

TEXAS STATUTES

GOVERNMENT CODE

**CHAPTER 406. NOTARY PUBLIC; COMMISSIONER OF DEEDS
SUBCHAPTER A. NOTARY PUBLIC**

Sec. 406.001. APPOINTMENTS. The secretary of state may appoint a notary public at any time.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.002. TERM. The term of a notary public expires four years after the date the notary public qualifies.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.003. JURISDICTION. A notary public has statewide jurisdiction.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.004. ELIGIBILITY. Each person appointed and commissioned as a notary public shall be at least 18 years of age and a resident of the State of Texas and must not have been convicted of a felony or crime involving moral turpitude.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 1, eff. Jan. 1, 1996.

Sec. 406.005. APPOINTMENT PROCEDURE--STATEMENT. (a) Each person to be appointed a notary public shall submit an application to the secretary of state on a form prescribed by the secretary of state. The application must satisfy the secretary of state that the applicant is qualified. The application must state:

- (1) the applicant's name to be used in acting as a notary public;
- (2) the applicant's post office address;
- (3) the applicant's county of residence;
- (4) the applicant's date of birth;
- (5) the applicant's driver's license number or the number of other official state-issued identification; and
- (6) the applicant's social security number.

(b) The applicant shall also execute the statement of officers as required by Section 1, Article XVI, Texas Constitution.

(c) Repealed by Acts 2003, 78th Leg., ch. 1211, Sec. 1.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 2, eff. Jan. 1, 1996; Acts 2003, 78th Leg., ch. 1211, Sec. 1, eff. Sept. 1, 2003.

Sec. 406.006. QUALIFICATION. An individual qualifies by:

- (1) properly completing the application form;
- (2) executing the statement;
- (3) providing the bond, if required;
- (4) paying the required filing fees; and
- (5) meeting the eligibility requirements.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 406, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 719, Sec. 3, eff. Jan. 1, 1996; Acts 2003, 78th Leg., ch. 285, Sec. 14, eff. Sept. 1, 2003.

Sec. 406.007. FEES PAID TO SECRETARY OF STATE. (a) The applicant must submit to the secretary of state:

- (1) a fee of \$10 for approving and filing the bond of the notary public, if required; and
- (2) a fee of \$1 to be appropriated to and used by the secretary of state only for hiring an investigator and for preparing and distributing the materials required to be distributed under Section 406.008.

(b) The secretary of state shall charge for use of the state a fee of \$10 for a notary public commission. The applicant must pay the fee in advance to the secretary of state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.14(a), eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 285, Sec. 15, eff. Sept. 1, 2003.

Sec. 406.008. COMMISSION; NOTARY MATERIALS. (a) Immediately after the qualification of a notary public, the secretary of state shall send notice of appointment along with a commission to the notary public. The commission is effective as of the date of qualification.

(b) When the commission is issued, the secretary of state shall supply the notary public with:

- (1) materials outlining the powers and duties of the office;
- (2) a list of prohibited acts; and
- (3) sample forms for an acknowledgment, jurat, and verification and for the administering of an oath, protest, and deposition.

(c) Repealed by Acts 1995, 74th Leg., ch. 719, Sec. 10, eff. Jan. 1, 1996.
Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 4, 10, eff. Jan. 1, 1996.

Sec. 406.009. REJECTION OF APPOINTMENT; SUSPENSION OR

REVOCAION OF COMMISSION. (a) The secretary of state may, for good cause, reject an application or suspend or revoke the commission of a notary public.

(b) An action by the secretary of state under this section is subject to the rights of notice, hearing, adjudication, and appeal.

(c) An appeal under this section is to the district court of Travis County. The secretary of state has the burden of proof, and the trial is conducted de novo.

(d) In this section, "good cause" includes:

- (1) a final conviction for a crime involving moral turpitude;
- (2) a false statement knowingly made in an application;
- (3) the failure to comply with Section 406.017;
- (4) a final conviction for a violation of a law concerning the regulation of the conduct of notaries public in this or another state;
- (5) the imposition on the notary public of an administrative, criminal, or civil penalty for a violation of a law or rule prescribing the duties of a notary public; or
- (6) performing any notarization when the person for whom the notarization is performed did not personally appear before the notary at the time the notarization is executed.

(e) The following may not be considered a conviction for the purposes of determining eligibility and good cause:

(1) a dismissal of a proceeding against the defendant and discharge of the defendant before an adjudication of guilt; and

(2) a finding of guilt that has been set aside.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.15(a), eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 719, Sec. 5, 6, eff. Jan. 1, 1996; Acts 2009, 81st Leg., ch. 569, Sec. 1, eff. Sept. 1, 2009.

Sec. 406.010. BOND; OATH. (a) Each person to be appointed a notary public shall, before entering the official duties of office, execute a bond in the amount of \$10,000 with a solvent surety company authorized to do business in this state as a surety. The bond must be approved by the secretary of state, payable to the governor, and conditioned on the faithful performance of the duties of office. The secretary of state has the authority to accept an electronic filing of the notary public bond if an agreement has been made with the surety company.

(b) The notary bond shall be deposited in the office of the secretary of state, is not void on first recovery, and may be sued on in the name of the injured party from time to time until the whole amount of the bond is recovered.

(c) A notary public, before entering on the duties of office, shall take the official oath required by Section 1, Article XVI, Texas Constitution.

(d) The oath shall be signed and sworn to or affirmed by the notary public in the presence of a notary public or other person authorized to administer oaths in this state. A notary public cannot execute his or her own oath of office.

(e) The secretary of state shall provide an oath of office form along with the commission and educational materials.

(f) Subsections (a) and (b) do not apply to a person whose services as a notary public are performed primarily as a state officer or employee.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 7, eff. Jan. 1, 1996; Acts 2003, 78th Leg., ch. 285, Sec. 16, eff. Sept. 1, 2003.

Sec. 406.011. REAPPOINTMENT. (a) Not earlier than 90 days prior to the expiration date of the notary's term, a notary public may apply for reappointment on submission of a new application to the secretary of state.

(b) A notary public who is not reappointed on or before the expiration date of the term the notary public is serving will be appointed for a new term expiring four years from the date of qualification.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 8, eff. Jan. 1, 1996.

Sec. 406.012. INSPECTION OF RECORDS. All records concerning the appointment and qualification of the notary public shall be kept in the office of the secretary of state. The records are public information.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.16(a), eff. Sept. 1, 1989.

Sec. 406.013. SEAL. (a) A notary public shall provide a seal of office that clearly shows, when embossed, stamped, or printed on a document, the words "Notary Public, State of Texas" around a star of five points, the notary public's name, and the date the notary public's commission expires. The notary public shall authenticate all official acts with the seal of office.

(b) The seal may be a circular form not more than two inches in diameter or a rectangular form not more than one inch in width and 2-1/2 inches in length. The seal must have a serrated or milled edge border.

(c) The seal must be affixed by a seal press or stamp that embosses or prints a seal that legibly reproduces the required elements of the seal under photographic methods. An indelible ink pad must be used for affixing by a stamp the impression of a seal on an instrument to authenticate the notary public's official act.

(d) Subsection (c) does not apply to an electronically transmitted authenticated document, except that an electronically transmitted authenticated document must legibly reproduce the required elements of the seal.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.71(d), eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 95, Sec. 2, eff. May 11, 2001.

Sec. 406.014. NOTARY RECORDS. (a) A notary public other than a court clerk notarizing instruments for the court shall keep in a book a record of:

(1) the date of each instrument notarized;

(2) the date of the notarization;

(3) the name of the signer, grantor, or maker;

(4) the signer's, grantor's, or maker's residence or alleged residence;

(5) whether the signer, grantor, or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and residence or alleged residence of the individual introducing the signer, grantor, or maker;

(6) if the instrument is proved by a witness, the residence of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the witness;

(7) the name and residence of the grantee;

(8) if land is conveyed or charged by the instrument, the name of the original grantee and the county where the land is located; and

(9) a brief description of the instrument.

(b) Entries in the notary's book are public information.

(c) A notary public shall, on payment of all fees, provide a certified copy of any record in the notary public's office to any person requesting the copy.

(d) A notary public who administers an oath pursuant to Article 45.019, Code of Criminal Procedure, is exempt from the requirement in Subsection (a) of recording that oath.

(e) A notary public may maintain the records required by Subsection (a) electronically in a computer or other storage device.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.17(a), eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 406, Sec. 2, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 451, Sec. 1, eff. June 14, 1989; Acts 1999, 76th Leg., ch. 1545, Sec. 71, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. NA, eff. Sept. 1, 2005.

Sec. 406.015. COPIES CERTIFIED BY COUNTY CLERK. (a) A copy of a record, declaration, protest, or other official act of a notary public may be certified by the county clerk with whom the instrument is deposited.

(b) A copy of an instrument certified by the county clerk under Subsection (a) has the same authority as if certified by the notary public by whom the record, declaration, protest, or other official act was originally made.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.016. AUTHORITY. (a) A notary public has the same authority as the county clerk to:

- (1) take acknowledgments or proofs of written instruments;
- (2) protest instruments permitted by law to be protested;
- (3) administer oaths;
- (4) take depositions; and
- (5) certify copies of documents not recordable in the public records.

(b) A notary public shall sign an instrument in Subsection (a) in the name under which the notary public is commissioned.

(c) A notary public may not issue an identification card.

(d) A notary public not licensed to practice law in this state may not give legal advice or accept fees for legal advice.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.0165. SIGNING DOCUMENT FOR INDIVIDUAL WITH DISABILITY.

(a) A notary may sign the name of an individual who is physically unable to sign or make a mark on a document presented for notarization if directed to do so by that individual, in the presence of a witness who has no legal or equitable interest in any real or personal property that is the subject of, or is affected by, the document being signed. The notary shall require identification of the witness in the same manner as from an acknowledging person under Section 121.005, Civil Practice and Remedies Code.

(b) A notary who signs a document under this section shall write, beneath the signature, the following or a substantially similar sentence:
“Signature affixed by notary in the presence of (name of witness), a disinterested witness, under Section 406.0165, Government Code.”

(c) A signature made under this section is effective as the signature of the individual on whose behalf the signature was made for any purpose. A subsequent bona fide purchaser for value may rely on the signature of the notary as evidence of the individual’s consent to execution of the document.

(d) In this section, “disability” means a physical impairment that impedes the ability to sign or make a mark on a document.

Added by Acts 1997, 75th Leg., ch. 1218, Sec. 1, eff. Sept. 1, 1997.

Sec. 406.017. REPRESENTATION AS ATTORNEY. (a) A person commits an offense if the person is a notary public and the person:

- (1) states or implies that the person is an attorney licensed to practice law in this state;
- (2) solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters;
- (3) solicits or accepts compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or the United States;
- (4) uses the phrase “notario” or “notario publico” to advertise the services of a notary public, whether by signs, pamphlets, stationery, or other written communication or by radio or television; or
- (5) advertises the services of a notary public in a language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, if the person does not post or otherwise include with the advertisement a notice that complies with Subsection (b).

(b) The notice required by Subsection (a)(5) must state that the notary public is not an attorney and must be in English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice must include the fees that a notary public may charge and the following statement:

“I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”

(c) It is an exception to prosecution under this section that, at the time of the conduct charged, the person is licensed to practice law in this state and in good standing with the State Bar of Texas.

(d) Except as provided by Subsection (e) of this section, an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

(f) Failure to comply with this section is, in addition to a violation of any other

applicable law of this state, a deceptive trade practice actionable under Chapter 17, Business & Commerce Code.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 566, Sec. 1, eff. Sept. 1, 2001.

Sec. 406.018. REMOVAL FROM OFFICE. (a) A notary public guilty of wilful neglect of duty or malfeasance in office may be removed from office in the manner provided by law.

(b) A notary public indicted for and convicted of a wilful neglect of duty or official misconduct shall be removed from office. The court shall include the order for removal as part of its judgment.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.019. CHANGE OF ADDRESS. A notary public shall notify the secretary of state of a change of the notary public's address not later than the 10th day after the date on which the change is made.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.020. REMOVAL FROM STATE. A notary public who removes his residence from this state vacates the office.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.021. REMOVAL FROM PRECINCT. An ex officio notary public who moves permanently from the notary public's precinct vacates the office.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.022. EFFECT OF VACANCY. If the office of a notary public becomes vacant due to resignation, removal, or death, the county clerk of the county in which the notary public resides shall obtain the record books and public papers belonging to the office of the notary public and deposit them in the county clerk's office.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 406, Sec. 3, eff. Sept. 1, 1989.

Sec. 406.023. ADMINISTRATION AND ENFORCEMENT. (a) The secretary of state shall adopt rules necessary for the administration and enforcement of this subchapter. The rules must be consistent with the provisions of this subchapter.

(b) The secretary of state may employ an investigator to aid in the enforcement of this subchapter.

(c) The secretary of state may provide for the appointment of county clerks as deputy custodians for the limited authentication of notary public records deposited in the clerks' offices.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.024. FEES CHARGED BY NOTARY PUBLIC. (a) A notary public or its employer may charge the following fees:

(1) for protesting a bill or note for nonacceptance or nonpayment, register and seal, a fee of \$4;

(2) for each notice of protest, a fee of \$1;

(3) for protesting in all other cases, a fee of \$4;

(4) for certificate and seal to a protest, a fee of \$4;

(5) for taking the acknowledgment or proof of a deed or other instrument in writing, for registration, including certificate and seal, a fee of \$6 for the first signature and \$1 for each additional signature;

(6) for administering an oath or affirmation with certificate and seal, a fee of \$6;

(7) for a certificate under seal not otherwise provided for, a fee of \$6;

(8) for a copy of a record or paper in the notary public's office, a fee of 50 cents for each page;

(9) for taking the deposition of a witness, 50 cents for each 100 words;

(10) for swearing a witness to a deposition, certificate, seal, and other business connected with taking the deposition, a fee of \$6; and

(11) for a notarial act not provided for, a fee of \$6.

(b) A notary public may charge a fee only for an acknowledgment or official act under Subsection (a). The fee charged may not exceed the fee authorized by Subsection (a).

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec.

2.18(a), eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 259, Sec. 1, eff. Sept. 1, 1995.

Sec. 406.025. SIGNATURE ON COMMISSIONS AFTER CHANGE IN OFFICE. If the governor or secretary of state ceases to hold or perform the duties of office, existing stocks of commissions bearing the person's printed name, signature, or facsimile signature may be used until they are exhausted, and the person succeeding to the office or the duties of the office shall have the commissions issued with:

- (1) the obsolete printed name, signature, or facsimile signature struck through;
- (2) the successor's printed name submitted for the obsolete printed name, signature, or facsimile signature; and
- (3) the inscription "Printed name authorized by law" near the successor's printed name.

Added by Acts 1995, 74th Leg., ch. 719, Sec. 9, eff. Jan. 1, 1996.

**CIVIL PRACTICE & REMEDIES CODE
TITLE 6. MISCELLANEOUS PROVISIONS
CHAPTER 121. ACKNOWLEDGMENTS AND
PROOFS OF WRITTEN INSTRUMENTS**

Sec. 121.001. OFFICERS WHO MAY TAKE ACKNOWLEDGMENTS OR PROOFS. (a) An acknowledgment or proof of a written instrument may be taken in this state by:

- (1) a clerk of a district court;
- (2) a judge or clerk of a county court;
- (3) a notary public;
- (4) a county tax assessor-collector or an employee of the county tax assessor-collector if the instrument is required or authorized to be filed in the office of the county tax assessor-collector; or

(5) an employee of a personal bond office if the acknowledgment or proof of a written instrument is required or authorized by Article 17.04, Code of Criminal Procedure.

(b) An acknowledgment or proof of a written instrument may be taken outside this state, but inside the United States or its territories, by:

- (1) a clerk of a court of record having a seal;
- (2) a commissioner of deeds appointed under the laws of this state; or
- (3) a notary public.

(c) An acknowledgment or proof of a written instrument may be taken outside the United States or its territories by:

- (1) a minister, commissioner, or charge d'affaires of the United States who is a resident of and is accredited in the country where the acknowledgment or proof is taken;
- (2) a consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who is a resident of the country where the acknowledgment or proof is taken; or
- (3) a notary public or any other official authorized to administer oaths in the jurisdiction where the acknowledgment or proof is taken.

(d) A commissioned officer of the United States Armed Forces or of a United States Armed Forces Auxiliary may take an acknowledgment or proof of a written instrument of a member of the armed forces, a member of an armed forces auxiliary, or a member's spouse. If an acknowledgment or a proof is taken under this subsection, it is presumed, absent pleading and proof to the contrary, that the commissioned officer who signed was a commissioned officer on the date that the officer signed, and that the acknowledging person was a member of the authorized group of military personnel or spouses. The failure of the commissioned officer to attach an official seal to the certificate of acknowledgment or proof of an instrument does not invalidate the acknowledgment or proof.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 891, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 165, Sec. 18, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 986, Sec. 2, eff. June 15, 2001.

Sec. 121.002. CORPORATE ACKNOWLEDGMENTS. (a) An employee of a corporation is not disqualified because of his employment from taking an acknowledgment or proof of a written instrument in which the corporation has an interest.

(b) An officer who is a shareholder in a corporation is not disqualified from taking an acknowledgment or proof of an instrument in which the corporation has an interest unless:

- (1) the corporation has 1,000 or fewer shareholders; and
- (2) the officer owns more than one-tenth of one percent of the issued and outstanding stock.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 121.003. AUTHORITY OF OFFICERS. In a proceeding to prove a written instrument, an officer authorized by this chapter to take an acknowledgment or a proof of a written instrument is also authorized to:

- (1) administer oaths;
- (2) employ and swear interpreters; and
- (3) issue subpoenas.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 121.004. METHOD OF ACKNOWLEDGMENT. (a) To acknowledge a written instrument for recording, the grantor or person who executed the instrument must appear before an officer and must state that he executed the instrument for the purposes and consideration expressed in it.

(b) The officer shall:

- (1) make a certificate of the acknowledgment;
- (2) sign the certificate; and
- (3) seal the certificate with the seal of office.

(c) The failure of a notary public to attach an official seal to a certificate of an acknowledgement or proof of a written instrument made outside this state but inside the United States or its territories renders the acknowledgement or proof invalid only if the jurisdiction in which the certificate is made requires the notary public to attach the seal.

(d) The application of an embossed seal is not required on an electronically transmitted certificate of an acknowledgement.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 603, Sec. 1, eff. June 14, 1995; Acts 2001, 77th Leg., ch. 95, Sec. 1, eff. May 11, 2001.

Sec. 121.005. PROOF OF IDENTITY OF ACKNOWLEDGING PERSON. (a) An officer may not take the acknowledgment of a written instrument unless the officer knows or has satisfactory evidence that the acknowledging person is the person who executed the instrument and is described in it. An officer may accept, as satisfactory evidence of the identity of an acknowledging person, only:

- (1) the oath of a credible witness personally known to the officer; or
- (2) a current identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging person.

(b) Except in a short form certificate of acknowledgment authorized by Section 121.008, the officer must note in the certificate of acknowledgment that:

- (1) he personally knows the acknowledging person; or
- (2) evidence of a witness or an identification card or other document was used to identify the acknowledging person.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 90, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.006. ALTERATION OF AUTHORIZED FORMS; DEFINITION.

(a) An acknowledgment form provided by this chapter may be altered as circumstances require. The authorization of a form does not prevent the use of other forms. The marital status or other status of the acknowledging person may be shown after the person's name.

(b) In an acknowledgment form 'acknowledged' means:

- (1) in the case of a natural person, that the person personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument for the purposes and consideration expressed in it;
- (2) in the case of a person as principal by an attorney-in-fact for the principal, that the attorney-in-fact personally appeared before the officer taking the acknowledgment and that the attorney-in-fact acknowledged executing the instrument as the act of the principal for the purposes and consideration expressed in it;
- (3) in the case of a partnership by a partner or partners acting for the partnership, that the partner or partners personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument as the act of the partnership for the purposes and consideration expressed in it;

(4) in the case of a corporation by a corporate officer or agent, that the corporate officer or agent personally appeared before the officer taking the acknowledgment and that the corporate officer or agent acknowledged executing the instrument in the capacity stated, as the act of the corporation, for the purposes and consideration expressed in it; and

(5) in the case of a person acknowledging as a public officer, trustee, executor or administrator of an estate, guardian, or other representative, that the person personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument by proper authority in the capacity stated and for the purposes and consideration expressed in it.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 121.007. FORM FOR ORDINARY CERTIFICATE OF

ACKNOWLEDGMENT. The form of an ordinary certificate of acknowledgment must be substantially as follows:

“The State of _____,

“County of _____,

“Before me _____ (here insert the name and character of the officer) on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal) “Given under my hand and seal of office this _____ day of _____, A.D., _____.”

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 90, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.008. SHORT FORMS FOR CERTIFICATES OF ACKNOWLEDGMENT.

(a) The forms for certificates of acknowledgment provided by this section may be used as alternatives to other authorized forms. They may be referred to as “statutory forms of acknowledgment.”

(b) Short forms for certificates of acknowledgment include:

(1) For a natural person acting in his own right:

State of Texas

County of _____

This instrument was acknowledged before me on (date) by (name or names of person or persons acknowledging).

(Signature of officer)

(Title of officer)

My commission expires: _____

(2) For a natural person as principal acting by attorney-in-fact:

State of Texas

County of _____

This instrument was acknowledged before me on (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

(Signature of officer)

(Title of officer)

My commission expires: _____

(3) For a partnership acting by one or more partners:

State of Texas

County of _____

This instrument was acknowledged before me on (date) by (name of acknowledging partner or partners), partner(s) on behalf of (name of partnership), a partnership.

(Signature of officer)

(Title of officer)

My commission expires: _____

(4) For a corporation:

State of Texas

County of _____

This instrument was acknowledged before me on (date) by (name of officer), (title of officer) of (name of corporation acknowledging) a (state of incorporation) corporation, on behalf of said corporation.

(Signature of officer)

(Title of officer)

My commission expires: _____

(5) For a public officer, trustee, executor, administrator, guardian, or other representative:

State of Texas

County of _____

This instrument was acknowledged before me on (date) by (name of representative) as (title of representative) of (name of entity or person represented).

(Signature of officer)

(Title of officer)

My commission expires: _____

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 121.009. PROOF OF ACKNOWLEDGMENT BY WITNESS. (a) To prove a written instrument for recording, at least one of the witnesses who signed the instrument must personally appear before an officer who is authorized by this chapter to take acknowledgments or proofs and must swear:

(1) either that he saw the grantor or person who executed the instrument sign it or that that person acknowledged in the presence of the witness that he executed the instrument for the purposes and consideration expressed in it; and

(2) that he signed the instrument at the request of the grantor or person who executed the instrument.

(b) The officer must make a certificate of the testimony of the witness and must sign and officially seal the certificate.

(c) The officer may take the testimony of a witness only if the officer personally knows or has satisfactory evidence on the oath of a credible witness that the individual testifying is the person who signed the instrument as a witness. If evidence is used to identify the witness who signed the instrument, the officer must note the use of the evidence in the certificate of acknowledgment.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 121.010. FORM OF CERTIFICATE FOR PROOF BY WITNESS. When the execution of a written instrument is proved by a witness, the certificate of the officer must be substantially as follows:

“The State of _____,

“County of _____.

“Before me, _____ (here insert the name and character of the officer), on this day personally appeared _____, known to me (or proved to me on the oath of _____), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw

_____, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same.)

(Seal) "Given under my hand and seal of office this _____ day of _____, A.D., _____."

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 121.011. PROOF OF ACKNOWLEDGMENT BY HANDWRITING. (a) The execution of an instrument may be established for recording by proof of the handwriting of persons who signed the instrument only if:

- (1) the grantor of the instrument and all of the witnesses are dead;
- (2) the grantor and all of the witnesses are not residents of this state;
- (3) the residences of the grantor and the witnesses are unknown to the person seeking to prove the instrument and cannot be ascertained;
- (4) the witnesses have become legally incompetent to testify; or
- (5) the grantor of the instrument refuses to acknowledge the execution of the instrument and all of the witnesses are dead, not residents of this state, or legally incompetent or their places of residence are unknown.

(b) If the grantor or person who executed the instrument signed his name to the instrument, its execution must be proved by evidence of the handwriting of that person and at least one witness who signed the instrument. If the grantor or person who executed the instrument signed the instrument by making his mark, its execution must be proved by the handwriting of at least two of the witnesses who signed the instrument.

(c) Evidence taken for proof of handwriting must give the residence of the testifying witness. A testifying witness must have known the person whose handwriting is being proved and must be well acquainted with the handwriting in question and recognize it as genuine.

(d) Evidence offered for proof of handwriting must be given in writing by the deposition or affidavit of two or more disinterested persons. The evidence must satisfactorily prove to the officer each of the requirements provided by this section. The officer taking the proof must certify the witnesses' testimony. The officer must sign, officially seal, and attach this certificate to the instrument with the depositions or affidavits of the witnesses.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 121.012. RECORD OF ACKNOWLEDGMENT. (a) An officer authorized by law to take an acknowledgment or proof of a written instrument required or permitted by law to be recorded must enter in a well-bound book and officially sign a short statement of each acknowledgment or proof. The statement must contain the date that the acknowledgment or proof was taken, the date of the instrument, and the names of the grantor and grantee of the instrument.

(b) If the execution of the instrument is acknowledged by the grantor of the instrument, the statement must also contain:

- (1) the grantor's known or alleged residence;
- (2) whether the grantor is personally known to the officer; and
- (3) if the grantor is unknown to the officer, the name and residence of the person who introduced the grantor to the officer, if any.

(c) If the execution of the instrument is proved by a witness who signed the instrument, the statement must also contain:

- (1) the name of the witness;
- (2) the known or alleged residence of the witness;
- (3) whether the witness is personally known to the officer; and
- (4) if the witness is unknown to the officer, the name and known or alleged residence of the person who introduced the witness to the officer, if any.

(d) If land is charged or conveyed by the instrument, the statement must also contain:

- (1) the name of the original grantee; and
- (2) the name of the county in which the land is located.

(e) The statements of acknowledgment recorded by the officer are original public records, open for public inspection and examination at all reasonable times. The officer must deliver the book to his successor in office.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 121.013. SUBPOENA OF WITNESS; ATTACHMENT. (a) On the sworn application of a person interested in the proof of an instrument required or permitted by law to be recorded, stating that a witness to the instrument refuses to appear and testify regarding the execution of the instrument and that the instrument cannot be proven without the evidence of the witness, an officer authorized to take proofs of instruments shall issue a subpoena requiring the witness to appear before the officer and testify about the execution of the instrument.

(b) If the witness fails to obey the subpoena, the officer has the same powers to enforce the attendance and compel the answers of the witness as does a district judge. Attachment may not be issued, however, unless the witness receives or is tendered the same compensation that is made to witnesses in other cases. An officer may not require the witness to leave his county of residence, but if the witness is temporarily present in the county where the execution of the instrument is sought to be proven for registration, he may be required to appear.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 121.014. ACTION FOR DAMAGES. A person injured by the failure, refusal, or neglect of an officer to comply with a provision of this chapter has a cause of action against the officer to recover damages resulting from the failure, refusal, or neglect of the officer.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 121.015. PRIVATE SEAL OR SCROLL NOT REQUIRED. A private seal or scroll may not be required on a written instrument other than an instrument made by a corporation.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 2, eff. Sept. 1, 1993.

TEXAS REVISED CIVIL STATUTES TITLE 61, ARTICLES 3907-3910

The following articles apply to notaries public and to certain other public officials.

Art. 3907. [3913] [2483] [2419] Fee book. Every officer entitled by law to charge fees for services shall keep a book, and shall enter therein all fees charged for services rendered, which fee book shall, at all times be subject to the inspection of any person wishing to see the amount of fees therein charged. Acts 1876, p. 285.

Art 3908. [3914] [2484] [2420] To itemize costs. None of the fees mentioned in this title shall be payable to any person whomsoever until there be produced, or ready to be produced, unto the person owing or chargeable with the same, a bill or account in writing containing the particulars of such fees, signed by the clerk or officer to whom such fees are due, or by whom the same are charged, or by the successor in office, or legal representative of such clerk or officer. Acts 1876, P. 285.

Art. 3909. [3915] [2485] [2421] Extortion. If any officer named in this title shall demand and receive any higher fees than are prescribed to them in this title, or any fees that are not allowed by this title, such officer shall be liable to the party aggrieved for fourfold the fees so unlawfully demanded and received by him. Acts 1876, P. 285.

Art. 3910. [3916] [2486] [2422] Fees Posted. County judges, clerks of the district and county courts, sheriffs, justices of the peace, constables and notaries public of the several counties shall keep posted up, at all times, in a conspicuous place in the respective offices a complete list of fees allowed by law to be charged by them respectively. Acts 1876, p. 285.

TEXAS ADMINISTRATIVE CODE

TITLE 1. ADMINISTRATION PART 4. OFFICE OF THE SECRETARY OF STATE CHAPTER 87. NOTARY PUBLIC

SUBCHAPTER A. NOTARY PUBLIC QUALIFICATIONS

RULE §87.1. Application for a Commission as a Notary Public

(a) All persons applying for a commission as a notary public shall use the application form prescribed by the secretary of state.

(b) The application form may be obtained by writing the Office of the Secretary of State, Notary Public Unit, P.O. Box 12079, Austin, Texas 78711.

Source Note: The provisions of this §87.1 adopted to be effective September 7, 1988, 13 TexReg 4233; amended to be effective February 27, 1996, 21 TexReg 1269.

RULE §87.4. Issuance of the Notary Public Commission by the Secretary of State

(a) The secretary of state shall commission each applicant if:

(1) the application is properly completed and executed;

(2) the applicant is a resident of the United States and of Texas, and is at least 18 years of age;

(3) the applicant is eligible and no good cause is known for rejection of the application as provided by law and hereafter by §87.41 of this title (relating to Rejection of Application and Revocation of Commission);

(4) the fees specified in the Texas Government Code, §406.007, are submitted with the application form; and

(5) If a renewal, the form is received by the secretary of state no later than the expiration date of the term for which the notary public is presently serving.

(b) The secretary of state shall not commission an applicant if he or she has had a prior application rejected or a commission revoked for a finding of ineligibility or good cause which still continues.

(c) If any application is received that is not properly completed and executed, the qualification of that particular applicant will be delayed. The secretary of state shall notify the applicant by means of a rejection notice stating why the commission was not issued, and the steps which should be taken to correct the errors or omissions. The applicant will have 30 days from the date of the notice to respond; otherwise, the application will be considered abandoned and all fees deposited forfeited.

(d) When an applicant states that he or she has been convicted of either a felony or a crime involving moral turpitude, or for the violation of any law concerning the regulation of the conduct of notaries public, the secretary of state may request such additional facts or supporting documentation as may be deemed necessary for fair consideration of the application. Once a request for additional facts or supporting documentation is made, the applicant shall have 30 days from the date of the request to respond; otherwise, the application will be considered abandoned and all fees deposited forfeited.

Source Note: The provisions of this §87.4 adopted to be effective March 28, 1980, 5 TexReg 968; amended to be effective October 25, 1984, 9 TexReg 5269; amended to be effective October 7, 1992, 17 TexReg 6547; amended to be effective February 27, 1996, 21 TexReg 1269

RULE §87.22. Completion and Execution of the Bond and Statement of Officer

(a) The bond and statement of officer will be completed as follows.

(1) All information entered on the application will be legible.

(2) The name and social security number of the applicant will be entered in the space provided in the application.

(3) The complete name of the insurance or bonding company will be entered in the spaces provided in the bond.

(4) The name and address of the agent or agency will be entered in the space provided in the bond.

(5) The applicant will sign in the space provided for signature for the principal. The surety officer or an attorney-in-fact for an insurance or bonding company will sign in the space provided and give the surety company's Texas Department of Insurance license number.

(6) A bond form that is preprinted with a surety company's name may be used only by that surety for the issuance of a notary bond.

(7) The applicant's name to be used as a notary public will be entered in the space provided in the statement of officer.

(8) The applicant will execute the statement of officer by signing in the space provided for signature. Both the initial qualification as well as renewals require the referenced statement of officer.

(b) An applicant who is an officer or employee of a state agency is not required to complete the surety bond. Such applicants will follow the procedure described in §87.25

of this Chapter.

(c) In this Chapter, “state agency” has the meaning assigned by Section 2052.101 of the Government Code.

Source Note: The provisions of this §87.22 adopted to be effective March 20, 1980, 5 TexReg 968; amended to be effective October 7, 1992, 17 TexReg 6547; amended to be effective February 27, 1996, 21 TexReg 1269; amended to be effective September 1, 2002, 27 TexReg 7787; amended to be effective December 11, 2003, 28 TexReg 10907

RULE §87.23. Review of the Bond and Statement of Officer

(a) The bond and statement of officer shall be approved by the secretary of state if:

(1) the form is properly completed and executed as hereinabove provided in §87.22(a) of this title (relating to Completion and Execution of the Bond and Statement of Officer); and

(2) the fees specified in the Notary Public Act, §406.007, Texas Government Code Annotated, §§406.001-406.024 (Vernon 1990) are remitted with the form to the secretary of state.

(b) When all conditions for qualification have been met, the application form shall be approved, stamped “qualified” with the date of qualification, and filed. The secretary of state shall cause a commission to be issued and sent to each notary public who has qualified, which commission shall be effective as of the date of qualification for a term of office as provided by law.

Source Note: The provisions of this §87.23 adopted to be effective March 28, 1980, 5 TexReg 968; amended to be effective October 25, 1984, 9 TexReg 5269; amended to be effective October 7, 1992, 17 TexReg 6547; amended to be effective February 27, 1996, 21 TexReg 1269.

RULE §87.25. Qualification by an Officer or Employee of a State Agency who does not furnish a Notary Public Bond

(a) Application for Appointment

(1) The applicant will complete the notary public application entitled: “Application for Appointment as a Notary Public Without Bond.”

(2) The State Agency that employs the applicant will submit the completed application to the State Office of Risk Management for verification by that Office.

(3) The State Office of Risk Management will complete the verification certificate on the application, and forward the completed application to the Office of the Secretary of State for processing.

(b) Change in employment status.

(1) If a notary public transfers to another state agency, the notary public’s new agency shall notify the State Office of Risk Management and the Office of the Secretary of State of the transfer.

(2) If a notary public terminates state employment, the notary public shall:

(A) voluntarily surrender the notary public commission;

(B) purchase a notary public bond for the time-period remaining on the notary’s current term of office; or

(C) apply for a new term of office and provide a notary public bond.

Source Note: The provisions of this §87.25 adopted to be effective September 1, 2002, 27 TexReg 7787

SUBCHAPTER B. REJECTION AND REVOCATION

RULE §87.41. Rejection of Application and Revocation of Commission

The secretary of state by final decision and order may, for ineligibility or good cause, reject any application, suspend or revoke the commission of any notary public, or take other disciplinary action against a notary public. The other disciplinary action shall include, but not be limited to, those actions outlined in §87.48 of this title (relating to Other Disciplinary Acts). Rejection, revocation, and disciplinary proceedings will be held pursuant to the right of notice, hearing, and adjudication as set out in the rules of practice and procedure before the Office of the Secretary of State and the Administrative Procedure Act, Texas Government Code, §§2001.001-2001.902. Any party to a contested case has the right to be represented by legal counsel. Such action will be subject to the right of appeal to a district court of Travis County.

Source Note: The provisions of this §87.41 adopted to be effective March 20, 1980, 5 TexReg 968; amended to be effective February 25, 1988, 13 TexReg 778; amended to be effective February 27, 1996, 21 TexReg 1269.

RULE §87.42. Eligibility for Appointment or To Hold the Office of Notary Public

An application for appointment will be rejected if the applicant is not 18 years of age and a resident of the United States and Texas. A notary public commission will be revoked if

the applicant was not at least 18 years of age at the time of appointment, or is no longer a resident of the United States and Texas. An applicant or notary public will no longer be eligible to hold the public office of notary public if convicted of a felony which has become final, and not set aside, for which no pardon or certificate of restoration of citizenship rights has been granted. The dismissal and discharge of proceedings under the adult probation, parole, and mandatory supervision law will not be considered a conviction for the purpose of determining a person's eligibility to be appointed or hold the office of notary public.

Source Note: The provisions of this §87.42 adopted to be effective March 28, 1980, 5 TexReg 968; amended to be effective October 25, 1984, 9 TexReg 5269.

RULE §87.43. Good Cause

(a) Good cause as stated in §87.41 of this title (relating to Rejection of Application and Revocation of Commission) may include, but not be limited to, the following:

- (1) a final conviction for a crime involving moral turpitude;
- (2) any false statement knowingly made in an application for appointment or reappointment as a notary public;
- (3) a final conviction for the violation of any law concerning the regulation of the conduct of notaries public in this state or any other state;
- (4) use of the phrase "notario" or "notario publico" to advertise the services of a notary public or any other false representation as an attorney as specified in the Texas Government Code, §406.017.
- (5) a failure to fully and faithfully discharge any of the duties or responsibilities required of a notary public;
- (6) the unauthorized practice of law;
- (7) a failure by the notary public to utilize a correct notary seal as described in the Notary Public Act, §406.013;
- (8) a failure to administer an oath or affirmation as required by law;
- (9) the collection of a fee in excess of those authorized by the Texas Government Code, §406.024;
- (10) the execution of any certificate as a notary public containing a statement known to the notary public to be false;
- (11) a failure to complete the acknowledgment at the time the notary public's signature and seal are affixed to the document;
- (12) the advertising in any manner whatsoever that the notary public is an immigration specialist, immigration consultant, or any other title or description reflecting an expertise in immigration matters;
- (13) the use of false or misleading advertising of either an oral or written nature, whereby the notary public has represented or indicated that he or she has duties, rights, powers, or privileges that are not possessed by law;
- (14) taking an acknowledgment when the person whose signature is acknowledged did not personally appear before the notary at the time of taking the acknowledgment;
- (15) previous disciplinary action against the notary public in accordance with these sections; and
- (16) a failure to comply with, or violation of, a previous disciplinary action taken pursuant to §87.48 of this title (relating to Other Disciplinary Action).

(b) A crime involving moral turpitude means the commission of a crime mala in se (an offense that is evil or wrong from its own nature or by natural law irrespective of statute) which may include, but not be limited to:

- (1) Class A and B type misdemeanors; and
- (2) felony convictions which have not been set aside, or for which no pardon or certificate of restoration of citizenship rights have been granted.

(c) The dismissal and discharge of proceedings under either the misdemeanor adult probation and supervision law or the adult probation, parole, and mandatory supervision law shall not be considered a conviction for the purposes of determining good cause.

(d) Final Class C type misdemeanor convictions shall not be considered in determining good cause.

Source Note: The provisions of this §87.43 adopted to be effective January 1, 1976; amended to be effective January 26, 1981, 6 TexReg 153; amended to be effective February 25, 1988, 13 TexReg 778; amended to be effective October 7, 1992, 17 TexReg 6547; amended to be effective October 18, 2001, 26 TexReg 8019

SUBCHAPTER C. ADMINISTRATIVE ACTION

RULE §87.44. Qualification under New Name

(a) During the four-year term of office, a notary public may change the name on the notary commission by submitting the following to the secretary of state:

(1) a completed change of name form;

(2) a rider or endorsement to the bond on file with the secretary of state from the surety company or its agent or representative specifying the change of name;

(3) the current certificate of commission or a statement that the notary public will perform all future notarial acts under the name specified on the amended commission; and

(4) the statutory fees for the issuance of a commission and the filing of a bond.

(b) The change of name will be effective as of the date of receipt of the properly completed and executed elements listed in this section.

(c) When the name change is effective, the notary public will perform all notarial acts using the name on the amended commission.

Source Note: The provisions of this §87.44 adopted to be effective November 10, 1986, 11 TexReg 4482; amended to be effective February 27, 1996, 21 TexReg 1269.

RULE §87.45. Rejection

If the submission of the change of name does not comply with §87.44(a) of this title (relating to Qualification under New Name), the secretary of state shall notify the notary public in writing of any deficiency. The notary public shall have 30 days from the date of the notice to respond; if no response is received, the request for the change of name will be considered abandoned and all fees paid will be forfeited.

Source Note: The provisions of this §87.45 adopted to be effective November 10, 1986, 11 TexReg 4482.

RULE §87.46. Issuance of Amended Commission

The secretary of state shall issue an amended commission to the notary public in the name requested.

Source Note: The provisions of this §87.46 adopted to be effective November 10, 1986, 11 TexReg 4482.

RULE §87.47. Complaint Procedures

(a) A person harmed by the actions of a notary public may file a complaint with the secretary of state. The complaint shall be filed on the form prescribed by the secretary of state for such purposes, shall be signed and verified by the person alleging misconduct on the part of the notary public, and shall substantially comply with the requirements set forth on the prescribed form.

(b) The complaint shall be reviewed by an employee of the secretary of state to determine if the complaint substantially complies with the requirements set forth on the prescribed form and if the actions complained of are sufficient to constitute good cause for suspension, revocation, or other disciplinary action.

(c) The secretary of state may determine that the actions of the notary public are not sufficiently egregious to warrant formal disciplinary action. The secretary may determine to take no action on the complaint, or the secretary may determine to informally advise the notary public of the appropriate conduct and the applicable statutes and rules governing the conduct. The secretary of state shall notify the complainant of the determination not to take further or formal action.

(d) If the secretary of state determines that the complaint alleges sufficient facts to constitute good cause for the suspension or revocation of the notary public's commission, or other disciplinary action against the notary public, the secretary of state shall notify the notary public of the filing of the complaint and send a copy of the complaint to the notary public.

(e) If the secretary of state determines to proceed on a complaint, the notary public shall be required to respond to the complaint within 20 days of mailing of the notice of complaint to the notary public. The response shall be in writing; the response should specify any disputed facts and provide such additional information as the notary public shall desire.

(f) The secretary of state shall review the response, and determine whether further administrative action is appropriate. If the secretary determines that no further action is appropriate, the secretary shall notify in writing the notary public and the complainant of the determination.

(g) If the secretary determines that further administrative action is appropriate, the secretary shall cause the initiation of a contested case under the rules of practice and procedure before the Office of the Secretary of State.

Source Note: The provisions of this §87.47 adopted to be effective February 25, 1988, 13 TexReg 778.

RULE §87.48. Other Disciplinary Action

(a) The secretary of state may determine that the conduct which is the basis of a complaint against a notary public does not warrant the suspension or revocation of the commission of the notary public. In the discretion of the secretary of state and after the initiation of a contested case, the secretary of state may seek, but is not limited to, the following disciplinary actions:

- (1) official reprimand to the public notary;
- (2) a consent decree to cease and desist from engaging in any further misconduct;
- (3) an agreement to voluntarily surrender the notary public commission;
- (4) an agreement to complete a course of study relating to the powers, duties, and responsibilities of a notary public;
- (5) an agreement not to seek renewal of a notary public commission for a specified period of time; or
- (6) to take such information action as the secretary deems appropriate.

(b) If no agreement can be reached, the secretary of state shall give written notice to the affected party of a right to a hearing in accordance with the rules of practice and procedure before the secretary of state.

Source Note: The provisions of this §87.48 adopted to be effective February 25, 1988, 13 TexReg 778; amended to be effective October 7, 1992, 17 TexReg 6547.

RULE §87.49. Time for Action

(a) A complaint which arises during the time of office of a notary public which is not disposed of prior to the end of the term may be pursued in a subsequent term of office. The secretary of state shall not be barred from seeking suspension or revocation of a notary public for acts or omission which occurred during a prior term of office.

(b) In the discretion of the secretary of state, the secretary may determine to take other disciplinary action after the expiration of the term of office of a notary public regardless of whether the notary public has renewed or will seek to renew the notary public commission.

Source Note: The provisions of this §87.49 adopted to be effective February 25, 1988, 13 TexReg 778

SUBCHAPTER D. SUBPOENAS

RULE §87.50. Authority

A notary public is authorized to issue a subpoena or subpoena duces tecum for written depositions. This is a powerful authorization and should be exercised cautiously.

Source Note: The provisions of this §87.50 adopted to be effective June 2, 1993, 18 TexReg 3277.

RULE §87.52. Issuing

Prior to issuing a subpoena, the notary shall:

- (1) require proof of service of notice to take a deposition from the requesting party or attorney; or
- (2) personally execute service of the notice to take a deposition. Additionally, the notary shall confirm that there is no court or administrative order or procedure that precludes the issuance of the subpoena. The notary shall obtain an affidavit from the requesting party or attorney stating whether the party or attorney is aware of any such procedure or order.

Source Note: The provisions of this §87.52 adopted to be effective June 2, 1993, 18 TexReg 3277.

RULE §87.54. Governed by Other Law

These rules do not independently authorize a notary public to issue a subpoena. The issuance of a subpoena by a notary public must be authorized by other law, rule, or procedure and in conformity with such law, rule, or procedure. Failure of a notary public to conform to these administrative rules does not affect the validity of a subpoena but may subject the notary public to disciplinary proceedings by the Office of the Secretary of State.

Source Note: The provisions of this §87.54 adopted to be effective June 2, 1993, 18 TexReg 3277.

SUBCHAPTER E. NOTARY RECORDS

RULE §87.60. Prohibition Against Recording Personal Information

(a) A notary public (other than a court clerk notarizing instruments for the court) that notarizes a document or instrument on behalf of a signer, grantor or maker that is identified to the notary by an identification card issued by a governmental agency or a

passport issued by the United States may not record in the notary's book of record:

(1) the identification number that was assigned by the governmental agency or by the United States to the signer, grantor or maker and that is set forth on the identification card or passport; or

(2) any other number that could be used to identify the signer, grantor or maker of the document.

(b) Nothing in this section shall be construed to prohibit a notary from recording a number related to the residence or alleged residence of the signer, grantor or maker of the document or the instrument.

Source Note: The provisions of this §87.60 adopted to be effective April 22, 2007, 32 TexReg 2275