, penalty.

The records of each notary public shall be deposited with the office of the attorney general upon the resignation, death, expiration of each term of office, or removal from or abandonment of office. If any notary fails to comply with this section within ninety days of the date of the resignation, expiration of any term of office, or removal from or abandonment of office or if the notary's personal representative fails to comply with this section within ninety days of the notary's death, then the notary or the notary's personal representative shall forfeit to the State not less than \$50 nor more than \$500, in the discretion of the court, in an action brought by the attorney general on behalf of the State. [PC 1869, c 77, §§1, 2; am L 1913, c 41, §1; RL 1925, §3182; RL 1935, §5208; am L 1941, c 322, §5; am L 1943, c 173, pt of §1; RL 1945, §7675; RL 1955, §168-15; HRS §456-16; am L 1976, c 200, pt of §1; am L 1978, c 122, §6; am L 1982, c 45, §2; am L 1984, c 127, §2; gen ch 1985; am L 1999, c 19, §1]

§456-17 Fees.

Subject to section 456-18, every notary public is entitled to demand and receive the following fees:

For noting the protest of mercantile paper, \$5;

For each notice and certified copy of protest, \$5;

For noting any other protest, \$5;

For every notice thereof, and certified copy of protest, \$5;

For every deposition, or official certificate, \$5;

For the administration of oath, including the certificate of the oath, \$5; for affixing the certificate of the oath to every duplicate original instrument beyond four, \$2.50;

For taking any acknowledgment, \$5 for each party signing; for affixing to every duplicate original beyond one of any instrument acknowledged before the notary, the notary's certificate of the acknowledgment, \$2.50 for each person making the acknowledgment. [CC 1859, §1276; L 1888, pt of c 6; am L 1917, c 132, §1; RL 1925, §3183; RL 1935, §5209; am L 1935, c 147, §1; RL 1945, §7676; am L 1951, c 281, §1; RL 1955, §168-16; HRS §456-17; am L 1976, c 146, §3; am L 1985, c 154, §1; am L 1995, c 141, §3]

§456-18 Notaries in government service.

Except as otherwise provided for by law, the head of every department (which term as used in this chapter includes any department, board, commission, bureau, or establishment of the United States, or of the State, or any political subdivision thereof) may designate one or more of the head of every department's subordinates to be a notary public who, upon duly qualifying and receiving a commission as a notary public in government service, shall perform, without charge, the services of a notary public in all matters of business pertaining to the State, any political subdivision thereof, or the United States.

Any provision of this chapter to the contrary notwithstanding, a subordinate so designated and thus qualified and commissioned as a notary public in government service shall:

(1) Be authorized to perform the duties of a notary public in one or more of the judicial circuits of the State as the attorney general shall designate;

(2) Not be required to:

(A) Pay any fee to the clerk of any circuit court for filing a copy of the notary's commission;

(B) Pay any fee to the attorney general for the issuance of the notary's commission or the renewal thereof; or

(C) Furnish and file an official bond unless that bond is required by the head of the department in which the notary is a subordinate, in which event, the expense of furnishing any such bond shall be borne by the department concerned; and

(3) Not demand or receive any fee for the notary's service as a notary public; provided that where the occasion, in the judgment of the head of the department, is deemed one of urgent necessity and convenience, the notary may, but shall not be compelled to, administer oaths or take acknowledgments in nongovernmental matters, for which services the prescribed fees shall be demanded and received as governmental realizations and covered into the notaries public revolving fund established by section 456-9.5, except that if that fund is terminated, the fees shall thereafter be deposited into the general fund of the State; provided further that with the prior written approval of the attorney general, the notary public, upon paying the fees prescribed by law and upon executing, depositing, and filing at the notary's own expense, the required official bond, may demand or receive the fees prescribed by law for services rendered by the notary in matters not pertaining to such public business. [L 1931, c 136, §1; RL 1935, §5210; am L 1941, c 322, §6; am L 1943, c 173, pt of §1; RL 1945, §7677; RL 1955, §168-17; HRS §456-18; gen ch 1985; am L 1998, c 290, §7]

[§456-19] Notary signing for disabled person.

A notary may sign the name of a person physically unable to sign or to make a mark on a document presented for notarization; provided that the notary is satisfied that the person has voluntarily given consent for the notary to sign on the person's behalf, if the notary writes, in the presence of the person: "Signature affixed by notary pursuant to section 456-19, Hawaii Revised Statutes." beneath the signature, and if a doctor's written certificate is provided to the notary certifying that the person is unable to physically sign or make a mark because of the disability, and that the person is capable of communicating the person's intentions. [L 1995, c 141, §1]

**DIVISION 3. PROPERTY; FAMILY
TITLE 28 PROPERTY
CHAPTER 502. BUREAU OF CONVEYANCES; RECORDING
GENERAL PROVISIONS**

§502-7 Definitions.

As used in this chapter, unless the context otherwise requires:

"Grantee" means a party that acquires interest by way of transfer of real property.

"Record", "recorded", or "recording" means the act of entering into the public records the written instruments affecting title to real property.

"Signature" means the name of a person as written by the individual or the affixing of a mark or finger or toe print. [L 1995, c 22, §2]

ACKNOWLEDGMENTS; PROOF OF INSTRUMENTS

§502-41 Certificate of acknowledgment; natural persons, corporations.

Except as otherwise provided by sections 502-50 to 502-52, to entitle any conveyance or other instrument to be recorded there shall be endorsed, subjoined, or attached thereto an acknowledgment in the form provided or authorized in any of sections 502-42, 502-43, or 502-45, or in substantially the following form:

(Begin in all cases by a caption specifying the state or territory and the place where the acknowledgment is taken.)

1. In the case of natural persons acting in their own right:

On (insert date), before me personally appeared A.B. (or A.B. and C.D.), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that the person or persons executed the same as the person or persons' free act and deed.

2. In the case of natural persons acting by attorney:

On (insert date), before me personally appeared A.B., to me known to be the person who executed the foregoing instrument in behalf of C.D. and acknowledged that the person executed the same as the free act and deed of said C.D.

3. In the case of corporations or partnerships:

On (insert date), before me appeared A.B., to me personally known, who, being by me duly sworn (or affirmed), did say that the person is the president (or other officer, partner, or agent of the corporation, or partnership) of (describing the corporation or partnership), and that the instrument was signed in behalf of the corporation (or partnership) by authority of its board of directors (partners or trustees), and A.B. acknowledged the instrument to be the free act and deed of the corporation (or partnership).

4. In the case of a corporation acknowledging by an individual as its attorney, where the enabling power of attorney has previously been recorded, the acknowledgment of the instrument executed under the power of attorney shall be substantially in the following form:

On (insert date), before me personally appeared A.B., to me personally known, who being by me duly sworn (or affirmed) did say that the person is the attorney-in-fact of C.D. (here name the corporation) duly appointed under power of attorney dated ..., recorded in book..., at page.../as document no.; and that the foregoing instrument was executed in the name and behalf of said C.D. by A.B. as its attorney-in-fact; and A.B. acknowledged the instrument to be the free act and deed of C.D.

In case the enabling power of attorney has not previously been recorded, omit the reference to its place of record and insert in lieu thereof the words "which power of attorney is now in full force and effect."

5. In the case of a corporation acknowledging by another corporation as its attorney, where the enabling power of attorney has previously been recorded, the acknowledgment of the instrument executed under the power of attorney shall be substantially in the following form:

On (insert date), before me personally appeared A.B., to me personally known, who, being by me duly sworn (or affirmed), did say that the person is the president (or other officer or agent of the corporation acting as attorney) of C.D. (here name the corporation acting as attorney) and that C.D. is the attorney-in-fact of E.F. (here name the corporation

in whose behalf the attorney is acting) duly appointed under power of attorney dated, recorded in book....., at page..../as document no.; that the foregoing instrument was executed in the name and behalf of E.F. by C.D. as its attorney-in-fact; that the instrument was so executed by C.D. by authority of its board of directors; and A.B. acknowledged the instrument to be the free act and deed of E.F.

In case the enabling power of attorney has not previously been recorded, omit the reference to its place of record and insert in lieu thereof the words “which power of attorney is now in full force and effect.”

6. The following form may be used in lieu of any of the foregoing forms:

On (insert date), before me personally appeared A.B. (or A.B. and C.D.), to me personally known, who, being by me duly sworn or (affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

In all cases add signature and title of the officer taking the acknowledgment.

[L 1909, c 69, §1; am L 1919, c 30, §1; am L 1923, c 85, §§1, 2; RL 1925, §3146; RL 1935, §5133; am L 1943, c 197, §1; RL 1945, §12733; am L 1945, c 84, §1; RL 1955, §343-25; HRS §502-41; am L 1992, c 197, §10; am L 2006, c. 38, §18]

§502-42 Certificate, contents.

The certificate of acknowledgment shall state in substance that the person who executed the instrument appeared before the officer granting the certificate and acknowledged or stated that the person executed the same, and that such person was personally known to the officer granting such certificate to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be such by the oath or affirmation of a credible witness known to the officer whose name shall be inserted in the certificate. It shall not be ground for the rejection of any such certificate, or for refusing to accept such instrument for record or in evidence, that the certificate fails to state that the person making the acknowledgment stated or acknowledged that the instrument was executed freely or voluntarily by the person or as the person’s free act and deed. [L 1872, c 28, §2; RL 1925, §3147; RL 1935, §5134; am L 1943, c 197, §2; RL 1945, §12734; RL 1955, §343-26; HRS §502-42; gen ch 1985]

§502-43 Form when person unknown.

When the person offering the acknowledgment is unknown to the officer taking the acknowledgment, the certificate may be substantially in the following form, to-wit:

State of Hawaii) ss.

County of

On this.....day of....., 19....., personally appeared before me A.B., satisfactorily proved to me to be the person described in and who executed the within instrument, by the oath of C.D., a credible witness for that purpose, to me known and by me duly sworn, and he (or she), A.B., acknowledged that he (or she) executed the same freely and voluntarily for the uses and purposes therein set forth. [L 1872, c 28, §4; RL 1925, §3149; RL 1935, §5135; RL 1945, §12735; RL 1955, §343-27; HRS §502-43; am L 1972, c 125, §1(c); am L 1992, c 197, §11]

§502-44 Married women.

The acknowledgment of a married woman when required by law may be taken in the same form as if she were sole and without any examination separate and apart from her husband. [L 1909, c 69, §2; RL 1925, §3150; RL 1935, §5136; RL 1945, §12736; RL 1955, §343-28; HRS §502-44]

§502-45 Acknowledgments without the State.

The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged in order to enable the same to be recorded or read in evidence, when made by any person without the State and within any other state, territory, district, or dependency of the United States, may be made before any officer of the state, territory, district, or dependency authorized by the laws thereof to take proof and acknowledgment of deeds and when so taken, and when the certificate of acknowledgment is in a form sufficient to entitle deeds of real property to be recorded in the appropriate office for recording in such state, territory, district, or dependency or in the form provided or permitted by any of sections 502-41 to 502-43, shall be entitled to be recorded and may be read in evidence in the State. The signature of such officer constitutes prima facie evidence that the acknowledgment is taken in accordance with the laws of the place where made and of the authority of the officer to take the acknowledgment. If the record of any such instrument, or a transcript thereof, is used in evidence in any proceeding the burden shall be on the party relying on such record to prove that the instrument was duly executed, in any proceeding where such fact is asserted by such party and is in dispute. The burden may be met by proof made in the manner provided in section 502-46. [L 1909, c 69, §3; RL 1925, §3151; RL 1935, §5137; am L 1943, c 197, §3; RL 1945, §12737; RL 1955, §343-29; am L 1963, c 83, §1; HRS §502-45]

§502-46 Same; certificate of authority of officer.

The burden of proving due execution of any conveyance or written instrument, acknowledged or proved under section 502-45, may be met by any admissible evidence sufficient for that purpose and shall also be met if at the time of recording or thereafter there is indorsed, subjoined, or attached to the certificate of proof or acknowledgment, signed by such officer, a certificate of the secretary of state of the state or territory in which such officer resides, under the seal of the state or territory, or a certificate of the clerk of a court of record of the state, territory, or district in the county in which the officer resides or in which the officer took such proof or acknowledgment, under the seal of the court, or a certificate of the executive officer or clerk of a court of record of such dependency, authorized to make such certificate, stating that the officer was, at the time of taking the proof or acknowledgment, duly authorized to take acknowledgments and proofs of deeds of lands in the state, territory, district, or dependency, and that the secretary of state, or other authorized executive officer, or clerk of court, is well acquainted with the handwriting of the officer taking the acknowledgment or proof, and that the secretary of state, executive officer, or clerk verily believes that the signature affixed to the certificate of proof or acknowledgment is genuine.

The authentication of the proof of acknowledgment of a deed or other written instrument when taken without the State and within any other state, territory, or district of the United States, shall be in substantially the following form:

(Begin with a caption specifying the state, territory, or district, and county or place, where the authentication is made.)

I,....., clerk of the..... in and for said county which court is a court of record, having a seal (or I,....., the secretary of state of said state or territory) do hereby certify that..... by and before whom the foregoing acknowledgment (or proof) was taken, was at the time of taking the same, a notary public (or other officer) residing (or authorized to act) in the county, and was duly authorized by the laws of the state (territory or district) to take and certify acknowledgment or proofs of deeds of land in the state (territory or district), and further that I am well acquainted with the handwriting of....., and that I verily believe that the signature to the certificate of acknowledgment (or proof) is genuine. In testimony whereof, I have hereunto set my hand and affixed the seal of the court (or state) this....day of...., 19..... [L 1909, c 69, §4; RL 1925, §3152; RL 1935, §5138; am L 1943, c 197, §4; RL 1945, §12738; RL 1955, §343-30; am L 1963, c 83, §2; HRS §502-46; gen ch 1985]

§502-47 Acknowledgment without the United States; by members of the armed forces; recordation where no official authorized to take proof.

(a) The proof or acknowledgment of any deed or other instrument required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence, when made by any person without the United States may be made by:

(1) Any officer now authorized thereto by the laws of the State;

(2) Any officer of the United States diplomatic or consular service, resident in any foreign country or port, when certified by the officer under the officer's seal of office; and

(3) Any person authorized by the law of any foreign country to take such acknowledgment or proof, when such acknowledgment or proof is accompanied by a certificate to the effect that the person taking the same is duly authorized thereto and that such acknowledgment or proof is in the manner prescribed by the laws of the foreign country or by treaty or international agreement of the United States. The certificate may be made by a diplomatic or consular officer of the United States under the seal of the officer's office, or by a diplomatic or consular officer of the foreign country, resident in the State, under the seal of the officer's office with the signature or facsimile of the signature of the diplomatic or consular officer of the United States.

For the purposes of this section diplomatic or consular officer includes any minister, consul, vice-consul, charge d'affaires, consular, or commercial agent, or vice-consular or vice-commercial agent.

(b) Proof or acknowledgment may be made by any person in the armed forces of the United States, or by any person without the United States, before any officer of the armed forces authorized by Congress to exercise the powers of a notary public. The signature without seal of any officer acting as such notary public is prima facie evidence of the officer's authority.

(c) Where it is established to the satisfaction of any judge of a circuit court of the State that any instrument required to be acknowledged or proved has been executed by a person then permanently or temporarily resident at some place where acknowledgment or proof cannot be made as hereinabove provided, such instrument shall be declared acceptable for recordation by order of the judge issued upon such testimony and evidence as are sufficient in the judgment of the judge to establish the genuineness and authenticity thereof, and a certified copy of the order shall be recorded together with and attached to any instrument so ordered acceptable for recordation.

(d) Any instrument so proved, acknowledged, or ordered acceptable for recordation is entitled to be recorded in the State, and may be read in evidence in any court of the State

in the same manner and with like effect as if therein duly recorded or acknowledged. [L 1909, c 69, §5; RL 1925, §3153; RL 1935, §5139; RL 1945, §12739; am L 1945, c 53, §1; am L 1947, c 86, §1; RL 1955, §343-31; HRS §502-47; gen ch 1993; am L 1995, c 22, §6]

§502-48 Identification of person making.

No acknowledgment of any conveyance or other instrument, except as provided by this chapter, whereby any real estate is conveyed or may be affected, shall be taken, unless the person offering to make the acknowledgment is personally known to the officer taking the acknowledgment to be the person whose name is subscribed to the conveyance or instrument as a party thereto, or is proved to be such by the oath or affirmation of a credible witness known to the officer or by production of a current identification card or document issued by the United States, this State, any other state, or a national government that contains the bearer's photograph and signature. [L 1909, c 69, §6; RL 1925, §3154; RL 1935, §5140; RL 1945, §12740; RL 1955, §343-32; HRS §502-48; am L 1995, c 141, §4]

§502-49 Certificate of officer, or judge, necessary.

Every officer who takes the acknowledgment of any instrument shall indorse, subjoin, or attach a certificate thereof, signed by oneself, on the instrument.

Every judge who takes the proof of any instrument shall indorse, subjoin, or attach a certificate thereof, signed by oneself, on the instrument, giving the names of the witnesses examined before the judge, their places of residence, and the substance of the evidence by them given. [L 1909, c 69, §7; RL 1925, §3155; RL 1935, §5141; RL 1945, §12741; RL 1955, §343-33; HRS §502-49; gen ch 1985]

§502-50 How made; proof if not made.

(a) Except as otherwise provided, to entitle any conveyance or other instrument to be recorded, it shall be acknowledged by the person or persons executing the same, before the registrar of conveyances, or the registrar's deputy or before a judge of a court of record or a notary public of the State. If any person having executed an instrument within the State, dies, or departs from the State, without having acknowledged the instrument, or refuses to acknowledge it, or if the person has acknowledged it but such acknowledgment has not been duly certified by the officer before whom made and for any reason neither proper certification nor a new acknowledgment can be secured, the instrument may be entered as of record on proof of its execution by a subscribing witness thereto before the judge of the land court or a judge of a circuit court of the State. If all the subscribing witnesses to the conveyance or other instrument are dead or out of the State, the same may be proved before any court in the State by proving the handwriting of the person executing the same and any subscribing witness. For the purposes of this section a notary public or person who wrongfully undertakes to act as such, may be deemed a subscribing witness.

(b) If there is any interlineation, erasure, or other change in an instrument, not initialed as required by section 502-61, and for any reason compliance with section 502-61 cannot be secured, the instrument may be proved as provided in subsection (c), or, without the bringing of the proceeding therein provided for, the judge of the land court or a judge of a circuit court may certify that the instrument is entitled to be recorded, if it is established to the judge's satisfaction that such change was made before execution of the instrument, and the instrument thereupon shall be received for record notwithstanding section 502-63. If the record of any such instrument, received for record by reason of such certificate, or a transcript thereof, is used in evidence in any proceeding, the burden shall be on the party relying on such record to prove that such change was made before

execution of the instrument, in any proceeding where such fact is asserted by the party and is in dispute.

(c) Any person interested under an instrument which if properly proved or acknowledged would be entitled to record, may institute a proceeding against the proper parties to obtain a judgment proving such instrument. The proceeding shall be brought in a circuit court or the land court. If the instrument affects the title to real property the proceeding shall be brought in the judicial circuit where the property is located. If judgment is obtained a certified copy thereof shall be appended to the instrument. [L 1909, c 69, §8; RL 1925, §3156; RL 1935, §5142; am L 1943, c 197, §5; RL 1945, §12742; RL 1955, §343-34; am L 1963, c 83, §3; HRS §502-50; am L 1972, c 125, §1(d); gen ch 1985]

§502-51 Exemption of instruments offered on behalf of United States.

In the case of any deed, lease, mortgage, lien, notice, agreement, or other instrument offered for recordation by any judicial, executive, or administrative officer of the United States, acting in the officer's official capacity, or by any duly authorized officer or agent of any agency or instrumentality of the United States created by or under federal or state law, acting in the officer's or agent's official capacity, it shall not be necessary that the instrument, where the instrument is required to be signed by the officer or agent, be acknowledged before a notary public by the officer or agent, and the registrar of conveyances shall accept the instrument for recordation, when the signature of the duly authorized officer or agent, together with the official seal, if any, is attached to the instrument for recordation. [L 1923, c 167, §1; RL 1925, §3157; am L Sp 1933, c 36, §1; RL 1935, §5143; RL 1945, §12743; RL 1955, §343-35; HRS §502-51; gen ch 1985; am L 1993, c 141, §5]

§502-52 Signatures of certain state officers, acknowledgments not required.

In the case of an official signature entitled to be judicially noticed pursuant to section 626-1, rule 901 or 902, the signature shall suffice to show due execution by the officer signing the instrument and the officer is not required to acknowledge the instrument in order to entitle it to be recorded. [L 1945, c 84, §2; RL 1955, §343-36; HRS §502-52; am L 1985, c 68, §19]

§502-53 No certificate of acknowledgment contrary hereto valid in court or entitled to be recorded; exception.

No certificate of acknowledgment contrary to this chapter is valid in any court of the State, nor is it entitled to be recorded in the bureau of conveyances, but no certificate of acknowledgment executed before July 29, 1872, shall in consequence of anything in this chapter contained be deemed invalid. [L 1909, c 69, §9; RL 1925, §3158; RL 1935, §5144; RL 1945, §12744; RL 1955, §343-37; HRS §502-53]

§502-54 Penalty for false certificate.

Any officer authorized to take acknowledgments to instruments who knowingly incorporates in the certificate of acknowledgment any false or misleading statement as to the facts therein contained, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Nothing in this section shall be construed to do away with the liability for civil damages for such act. [L 1882, c 41; am L 1903, c 8, §2; RL 1925, §3159; RL 1935, §5145; am L 1941, c 22, §1; RL 1945, §12745; RL 1955, §343-38; HRS §502-54]

INTERLINEATIONS, ERASURES, ETC.

§502-61 Changes noted in instrument.

Every notary public or the officer authorized to take acknowledgments to instruments, before taking any acknowledgment, shall first carefully inspect any instrument proposed to be acknowledged before the notary public or officer, and ascertain whether there are any interlineations, erasures, or changes in the instrument. If there are any interlineations, erasures, or changes, the notary public or officer shall call the attention thereto of the person offering to acknowledge the instrument. If they are approved, the acknowledging officer shall place the officer's initials in the margin of the instrument opposite each interlineation, erasure, or change. The initialing by the officer taking the acknowledgment is prima facie evidence of the extent of the interlineations, erasures, or changes and of the fact that the same were made prior to acknowledgment of the instrument, but does not preclude proof to the contrary. [L 1896, c 55, §1; RL 1925, §3160; RL 1935, §5146; RL 1945, §12746; RL 1955, §343-39; am L 1963, c 83, §4; HRS §502-61; gen ch 1985]

§502-62 Penalty for not noting changes.

Every notary public or other person authorized to take acknowledgments to instruments who takes the acknowledgment of any person to any instrument in which there are interlineations, erasures, or changes, and who fails to observe or perform the requirements, or any of them, of section 502-61, shall be fined not more than \$200. [L 1896, c 55, §2; am L 1903, c 8, §2; RL 1925, §3161; RL 1935, §5147; RL 1945, §12747; RL 1955, §343-40; HRS §502-62]

§502-63 Not recorded unless initialed.

No instrument acknowledged in the State of Hawaii in which there are interlineations, erasures, or changes shall be recorded by the registrar, unless the same are duly initialed by the officer or officers taking the acknowledgment or acknowledgments to the same in the State of Hawaii.

No instrument acknowledged outside of the State of Hawaii in which there are interlineations, erasures, or changes shall be recorded by the registrar, unless the same are duly initialed by either:

- (1) The parties to such instrument; or
- (2) The officer or officers taking the acknowledgment or acknowledgments to the same. [L 1896, c 55, §3; RL 1925, §3162; RL 1935, §5148; RL 1945, §12748; RL 1955, §343-41; am L 1963, c 83, §5; HRS §502-63; am L 1992, c 197, §12]

§502-64 REPEALED. L 1992, c 197, §14.

RECORDS OF ACKNOWLEDGMENTS

§502-71 Record of acknowledgments to be kept.

All judges and other officers authorized by law to take acknowledgments to instruments, besides the certificate of acknowledgment indorsed upon the instrument, shall keep a record of every acknowledgment in a book of records. Each record shall set forth at least the date of acknowledgment, the parties to the instrument, the persons acknowledging, the date, and some memorandum as to the nature of the instrument acknowledged. [L 1888, c 18, §1; RL 1925, §3164; RL 1935, §5150; RL 1945, §12750; RL 1955, §343-43; HRS §502-71]

§502-72 Disposition of records.

Except as otherwise provided in respect to notaries public by section 456-16, the books of record so kept shall every five years, and upon the resignation, death, or removal from office of such judge or other officer, be deposited with the clerk of the circuit court of the judicial circuit for and in which the judge or other officer was or is authorized to act. [L 1888, c 18, §2; RL 1925, §3165; RL 1935, §5151; am L 1941, c 322, §7; RL 1945, §12751; RL 1955, §343-44; HRS §502-72]

§502-73 Same, open to inspection.

The clerks of the circuit courts shall carefully preserve the books of record deposited with them as provided by section 502-72, filing the same with the records of the court. The records, both while in the custody of the acknowledging officers and after such filing, shall be open at all reasonable times to the inspection of any responsible person, without fee or reward. [L 1888, c 18, §3; RL 1925, §3166; RL 1935, §5152; RL 1945, §12752; RL 1955, §343-45; HRS §502-73; am L 1972, c 125, §1(e)]

§502-74 Penalty for not keeping.

Any of the officers to take acknowledgments who fails to keep the record directed by section 502-71, or upon failure to deposit the same with a clerk of a court of record as directed, shall be fined not less than \$50 nor more than \$250, which may be recovered of such officer, or the officer's personal representatives. [L 1888, c 18, pt of §4; am L 1903, c 8, §2; RL 1925, §3167; RL 1935, §5153; RL 1945, §12753; RL 1955, §343-46; HRS §502-74; am L 1976, c 200, pt of §1; gen ch 1985]

**REQUIREMENT AND EFFECT OF ACKNOWLEDGING,
RECORDING, NOT RECORDING**

§502-81 Instruments may be recorded; as evidence.

Every conveyance or other instrument, acknowledged or proved, and certified in the manner hereinbefore prescribed, by any of the officers before named, may be read in evidence without further proof thereof, and is entitled to be recorded. [CC 1859, §1258; am imp L 1917, c 207, §1; am L 1921, c 34, §1; RL 1925, §3168; RL 1935, §5154; RL 1945, §12754; RL 1955, §343-47; HRS §502-81]

§502-82 Record or copy as evidence.

The record of an instrument duly recorded, or a transcript thereof, duly certified, may also be read in evidence, with like force and effect as the original instrument. Neither the certificate of acknowledgment, nor the proof of any instrument, is conclusive, but may be rebutted, and the force and effect thereof may be contested by any party affected thereby. If the party contesting the proof of an instrument makes it appear that the proof was taken upon the oath of an interested or incompetent witness, neither the instrument nor the record thereof shall be received in evidence until established by other competent proof. [CC 1859, §1259; RL 1925, §3169; RL 1935, §5155; RL 1945, §12755; RL 1955, §343-48; HRS §502-82]

§502-83 Effect of not recording deeds, leases, etc.

All deeds, leases for a term of more than one year, mortgages of any interest in real estate, or other conveyances of real estate within the State, shall be recorded in the bureau of conveyances. Every such conveyance not so recorded is void as against any subsequent purchaser, lessee, or mortgagee, in good faith and for a valuable consideration, not having actual notice of the conveyance of the same real estate, or any portion thereof, or interest therein, whose conveyance is first duly recorded. [CC 1859,

§1262; RL 1925, §3170; RL 1935, §5156; RL 1945, §12756; RL 1955, §343-49; am L 1963, c 83, §6; HRS §502-83]

§502-84 Powers of attorney, etc.

All articles of marriage settlement and powers of attorney for the transfer of real property within the State shall be recorded in the bureau of conveyances, in default of which no such instrument shall be binding to the detriment of third parties or conclusive upon their rights and interests. [CC 1859, §1263; am L 1911, c 20, §1; am imp L 1915, c 47, §§2, 3; am L 1919, c 3, pt of §1; RL 1925, §3171; RL 1935, §5157; RL 1945, §12757; RL 1955, §343-50; HRS §502-84; am L 1972, c 125, §1(f)]

DIVISION 1. GOVERNMENT
TITLE 6. COUNTY ORGANIZATION AND ADMINISTRATION
SUBTITLE 1. PROVISIONS COMMON TO ALL COUNTIES
CHAPTER 46. GENERAL PROVISIONS
PART II. OFFICERS AND EMPLOYEES

§46-29 Certain notarial powers conferred upon county officers.

Wherever by law any affidavit under oath or any statement or other document to be acknowledged is required to be filed with the chief of police, treasurer, director of finance, clerk, or council of any county as a condition to the granting of any license or the performance of any act by any person, or by any county officer, the chief of police, treasurer, director of finance, or clerk, their deputy or deputies, of the county, shall take the oath or acknowledgment, free of charge, keeping records thereof as required by law of notaries public; provided that nothing herein shall prevent any person desiring so to do from making the oath or acknowledgment before any duly authorized notary public, subject to the notary's legal fees therefor. [L 1919, c 9, §1; RL 1925, §2174; am imp L 1932 1st, c 1, pt of §1; RL 1935, §2314; RL 1945, §6005; RL 1955, §138-4; HRS §46-29; gen ch 1985]

DIVISION 4. COURTS AND JUDICIAL PROCEEDINGS
TITLE 32. COURTS AND COURT OFFICERS
CHAPTER 603. CIRCUIT COURTS
PART I. CIRCUITS AND JUDGES

§603-1 Judicial circuits.

The State is divided into four judicial circuits, as follows:

(1) The first judicial circuit is the island of Oahu and all other islands belonging to the State not hereinafter mentioned;

(2) The second judicial circuit includes the islands of Maui, Molokai, Lanai, Kahoolawe, and Molokini;

(3) The third judicial circuit is the island of Hawaii;

(4) The fifth judicial circuit includes the islands of Kauai and Niihau. [L 1892, c 57, §29; am L 1913, c 34, §1; RL 1925, §2234; RL 1935, §3630; am L 1943, c 141, §1(a); RL 1945, §9631; RL 1955, §215-1; HRS §603-1; am L 1994, c 103, §1]

TITLE 33. EVIDENCE
CHAPTER 621. EVIDENCE AND WITNESSES, GENERALLY

§621-12 Oath; affirmation.

Every court and person having authority to hear, receive, and examine evidence may administer the following oath-affirmation to all witnesses legally called before them: Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth and nothing but the truth? [L 1876, c 32, §48; RL 1925, §2614; RL 1935, §3821; RL 1945, §9832; RL 1955, §222-12; HRS §621-12; am L 1972, c 104, §1(g); am L 1973, c 155, §1]

§621-13 Oaths, validity of.

If an oath has been administered by a judge of a court of record, or by a clerk, notary public, or other person having authority to administer oaths by the law of the place where the oath was administered, it shall not be an objection to the validity of the oath that the judge or other person has not jurisdiction or cognizance of the matter or thing concerning which the oath was administered. [L 1876, c 32, §65; RL 1925, §2631; RL 1935, §3822; RL 1945, §9833; RL 1955, §222-13; HRS §621-13; am L 1972, c 104, §1(h)]

**HAWAII ADMINISTRATIVE RULES
TITLE 5 DEPARTMENT OF THE ATTORNEY GENERAL
CHAPTER 11 NOTARIES PUBLIC**

Subchapter 1 General Provisions

- §5-11-1 Purpose
- §5-11-2 Commission required to act as a notary public
- §5-11-3 Conduct
- §5-11-4 Powers
- §5-11-5 Official seal
- §5-11-6 Official signature
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Subchapter 2 Applications

- §5-11-21 Application for notary public commission
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Subchapter 3 Examinations

- §5-11-32 Examination
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Subchapter 4 Disciplinary Sanctions

- §5-11-39 Grounds for refusal to renew, reinstate, or restore, and for revocation,

suspension, denial, or condition of commissions

Subchapter 5 Fees

§5-11-46 Fees

Subchapter 6 Practice and Procedure

§5-11-51 Administrative practice and procedure

§5-11-52 Notification of denial of application for commission or renewal, or of proposed disciplinary action

§5-11-53 Demand for a hearing

§5-11-54 Proceedings upon demand for a hearing

§5-11-55 Exceptions

SUBCHAPTER 1 GENERAL PROVISIONS

§5-11-1 Purpose.

This chapter is intended to clarify and implement chapter 456, Hawaii Revised Statutes, as amended, to the end that the provision thereunder, for the protection of the general public, may best be effectuated and the public interest most effectively served. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-2 Commission required to act as a notary public.

No person shall act as a notary public, or advertise or represent oneself as a notary public, without a current commission previously obtained from the attorney general. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-3 Conduct.

Every notary public shall perform notary public duties in accordance with chapter 456, HRS, this chapter, and the notary public code of professional responsibility as adopted by the National Notary Association, and as any of these maybe amended. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-7)

§5-11-4 Powers.

Every notary public shall take acknowledgments, administer oaths and affirmations, witness the signing of documents, attest to the identity of the signer of a document, note protests, and perform any other act permitted by chapter 456, HRS. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-10, 456-11, 456-13, 456-14, 456-17, 456-18, 456-19)

§5-11-5 Official seal.

(a) A notary public shall obtain and keep an official seal of one type, either an engraved seal or a rubber stamp facsimile seal, on which shall be inscribed the name of the notary public, the commission number of the notary public, and the words “notary public” and “State of Hawaii.”

(b) The notary public shall authenticate all of the notary public’s official acts, attestations, certifications, and instruments with the notary public’s official seal.

(c) The official seal of every notary public shall be affixed by either an engraved seal or a rubber stamp facsimile seal which shall be circular, not over two inches in diameter, with a serrated or milled edge border and shall include the required wording and information specified in subsection (a).

(d) The notary public shall surrender the notary public's seal to the attorney general within ninety days of resignation, removal from office, or the expiration of a term of office without renewal. Failure to comply with this requirement may result in a fine not more than \$200. [Eff](Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-3)

§5-11-6 Official signature.

(a) A notary public shall sign on every notarial certificate, at the time of notarization, the notary public's official signature as filed with the clerk of the circuit court in the circuit in which the notary public resides and as the notary public's name appears on the notary public's seal.

(b) The notary public shall always add to the notary public's official signature the typed or printed name of the notary public and a statement indicating the date of expiration of the notary public's commission. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-3)

§5-11-7 Acceptable forms of identification of signers.

No acknowledgment, jurat, or other instrument shall be taken, unless the person offering to make the acknowledgment, jurat, or instrument is personally known to the notary public to be the person whose name is subscribed to the acknowledgment, jurat, or instrument as a party thereto, or is proved to be such by the oath or affirmation of a credible witness known to the notary public, or by production of a current identification card or document issued by the United States, this State, any other state, or a national government that contains the bearer's photograph and signature. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-15)

§5-11-8 Acknowledgments; jurats.

Every acknowledgment or jurat shall be evidenced by a certificate signed and dated by a notary public. The certificate shall include the printed name of the notary public, the official stamp or seal of the notary public, identification of the jurisdiction in which the notarial act is performed, identification or description of the document being notarized, which shall be close in proximity to the acknowledgment or jurat, and the number of pages and date of such document. [Eff] (Auth: HRS §§28-10.3,456-8) (Imp: HRS §456-15)

§5-11-9 Record book.

(a) A notary public shall record all of the notary public's transactions, as prescribed in chapter 456, HRS.

(b) The record book shall be bound with a soft cover and shall not exceed eleven inches in height and sixteen and one-half inches in width when fully opened.

(c) The pages of the record book shall be consecutively numbered.

(d) The notary public shall always provide and print legibly on the information page of each record book the notary public's name, business address, commission number, and commission expiration date, the book number, and the beginning and ending dates of the notarial acts recorded in that book.

(e) The notary public shall always print legibly the notary public's name on the top left corner and the notary public's commission number on the top right corner of each set of pages of transactions in each record book.

(f) The notary public shall deposit the notary public's record book with the attorney general within ninety days of the end date of the notary public's commission. Failure to comply with this requirement may result in a fine of no less than \$50 and no more than

§500. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-15, 456-16)

§5-11-10 Notification and filing of names, addresses, and changes.

(a) Each notary public shall file the notary public's name, employer, residence and business addresses and telephone numbers, and occupation with the attorney general, and shall notify the attorney general of any change, in writing, within thirty days of the change.

(b) The notice from the notary public of the notary public's name change shall state the old and new names and the effective date of the notary public's name change, and shall include a copy of the legal documentation recording the name change and the new signature of the notary public.

(c) The notice from the notary public of the notary public's address change shall state the old and new addresses of the notary public's residence, if there is a change in the notary public's residence address, the old and new addresses of the notary public's business, if there is a change in the notary public's business address, and the effective date of the notary public's address change. [Eff] (Auth: HRS §§28-10.8, 456-8)(Imp: HRS §456-1)

§5-11-11 Display of commission; hours of business.

(a) A sign, no smaller than three inches by five inches, bearing the words "notary public" shall be conspicuously displayed within the premises of the place of business where the notary public is employed.

(b) A notary public shall provide notarial services to the public during all normal business hours of operation where the notary public is employed.

(c) This section shall not apply to notaries in government service. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-12 Term of commission.

The term of office of a notary public shall be four years from the date of the notary public's commission, unless sooner terminated by the notary public's resignation, death, or abandonment of office, or revoked or suspended by action of the attorney general. Any notarial act performed after the termination, revocation, or suspension of a commission shall be invalid. [Eff] (Auth: HRS §§28-10.8, 456-8)(Imp: HRS §456-1)

§5-11-13 Forfeited commission.

(a) The commission of a notary public is forfeited if the notary public knowingly fails to submit a completed renewal application, pay the renewal fee, or complete the processing and filing of a commission for renewal by the date of expiration of the notary public's commission. A failure to renew shall be deemed knowingly if notice of renewal is sent to the last address on file for the notary public and the notary public fails to complete all the requirements of this subsection.

(b) Any person seeking to restore the person's forfeited commission more than one year from the date of expiration of the commission shall reapply as a new applicant for a notary public commission. [Eff] (Auth: HRS §§28-10.8, 456-8)(Imp: HRS §456-1)

§5-11-14 Suspended commission.

No commission shall be suspended by the attorney general for a period exceeding five years. A person whose commission has been suspended may apply for reinstatement of the commission upon complete compliance with all terms and conditions imposed by the order of suspension. The application for reinstatement shall be accompanied by all

applicable fees. If the person fails to file for reinstatement within thirty days after the end of suspension, the person's commission shall be forfeited. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-15 Revoked commission.

A person may apply for a new commission after five years from the effective date of the revocation of the commission by filing an application and complying with all current requirements for new applicants. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-16 Resignation of commission.

(a) A notary public may resign the notary public's commission, and shall:

- (1) Surrender the notary public's commission certificate, seal, and notarial record books as provided in section 5-11-17(a); and
- (2) Cease conducting all notarial services.

(b) The resignation or surrender shall not bar jurisdiction by the attorney general to proceed with any investigation, action, or proceeding to revoke, suspend, condition, or limit the notary public's commission or fine the notary public.

(c) A person may obtain a new commission by applying as a new applicant should the person desire to engage in any notarial services. [Eff] (Auth: HRS §§28-10.8, 456-8)(Imp: HRS §456-1)

§5-11-17 Surrender of notary public commission certificate, seal, and record book.

(a) Within ninety days of resignation, removal from office, or the expiration of a term of office without renewal, the notary public shall:

- (1) Surrender the notary public's commission certificate to the attorney general for the purpose of destruction;
- (2) Surrender the notary public's seal to the attorney general for the purpose of defacement; and
- (3) Deposit the notary public's record book with the attorney general.

(b) Upon the death of the notary public, the notary public's employer or personal representative shall within ninety days fulfill the requirements of subsection (a).

(c) Failure to comply with subsection (a)(2) may result in a fine not more than \$200. Failure to comply with subsection (a)(3) may result in a fine not less than \$50 nor more than \$500. [Eff] (Auth: HRS §§28-10.8, 456-8)(Imp: HRS §§456-1, 456-3, 456-7, 456-16)

§5-11-18 Loss, misplacement, or theft of notary public certificate, seal, or record book.

Within ten days after loss, misplacement, or theft of the notary public's official seal or notarial record book or both, a notary public shall deliver written notification to the attorney general of the loss, misplacement, or theft. The notary public also shall inform the appropriate law enforcement agency in the case of theft and deliver a copy of the law enforcement agency's report of the theft to the attorney general. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-3, 456-16)

SUBCHAPTER 2 APPLICATIONS

§5-11-21 Application for notary public commission.

(a) Each applicant for a notary public commission shall complete and file an application with the attorney general. A completed application shall include:

- (1) A non-refundable application fee;

(2) A letter of character recommendation from a person residing in this State, who is not a relative or an employer of the applicant and who can attest to the applicant's honesty, trustworthiness, financial integrity, and moral character; and

(3) A letter of justification from the applicant's employer, or if the applicant is self-employed, from the applicant, explaining in detail the reasons why the commission is being sought. The letter shall also contain a statement by the employer or applicant, if the applicant is self-employed, acknowledging that a notary public is a public officer and that the applicant would be permitted to serve the general public in such capacity during the employer's or applicant's normal business hours.

(b) The application may require the applicant to provide the following:

(1) The applicant's legal name;

(2) Verification that the applicant is at least eighteen years of age;

(3) The applicant's current residence, business, and mailing addresses;

(4) The date and place of any conviction of a penal crime;

(5) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United States; and

(6) Any other information the attorney general may require to investigate the applicant's qualifications for a notary public commission.

(c) When an application is made for a commission as a government notary public, the application shall be accompanied by a letter of justification from the head of every department (which includes any department, board, commission, bureau, or establishment of the United States, the State, or any political subdivision thereof) where the applicant is employed and shall designate the applicant to perform, without charge, the services of a notary public in all matters of business pertaining to the business of the governmental entity employing the applicant.

(d) Each applicant shall have the application properly notarized by a notary public currently commissioned in this State. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-1, 456-2, 456-9, 456-18)

§5-11-22 Action on application.

(a) Unless otherwise provided by law, the attorney general shall take the following actions within one year after the filing of a complete application for a commission:

(1) If the attorney general deems appropriate, conduct an investigation of the applicant; and

(2) After completing any necessary investigation, provide written notification to the applicant of the decision regarding the application for a commission. If the application is denied, written notification of the denial shall state the reason for denying the application and shall inform the applicant of the right to a hearing in accordance with chapter 91, HRS, and chapter 5-1.

(b) An application may be considered abandoned if the application is not completed and the required documents and other information are not submitted to the attorney general within ninety days from the date the application is first filed with the attorney general. The attorney general shall not be required to act on any abandoned application, and the abandoned application may be destroyed by the attorney general. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§28-10.8, 91-13.5, 456-8)

§5-11-23 Application for renewal of notary public commission.

(a) Each notary public shall be responsible for timely renewing the notary public's commission and satisfying the renewal requirements provided by law. A completed

renewal application received by the attorney general before or on the notary public's current date of expiration of commission shall be considered timely filed.

(b) At the time of commission renewal, each notary public shall submit a completed renewal application, pay all applicable fees, and comply with any other requirement provided by law.

(c) The failure to timely renew a commission, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement may cause the commission to be automatically forfeited.

(d) Each applicant shall have the renewal application properly notarized by a notary public, other than the applicant, currently commissioned in this State. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-1, 456-2, 456-9, 456-18)

SUBCHAPTER 3 EXAMINATIONS

§5-11-32 Examination.

(a) No notary public commission shall be issued to any person unless the person pays the examination fee, and takes and passes a written examination as prescribed by the attorney general. The minimum passing score is eighty percent. Failure to obtain a passing score shall result in failure of examination, and no commission shall be issued.

(b) The applicant shall take the examination on the date specified on the notification of approval of the application for a commission and of the scheduled examination date. Failure to take the notary examination on the scheduled examination date three consecutive times shall require that the applicant submit a new application for a notary public commission with updated supporting letters.

(c) The attorney general shall designate the locations and times of the examination.

(d) The attorney general shall notify an applicant in writing of the examination result within thirty calendar days of the examination.

(e) An applicant who fails to attain a passing score may take a re-examination without submitting anew application, provided that the applicant requests, pays the examination fee, and takes the re-examination within thirty calendar days from the date of the notification of the applicant's failure to attain a passing score on the first examination. If the applicant fails to take a re-examination within the thirty calendar days, the applicant shall submit a new application and pay the applicable application and examination fees.

(f) An applicant who fails the examination twice shall wait ninety days from the date of the last examination to reapply for a notary public commission. [Eff] (Auth: HRS §§28-10.8, 456-8)(Imp: HRS §§456-1, 456-7, 456-8)

§5-11-33 Examination subject matter.

The examination shall test whether applicants have a reasonable knowledge of the general principles and practices of notary public duties, and the laws and rules pertaining to notaries public, including chapter 456, HRS, sections 502-41 to 502-74, HRS, and this chapter. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-1, 456-7)

SUBCHAPTER 4 DISCIPLINARY SANCTIONS

§5-11-39 Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of commissions.

(a) In addition to any other acts or conditions provided by law, the attorney general may refuse to renew, reinstate, or restore, or may revoke, suspend, deny, or condition, a

commission of any applicant or notary public who violates any of the provisions of chapter 456, HRS, and this chapter, and to seek fines or to otherwise discipline a notary public for any cause authorized by law, including but not limited to the following:

(1) Failing to meet and sustain the conditions and requirements necessary to maintain a commission;

(2) Submitting an application for a new commission, renewed commission, restoration of a forfeited commission, or reinstatement of a suspended commission that contains a false statement, an omission of fact, or a substantial misstatement;

(3) Failing to complete the processing of the notary public's commission by filing the notary public's commission with the clerk of the circuit court of the judicial circuit in which the notary public resides;

(4) Failing to maintain a business or residence address in the State while practicing as a notary public in the State;

(5) Being incapable of reading, writing, or speaking the English language with understanding;

(6) Allowing the notary public's name or title to be used deceptively, fraudulently, or in false or misleading advertising, or making untruthful or improbable statements;

(7) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;

(8) Practicing as a notary public while the ability to practice is impaired by alcohol, drugs, or mental instability, or substantially impaired by physical disability;

(9) Procuring a commission through fraud, misrepresentation, or deceit;

(10) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of a notary public;

(11) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;

(12) Conduct or practice contrary to the notary public code of professional responsibility as adopted by the National Notary Association;

(13) Violating any condition or limitation upon which a conditional or temporary commission was issued;

(14) Engaging in business under a past or present commission issued pursuant to the notary public laws, in a manner causing injury to one or more members of the public;

(15) Failure to comply with, observe, or adhere to any law in a manner such that the attorney general deems the holder of a notary public commission to be unfit or an improper person to hold a commission;

(16) Revocation, suspension, restriction, or denial of a professional license or notary public commission if that action was for misconduct, dishonesty, or any cause that relates to the duties or responsibilities of a notary public;

(17) Criminal conviction, whether by nolo contendere or otherwise, of a crime related to the qualifications, functions, or duties of a notary public, or involving theft, fraud, dishonesty, or false statement;

(18) Failure to report in writing to the attorney general any disciplinary decision issued against the notary public or the applicant in another jurisdiction within thirty days of the disciplinary decision; and

(19) Violating this chapter, the applicable laws governing notaries public, or any rule or order of the attorney general. [Eff] (Auth: HRS §§28-10.8,456-8) (Imp: HRS §456-1)

SUBCHAPTER 5 FEES

§5-11-46 Fees.

(a) The attorney general shall charge and collect the following fees, which shall be nonrefundable:

- (1) Application for commission of notary public commission, \$10;
 - (2) Application for renewal of notary commission, \$10;
 - (3) Application for restoration of forfeited commission, \$10;
 - (4) Application for reinstatement of suspended commission, \$10;
 - (5) Issuance of notary public commission, \$40;
 - (6) Renewal of notary public commission, \$40;
 - (7) Each examination, \$10;
 - (8) Restoration of forfeited commission, \$60;
 - (9) Commission name change, \$10;
 - (10) Change in judicial circuit, \$10;
 - (11) Notary public manual, \$3 if the manual is picked up at the notary public office or \$3.85 if the manual is to be mailed;
 - (12) Certification of each notarial transaction from a notary public's record book in the disposition of the attorney general, \$5 per notarial transaction; and
 - (13) Copying, per printed page, 25 cents;
- (b) All fees prescribed by this chapter shall be deposited to the credit of the department of the attorney general's notaries public revolving fund. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-9)

SUBCHAPTER 6 PRACTICE AND PROCEDURE

§5-11-51 Administrative practice and procedure.

The rules of practice and procedure for notaries public shall be as provided in chapter 5-1, the rules of practice and procedure for administrative process of the department of the attorney general. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-52 Notification of denial of application for commission or renewal, or of proposed disciplinary action.

In the event an application for commission or renewal is denied, or a notary public is to be disciplined, the attorney general shall provide written notification to the applicant or notary public of the attorney general's intended action, which shall include a concise statement of the reasons therefor and a statement informing the applicant or notary public of the right to a hearing if the applicant or notary public so desires. [Eff] (Auth: HRS §§456-1) (Imp: HRS §456-1)

§5-11-53 Demand for a hearing.

Any person whose application is denied, or notary public who is to be disciplined by the attorney general, shall be entitled to a hearing if a demand for hearing is filed with attorney general within sixty days of the date of the letter informing the applicant or notary public of the denial of application, or intent to discipline the notary public, respectively. [Eff] (Auth: HRS §§28-10.8, 91-9, 456-8) (Imp: HRS §456-1)

§5-11-54 Proceedings upon demand for a hearing.

If a demand for a hearing is filed within sixty days of the date of the denial or intent to

discipline, the attorney general shall order a hearing pursuant to chapter 91, HRS, and chapter 5-1. [Eff] (Auth: HRS §§28-10.8, 91-9, 456-8) (Imp: HRS §§91-13.1, 456-1)

§5-11-55 Exceptions.

If any requirement of this chapter results in undue hardship for the applicant or notary public, the attorney general may, upon written request from the applicant or notary public, grant an exception to that requirement if the attorney general determines such action to be in the best interest of the State.” [Eff] (Auth HRS §§28-10.8,456-6) (Imp: HRS §456-1)