

**OFFICE OF THE SECRETARY**

**NOTICE OF FINAL RULEMAKING**

The Secretary of the District of Columbia (Secretary), pursuant to the authority set forth in Section 558 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1189, ch. 854, § 558; D.C. Official Code §§ 1-1201 *et seq.* (2012 Repl.)), as amended by An Act to authorize the Commissioners of the District of Columbia to appoint notaries public, approved December 16, 1944 (58 Stat. 810, ch. 597, § 1); Regulation No. 73-13, approved May 24, 1973 (19 DCR 1147 (June 11, 1973)); the Notaries Public Fees Increase Act of 1983, effective June 22, 1983 (D.C. Law 5-14; 30 DCR 2632 (June 3, 1983)); the Notaries Public Fee Act of 1983, effective March 8, 1984 (D.C. Law 5-52; 30 DCR 5931 (November 18, 1983)); the Notaries Public Authentications and License Fee Amendment Act of 2010, effective September 24, 2010 (D.C. Law 18-223; 57 DCR 6242 (July 23, 2010)); Section 3(k) of Mayor’s Order 97-177, dated October 9, 1997; and Mayor’s Order 2016-031, dated March 1, 2016; hereby gives notice of the adoption of the following amendments to Chapter 24 (Notaries Public) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rulemaking is to make changes to the Office of Notary Commissions and Authentications regulations to conform to the office’s current operations. The rulemaking also makes editorial amendments to enhance readability and consistency within and across chapters.

The Notice of Proposed Rulemaking was published in the *D.C. Register* on May 13, 2016 at 63 DCR 7293. No comments were received and no substantive changes have been made.

The rules were adopted as final on June 15, 2016 and will become effective upon publication of this notice in the *D.C. Register*.

**Chapter 24, NOTARIES PUBLIC, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is deleted in its entirety and replaced with the following new Chapter 24:**

**CHAPTER 24 NOTARIES PUBLIC**

**2400 APPOINTMENT OF NOTARIES**

2400.1 New appointments of notaries public shall be made to serve the needs and convenience of members of the public, the bar, financial institutions, and other fiduciary bodies.

2400.2 The District of Columbia Office of the Secretary, Office of Notary Commissions and Authentications Section, may appoint citizens of the United States who are residents of the District of Columbia or whose sole place of business or employment is located in the District.

- 2400.3 Any person requesting an appointment as a notary public in the District of Columbia shall be at least eighteen (18) years of age.
- 2400.4 Each person requesting an appointment as a notary public shall indicate to the Office of Notary Commissions and Authentications (ONCA) the hours during which he or she will be available at a designated place of business in the District or if a residential notary the hours he or she will be available in the residence.
- 2400.5 Requests for an appointment as a notary public by a privately employed or self-employed person shall be made by the employer or an official of the company or business in which the applicant is employed. The employer's letterhead must have a District of Columbia physical address and phone number.
- 2400.6 Request for an appointment as a notary public by a government employee shall be made by the employer or an official of the government office in which the applicant is employed.
- 2400.7 An individual requesting a residential appointment as a notary public must submit the request in writing on his or her official letterhead. The letterhead must have a District of Columbia address and phone number.
- 2400.8 Applications for dual commissions (business and residential), shall include a both a letter from the employer and a letter from the individual.
- 2400.9 A letter requesting an appointment of a notary public shall include:
- (a) For business notaries, the reasons the business or government needs the individual to serve as a notary and how that will improve the service to the customers, public and others; and
  - (b) For residential notaries, the individual should state how they intend to use their commission to serve the public, their community and others.
- 2400.10 Letters requesting appointment shall be sent to the Office of Notary Commissions and Authentications, 441 4<sup>th</sup> Street N.W., Suite 810 South, Washington D.C. 20001.

## **2401 GOVERNMENT EMPLOYEES**

- 2401.1 A person employed in an executive department or other government office shall not be appointed or reappointed a notary public to function for the government business unless his or her appointment is requested by the head of the department or office or designee to facilitate the transaction of government business.
- 2401.2 The commission of a government employee shall be terminated when the employee leaves government service. The notary must notify ONCA and return

his or her official notary seal to the ONCA office (see Section 2409 on the Expiration of Commission).

2401.3 Government employees who desire to exercise notarial powers other than in connection with their government work, or in addition to that work, may be granted a separate residential commission upon submission of an application and upon compliance with the appointment requirements.

2401.4 Government employees who have dual commissions (business and residential) may not charge any fee for notarial service performed during hours of active duty as a government employee.

## **2402 APPLICATION AND ORIENTATION; REAPPOINTMENT**

2402.1 Application shall be made on the form furnished by the Office of Notary Commissions and Authentications at 441 4<sup>th</sup> Street N.W., Suite 810 South, Washington D.C. 20001, or online at <http://os.dc.gov/service/notary-commissions>.

2402.2 Each application shall include the names, addresses, phone number, and email address of two (2) individuals who can attest to the character of the applicant. The references may not include family members or the employer submitting the letter of request.

2402.3 Each candidate applying for a new appointment, or applying for reappointment after more than twelve (12) months, shall be required to attend an orientation session provided by ONCA.

2402.4 District notary publics are appointed for a renewable five (5)-year term, and may apply for reappointment at the end of the term.

2402.5 A notary public applying for reappointment shall submit the reappointment application, furnished by ONCA, by the deadline indicated by ONCA. A reappointment only applies to those who have been a notary in the District of Columbia within twelve (12) months of commission expiration. A notary whose commission has been expired for more than twelve (12) months must apply as a new applicant.

2402.6 A notary in another jurisdiction must apply as a new applicant.

## **2403 COMMISSION FEES, OATH, AND SURETY BOND REQUIREMENTS**

2403.1 Each notary public, before obtaining his or her commission, and for each renewal of his or her commission, shall pay to the District of Columbia Treasurer an application fee of seventy-five dollars (\$75.00). District and federal government employees whose notarial duties are confined solely to official government business are exempt from the application fee.

2403.2 Before entering upon the duties of the office, each notary public will take the Oath of Office administered by an official of ONCA. The names and business addresses of all approved notary publics will be published in the *D.C. Register*.

2403.3 Before entering upon the duties of the office, each notary public shall give bond to the District of Columbia in the sum of two thousand dollars (\$2,000), with security, to be approved by ONCA, for the faithful discharge of the duties of the office.

2403.4 District of Columbia Government employees whose notarial duties are confined solely to government official business are not required to obtain an individual surety bond, but may be covered by bond obtained by the Mayor of the District of Columbia. Federal government employees are required to obtain an individual surety bond.

#### **2404 SIGNATURES AND SEALS**

2404.1 Each notary public commissioned in the District shall file his or her official signature and an impression of his or her official seal with ONCA.

2404.2 A notary shall keep an official seal that is the exclusive property of the notary. When not in use, the seal shall be kept secure and accessible only to the notary. In addition:

- (a) A business notary who no longer is employed by that business may take his or her commission with him or her upon the approval of the business. If the business does not consent to the continuation of the commission, the commission shall be terminated.
- (b) Upon termination of a commission, a notary shall return the notary seal to ONCA.

2404.3 The seal shall not be possessed or used by any other person, nor be used for any purpose other than performing lawful notarizations.

2404.4 An official notary seal shall include the following elements:

- (a) The notary's name at the top, exactly as indicated on the commission;
- (b) The words "Notary Public" in the center
- (c) The words "District of Columbia" at the bottom
- (d) The expiration date in the center

- (e) A border in a circular shape no larger than one and three-quarters inches (1.75 in.) surrounding the required words.

2404.5 A notary public shall affix his or her official signature and official seal on every document notarized, at the time the notarial act is performed.

2404.6 A seal impression inker shall be used in conjunction with the official seal, making the impression legible, permanent, and photographically reproducible.

2404.7 In the case that the document being notarized is made of a non-porous material, such as Mylar or a similar material to which standard ink will not adhere, an embossed seal shall be used alone or in conjunction with a non-porous, permanent ink that dries through evaporation, which will adhere without smearing.

2404.8 Notaries public commissioned prior to December 15, 2010, may use an official seal that does not comply with Subsection 2404.4 provided that seal is made visible with a seal impression inker and coupled with an expiration stamp on all notarizations.

2404.9 Notaries public commissioned on or after December 15, 2010, must obtain a seal impression inker that complies with Subsection 2404.4 upon being newly- or re-appointed.

## **2405 NOTARY SIGN**

2405.1 Each notary public must exhibit a sign.

2405.2 The provisions of this section do not apply to notaries functioning in the government service.

## **2406 NOTARY PUBLIC PROCEDURES AND FEES**

2406.1 Each notary public shall have the authority as follows:

- (a) To take and to certify the acknowledgement or proof of powers of attorney, mortgages, deeds, and other instruments of writing;
- (b) To take depositions;
- (c) To administer oaths and affirmations;
- (d) To take affidavits to be used before any court, judge, or officer within the District;
- (e) To demand acceptance and payment of foreign bills of exchange, and to protest the same for non-acceptance and nonpayment;

- (f) To demand acceptance of inland bills of exchange and payment thereof, and of promissory notes and checks, and may protest the same for non-acceptance and nonpayment;
- (g) To exercise such other powers and duties notary publics are authorized by the law of nations and according to commercial usages; and
- (h) To exercise such other powers and duties notary publics are authorized by the law of any state or territory of the United States, or any foreign government in amity with the United States;

2406.2 Fees. Notary publics may not charge more than \$2.00 per notarial act.

2406.3 Any notary public who shall take a higher fee than is prescribed by Subsection 2409.2 shall pay a fine of \$100 and be removed from office.

2406.4 A notary is prohibited from a notarial act in matters in which the notary is a signatory; employed as counsel, attorney, or agent; or in any way directly interested in the matter.

## **2407 NOTARY PUBLIC RECORDS**

2407.1 Each notary public shall keep a fair record of all official acts performed, and when required, provide a certified copy of any record in his office to any person upon payment of the fees incurred. Based on national standard practices, the Office of Notary Commissions and Authentications recommends that each notary's log include the:

- (a) Name: The name and address of each person appearing before the notary;
- (b) Date: The date they appeared before the notary;
- (c) Identification: The method by which each person was identified to the notary;
- (d) Document Type: The type of document involved;
- (e) Fee: The fee charged; and
- (f) Signature: The signature(s) of person(s) signing the document(s).

2407.2 The certificate of a notary public, under hand and seal of office, drawn from the notary public's record, stating the protest and the facts recorded in the record, shall be accepted as evidence of the facts in like manner as an original protest.

2407.3 The log may be kept by hard copy or electronically, but if electronically, a record of the signature of the person who had the document notarized should be saved. All signatures must be completed in person. No electronic signatures shall be accepted.

## **2408 CHANGES IN NAME, ADDRESS, OR OFFICE HOURS**

2408.1 Each notary shall inform ONCA promptly of any change in name, address, or phone number. No fees will be charged for a change of name or address.

2408.2 If a notary changes a place of business, the individual should provide a letter from the new employer providing the name, physical address, and phone number of the new place of employment. If a notary changes his or her name, the individual shall provide ONCA with a copy of the legal document showing the change of name and shall come into the office to provide a new impression of their seals.

2408.3 Notaries should also inform the surety bond company of the change of name or address; order new seal(s); and provide a new impression of the seal with ONCA.

## **2409 EXPIRATION OF COMMISSION**

2409.1 Notary commissions expire at the end of the five year term or upon resignation of the commission. (See Section 2402 on Reappointment). Notaries who no longer reside in the District or who cease to be employed in a business physically located in the District must resign their commission by notifying ONCA, in writing, at: Secretary of the District of Columbia Attention: Office of Notary Commissions and Authentications, 441 4th Street N.W., Suite 810 South, Washington D.C. 20001. Notification may also be sent by email to: [notary@dc.gov](mailto:notary@dc.gov).

## **2410 DENIAL OR REVOCATION OF COMMISSION**

2410.1 The Office of Notary Commissions and Authentications may refuse to issue a commission to an applicant or may remove a notary public from office upon determining that the action is necessary in view of the conditions and restrictions as provided in this chapter and by law, as well as upon written complaints received by the Secretary of the District of Columbia.

- (a) Denials. A notary commission may be denied if there is probable cause to believe that an applicant fails to meet the qualifications of a notary or if the application was not submitted according to the code, regulation or policies set forth by ONCA. If the application incomplete, it will be returned and may be re-submitted.
- (b) Revocations. A notary commission may be revoked if a notary fails to discharge fully and faithfully any of the duties or responsibilities required

of a notary public, or otherwise commits misconduct that substantially relates to the duties or responsibilities of a notary public.

2410.2 A notice, in writing, of a determination to deny or revoke a commission shall be given by ONCA to the person concerned.

2410.3 The notice of determination shall explain the following:

- (a) The nature of and grounds for the action;
- (b) The right of the person concerned to be heard on the matter; and
- (c) The finality of the decision to deny or revoke a commission unless the person concerned requests a hearing on the matter by filing a petition for review with the Office of Administrative Hearings.

2410.4 Applicants denied a notary commission or removed from office may file a petition for review of the decision. The petition for review will be governed by the Office of Administrative Hearings Rules of Practice and Procedure as set forth in 1 DCMR Chapter 28.

## **2411 FILING A PETITION FOR REVIEW OF ADVERSE NOTARY COMMISSION DECISION**

2411.1 A petition for review shall be sent to the Office of Administrative Hearings (OAH), pursuant to 1 DCMR § 2808, within twenty (20) days after service of the notice to deny or revoke a license.

2411.2 The petition for review may be delivered as follows:

- (a) By certified letter to the Office of Administrative Hearings, 441 Fourth Street, N.W., Suite 450 North, Washington D.C. 20001;
- (b) By email, pursuant to the procedures in 1 DCMR § 2841;
- (c) By fax, to (202) 442-4789.

2411.3 To file any paper at OAH, a person must bring, mail, fax, or have the paper delivered to the Clerk's office during regular business hours from 9:00 a.m. to 5:00 p.m. on a business day. A paper is filed on the day the Clerk's office receives it during business hours, except as provided in Subsections 2411.4 and 2411.5.

2411.4 The filing date of a fax transmission will be determined as follows:



- (a) The filing date is the date on which the fax is received in the Clerk's office between the hours of 9:00 a.m. and 5:00 p.m. If a paper is received on a date or at a time when the Clerk's office is not open, the paper shall be deemed to have been filed when the Clerk's office is next open.
- (b) A party filing a paper by fax is responsible for delay, disruption, interruption of electronic signals, and legibility of the paper, and accepts the risk that the paper may not be filed.
- (c) Any incomplete or illegible fax will not be considered received unless a hard copy of the fax is filed or a complete and legible fax is received within three (3) calendar days of the first transmission. In a response to a motion, the Administrative Law Judge may extend this time.

2411.5 The filing date for an e-mail filing received between 9:00 a.m. and 5:00 p.m. on any OAH business day will be the date it is received in the correct OAH electronic mailbox. The filing date for an e-mail filing received at other times will be the next day that the Clerk's Office is open for business. The date and time recorded in the correct OAH electronic mailbox shall be conclusive proof of when it was received.

2411.6 The petition for review shall be signed by the petitioner and shall follow the guidance for requesting a hearing with the Office of Administrative Hearings pursuant to 1 DCMR § 2808, include the following:

- (a) A request for review of the decision of ONCA;
- (b) A statement of why the petitioner believes the decision of ONCA was in error;
- (c) A copy of the notice denying or revoking the notary commission;
- (d) The petitioner's full name, address, telephone numbers, and email address, if available; and
- (e) If the petitioner will be represented by legal counsel, the name, address, email address, and telephone number of that legal counsel.

2411.7 OAH shall, after receipt of the petition of review, notify the petitioner concerned of the time and place of a hearing. Hearings shall be governed by OAH Rules of Practice and Procedure, as set forth in 1 DCMR Chapter 28.

**2412 CERTIFICATION (AUTHENTICATIONS) OF NOTARIES PUBLIC AND CERTIFICATION OF RECORDS**

2412.1 The Secretary of the District of Columbia shall issue certifications (authentications) of seals and signatures of notaries appointed in the District of

Columbia pursuant to Section 588 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1279; D.C. Official Code § 1-1201), and this chapter.

2412.2 The Secretary of the District of Columbia shall issue certifications of the signatures of the District of Columbia governmental officials who are required to sign documents of public records. The certifications shall be as follows:

- (a) A Certificate: For documents that will be used within the United States, generally for interstate commerce.
- (b) Department Head Certificate: For documents that require the signature of an agency head (or his or her designee) and the official seal of the agency.
- (c) Apostille: For documents destined for countries that are parties to the Hague Convention.
- (d) Foreign Certificate: For documents destined for countries that are not parties to the Hague Convention.

2412.3 A fee of fifteen dollars (\$15.00) per certificate shall be charged for the issuance of District certifications under this section. The certifications will be issued through the Office of Notary Commissions and Authentications.

2412.4 For procedures on obtaining notarizations in other state or foreign jurisdictions that will be recognized in the District of Columbia, please see D.C. Official Code §§ 42-141 *et seq.*

## 2499 DEFINITIONS

When used in this chapter, the following terms and phrases shall have the meanings ascribed as follows:

**Business Notary** - A business notary public is an individual who is employed by a business physically operating in the District of Columbia, but who may or may not reside in the District, and exercises notarial functions on behalf of his or her employer.

A person may also apply to be a “government” notary public if they obtain a business commission in their role as a government employee, providing the agency is physically located in the District of Columbia. The notarial functions may only be exercised on behalf of the government employer. The application is submitted to ONCA as a Business application, but no fee is required.

**District** – The District of Columbia

**Dual Commission** - A District of Columbia resident who desires to exercise notarial functions from his/her personal residence in the District in addition to their business commission may apply for a dual commission. A letter from the individual and the business must be submitted with the application, but only one fee is required.

**ONCA** – The Office of Notary Commissions and Authentications

**Residential Notary** - A residential notary public resides in and performs notarial functions from his/her personal residence in the District of Columbia. The notary must submit a Residential Letter of Request that sets forth the need for the notary's commission to be issued for use in the community and in his/her personal residence.