

HAWAII REVISED STATUTES

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.

History

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; am imp L 1984, c 90, §1.

DIVISION 2. BUSINESS

TITLE 25. PROFESSIONS AND OCCUPATIONS

CHAPTER 456. NOTARIES PUBLIC

§456-1. Commission; renewal.

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

History

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; am imp L 1984, c 90, §1; am L 1998, c 290, §2; am L 2020, c 54, §3, effective January 1, 2021.

[§456-1.5.] 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.

History

L 2008, c 175, §2, effective January 1, 2009.

[§456-1.6.] Definitions.

“Acknowledgment” means a declaration by a person before a notary public that the person has signed a document for the purpose stated in the document and, if the document is signed in a representative capacity, that the person signed the document with proper authority and signed it as the act of the person or entity identified in the document.

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

“Document” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Electronic signature” means an electronic symbol, sound, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

“In a representative capacity” means acting as:

- (1) An authorized officer, agent, partner, trustee, or other representative for a person other than an individual;
- (2) A public officer, personal representative, guardian, or other representative, in the capacity stated in an applicable document;
- (3) An agent or attorney-in-fact for a principal; or
- (4) An authorized representative of another in any other capacity.

“Notarial act” means an act, whether performed with respect to a tangible or electronic document, that a notary public may perform under the laws of this State. “Notarial act” includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

“Notary public” means an individual commissioned to perform a notarial act by the attorney general under this chapter.

“Proof of the signer’s signature and identity” means satisfactory evidence of the identity of an individual appearing before the notary public if the notary public can identify the individual:

- (1) By means of:
 - (A) Having personal knowledge of the identity of an individual before the officer if the individual is personally known to the notary public through dealings sufficient to provide reasonable certainty that the individual has the identity claimed;

(B) A passport, driver's license, or government-issued non-driver identification card that is valid or expired no more than three years prior to the performance of the notarial act and contains the signature and photograph of the individual;

(C) Another form of government identification issued to an individual that is valid or expired no more than three years prior to performance of the notarial act, contains the signature and photograph of the individual, and is satisfactory to the notary public; or

(D) By verification on oath or affirmation of a credible witness personally appearing before the notary public and known to the notary public or whom the notary public can identify on the basis of a passport, driver's license, or government-issued non-driver identification card that is valid or expired no more than three years prior to performance of the notarial act; or

(2) By requiring an individual to provide additional information or identification credentials necessary to assure the notary public of the identity of the individual.

“Sign” means, with present intent to authenticate or adopt a document:

(1) To execute or adopt a tangible symbol; or

(2) To attach or logically associate with the document an electronic symbol, sound, or process.

“Signature” means a tangible symbol or an electronic signature that evidences the signing of a document.

“Stamping device” means:

(1) A physical device capable of stamping or impressing upon a tangible document a notary seal; or

(2) An electronic device or process capable of attaching to, or logically associating with, an electronic document a notary seal.

“Tamper-evident” means any change to an electronic document that displays evidence of the change.

“Verification on oath or affirmation” means a declaration, made by a person on oath or affirmation before a notary public, that a statement in a document is true.

History

L 2008, c 175, §2, effective January 1, 2009; am L 2020, c 54, §4, effective January 1, 2021.

§456-2. Qualifications; oath.

Every person commissioned as a notary public shall, at the time of the person's commission, be a resident of the State, possess the other qualifications required of a notary public and be at least eighteen years of age. Every person, prior to being commissioned as a notary public, shall 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.

History

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; am imp L 1984, c 90, §1; am L 2020, c 54, §5, effective January 1, 2021.

§456-3. Seal.

Every notary public shall constantly keep a rubber stamp notary seal which shall clearly show, when stamped or impressed upon a tangible document or when attached to or logically associated with an electronic document, only the notary public's name, the notary public's commission number, and the words, “notary public” and “State of Hawaii”. The notary seal shall be capable of being copied together with the document to which it is stamped, impressed, or attached, or with which it is logically associated. The notary public shall authenticate all the notary public's official acts, attestations, certificates, and instruments therewith, and shall always

add to an official signature the typed or printed name of the notary public and a statement showing the date that the notary public's commission expires. Upon resignation, death, expiration of term of commission without renewal, or revocation or abandonment of commission, the notary public, or in the case of the death of the notary public, the notary public's personal representative, shall immediately deliver the notary public's seal to the attorney general who shall deface or destroy the same. If a notary public has used an electronic stamping device, upon resignation, death, expiration of term of commission without renewal, or revocation or abandonment of commission, the notary public, or in the case of the death of the notary public, the notary public's personal representative, shall disable the electronic stamping device by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable and shall submit a declaration to the attorney general that the electronic stamping device was disabled and indicate the date and manner in which the device was disabled.

History

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 imp L 1984, c 90, §1 and am L 1984, c 127, §1; am L 1986, c 327, §1; am L 1998, c 290, §3; am L 2013, c 29, §1, effective April 22, 2013; am L 2020, c 54, §6, effective January 1, 2021.

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

(a) Each person commissioned as 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 tangible 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 commissioned as 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 requested, shall certify to the official character and acts of any such notary public whose commission, impression of tangible seal, and specimen of official signature are so filed in the clerk's office. A notary public's electronic seal shall not be subject to the requirements of this section.

(b) All documents filed under this section may be maintained in tangible or electronic format.

History

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; am imp L 1984, c 90, §1; am L 2020, c 54, §7, effective January 1, 2021.

§456-5. Official bond.

Each notary public forthwith and before entering upon the duties of the notary public's commission shall execute, at the notary public'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, or bond continuation certificate, 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 public's commission 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 public's commission. The surety on each bond, or bond continuation certificate, shall be a surety company authorized to do business in the State. After approval, the bond or bond continuation certificate 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 data relating to each of the bonds or bond continuation certificates deposited and filed in the clerk's office as the attorney general may direct.

History

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; am imp L 1984, c 90, §1; am L 1998, c 290, §4; am L 2020, c 54, §8, effective January 1, 2021.

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

(a) In the performance of a notarial act, a notary public's liability shall be limited to a failure by the notary public to perform properly the actions required for the jurat, acknowledgment, or other notarial acts. The notary public'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 public's official bond, the notary public and the surety on the notary public'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 name upon the bond and may prosecute the action to final judgment and execution.

History

L 1941, c 322, pt of §4; RL 1945, §7666; RL 1955, §168-6; HRS §456-6; am imp L 1984, c 90, §1; am L 1996, c 18, §1; am L 2020, c 54, §9, effective January 1, 2021.

§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 a notary public without first complying with all of the following:

- (1) Being 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.

History

L 1941, c 322, pt of §4; RL 1945, §7667; RL 1955, §168-7; HRS §456-7; am imp L 1984, c 90, §1; am L 2008, c 175, §4, effective January 1, 2009; am L 2020, c 54, §10, effective January 1, 2021.

§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 commission and duties of notaries public, and any measures as may be necessary to prevent the fraudulent use of a notarized document after placement of the notary public's seal. The rules shall have the force and effect of law.

History

L 1941, c 322, pt of §4; RL 1945, §7668; RL 1955, §168-8; am L 1965, c 96, §110; HRS §456-8; am imp L 1984, c 90, §1; am L 1998, c 290, §5; am L 2008, c 175, §5, effective January 1, 2009; am L 2020, c 54, §11, effective January 1, 2021.

§456-9. Fees and administrative fines.

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

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

(3) Electronic processing service fees of up to ten per cent of the amount of the transaction.

These fees may be adjusted, and any other fees may be established and adjusted, by adopting rules 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 a single rubber stamp notary 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" only, \$20;

(2) Surrender the notary public's physical stamping device and certificate to the attorney general within ninety days of resignation, revocation of commission, or the expiration of a term without renewal, \$200;

(3) Disable the notary public's electronic stamping device within ninety days of resignation, revocation of commission, or the expiration of a term without renewal, \$200;

(4) Authenticate every acknowledgment or jurat with a certificate that shall be signed and dated by the notary public, include the printed name and official stamp or seal of the notary public, and identify the jurisdiction in which the notarial act is performed, \$500;

(5) Chronicle all of the notary public's notarial acts as prescribed by section 456-15 and applicable rules, \$200; and

(6) Notify the attorney general within ten days after loss, misplacement, or theft of the notary public's stamping device or any journal, 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 moneys collected by the attorney general pursuant to this section shall be deposited into the notaries public special fund established by section 456-9.5, except that if that fund is terminated, the moneys shall thereafter be deposited with the director of finance to the credit of the general fund.

(e) All unpaid fees, fines, and forfeitures shall constitute a debt due and owing to the State.

History

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, effective January 1, 2009; am L 2013, c 29, §2, effective April 22, 2013; am L 2020, c 54, §12, effective January 1, 2021; am L Sp 2021 1st c. 9, §54, effective July 1, 2021.

[§456-9.5.] Notaries public special fund.

(a) There is established in the state treasury the notaries public special 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 or 456-7;

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

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

(b) The notaries public special fund shall be administered by the department of the attorney general. Notwithstanding any law to the contrary, moneys in the notaries public special 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.

History

L 1998, c 290, §1; am L 2008, c 175, §7, effective January 1, 2009; am L 2020, c 54, §13, effective January 1, 2021; am L Sp 2021 1st c. 9, §55, effective July 1, 2021.

§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.

History

CC 1859, §1269; RL 1925, §3177; RL 1935, §5203; RL 1945, §7670; RL 1955, §168-10; HRS §456-10; am imp L 1984, c 90, §1.

§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.

History

CC 1859, §1270; RL 1925, §3178; RL 1935, §5204; RL 1945, §7671; RL 1955, §168-11; HRS §456-11; am imp L 1984, c 90, §1.

§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.

History

CC 1859, §1271; RL 1925, §3179; RL 1935, §5205; RL 1945, §7672; RL 1955, §168-12; HRS §456-12; am imp L 1984, c 90, §1.

§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.

History

L 1888, pt of c 6; RL 1925, §3180; RL 1935, §5206; RL 1945, §7673; RL 1955, §168-13; HRS §456-13.

§456-14. Authority to perform notarial act; notary public connected with a corporation or trust company.

(a) Except as otherwise provided in subsection (b):

(1) A notary public may perform a notarial act authorized by this chapter or by the laws of this State; and

(2) 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 that may be owned or held for collection by the corporation or trust company.

(b) A notary public shall not perform a notarial act with respect to a document to which the notary public or the notary public's spouse or civil partner is a party or in which either of them has a direct beneficial interest. A notarial act performed in violation of this section is voidable.

(c) A notary public may certify that a tangible copy of an electronic document is an accurate copy of the electronic document.

History

L 1961, c 97, §1; Supp. §168-13.5; HRS §456-14; am L 2020, c 54, §14, effective January 1, 2021.

§456-15. Journal; copies as evidence.

(a) A notary public shall maintain a journal in which the notary public chronicles all notarial acts that the notary public performs. The notary public shall retain the journal for ten years after the performance of the last notarial act chronicled in the journal.

(b) A journal may be created on a tangible medium or in an electronic format. A notary public shall maintain only one tangible journal at a time to chronicle all notarial acts performed regarding tangible documents and one electronic journal at a time to chronicle all notarial acts performed regarding electronic documents. If the journal is maintained on a tangible medium, it shall be a permanent, bound register with numbered pages. If the journal is maintained in an electronic format, it shall be in a permanent, tamper-evident electronic format complying with all rules adopted by the attorney general pursuant to this chapter.

(c) A notary public having the care and custody of the journal may cause the same to be photographed, microphotographed, reproduced on film, or copied to an electronic format. Any device or electronic storage system used to copy or reproduce the journal shall accurately reflect all details of the information in the original thereof.

(d) A photograph, microphotograph, reproduction on film, or electronic copy of a journal shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification, facsimile, or certified copy thereof, for all purposes recited in this section, shall be deemed to be a transcript, exemplification, facsimile, or certified copy of the original record.

(e) An entry in a journal shall be made contemporaneously with performance of the notarial act and contain the following information:

- (1) The type, date, and time of day of the notarial act;
- (2) The title or type and date of the document or proceeding and the nature of the act, transaction, or thing to which the document relates;
- (3) The full printed name and address of each person whose signature is notarized and of each witness and, if the journal is maintained in a tangible medium, the signature of that person;
- (4) If the identity of the person is based on personal knowledge, a statement to that effect;
- (5) If the identity of the person is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the identification number and date of expiration of any identification credentials; and
- (6) The fee, if any, charged by the notary public.

(f) If a notary public's journal is lost or stolen, the notary public shall promptly notify the attorney general upon discovering that the journal is lost or stolen.

(g) On resignation from, or the expiration, revocation, or suspension of, a notary public's commission, the notary public shall retain the notary public's journal in accordance with this

section and provide to the attorney general the location of the journal.

(h) On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal shall transmit the journal to the attorney general or a repository approved by the attorney general.

(i) All copies or certificates granted by the notary public shall be under the notary public's hand and notary seal and shall be received as evidence of such transactions.

(j) The journals are subject to any reasonable periodic, special, or other audits or inspections by the department of the attorney general, within or without the State, as the attorney general considers necessary or appropriate. An audit or inspection may be made at any time and without prior notice. The department of the attorney general may copy, and remove for audit or inspection copies of, all records that the department of the attorney general reasonably considers necessary or appropriate to conduct the audit or inspection. If any notary public fails to comply with this section, the notary public shall be subject to an administrative fine of no less than \$50 nor more than \$500. All unpaid fees, fines, and forfeitures shall constitute a debt due and owing to the State.

History

CC 1859, §1273; RL 1925, §3181; RL 1935, §5207; RL 1945, §7674; RL 1955, §168-14; HRS §456-15; am imp L 1984, c 90, §1; am L 1995, c 141, §2; am L 2008, c 175, §8, effective January 1, 2009; am L 2020, c 54, §15, effective January 1, 2021.

§456-16. Disposition of records, penalty. [Repealed]

History

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 imp L 1984, c 90, §1 and am L 1984, c 127, §2; am L 1999, c 19, §1; repealed by L 2020, c 54, §23, effective January 1, 2021.

§456-17. Fees.

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

- (1) For noting the protest of mercantile paper, \$5;
- (2) For each notice and certified copy of protest, \$5;
- (3) For noting any other protest, \$5;
- (4) For every notice thereof and certified copy of protest, \$5;
- (5) For every deposition or official certificate, \$5;
- (6) 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;
- (7) For taking any acknowledgment, \$5 for each party signing; for affixing to every duplicate original beyond one of any instrument acknowledged before the notary public, the notary public's certificate of the acknowledgment, \$2.50 for each person making the acknowledgment; and
- (8) For any of the foregoing notarial acts performed for a remotely located individual under section 456-23, other than affixing a notary public's certificate to a duplicate original, \$25.

History

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; am L 2020, c 54, §16, effective January 1, 2021; am L 2021, c 230, §16; effective July 6, 2021.

§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 special 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.

History

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; am imp L 1984, c 90, §1; am L 1998, c 290, §7; am L Sp 2021 1st c. 9, §56, effective July 1, 2021.

§456-19. Notary public signing for disabled person.

A notary public 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 public is satisfied that the person has voluntarily given consent for the notary public to sign on the person's behalf, if the notary public writes, in the presence of the person: "Signature affixed by notary public pursuant to section 456-19, Hawaii Revised Statutes." beneath the signature, and if a doctor's written certificate is provided to the notary public 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. The certificate shall be attached to the document.

History

L 1995, c 141, §1; am L 2020, c 54, §17, effective January 1, 2021.

§456-20. Failure to verify identity and signature.

(a) A person commits the offense of failure to verify identity if the person is a commissioned notary public and knowingly notarizes a document and if a witness to the signing of the instrument, fails to verify the identity of the signer by proof of the signer's signature and identity, or by obtaining satisfactory evidence of identity of a remotely located individual under section 456-23.

(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.

History

L 2008, c 175, §2, effective January 1, 2009; am L 2020, c 54, §18, effective January 1, 2021.

§456-21. 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 performs a notarial act with respect to 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, date of expiration, and stamp or seal of the notary public; and
- (3) Identification of the jurisdiction in which the notarial act is performed.

(b) If a notarial act regarding a tangible record is performed by a notary public, an official stamp shall be stamped, impressed, or attached on the certificate. If a notarial act is performed regarding a tangible record by a notary public and the certificate contains the information specified in this section, an official stamp shall be affixed to the certificate. If a notarial act regarding an electronic record is performed by a notary public and the certificate contains the information specified in this section, an official stamp shall be attached to or logically associated with the certificate.

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

(d) A conviction under this section shall result in the automatic revocation of the notary public's commission.

History

L 2008, c 175, §2, effective January 1, 2009; am L 2020, c 54, §19, effective January 1, 2021.

§456-22. Authority to refuse to perform notarial act.

(a) A notary public may refuse to perform a notarial act if the notary public is not satisfied that:

- (1) The person executing the document is competent or has the capacity to execute the document;
- (2) The person's signature is knowingly and voluntarily made; or
- (3) The notary public has proof of the signer's signature and identity or, if the person is a remotely located individual, satisfactory evidence of the identity under section 456-23.

(b) A notary public may refuse to perform a notarial act unless the refusal is prohibited by any provision of law other than this chapter.

History

L 2020, c 54, §2, effective January 1, 2021.

§456-23. Notarial act performed for remotely located individual.

(a) A remotely located individual may comply with any law requiring the individual to appear personally before, or be in the presence of, a notary public at the time of the performance of a notarial act by using communication technology to appear before a remote online notary public.

(b) A remote online notary public located in this State may perform a notarial act for a remotely located individual using communication technology if:

- (1) The remote online notary public has:
 - (A) Personal knowledge of the identity of the individual;
 - (B) Satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the remote online notary public under this

chapter; or

(C) Obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(2) The remote online notary public is reasonably able to confirm that a document before the remote online notary public is the same document in which the remotely located individual made a statement or on which the remotely located individual executed a signature;

(3) The remote online notary public, or a person acting on behalf of the remote online notary public, creates an audiovisual recording of the performance of the notarial act; and

(4) For a remotely located individual located outside the United States:

(A) The document to be notarized:

(i) Is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States;

(ii) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; or

(iii) Involves a transaction with a bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, including a bank so insured and that is located in the Federated States of Micronesia, Republic of the Marshall Islands, or Republic of Palau; and

(B) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

(c) If a notarial act is performed under this section, any certificate of notarial act required by this chapter or other laws of this State shall indicate that the notarial act was performed using communication technology.

(d) A form of certificate of notarial act subject to this section and authorized by the laws of this State, including a certificate of acknowledgment provided in section 502-41, is sufficient if it:

(1) Complies with rules adopted under this section; or

(2) Is in the form authorized by the laws of this State and contains a statement substantially as follows: "This notarial act involved the use of communication technology".

(e) A remote online notary public; guardian, conservator, or agent of a remote online notary public; or personal representative of a deceased remote online notary public shall retain any audiovisual recording created under this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by a rule adopted under this section, the recording shall be retained for a period of no less than ten years after the recording is made.

(f) Prior to performing any initial notarial act under this section, the remote online notary public shall notify the attorney general that the remote online notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies that the remote online notary public intends to use. The technologies selected by a remote online notary public to perform notarial acts for remotely located individuals shall conform to the attorney general's standards developed for this chapter.

(g) In addition to adopting, amending, or repealing rules under sections 456-1.5 and 456-8, the attorney general may adopt, amend, or repeal rules pursuant to chapter 91 regarding the performance of notarial acts under this section, including:

(1) Prescribing the means of performing a notarial act involving a remotely located individual using communication technology;

(2) Establishing standards for communication technology and identity proofing;

(3) Establishing requirements and procedures to approve providers of communication technology and the process of identity proofing; and

(4) Establishing standards for, and a period of retention of, any audiovisual recording created under this section.

(h) Prior to adopting, amending, or repealing a rule governing the performance of a notarial act with respect to a remotely located individual, the attorney general shall consider:

(1) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State;

(2) The standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and

(3) The views of governmental officials and entities and other interested persons.

(i) For purposes of this section:

“Communication technology” means an electronic device or process that:

(1) Allows a remote online notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(2) When necessary and consistent with other applicable laws, facilitates communication between a remote online notary public and a remotely located individual who has a vision, hearing, or speech impairment.

“Foreign state” means a jurisdiction other than the United States, a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, any territory or insular possession subject to the jurisdiction of the United States, or a federally recognized Indian tribe.

“Identity proofing” means a process or service by which a third person provides a remote online notary public with a means to verify the identity of a remotely located individual by a review of the remotely located individual’s personal information from public or private data sources.

“Outside the United States” means a location outside the geographic boundaries of the United States; Puerto Rico; the United States Virgin Islands; and any territory, insular possession, or other location subject to the jurisdiction of the United States.

“Remote online notary public” means an individual commissioned by the attorney general to perform notarial acts for remotely located individuals.

“Remotely located individual” means an individual who is not in the physical presence of the remote online notary public performing a notarial act for that individual under this section.

History

L 2020, c 54, §2, effective January 1, 2021.

§456-24. Remote online notaries public; application; qualifications.

(a) A notary public or an applicant for commission as a notary public may apply to the attorney general to be commissioned as a remote online notary public in the manner provided by this section.

(b) A person qualifies to be commissioned as a remote online notary public by:

(1) Satisfying the qualification requirements for commission as a notary public under this chapter;

(2) Paying any application fee established pursuant to subsection (c); and

(3) Submitting to the attorney general an application in the form prescribed by the attorney general that establishes the applicant’s qualifications.

(c) The attorney general may charge a fee for an application submitted under this section in an amount necessary to administer this section.

(d) An individual commissioned as a remote online notary public under this section shall forthwith file a literal or photostatic copy of the individual’s commission with the clerk of the circuit court of the circuit in which the remote online notary public resides.

(e) An individual commissioned as a remote online notary public under this section shall be

deemed a notary public for purposes of this chapter and shall be subject to the requirements, powers, and duties of a notary public under this chapter.

History

L 2020, c 54, §2, effective January 1, 2021.

§456-25. Notification regarding performance of notarial act on electronic record; selection of technology; acceptance of tangible copy of electronic record.

(a) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic documents. No person shall require a notary public to perform a notarial act with respect to an electronic document using a technology that the notary public has not selected.

(b) Prior to the performance of an initial notarial act with respect to an electronic document, the notary public shall notify the attorney general that the notary public will be performing notarial acts with respect to electronic documents and identify the technology the notary public intends to use; provided that the technology selected by a remote online notary public for remote online notarizations shall conform to the attorney general's standards developed for this chapter.

(c) The registrar of conveyances may accept for recording under chapter 502 a tangible copy of an electronic document containing a notarial certificate as satisfying any requirement that a document accepted for recording be an original; provided that the notary public executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic document.

History

L 2020, c 54, §2, effective January 1, 2021.

§456-26. Validity of notarial acts.

Except as otherwise provided in section 456-14(b), the failure of a notary public to perform a duty or meet a requirement specified in this chapter does not validate or invalidate a notarial act performed by the notary public. The validity of a notarial act under this chapter does not prevent an aggrieved person from seeking to invalidate the document or transaction that is the subject of the notarial act or from seeking other remedies based on the laws of this State other than this chapter or based on the laws of the United States. This section shall not be deemed to validate a purported notarial act performed by a person who does not have the authority to perform notarial acts.

History

L 2020, c 54, §2, effective January 1, 2021.

§456-27. Relation to the federal Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, title 15 United States Code section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that Act, title 15 United States Code section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, title 15 United States Code section 7003(b).

History

L 2020, c 54, §2, effective January 1, 2021.

**TITLE 26. TRADE REGULATION AND PRACTICE
CHAPTER 489E. UNIFORM ELECTRONIC TRANSACTIONS ACT**

§489E-11 Notarization, certification, acknowledgment, and verification.

If a law requires a signature or record to be notarized, certified, acknowledged, verified, or

made under oath or seal, the requirement is satisfied if the electronic signature or seal of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record. [L 2000, c 282, pt of §1; am L 2002, c 62, §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 notary public granting the certificate and acknowledged or stated that the person executed the same, and that the person was personally known to the notary public granting the certificate to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be the party by the oath or affirmation of a credible witness known to the notary public whose name shall be inserted in the certificate or by other satisfactory evidence of identity under the laws of this State. If the person who executed the instrument appeared before a notary public as a remotely located individual under section 456-23, then the certificate shall indicate that the notarial act was performed using communication technology in a manner provided in section 456-23. It shall not be grounds for the rejection of any certificate, or for refusing to accept the 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; am L 2020, c 54 §20]

§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 notary public 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 notary public or by production of a valid 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 or by obtaining satisfactory evidence of identity of a remotely located individual under section 456-23.

[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; am L 2020 c 54 §21]

§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.

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; am L 2020 c 54 §22]

§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)]

CHAPTER 502. BUREAU OF CONVEYANCES; RECORDING UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

§502-122 Electronic document and electronic signature; validity.

(a) The registrar may accept an electronic document for recording. The electronic document shall be exempt from any requirement under this chapter that a document or instrument be:

- (1) The original document or instrument;
- (2) On paper, cloth, or other tangible medium; or
- (3) In writing.

(b) When a law requires as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) Any requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath shall be satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. It shall not be necessary to accompany an electronic signature with a physical or electronic image or a stamp, impression, or seal.

(d) In a proceeding, evidence of a document or signature shall not be excluded solely because it is in electronic form.

§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 5-11 NOTARIES PUBLIC

SUBCHAPTER 1 GENERAL PROVISIONS

GENERAL PROVISIONS

§5-11-1 Purpose. This chapter is intended to clarify and implement chapter 456, Hawaii Revised Statutes (HRS), as amended, to the end that the provisions thereunder, for the protection of the general public, may best be effectuated and the public interest most effectively served.

[Eff 5/5/08; comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-8)

§5-11-1.5 Definitions. As used in this chapter, unless the context requires otherwise:

“Affirmation” or “oath” means a solemn pledge made orally or in writing by a person to attest to the truth of the person’s statement.

“Appear personally” means:

- (1) Being in the same physical location as another person and close enough to see, hear, communicate with, and exchange proof of the signer’s signature and identity with that person; or
- (2) Interacting with a remotely located individual by means of communication technology that complies with the provisions of section 456-23, HRS, and this chapter.

“Conviction” means a formal judgment entered by a court based on a verdict or plea of guilty or a plea of nolo contendere.

“Department” means the department of the attorney general.

“Electronic notary seal” or “electronic seal” means an electronic image that contains information attached to or logically associated with an electronic record and that contains the notary public’s name, the notary public’s commission number, and the words “notary public” and “State of Hawaii”.

“Electronic signature” has the same meaning as in section 456-1.6, HRS.

“Identity proofing” has the same meaning as in section 456-23, HRS.

“Notarial act” has the same meaning as in section 456-1.6, HRS.

“Notary public” has the same meaning as in section 456-1.6, HRS.

“Person” means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government

or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Remote online notary public” has the same meaning as in section 456-23, HRS.

“Signature” has the same meaning as in section 456-1.6, HRS .

“Stamping device” has the same meaning as in section 456-1.6, HRS.

[Eff and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-2, 456-13, 456-22- 456-23, 456-24, 456-25)

§5-11-2 Commission required to act as a notary public. No person shall act as a notary public, advertise or represent oneself as a notary public, or perform notarial acts, without a current commission obtained from the attorney general.

[Eff 5/5/08; comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-26)

§5-11-3 Conduct. Every notary public shall perform notarial acts in accordance with chapter 456, HRS, this chapter, other laws in Hawaii, and official guidelines (e.g., Notary Manual) that pertain to notarial acts and shall follow recognized industry best practice standards that do not conflict with Hawaii law.

[Eff 5/5/08; comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (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 5/5/08; comp 3/12/15; comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-10, 456-11, 456-13, 456-14, 456-17, 456-18, 456-19, 456-23)

§5-11-4.5 Prohibited acts. (a) A notary public shall not do any of the following:

- (1) Refuse to perform a lawful and proper notarial act because of the race; sex, including gender identity or expression; sexual orientation; color; ancestry; nationality; ethnicity; religion; politics; advanced age; or disability, including the use of a service animal, of the person appearing before the notary public; or any disagreement with the statements or purpose of a document;
- (2) Base the charging of a fee for performing a notarial act or the amount of the fee on the race; sex, including gender identity or expression; sexual orientation; color; ancestry; nationality; ethnicity; religion; politics; advanced age; or disability, including the use of a service animal, of the person appearing before the notary public; or any disagreement with the statements or purpose of a document;
- (3) Notarize the notary public’s own signature;
- (4) Perform a notarial act if the notary public has an actual and apparent conflict of interest regarding the transaction in question;
- (5) Deliver a signed notarial certificate to another person and authorize that person to attach the certificate to a document outside of the notary public’s presence; or
- (6) Provide legal advice, unless the notary public is an attorney licensed to practice law in this State.

(b) Nothing contained in this section shall be construed to limit or deny the enforcement of any of chapters 456 and 502, HRS, or this chapter.

(c) Nothing contained in subsection (a) (2) shall be construed to prohibit reducing or waiving a fee at the notary public’s discretion, provided that doing so is not done for an unlawful or

discriminatory purpose.

[Eff and comp Feb. 27, 2022] (Auth: HRS §§28-10. 8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-1.5, 456-2, 456-9, 456-17, 456-22, 456-23, 456-24, 456-26)

§5-11-5 Notary seal. (a) A notary public shall obtain and keep a rubber stamp notary seal that, when stamped or impressed upon a tangible document, shall clearly show the name of the notary public, the commission number of the notary public, and the words “notary public” and “State of Hawaii”. The notary public shall not possess more than one rubber stamp notary seal at a time.

(b) The notary public shall authenticate all of the notary public’s notarial acts, attestations, certifications, and instruments with the notary public’s notary seal contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS.

(c) The rubber stamp notary seal of every notary public shall be a circular, rubber stamping device with a serrated or milled edge border between one inch and two inches in diameter and shall include the required wording and information specified in subsection (a).

(d) The notary public shall safeguard and maintain sole control of the notary seal.

(e) The notary public shall surrender the rubber stamp notary seal to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal. Failure to comply with this requirement may result in an administrative fine of \$200.

[Eff 5/5/08 ; am and comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-3, 456-23)

§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 notary 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 5/5/08; comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1.6, 456-3, 456-23)

§5-11-7 Acceptable forms of identification of signers. A notary public shall not perform a notarial act unless there is proof of the signer’s signature and identity as defined in section 456-1.6, HRS, or as otherwise provided in sections 5-11-69 and 5-11-70.

[Eff 5/5/08; comp 3/12/15; am and comp Feb. 27, 2027] (Auth: HRS §§28-10.8, 456-1.5, 4-6-8, 456-23) (Imp: HRS §§456-1.6, 456-15, 456-20, 456-22)

§5-11-8 Acknowledgments; jurats. Every acknowledgment or jurat shall be evidenced by a certificate signed and dated by a notary public contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS. The certificate shall include the printed name of the notary public, the expiration date, the notary seal of the notary public, and identification of the jurisdiction in which the notarial act is performed.

[Eff 5/5/08 comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-15, 456-21)

§5-11-9 Journal. (a) A notary public shall create, maintain, and retain a journal in which the notary public chronicles all notarial acts performed by the notary public in accordance with the requirements of section 456-15, HRS, and this chapter.

(b) The tangible journal 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 tangible journal shall be consecutively numbered.

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

(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 tangible journal.

(f) The notary public shall retain the notary public's journal for ten years after the performance of the last notarial act chronicled in the journal. The notary public shall provide to the attorney general the location of the journal upon resignation from, or revocation, abandonment, or suspension of the notary public's commission, or the expiration of a commission without renewal. At any time, the journal shall be subject to an audit pursuant to section 456-15, HRS. Failure to comply with this requirement may result in an administrative fine of no less than \$50 and no more than \$500.

[Eff 5/5/08; am and comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-15)

§5-11-10 Notification and filing of names, addresses, and changes; failure to notify. (a) Each notary public shall file with the attorney general the notary public's name, employer, residence and business addresses, telephone numbers, email address, and occupation 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.

(d) Failure to provide timely written notification to the attorney general of any change shall subject the notary public to a \$25 administrative fine. Failure to provide timely written notification to the attorney general of any change of address that results in renewal forms being mailed to an incorrect address shall subject the notary public to a \$50 administrative fine.

[Eff 5/5/08; am and comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9)

§5-11-10.5 Notification of status change. (a) Each notary public or the notary public's representative or guardian shall notify the attorney general in writing of an adjudication of the notary public's incompetency within thirty days of the adjudication.

(b) Each notary public shall notify the attorney general in writing of a criminal conviction against the notary public of any felony, or a misdemeanor related to the qualifications, functions, or duties of the notary public or involving fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses.

(c) Each notary public shall notify the attorney general in writing of any professional disciplinary decision issued against the notary public in this or another jurisdiction within thirty days of the disciplinary decision.

(d) Failure to provide timely written notification to the attorney general of any change, as prescribed under this section, shall subject the notary public to an administrative fine of \$25 per violation.

[Eff and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9)

§5-11-11 REPEALED.

[Eff 5/5/08; comp 03/12/15; R Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS 456-1)

§5-11-12 Term of commission. The term of commission 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 commission, 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 5/5/08; comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24, 456-26)

§5-11-13 REPEALED.

[Eff 5/5/08; comp 03/12/15] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS 456-1)

§5-11-14 REPEALED.

[Eff 5/5/08; comp 03/12/15] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS 456-1)

§5-11-15 REPEALED.

[Eff 5/5/08; comp 03/12/15] (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 and rubber stamp notary seal as provided in sections 5-11-5(e) and 5-11-17(a) and provide to the attorney general the location of the journal as provided in section 5-11-9(f); 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 successfully applying as a new applicant should the person desire to engage in any notarial services.

[Eff 5/5/08; comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-3, 456-15, 456-24)

§5-11-17 Surrender of notary public commission certificate and notary seal; retention of journal; failure to comply. (a) Within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, the notary public shall:

- (1) Surrender the notary public's commission certificate, including the remote online notary public's commission certificate, if applicable, to the attorney general for the purpose of destruction;

- (2) Surrender the notary public's rubber stamp notary seal to the attorney general for the purpose of defacement; and
- (3) Retain, or cause to be retained, the notary public's journal and inform the attorney general of the location of the journal.

(b) Upon the death of a current notary public, the notary public's employer, personal representative, or any other person knowingly in possession of the notary public's certificate or notary seal shall within ninety days fulfill the requirements of subsection (a) (1) and (2).

(c) Upon the death of a current or former notary public, the notary public's employer, personal representative, or any other person knowingly in possession of the notary public's journal shall transmit the journal to the attorney general or a repository approved by the attorney general as provided in section 456-15(h), HRS, and notify the attorney general of the location of the repository.

(d) Failure to comply with subsection (a) (2) may result in an administrative fine of not more than \$200. Failure to comply with subsection (a) (3) or (c) may result in an administrative fine of no less than \$50 and no more than \$500. Failure to comply with any paragraph of subsection (a) shall preclude the reissuance of a notary public's commission. Strict compliance with subsection (a) shall be a condition for the reissuance of a notary public's commission.

[Eff 5/5/08; am and comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23)
(Imp: HRS §§456-1, 456-3, 456-7, 456-15, 456-24)

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

Within ten days after loss, misplacement, or theft of the notary public's notary seal or journal or both, a notary public shall transmit 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. Failure to comply with this section shall result in an administrative fine of \$20.

[Eff 5/5/08; am and comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23)
(Imp: HRS §§456-3, 456-9, 456-15)

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.

(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, mailing, and email addresses;
- (4) The date and place of a conviction of any felony, or a misdemeanor related to the qualifications, functions, or duties of a notary public or involving fraud, false

- statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses;
- (5) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United States;
 - (6) Proof of the applicant's identity by a current government-issued photo identification; and
 - (7) Proof that the applicant is a resident of the State;
 - (8) Proof that the applicant has executed an official surety bond that has been approved by a judge of the circuit court;
 - (9) 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.

[Eff 5/5/08; comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-2, 456-5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9, 456-18, 456-24)

§5-11-22 Action on application. (a) Unless otherwise provided by law, the attorney general shall take the following actions within six months 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 status of 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 5/5/08; comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-22) (Imp: HRS §§28-10.8, 91-13.5, 456-8, 456-24)

§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 within sixty calendar days prior to the expiration of the notary public's current 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.

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 per cent. 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 public examination on the scheduled examination date without advance notice, as follows, to the attorney general to reschedule the examination shall require that the applicant submit a new application for a notary public commission with updated supporting letters and also pay a \$25 no-show examination fee. The fee to reschedule an examination shall be \$15 if an applicant requests to reschedule more than forty-eight hours before the examination. The fee to reschedule an examination shall be \$20 if the applicant requests to reschedule less than forty-eight hours before the examination.

(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 reexamination without submitting a new application, provided that the applicant requests, pays the examination fee, and reschedules a reexamination within fourteen 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 request, pay for, and reschedule a reexamination within the fourteen 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 5/5/08; am and comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-7, 456-24)

§5-11-33 Examination subject matter. The examination shall test whether applicants have a reasonable knowledge of the general principles and practices of notarial acts, and the laws and rules pertaining to notaries public, including chapter 456, HRS, sections 502-41 to 502-74, HRS, and this chapter.

[Eff 5/5/08; comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-7, 456-24)

SUBCHAPTER 4 DISCIPLINARY SANCTIONS

§5-11-39 Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of commissions. 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, or deny a commission of any applicant or notary public who violates any of the provisions of chapter 456, HRS, and this chapter, and may seek administrative fines for each occurrence or otherwise discipline a former or current 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) 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;
- (13) 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;
- (14) 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;
- (15) Criminal conviction, whether by nolo contendere or otherwise, of any felony, or a misdemeanor related to the qualifications, functions, or duties of a notary public or involving theft, fraud, dishonesty, or false statement;
- (16) Failure to report in writing to the attorney general any disciplinary decision issued against the notary public or the applicant in this jurisdiction or another jurisdiction within thirty days of the disciplinary decision; and
- (17) Violating this chapter, the applicable laws governing notaries public, or any rule or order of the attorney general.

[Eff 5/5/08; am and comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23)
(Imp: HRS §§456-1, 456-24)

§5-11-40 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 and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-41 Suspended commission. A notary public commission may be suspended by the attorney general for a period not exceeding ten years. A person whose commission has been suspended pursuant to section 5-11-39 may apply for reinstatement of the commission upon strict 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 and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-42 Revoked commission. A person whose commission is revoked pursuant to section 5-11-39 may apply for a new commission, unless the revocation is permanent, 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 and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

SUBCHAPTER 5 FEES AND ADMINISTRATIVE FINES

§5-11-46 Fees and administrative fines. (a) Pursuant to section 456-9, HRS, the attorney general shall charge and collect the following fees, which shall be nonrefundable:

- (1) Application for notary public commission, \$20;
- (2) Application for renewal of notary public commission, \$20;
- (3) Application for restoration of forfeited commission, \$10;
- (4) Application for reinstatement of suspended commission, \$10;
- (5) Issuance of notary public commission, \$100;
- (6) Renewal of notary public commission, \$100;
- (7) Each examination, \$10;
- (8) Administrative fee to process and catalogue notary public journals, \$10;
- (9) Restoration of forfeited commission, \$80;
- (10) Change in name, employer, residential, or business address, telephone number, or judicial circuit, \$10;
- (11) Notary public manual, \$3 if the manual is picked up at the notary public office or \$5 if the manual is to be mailed;
- (12) Certification of each notarial transaction from a notary public's journal in the disposition of the attorney general, \$5 per notarial transaction;
- (13) Copying, per printed page, 25 cents;
- (14) Replacement commission certificate, \$10;
- (15) Request to reschedule examination more than forty-eight hours before the examination, \$15;
- (16) Request to reschedule examination less than forty-eight hours before the examination, \$20;

- (17) Administrative fee to process returned documents from the court, \$15;
- (18) Application for remote online notary public commission, \$20;
- (19) Application for renewal of remote online notary public commission, \$20;
- (20) Issuance of remote online notary public commission, \$100;
- (21) Renewal of remote online notary public commission, \$100;
- (22) Administrative fee to process and catalogue audiovisual recordings, \$10; and
- (23) Any other fees or charges referenced in chapter 456, HRS, or this chapter.

(b) The attorney general may impose and collect the following administrative fines for each occurrence of the following:

- (1) Failure to timely notify the attorney general of change of any item specified in section 5-11-10, \$25 per occurrence;
- (2) Failure to timely notify the attorney general of change of address that results in mailing of renewal forms to incorrect address, \$50;
- (3) Failure to timely notify the attorney general of loss, misplacement, or theft of the notary public's notary seal or journal, \$20;
- (4) Failure to appear at the examination without request or notification to reschedule examination received prior to the time of the examination, \$25;
- (5) Failure to pick up commission certificate from the attorney general within sixty days of notification from the attorney general of the availability of the certificate, \$40;
- (6) Failure to surrender the notary public's rubber stamp notary seal to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, \$200;
- (7) Failure to surrender the notary public's commission certificate to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, \$200;
- (8) Failure to destroy or disable the remote online notary public's electronic stamping device and to submit a declaration to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal that the electronic stamping device was destroyed or disabled, \$200;
- (9) Possessing more than one rubber stamp notary seal at a time, \$200;
- (10) Failure to retain the notary public's journal for ten years after the performance of the last notarial act chronicled in the journal, no less than \$50 and no more than \$500;
- (11) Failure to comply with the audit or inspection of the notary public's journal by the attorney general, no less than \$50 and no more than \$500;
- (12) Failure to inform the attorney general of the location of the notary public's journal, no less than \$50 and no more than \$500;
- (13) Failure to transmit the notary public's journal to the attorney general or a repository approved by the attorney general upon the notary public's death, no less than \$50 and no more than \$500;
- (14) Failure to timely notify the attorney general of the notary public's status change as required by section 5-11-10.5, \$25; and
- (15) Any other administrative fines referenced in chapter 456, HRS, or this chapter.

(c) All fees and administrative fines prescribed by this chapter shall be deposited to the credit of the department of the attorney general's notaries public revolving fund.

(d) All unpaid fees and administrative fines shall constitute a debt due and owing to the State. [Eff 5/5/08; am and comp 3/12/15; am and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23)

(Imp: HRS §§456-9, 456-24)

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 5/5/08; comp 3/12/15; comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (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 5/5/08; comp 3/12/15; comp Feb. 27, 2022] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§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 the 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 5/5/08; comp 3/12/15; am and comp Feb. 27, 2022] (Auth: §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§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 5/5/08; comp 3/12/15; comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§91-13.1, 456-1, 456-24)

§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 3/12/15; comp 3/12/15; comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9, 456-24)

SUBCHAPTER 7 REMOTE ONLINE NOTARIZATION

§5-11-61 Authority to perform remote online notarization. No person shall perform notarial acts for remotely located individuals or advertise or represent oneself as a notary public who is able to do so, without a current commission as a remote online notary public obtained from the attorney general.

[Eff and comp Feb. 27, 2022] (Auth: HRS §§28-10.88, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

§5-11-62 Application for a remote online notary public commission.

(a) Only a notary public with an active commission may apply for a remote online notary public commission.

(b) Each applicant for a remote online notary public commission shall complete and file with the attorney general an application for commission of remote online notary public. In addition to the information required under section 5-11-21(b), a completed application shall include:

- (1) A non-refundable application fee;
- (2) The applicant's email address;
- (3) The applicant's notary public commission number;
- (4) A description of the communication technologies and devices that the applicant intends to use to perform remote online notarization;
- (5) The name, address, and website address of any vendors or other persons that will directly supply to the notary public the technologies and devices that the notary public intends to use;
- (6) A description of the data storage methods to maintain a secure backup of electronic journals and audiovisual recordings;
- (7) A statement certifying that the applicant has obtained a digital certificate from a qualified certificate authority or a trusted service provider to be used by the applicant in performing remote online notarizations; and
- (8) A statement of compliance that the technologies named in the application are fully compliant with chapter 456, HRS, and this chapter.

(c) If, during the term of a remote online notary public's commission, the remote online notary public intends to use the technologies or devices of a vendor or person other than those identified in the application submitted under subsection (b), the remote online notary public shall notify the attorney general identifying such other business or other person as required by this section.

[Eff and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-24, 456-25)

§5-11-63 Action on application for remote online notary public commission. (a) Unless otherwise provided by law, the attorney general shall take the following actions within six months after the filing of a complete application for a commission as an online notary public:

- (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 status of 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 and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

§5-11-64 Remote online notary public examination. No remote online notary public commission shall be issued to any notary public unless the notary public pays the examination fee and takes and passes an examination specific to notarization of remotely located individuals

as prescribed by the attorney general and pursuant to the requirements of section 5-11-32.
[Eff and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

§5-11-65 Remote online notary public commission. The attorney general shall commission a notary public to perform remote online notarization, provided that no remote online notary public commission shall be in effect, nor shall a notary public perform remote online notarization unless, in addition to the requirements of sections 5-11-62 and 5-11-64, the notary public:

- (1) Files a literal or photostatic copy of the notary public's remote online notary public commission issued by the attorney general with the clerk of the circuit court of the circuit in which the remote online notary public resides within thirty days of the receipt of the commission; and
- (2) Submits to the attorney general a tangible copy of the notary public's electronic seal and electronic signature.

[Eff and comp Feb. 27, 2022] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

§5-11-66 Term of commission as remote online notary public. A remote online notary public's commission to perform notarial acts for remotely located individuals shall expire on the same date as the notary public's commission.

[Eff and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-67 Application for renewal of remote online notary public commission. (a) Each remote online notary public shall be responsible for timely renewing the remote online notary public's commission and satisfying the renewal requirements provided by law. A completed renewal application to perform remote online notarial acts received by the attorney general within sixty calendar days prior to the expiration of the notary public's current commission shall be considered timely filed.

(b) At the time of commission renewal as a remote online notary public, each remote online 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 as a remote online notary public, 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.

[Eff and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-24, 456-25)

§5-11-68 Means of performing a remote online notarial act. (a) A remote online notary public located in the State may perform a notarial act for remotely located individuals only if the remotely located individual personally appears before the remote online notary public at the time of the notarization.

(b) A remotely located individual may comply with the requirement to appear personally before a remote online notary public by appearing before the remote online notary public by means of communication technology.

[Eff and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §465-23)

§5-11-69 Identity proofing. (a) If a remote online notary public does not have satisfactory evidence of the identity of a remotely located individual, the remote online notary public shall reasonably verify the remotely located individual's identity through two different types of identity proofing consisting of a multi-factor authentication procedure as provided in this section. The procedure shall analyze the remotely located individual's identity credential against trusted

third-person data sources, bind the remotely located individual's identity to the remotely located individual following successful knowledge-based authentication, and permit the remote online notary public visually to compare the identity credential and the remotely located individual.

(b) The analysis of the identity credential and the knowledge-based authentication shall conform to the following requirements:

- (1) Credential analysis. The analysis of an identity credential shall use public or private data sources to confirm the validity of the identity credential presented by a remotely located individual and shall, at a minimum:
 - (A) Use automated software processes to aid the remote online notary public in verifying the identity of each remotely located individual;
 - (B) Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;
 - (C) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and
 - (D) Enable the remote online notary public visually to compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the remote online notary public in real time through communication technology; and
- (2) Knowledge-based authentication. A knowledge-based authentication is successful if it meets the following requirements:
 - (A) The remotely located individual shall answer a quiz consisting of a minimum of five questions related to the remotely located individual's personal history or identity formulated from public or private data sources;
 - (B) Each question shall have a minimum of five possible answer choices;
 - (C) At least eighty per cent of the questions shall be answered correctly;
 - (D) All questions shall be answered within two minutes;
 - (E) If the remotely located individual fails the first attempt, the remotely located individual may retake the quiz one time within twenty-four hours;
 - (F) During a retake of the quiz, a minimum of forty per cent of the prior questions shall be replaced;
 - (G) If the remotely located individual fails the second attempt, the remotely located individual is not allowed to retry with the same remote online notary public within twenty-four hours of the second failed attempt; and
 - (H) The remote online notary public shall not be able to see or record the questions or answers.

[Eff and comp Feb. 27, 2020] (Auth: HRS §§28-10, 8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-20, 456-23)

§5-11-70 Other methods of identity verification. A remote online notary public has satisfactory evidence of the identity of a remotely located individual if the remote online notary public has personal knowledge, as defined in paragraph (1), of the identity of the remotely located individual or if the remote online notary public has satisfactory evidence of the identity of the remotely located individual by oath or affirmation of a credible witness, as defined in paragraph (2), appearing before the remote online notary public.

- (1) Personal knowledge. A remote online notary public has personal knowledge of the

identity of the remotely located individual appearing before the remote online notary public if the remotely located individual is personally known to the remote online notary public through dealings sufficient to provide reasonable certainty that the remotely located individual has the identity claimed; or

- (2) Credible witness. To be a credible witness, the witness shall have personal knowledge of the remotely located individual who has made a statement in or executed a signature on the record that is the subject of the notarial act. The remote online notary public shall have personal knowledge of the credible witness or shall have verified the identity of the credible witness under section 5-11-69. A credible witness may be a remotely located individual if the remote online notary public, credible witness, and remotely located individual whose statement or signature is the subject of the notarial act can communicate by using communication technology.

[Eff and comp Feb 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-20, 456-23)

§5-11-71 Standards for communication technology. (a) A remote online notary public may not perform a notarial act for a remotely located individual unless the technology identified by the remote online notary public satisfies all of the following:

- (1) Provides continuous synchronous audiovisual feeds;
- (2) Provides sufficient video resolution and audio clarity to enable the remote online notary public and remotely located individual to see and speak with each other simultaneously through live, real-time transmission;
- (3) Provides sufficient captured-image resolution for identity proofing;
- (4) Provides a means of authentication that reasonably ensures only authorized parties have access to the audiovisual record of the performed notarial act;
- (5) Provides for the recording of the remote online notarial act in compliance with this chapter in sufficient quality to ensure the verification of the remote online notarial act;
- (6) Ensures that any change to or tampering with an electronic record is evident after the electronic notary signature and notary seal have been affixed and the remote online notarial act has been;
- (7) Provides confirmation that the electronic record presented is the same electronic record notarized;
- (8) Provides the notary public with a means of electronically affixing the notary public's notary seal, signature, and notarial certificate to the notarized document based on an electronic technology standard that utilizes public key infrastructure (PKI) technology from a PKI service provider that is X.509 compliant;
- (9) Provides an electronic-format notary journal that complies with the provisions of chapter 456, HRS, and this chapter to document the remote online notarial acts;
- (10) Provides that if a remotely located individual shall exit the workflow or if the workflow is interrupted for any reason, the remotely located individual shall restart the identity verification process under section 5-11-69 or 5-11-70 from the beginning; and
- (11) Provides security measures the attorney general deems reasonable to prevent unauthorized access to:
 - (A) The live transmission of the audiovisual communication;
 - (B) A recording of the audiovisual communication;
 - (C) The verification methods and credentials used in the identity proofing

procedure;

(D) The electronic records presented for online notarization; and

(E) Any personally identifiable information used in the identity proofing.

(b) The online notary public shall immediately cease performing remote online notarial acts and notify the attorney general if:

(1) The technology no longer permits the remote online notary public to meet the requirements of chapter 456, HRS, or this chapter;

(2) The vendor ceases to provide the technology, which met the requirements of this section;

(3) The vendor has failed to protect from unauthorized access any information it is required to protect under chapter 456, HRS, this chapter, or any other laws in Hawaii; or

(4) Any other grounds that may materially affect the ability of notaries public to meet the requirements of Hawaii law.

[Eff and comp Feb. 27, 20,22] (Auth: §§28-10. 8, 456-1. 5, 456-8, 456-23) (Imp: HRS §§456-9, 456-23, 456-25)

§5-11-72 Electronic signature and electronic notary seal; electronic stamping device;

electronic notarial certificate. (a) In addition to the rubber stamp notary seal required for all notaries public pursuant to section 456-3, HRS, and section 5-11-5, a remote online notary public shall obtain and keep one or more electronic stamping devices. An electronic stamping device shall consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union. A remote online notary public shall attach or logically associate the remote online notary public's electronic signature and electronic notary seal to an electronic document that is the subject of a notarial act for a remotely located individual by use of a digital certificate. A remote online notary public may not perform a notarial act for a remotely located individual if the digital certificate:

(1) Has expired;

(2) Does not comply with section 5-11-71;

(3) Is invalid; or

(4) Is incapable of authentication at the time the notarial act is performed.

(b) Prior to the application of a digital certificate on an electronic document, the remote online notary public shall apply their electronic signature, notarial certificate, and electronic notary seal, that, when logically associated with an electronic document, shall contain the name of the notary public, the commission number of the notary public, and the words "notary public" and "State of Hawaii".

(c) The remote online notary public shall use technology from a third-party provider of the communication technology for an electronic stamping device, electronic signature, electronic notary seal, and electronic notarial certificate.

(d) The electronic notarial certificate shall comply with sections 456-21 and 456-23, HRS, the form of certificate provided in section 502-41, HRS, if applicable, or the form of certificate provided by other applicable law, and this chapter, and shall indicate that the notarial act was performed using communication technology.

(e) A remote online notary public shall safeguard and maintain sole control of the remote online notary public's electronic notary seal and electronic stamping device by means of use of a password or other secure method of authentication.

(f) Upon resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, the remote online notary public shall destroy or disable the

remote online notary public's electronic stamping device, including but not limited to, any coding, disk, digital certificate, card, software, or password, that enables the notary public to attach the electronic notary seal to an electronic record. The remote online notary public shall submit a declaration to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal in which the remote online notary public declares that the electronic stamping device was disabled and indicates the date and manner in which the electronic stamping device was disabled. Failure to comply with this section may result in an administrative fine of \$200.

[Eff and comp Feb. 27, 2022] (Auth: HRS §§28-10. 8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-21, 456-23, 456-35, 503-41)

§5-11-73 Retention and repositories of electronic journal and audiovisual recording. (a) In addition to the tangible journal required of all notaries public pursuant to section 456-15, HRS, a remote online notary public shall retain an electronic journal as required under section 456-15, HRS, and this chapter and any audiovisual recording created under section 456-23, HRS, in a computer or other electronic storage device that protects the journal and recording against unauthorized access by password or cryptographic process. The electronic journal and audiovisual recording shall be maintained and retained in an industry-standard audiovisual file format that can be viewed by the attorney general without the need for additional software. An electronic journal kept by the remote online notary public and the audiovisual recording created pursuant to this subchapter are not subject to the requirements of section 5-11-9.

(b) A remote online notary public shall take reasonable steps to ensure that a backup of the electronic journal and audiovisual recording exists and is secure from unauthorized use.

(c) On the death or adjudication of incompetency of a current or former remote online notary public, the remote online notary public's personal representative or guardian, or any other person knowingly in possession of an electronic journal or audiovisual recording shall comply with the retention requirements of chapter 456, HRS, and this chapter and transmit the journal and recording to:

- (1) One or more repositories under subsection (d); or
- (2) The attorney general in an industry-standard data storage device that is readable without the need for additional software or password or cryptographic process.

(d) A remote online notary public, a guardian or personal representative of a remote online notary public, or any other person knowingly in possession of an electronic journal or audiovisual recording may, by written contract, engage a third person to act as a repository to provide the storage required by this chapter. A third person under a contract pursuant to this subsection shall be deemed a repository under chapter 456, HRS. The contract shall:

- (1) Enable the notary public, the guardian or personal representative, or the person in possession to comply with the retention requirements of chapter 456, HRS, and this chapter, even if the contract is terminated; or
- (2) Provide that the information will be transferred to the attorney general in an industry-standard data storage device that is readable without the need for additional software or password or cryptographic process upon the attorney general's request or if the contract is terminated.

(e) At any time, the electronic journal and audiovisual recording shall be subject to reasonable periodic, special, or other audits or inspections by the department as required under section 456-15, HRS.

(f) The remote online notary public shall retain the remote online notary public's electronic

journal and audiovisual recording for ten years after the performance of the last notarial act chronicled in the journal. The notary public shall provide to the attorney general the location of the electronic journal upon resignation from, or revocation or abandonment or suspension of, a commission, or the expiration of a commission without renewal.

(g) The failure to comply with this section may result in an administrative fine of no less than \$50 and no more than \$500.

[Eff and comp Feb. 27, 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-15, 456-23, 456-24)