

GENERAL LAWS OF MASSACHUSETTS

**PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XV. REGULATION OF TRADE
CHAPTER 110G. UNIFORM ELECTRONIC TRANSACTIONS**

Chapter 110G: Section 11. Fulfillment of notarization, acknowledgment, verification, or oath requirements. If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature 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.

**PART II. REAL AND PERSONAL PROPERTY AND DOMESTIC RELATIONS.
TITLE I. TITLE TO REAL PROPERTY
CHAPTER 183. ALIENATION OF LAND**

§ 29. Acknowledgment of Deed — Requirement Before Recording; Exception.

No deed shall be recorded unless a certificate of its acknowledgment or of the proof of its due execution, made as hereinafter provided, is endorsed upon or annexed to it, and such certificate shall be recorded at length with the deed to which it relates; but this section shall not apply to conveyances from the United States.

History

CL 32, § 4; 1697, 21, § 1; 1783, 37, § 4; RS 1836, 59, § 22; GS 1860, 89, § 28; 1869, 167; PS 1882, 120, § 5; RL 1902, 127, § 7.

§ 30. Acknowledgment of Deed — How Made.

The acknowledgment of the execution of a deed or other written instrument required to be acknowledged shall be by 1 or more of the grantors or by any attorneys or representatives executing it on behalf of the grantors. The officer before whom the acknowledgment is made shall endorse upon or annex to the instrument a certificate thereof. Such acknowledgment may be made—

(a) If within the commonwealth, before a justice of the peace or notary public.

(b) If without the commonwealth, in any state, territory, district or dependency of the United States, before a justice of the peace, notary public, magistrate or commissioner appointed therefor by the governor of this commonwealth, or, if a certificate of authority in the form prescribed by section thirty-three is attached thereto, before any other officer therein authorized to take acknowledgments of deeds.

(c) If without the United States or any dependency thereof, before a justice of the peace, notary, magistrate or commissioner as above provided, or before an ambassador, minister, consul, vice consul, chargé d'affaires or consular officer or agent of the United States accredited to the country where the acknowledgment is made; if made before an ambassador or other official of the United States, it shall be certified by him under his seal of office.

History

1783, 37, § 4; 1829, 125, § 1; RS 1836, 59, §§ 12, 13, 22; 1856, 253, § 1; GS 1860, 89, §§ 18, 19, 28; 1867, 250, § 1; 1875, 142; PS 1882, 120, § 6; 1894, 253, §§ 3, 4, 6; 1895, 460; RL 1902, 127, §§ 8, 19, 22; 1902, 289; 1931, 394, § 186; 2016, 289, § 1, effective January 4, 2017.

§ 31. Acknowledgment of Deed — by Married Woman.

The acknowledgment by a married woman may be taken in the same form as if she were sole, and without any examination separate and apart from her husband.

History

1894, 253, § 2; RL 1902, 127, § 9.

§ 32. Acknowledgment of Deed — Law Applied to Power of Attorney.

The law relative to the acknowledgment and recording of deeds shall apply to letters of attorney for the conveyance of real estate.

History

1849, 205; GS 1860, 89, § 29; 1879, 86; PS 1882, 120, § 14; RL 1902, 127, § 17.

§ 33. Acknowledgment of Deed — Certificate of Authority.

Whenever, under clause (b) of section thirty or under section forty-one, a certificate of authority is required to be attached, there shall be subjoined or attached to the certificate of proof or acknowledgment a certificate of the secretary of state of the state where the officer taking the acknowledgment resides, under the seal of such state, or a certificate of the clerk of a court of record of such state in the county where said officer resides or where he took such proof or acknowledgment, under the seal of the court, stating that said officer was, at the time of taking such proof or acknowledgment, duly authorized thereto in said state, and that said secretary of state or clerk of court is well acquainted with his handwriting and verily believes the signature affixed to such certificate of proof or acknowledgment is genuine.

History

1894, 253, § 4; RL 1902, 127, § 20.

§ 34. Acknowledgment of Deed — If Grantor is Dead or Non-Resident.

If the grantor dies or removes from the commonwealth without having acknowledged his deed, the due execution thereof may be proved before any court of record in this commonwealth by the testimony of a subscribing witness thereto.

History

1697, 21, § 2; 1783, 37, § 4; RS 1836, 59, § 14; GS 1860, 89, § 20; PS 1882, 120, § 7; RL 1902, 127, § 10.

§ 35. Acknowledgment of Deed — If Witnesses are Dead or Non-Residents.

If all the subscribing witnesses to the deed are also dead or out of the commonwealth, the due execution thereof may be proved before such court by proving the handwriting of the grantor and of a subscribing witness.

History

1787, 5; RS 1836, 59, § 15; GS 1860, 89, § 21; PS 1882, 120, § 8; RL 1902, 127, § 11.

§ 36. Acknowledgment of Deed — Proof if Grantor Refuses to Acknowledge.

If a grantor refuses to acknowledge his deed, the grantee or any person who claims under him may apply to a court of record in the county where the land lies or where the grantor or a subscribing witness to the deed resides, and such court shall thereupon issue a summons to the grantor to appear at a certain time and place to hear the testimony of the subscribing witnesses. Such summons, with a copy of the deed annexed, shall be served seven days at least before the time therein assigned for proving the deed, and at such hearing its due execution may be proved by the testimony of one or more of the subscribing witnesses.

History

CL 32, § 4; 1697, 21, § 3; 1783, 37, § 5; RS 1836, 59, §§ 16, 17; GS 1860, 89, §§ 22, 23; PS 1882, 120, § 9; RL 1902, 127, § 12.

§ 37. Acknowledgment of Deed — Proof If Grantor Refuses to Acknowledge and Witnesses are Unavailable.

If a grantor refuses to acknowledge his deed and the subscribing witnesses thereto are all dead or out of the commonwealth, its execution may be proved before any court of record in this commonwealth by proving the handwriting of the grantor and of a subscribing witness, the court first summoning the grantor for the purpose and in the manner provided in the preceding section.

History

RS 1836, 59, § 18; GS 1860, 89, § 24; PS 1882, 120, § 10; RL 1902, 127, § 13.

§ 38. Acknowledgement of Deed — Effect of Filing Copy of Deed.

A person interested in a deed which has not been acknowledged may, before or during proceedings before a court for proof of its execution, file in the proper registry of deeds a copy thereof, compared with the original by the register; and the filing of such copy shall for thirty days thereafter have the same effect as the recording of the deed, if the deed is within that time duly proved and recorded; or if, at the expiration of said thirty days, such proceedings are pending, the effect of filing such copy shall continue until the expiration of seven days after the termination of such proceedings.

History

CL 32, § 4; 1697, 21, § 3; 1783, 37, § 5; RS 1836, 59, §§ 19, 20; GS 1860, 89, §§ 25, 26; PS 1882, 120, § 11; RL 1902, 127, § 14.

§ 39. Acknowledgment of Deed — Unwitnessed Deeds.

The execution of a deed shall not be proved in the manner before provided unless it has at least one subscribing witness.

History

RS 1836, 59, § 21; GS 1860, 89, § 27; PS 1882, 120, § 12; RL 1902, 127, § 15.

§ 40. Acknowledgment of Deed — Endorsement of Certificate of Proof.

A certificate of proof of the execution of a deed shall be endorsed upon it or annexed thereto by the clerk or register of the court or by the judge before whom such proof is made, and the certificate shall state whether the grantor was present at the hearing.

History

1783, 37, § 5; RS 1836, 59, §§ 17, 22; GS 1860, 89, §§ 23, 28; PS 1882, 120, § 13; RL 1902, 127, § 16.

§ 41. Acknowledgment of Deed — Proof of Deed Outside the Commonwealth.

The proof of a deed or other instrument, if made without the commonwealth in some state, territory, district or dependency of the United States, may be made before any of the persons enumerated in clause (b) of section thirty; provided, however, that a certificate of authority as provided in section thirty-three shall be attached thereto; if without the United States or any dependency thereof, such proof may be made before any of the persons enumerated in clause (c) of said section thirty.

History

1894, 253, §§ 3, 4, 6; RL 1902, 127, §§ 19, 20, 22.

§ 42. Acknowledgment of Deed — Forms.

The forms set forth in the appendix to this chapter and in section 15 of chapter 222 for taking acknowledgments to deeds and other instruments and for certifying the authority of officers taking proofs or acknowledgments may be used but the existence of those forms shall not

preclude the use of any other forms lawfully used as required or authorized by any general or special law or any regulation or executive order regulating notaries public, including forms that acknowledge the voluntary act of an individual executing a document in a representative capacity but fail to acknowledge the deed or instrument as the voluntary or free act of the principal or grantor.

History

1894, 253, §§ 1, 5; 1895, 460; RL 1902, 127, §§ 18, 21, 23; 2016, 289, § 2, effective January 4, 2017.

Appendix

FORMS OF ACKNOWLEDGMENTS, ETC.

(13) Acknowledgment of Individual acting in his Own Right.

(Caption specifying the state and place where the acknowledgment is taken)

On this ____ day of _____ 19____, before me personally appeared AB (or AB and CD), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

(Signature and title of officer taking acknowledgment. Seal, if required.)

(1894, 253, § 1; 1902, 127, § 18)

(14) Acknowledgment of Individual acting by Attorney.

(Caption specifying the state and place where the acknowledgment is taken)

On this ____ day of _____ 19____, before me personally appeared AB, to me known to be the person who executed the foregoing instrument in behalf of CD, and acknowledged that he executed the same as the free act and deed of said CD.

(Signature and title of officer taking acknowledgment. Seal, if required.)

(1894, 253, § 1; 1902, 127, § 18)

(15) Acknowledgment of a Corporation or Joint Stock Association.

(Caption specifying the state and place where the acknowledgment is taken)

On this ____ day of _____ 19____, before me appeared AB, to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association) and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said AB acknowledged said instrument to be the free act and deed of said corporation (or association).

(Signature and title of officer taking acknowledgment. Seal, if required.)

[If the corporation or association has no corporate seal, the words “the seal affixed to said instrument is the corporate seal of said corporation (or association), and that” shall be omitted, and at the end of the affidavit shall be added the words “and that said corporation (or association) has no corporate seal”.]

(1894, 253, § 1; 1902, 127, § 18)

(16) Certificate of Authority of Officer taking Acknowledgment.

(Caption specifying the state, 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 such 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 said county, and was duly authorized by the laws of said state (territory or district) to take and certify acknowledgments or proofs of deeds of land in said state (territory or district), and further that I am well acquainted with the handwriting of said _____, and that I verily believe that the signature to said certificate of acknowledgment (or proof) is genuine. In testimony whereof, I have hereunto set my hand and affixed the seal of the said court (or state) this day of _____, 19____.

(Signature and title of officer certifying. Seal.)

(1894, 253, § 5; 1902, 127, § 21)

PART III. COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES
TITLE I. COURTS AND JUDICIAL OFFICERS
CHAPTER 222. JUSTICES OF THE PEACE, NOTARIES PUBLIC AND
COMMISSIONERS

§ 1. Definitions.

For the purposes of this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Acknowledgment”, a notarial act in which an individual, at a single time appears in person before a notary public, is identified by the notary public through satisfactory evidence of identity and presents a document or electronic record to the notary public and indicates to the notary public that the signature on the document or record before the notary was voluntarily affixed by the individual for the purposes stated within the document or electronic record or that the signature on the document or electronic record was the individual’s free act and deed and, if applicable, that the individual was authorized to sign in a particular representative capacity.

“Affirmation”, a notarial act, or part thereof, that is legally equivalent to an oath and in which an individual, at a single time appears in person before a notary public, is identified by the notary public through satisfactory evidence of identity and makes a vow of truthfulness or fidelity while appearing before the notary public under the penalties of perjury without invoking a deity.

“Appears in person”, “appears personally” or “personally appears”, (i) being in the same physical location as another individual and close enough to see, hear, communicate with and exchange tangible identification credentials with that individual; or (ii) interacting with a remotely-located individual by means of communication technology in compliance with section 28.

“Capable of independent verification”, the ability to confirm the validity of an electronic notarial act, including the electronic signature and seal, through a publicly accessible system, in compliance with industry standard technology as approved by the secretary of the commonwealth.

“Communication technology”, an electronic device or process that allows a notary public and a remotely-located individual to communicate with each other simultaneously by sight and sound, and when necessary and consistent with other applicable laws, facilitates communication with a remotely-located individual with a vision, hearing or speech impairment.

“Copy certification”, a notarial act in which a notary public is presented with a document that the notary public copies, or that the notary supervises someone else copying, by a photographic

or electronic copying process, compares the original document to the copy and determines that the copy is accurate and complete.

“Credential analysis”, a process or service that meets the guidelines established by the secretary, through which a third person affirms the validity of a current government-issued identification credential by review of public or proprietary data sources.

“Credible witness”, an honest, reliable and impartial person who personally knows an individual appearing before a notary and who takes an oath or affirmation before the notary to vouch for that individual’s identity.

“Dynamic knowledge-based authentication”, a form of identity proofing based on a set of questions that pertain to an individual and are formulated from public or proprietary data sources.

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

“Electronic record”, information that is created, generated, sent, communicated, received or stored by electronic means.

“Electronic signature”, an electronic sound, symbol or process that is attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

“Foreign state”, a jurisdiction other than the United States, a state or a federally recognized Indian tribe.

“Identity proofing”, a process or service that meets the guidelines established by the secretary, by which a third party provides a notary public with a means to verify the identity of a remotely-located individual by a review of personal information from public or private data sources, which may include credential analysis, dynamic knowledge-based authentication, analysis of biometric data including, but not limited to, facial recognition, voiceprint analysis or fingerprint analysis or other means permitted by the secretary.

“Journal”, a chronological record of notarial acts performed by a notary public.

“Jurat”, a notarial act in which an individual, at a single time appears in person before a notary public, is identified by the notary public through satisfactory evidence of identity and: (i) presents a document or electronic record; (ii) signs the document or electronic record in the presence of the notary public; and (iii) takes an oath or affirmation before the notary public vouching for the truthfulness or accuracy of the contents of the signed document or electronic record.

“Notarial act” or “notarization”, an act that a notary public is empowered to perform, including acts performed electronically in accordance with this chapter.

“Notarial certificate”, the part of or attachment to a notarized document or electronic record for completion by the notary public that bears the notary public’s signature and seal and states the venue, date and facts that are attested by the notary public in a particular notarial act or notarization.

“Notary public” or “notary”, a person commissioned to perform official acts pursuant to Article IV of the Amendments of the Constitution.

“Notarial seal”, (i) a physical image or impression affixed, stamped or embossed on a tangible record; or (ii) an electronic image attached to, or logically associated with, an electronic record.

“Oath”, a notarial act, or part thereof, that is legally equivalent to an affirmation and in which an individual, at a single time, appears in person before a notary public, is identified by the

notary public through satisfactory evidence of identity and takes a vow of truthfulness or fidelity under the penalties of perjury by invoking a deity.

“Official misconduct”, a violation of sections 13 to 24, inclusive, or any other general or special law in connection with a notarial act or a notary public’s performance of an official act in a manner found to be grossly negligent or against the public interest.

“Personal knowledge of identity”, familiarity with an individual resulting from interactions with that individual over a period of time sufficient to ensure beyond doubt that the individual is the person whose identity is claimed.

“Principal”, a person whose signature is notarized or a person taking an oath or affirmation before a notary public.

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

“Regular place of work or business”, a place where an individual spends a substantial portion of their working or business hours.

“Remotely-located individual”, an individual who is not in the physical presence of the notary public who performs a notarial act pursuant to section 28.

“Satisfactory evidence of identity”, identification of an individual based on: (i) at least 1 current document issued by a United States or state government agency bearing the photographic image of the individual’s face and signature; (ii) the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the individual; or (iii) identification of an individual based on the notary public’s personal knowledge of the identity of the principal; provided, however, that for a person who is not a United States citizen, “satisfactory evidence of identity” shall mean identification of an individual based on a valid passport or other government-issued document evidencing the individual’s nationality or residence and which bears a photographic image of the individual’s face and signature. For purposes of a notarial act performed using communication technology for a remotely-located individual, “satisfactory evidence of identity” shall be determined pursuant to section 28.

“State secretary”, the secretary of the commonwealth.

“Signature witnessing”, a notarial act in which an individual, at a single time, appears in person before a notary public, is identified by the notary public through satisfactory evidence of identity and presents a document or electronic record and signs the document or electronic record in the presence of the notary public.

“Tamper-evident”, the use of a set of applications, programs, hardware, software or other technologies that will display evidence of any changes to an electronic record.

“Tangible journal”, a journal created on a fixed tangible medium in a permanent bound register with numbered pages.

“United States”, a location within 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.

History

Const. amend. 4, 37, 57; Const. Rev. art. 123. RS 1836, 85, § 36; 1851, 29; GS 1860, 14, § 34; 1860, 120, § 49; 1863, 157, § 1; 1867, 250; 1870, 120; 1880, 132; PS 1882, 18, § 1; 1882, 155, §§ 2, 5; 1891, 38, §§ 1, 2; 1899, 178, § 3; RL 1902, 17, § 1; 1902, 161, §§ 1, 2; 1931, 426, § 294; 2016, 289, § 3, effective January 4, 2017; 2023, 2, § 23, effective June 27, 2023.

§ 1A. Justices of the Peace and Notaries Public — Appointment and Jurisdiction.

Justices of the peace and notaries public shall be appointed and their commissions shall be issued for the commonwealth. Justices of the peace and notaries public shall have jurisdiction throughout the commonwealth when acting under the sole authority of such a commission and shall perform their duties subject to sections 8 to 29, inclusive. Unless otherwise expressly provided, justices of the peace and notaries public may administer oaths or affirmations in all cases in which an oath or affirmation is required and take acknowledgments of deeds and other instruments.

History

2016, 289, § 3, effective January 4, 2017; 2023, 2, § 24, effective June 27, 2023.

§ 2. [Repealed.]

§ 3. Commissioners to Qualify Public Officers.

The governor, with the advice and consent of the council, shall appoint commissioners to administer to public officers the oaths of office required by the constitution. Upon administering such oaths, the commissioners shall forthwith make return thereof, with the date of the same, to the state secretary. Neither the state secretary, nor any officer or employee in his department acting as such a commissioner, shall charge any fee for administering such an oath.

History

1780, Res. 58; RS 1836, 13, § 57; GS 1860, 14, § 40; 1867, 138, § 4; PS 1882, 18, §§ 7, 8; RL 1902, 17, § 8; 1929, 318, § 2; 1961, 18, § 2.

§ 4. Commissioners for Massachusetts — To Serve in Other Jurisdictions.

The governor, with the advice and consent of the council, may appoint commissioners in the states, territories, districts and dependencies of the United States, and one or more commissioners in every foreign country, to hold office for three years from the date of their respective appointments.

History

1829, 125, § 1; RS 1836, 13, § 53; 1854, 17, § 1; 1856, 253, § 1; GS 1860, 14, §§ 41, 45; PS 1882, 18, §§ 9, 13; 1901, 149; RL 1902, 17, § 9; 1918, 257, § 83; 1919, 5; 1920, 2.

§ 5. Commissioners for Massachusetts — Oath; Formalities.

A person appointed commissioner in a state, territory, district or dependency of the United States shall, within three months after his appointment, take and subscribe an oath before a justice of the peace or other magistrate of the town or country where he resides, or before a clerk of a court of record within the state, territory, district or dependency where he resides, faithfully to perform the duties of his office, and shall cause an official seal to be prepared, upon which shall appear his name, the words “Commissioner for Massachusetts” and the name of the state, territory, district or dependency, and town or county where he resides. A person appointed commissioner in a foreign country shall, before performing any duty of his office, take and subscribe an oath before a judge or clerk of a court of record of the country where he resides or before an ambassador, minister or consul of the United States, accredited to such country, faithfully to perform the duties of his office. In each case, a certificate of the commissioner’s oath of office and his signature and an impression of his official seal shall be forthwith transmitted to and filed in the office of the state secretary.

History

1829, 125, § 2; RS 1836, 13, § 56; 1854, 17, § 2; 1856, 253, § 4; GS 1860, 14, §§ 42, 46; 1873, 11; PS 1882, 18, §§ 10, 14; 1885, 31; RL 1902, 17, § 10; 1918, 257, § 84; 1919, 5; 1920, 2.

§ 6. Commissioners for Massachusetts — Powers and Duties.

A commissioner may, in his state, territory, district, dependency or country, administer oaths and take depositions, affidavits and acknowledgments of deeds and other instruments, to be used or recorded in this commonwealth, and the proof of such deeds, if the grantor refuses to acknowledge the same, all of which shall be certified by him under his official seal.

History

1829, 125, § 1; RS 1836, 13, §§ 53–55; 1854, 17, § 3; 1856, 253, §§ 1–3; GS 1860, 14, §§ 43, 47; PS 1882, 18, §§ 11, 15; RL 1902, 17, § 11; 1918, 257, § 85; 1919, 5; 1920, 2.

§ 7. Commissioners for Massachusetts — Instructions and Forms.

The state secretary shall prepare and forward to each commissioner appointed under section four, instructions and forms in conformity to law, and a copy of the three preceding sections.

History

1854, 17, § 4; GS 1860, 14, § 44; PS 1882, 18, § 12; RL 1902, 17, § 12.

§ 8. Acknowledgment Requirements; Notarial Seal.

(a) When taking an acknowledgment of an instrument or administering an oath for an instrument filed in court, a justice of the peace, notary public or other person duly authorized shall print or type such justice of the peace, notary public or other person’s name directly below such person’s signature and affix thereto the date of the expiration of such person’s commission in the following language: “My commission expires _____.”

(b)

(1) A notary public shall keep an official notarial seal that shall be the exclusive property of the notary public. A notary public shall not permit another to use such notarial seal. A notary public shall obtain a new seal upon renewal of the commission, upon receipt of a new commission or if the name of the notary public has changed. The notarial seal shall include: (i) the notary public’s name exactly as indicated on the commission; (ii) the words “notary public” and “Commonwealth of Massachusetts” or “Massachusetts”; (iii) the expiration date of the commission in the following words: “My commission expires ___”; and (iv) a facsimile of the seal of the commonwealth.

(2) If a notarial seal that requires ink is employed, black ink shall be used. The seal of a notary public may be a digital image that appears in the likeness or representation of a traditional physical notary public seal. Only the notary public whose name and registration number appear on an electronic seal shall affix said seal. If the seal is electronically generated, it shall include the words “Electronically affixed”. The requirements of this subsection shall be satisfied by using a seal that includes all of the information required by this section.

(3) A notary public shall attach or logically associate the notary public’s electronic signature and electronic seal to an electronic record that is the subject of a notarial act by use of the digital certificate in a matter that is capable of independent verification and renders any subsequent change or modification to the electronic document tamper evident.

History

1917, 42, §§ 1, 2; 1931, 394, § 188; 1947, 256, § 1; 2016, 289, § 4, effective January 4, 2017; 2023, 2, § 25, effective June 27, 2023.

§ 8A. [Repealed.]

History

1952, 184, § 1; repealed by 2016, 289, § 4, effective January 4, 2017.

§ 9. Justices of the Peace and Notaries — Acting after Expiration of Commission.

Whoever presumes to act as a justice of the peace or notary public after the expiration of his commission, and after receiving notice of such expiration, shall be punished by a fine of not less than one hundred nor more than five hundred dollars.

History

1865, 231, § 2; PS 1882, 205, § 24; 1899, 178, § 8; RL 1902, 210, § 34; 1931, 394, § 189.

§ 10. Notaries Public — Records — Destruction.

Whoever knowingly destroys, defaces or conceals the records or official papers of a notary public shall forfeit not more than one thousand dollars and be liable for damages to any person injured thereby.

History

1798, 62, § 1; RS 1836, 13, § 50; GS 1860, 14, § 38; PS 1882, 18, § 5; RL 1902, 17, § 4.

§ 11. Acknowledgment before Certain Commissioned Officers of Armed Forces.

Persons serving in or with the armed forces of the commonwealth or other reserve component commands when conducting mobilization exercises and soldier readiness processing or the armed forces of the United States or their dependents, wherever located, may acknowledge any instrument in the manner and form required by law before a commissioned officer in the active service of the armed forces of the commonwealth or the United States with the rank of second lieutenant or higher in the army, air force or marine corps or ensign or higher in the navy or United States Coast Guard. Any such instrument shall contain a statement that the person executing the instrument is serving in or with the armed forces of the commonwealth or other reserve component command when conducting mobilization exercises and soldier readiness processing or the armed forces of the United States or is a dependent of any such person. No such instrument shall be rendered invalid by the failure to state in the instrument the place of execution or acknowledgment.

No authentication of the officer's certificate of acknowledgment shall be required.

Instruments so acknowledged outside of the commonwealth, if otherwise in accordance with the law, shall be received and may be used in evidence or for any other purpose in the same manner as if taken before a commissioner of the commonwealth appointed to take depositions in other states.

History

1953, 191; 1961, 207; 2014, 307, § 90; 2016, 289, § 5, effective January 4, 2017.

§ 12. Notaries Public — Journal Requirement — Exemption.

Notwithstanding section 22 or any other general or special law to the contrary, a notary public who is an attorney or who is employed by an attorney and by virtue of such employment performs notary public duties shall not be required to maintain a journal.

History

2004, 149, § 206; 2016, 289, § 6, effective January 4, 2017.

§ 13. Notaries Public — Requirements.

(a) A person qualified for a notary public commission shall be at least 18 years of age and reside or have a regular place of work or business within the commonwealth.

(b) In the governor's discretion, an application for appointment, reappointment or renewal of a commission may be denied based on:

(i) submission of an official application containing a material misstatement or omission of

fact;

- (ii) the applicant’s conviction of an offense that resulted in a prison sentence;
- (iii) the applicant’s conviction of a misdemeanor offense that resulted in a sentence to probation or a fine or a conviction for a violation of paragraph (a) of subdivision (1) of section 24 of chapter 90 or subsection (a) of section 8 of chapter 90B;
- (iv) the applicant’s admission to sufficient facts to warrant a finding of guilt of any offense;
- (v) a finding or admission of responsibility or liability against the applicant in a civil action based on the applicant’s fraud or deceit;
- (vi) revocation, suspension, restriction or denial of a notary public commission or professional licensure by the commonwealth or any other jurisdiction; or
- (vii) any other reason, including official misconduct, that in the governor’s discretion, would render the applicant unsuitable to hold a notary public commission.

History

2016, 289, § 6, effective January 4, 2017.

§ 14. Notaries Public — Term.

A person commissioned as a notary public may perform notarial acts in any part of the commonwealth for a term of 7 years unless the commission is earlier revoked or the notary public resigns.

History

2016, 289, § 6, effective January 4, 2017.

§ 15. Notaries Public — Procedures; Forms.

(a) A notary public may perform the following notarial acts: (i) acknowledgments; (ii) oaths and affirmations; (iii) jurats; (iv) signature witnessings; (v) copy certifications; (vi) issuing summonses for witnesses pursuant to section 1 of chapter 233; (vii) issuing subpoenas; and (viii) witnessing the opening of a bank safe, vault or box pursuant to section 32 of chapter 167.

(b) A notary public shall take the acknowledgment of the signature or mark of persons acknowledging for themselves or in any representative capacity by using substantially the following form:

“On this _____ day of _____, 20_____, before me, the undersigned notary public, _____ personally appeared, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

(as partner for _____, a partnership)

(as _____ for _____, a corporation or other entity)

(as attorney in fact for _____, the principal)

(as _____ for _____, (a) (the)

_____)

as the voluntary act of the (partnership)(corporation or other entity)(principal)(_____).

”

(c) A notary public shall use a jurat certificate in substantially the following form in notarizing a signature or mark on an affidavit or other sworn or affirmed written declaration:

“On this _____ day of _____, 20_____, before me, the undersigned notary public, _____ personally appeared, proved to me through satisfactory evidence of identification, which were _____, to be the

person who signed the preceding or attached document in my presence and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his) (her) knowledge and belief.

_____”.

(d) A notary public shall witness a signature in substantially the following form in notarizing a signature or mark to confirm that it was affixed in the notary public’s presence without administration of an oath or affirmation:

“On this _____ day of _____, 20_____, before me, the undersigned notary public, _____ personally appeared, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document in my presence.

_____”.

(e) A notary public shall certify a copy by using substantially the following form:

“On this _____ day of _____, 20_____, I certify that the (preceding) (following) (attached) document is a true, exact, complete and unaltered copy made by me of _____, presented to me by _____.

_____ (official signature and seal of notary public)”.

(f) A notary public may certify the affixation of a signature by mark on a document presented for notarization if:

- (i) the principal affixes the mark in the presence of the notary public and 2 witnesses unaffected by the document;
- (ii) both witnesses sign their own names beside the mark; and
- (iii) the notary public notarizes the signature by mark through an acknowledgment, jurat or signature witnessing.

(g) A notary public may sign the name of a principal who is physically unable to sign or make a mark on a document presented for notarization if:

- (i) the principal directs the notary public to do so in the presence of 2 witnesses who are unaffected by the document;
- (ii) the principal does not have a demeanor that causes the notary public to have a compelling doubt about whether the principal knows the consequences of the transaction or document requiring the notarial act;
- (iii) in the notary public’s judgment, the principal is acting of the principal’s own free will;
- (iv) the notary public signs the principal’s name in the presence of the principal and the witnesses;
- (v) both witnesses sign their own names beside the signature;
- (vi) the notary public writes below the signature: “Signature affixed by notary public in the presence of (names and addresses of principal and 2 witnesses)”;
- (vii) the notary public notarizes the signature through an acknowledgment, jurat or signature witnessing.

(h) This section shall not require a notary public to use the forms in this section if another form of acknowledgment, jurat, signature witnessing or copy certification is: (i) required or allowed by any court rule or court form or by any court rule or directive, including, with respect to documents presented for filing with the land court and its land registration districts, the rules, forms, directives and guidelines of the land court; or (ii) is required by any general or special law including, but not limited to, section 2-504 of chapter 190B, any federal law or any regulation adopted pursuant to any such law; provided, however, that the forms in this section may be used

in lieu of any equivalent form authorized or promulgated by any such law or regulation including, but not limited to, section 42 of chapter 183 and the forms in the appendix to said chapter 183 if any such law or regulation does not expressly prohibit the use of other forms.

(i) This section shall not require a notary public to use the forms in this section if the form of acknowledgment, jurat, signature witnessing or copy certification of a document contains an alternative form from another state if the document is to be filed or recorded in or governed by the laws of the other state.

History

2016, 289, § 6, effective January 4, 2017.

§ 16. Notaries Public — Prohibited Acts.

(a) A notary public shall not perform a notarial act if:

(i) the principal is not in the notary public's presence at the time of notarization, except as specifically provided in this chapter;

(ii) the principal is not identified by the notary public through satisfactory evidence of identity;

(iii) the principal has a demeanor that causes the notary public to have a compelling doubt about whether the principal knows the consequences of the transaction or document requiring the notarial act;

(iv) in the notary public's judgment, the principal is not acting of the principal's own free will;

(v) the notary public is a party to or is named in the document that is to be notarized unless: (1) the notary public is named in the document for the sole purpose of receiving notices relating to the document; or (2) the notary public is licensed as an attorney in the commonwealth or is employed by an attorney so licensed and is named as an executor, trustee or any other fiduciary capacity in a document;

(vi) the notary public will receive as a direct result of the notarial act any commission, fee, advantage, right, title, interest, cash, property or other consideration exceeding the maximum fees provided in section 41 of chapter 262 or any other general or special law or executive order, or has any financial interest in the subject matter of the document; provided, however, that this clause shall not preclude a notary public who is licensed as an attorney in the commonwealth or who is employed by an attorney so licensed from performing notarial acts relative to any document in connection with which the attorney receives a legal fee for professional legal services; provided further, that a notary public shall not be precluded from receiving a technology services fee that has been clearly disclosed in advance to the person requesting the service and that technology services fee reflects the actual reasonable cost to the notary public of utilizing a third-party technology service provider; provided further, that the state secretary may set reasonable limits on such technology services fee; or

(vii) the notary public is a spouse, domestic partner, parent, guardian, child or sibling of the principal, including in-law, step or half relatives, except if a principal witnesses a will or other legal document prepared by the notary public who is an attorney licensed in the commonwealth or if the notary is employed by any such attorney.

(b) A notary public shall not refuse to perform a notarial act solely based on the principal's race, age, sex, gender identity, sexual orientation, religion, national origin, health, disability or status as a nonclient or noncustomer of the notary public or the notary public's employer.

(c) A nonattorney notary public shall not influence a person to enter into or avoid a transaction involving a notarial act by the notary public; provided, however, that the notary

public may provide assistance relating to that transaction if the notary public is duly qualified, trained or acting pursuant to a standard or practice recognized in a particular industry or professional field in selecting, drafting or completing a certificate or other document related to a matter within such industry or field.

(d) A notary public shall not execute a certificate containing information which the notary public knows or believes to be false.

(e) A notary public shall not affix an official signature or seal on a notarial certificate that is incomplete.

(f) A notary public shall not provide or send a signed or sealed notarial certificate to another person with the understanding that it will be completed or attached to a document outside of the notary public's presence; provided, however, that in connection with a commercial, nonconsumer transaction, a notary public may deliver a signed, sealed or signed and sealed notarial certificate to an attorney with the understanding that: (i) the attorney shall attach the certificate to a document outside of the notary public's presence; (ii) the attorney shall hold such notarial certificate in escrow; and (iii) the attorney shall obtain the approval of any principals involved before attaching the certificate to the document.

(g) A notary public shall not notarize a signature on a blank or incomplete document, except as provided in subsection (f).

(h) A notary public shall not perform any official notarial act with the intent to deceive or defraud.

(i) A notary public shall not use the term "notario" or "notario publico" or any equivalent non-English term in a business card, advertisement, notice or sign.

(j) A notary public shall not claim to have powers, qualifications, rights or privileges that the office of notary public does not provide.

(k) This section shall not require a notary public to use the forms in section 15 if the form of acknowledgment, jurat, signature witnessing or copy certification appears on a printed form that contains an express prohibition against altering such form.

History

2016, 289, § 6, effective January 4, 2017; 2023, 2, §§ 26, 27, effective June 27, 2023.

§ 17. Notaries Public — Prohibited Acts — Legal Advice.

(a) A notary public shall not advise clients, offer legal advice or represent or advertise the notary public as a legal specialist or consultant unless the notary public is an attorney licensed to practice law in the commonwealth. A notary public shall not state or imply in any communication that the notary public can or will obtain special favors from or has special influence with a government agency. A notary public who is not licensed to practice law in the commonwealth shall not make a literal translation of the notary public's status as "licensed" or as a "notary public" into a language other than English without regard to the true meaning of the word or phrase in that language or use any other term that implies that the notary public is an attorney so licensed, in any document, including an advertisement, stationery, letterhead, business card or other written or broadcast material describing the notary public or the notary public's services.

(b) A notary public who is not an attorney licensed to practice law in the commonwealth:

(i) shall not offer legal advice or advise a client as to the immigration status of a client, secure or attempt to secure supporting documents including, but not limited to, birth certificates, necessary to complete a client's immigration forms or submit completed immigration forms on a client's behalf to any governmental agency;

(ii) may translate questions presented on an immigration form for another person and may complete those forms at the explicit direction of such other person only if the translation of such other person's answers is necessary; and

(iii) prior to providing services of any kind related to an immigration matter or any matter that could influence or affect a person's immigration status, shall provide a client with a written statement that states "I am not an attorney licensed to practice law. I may not give you legal advice or advise you about immigration policies or procedures. You should seek the advice of a qualified attorney to assist you with any legal questions or with questions about legal status under immigration law."

(c) Subsection (b) shall not apply to:

(i) an attorney licensed to practice law in any state or territory of the United States or in a foreign country when authorized by the supreme judicial court, to the extent the attorney renders immigration assistance service in the course of the attorney's practice as an attorney;

(ii) a paralegal, legal intern or law student employed by an attorney so licensed and rendering immigration assistance in the course of the intern's or student's employment; and

(iii) an organization employing or desiring to employ a person who is not a citizen of the United States if the organization, its employees or agents provide advice or assistance in immigration-related matters to noncitizen employees or potential employees without compensation from the individuals to whom such advice or assistance is provided.

(d) A notary public who is not an attorney shall not engage in the practice of law. This subsection shall not preclude a notary public who is duly qualified, trained or experienced in a particular industry or professional field from selecting, drafting or completing a certificate or other document related to a matter within that industry or field.

(e) A notary public who is not an attorney licensed to practice law in the commonwealth shall not conduct a real estate closing and shall not act as a real estate closing agent; provided, however, that a notary public who is employed by an attorney so licensed may notarize a document in conjunction with a real estate closing conducted by the attorney and a notary public who is employed by a lender may notarize a document in conjunction with the closing of such lender's real estate loans.

(f) This section shall apply to a notary public and to any person who employs, contracts with or otherwise uses the services of a notary public with knowledge or reason to know of conduct that is in violation of this section.

History

2016, 289, § 6, effective January 4, 2017.

§ 18. Violations of Chapter — Penalties; Civil Cause of Action; Unfair or Deceptive Act or Practice; Revocation.

(a) The attorney general or district attorney may prosecute any person committing a violation of this chapter. A person convicted of committing a violation of this chapter shall be punished for a first offense by a fine of not more than \$1,000 or by imprisonment in a jail or house of correction for not more than 6 months, or by both such fine and imprisonment, and, for a second or subsequent offense, by a fine of not more than \$5,000 or by imprisonment in a jail or house of correction for not more than 1 year, or by both such fine and imprisonment. The attorney general or district attorney may file a petition for injunctive relief against any person who violates this chapter. If the attorney general, district attorney or the state secretary has cause to believe that, as a result of official misconduct, a person holding the office of notary public is unsuitable to hold that office, the attorney general, district attorney or state secretary shall

provide notice to the governor of such official misconduct. Any conviction based on a violation of this chapter shall be grounds for the revocation of a notary public's appointment. If the court finds that a person so convicted either knew or should have known that the conduct would be in violation of this chapter, the court may require such person to pay a civil penalty of not more than \$5,000 for each such violation and may also require the person to pay the reasonable costs of investigation and litigation of the violation, including reasonable attorneys' fees.

(b) A person having an interest or right that is or may be adversely affected by a violation of section 17 may initiate an action for private remedies and, if the attorney general or district attorney has not done so, for injunctive relief. Such person may be awarded actual damages and, if the court finds that the person against whom the action is brought either knew or should have known the conduct would be in violation of said section 17, punitive damages of not more than \$5,000 per violation, attorneys' fees and court costs.

(c) A violation of section 17 shall constitute an unfair or deceptive act or practice pursuant to chapter 93A.

(d) It shall not be a defense in an action pursuant to this section that the conduct that is the subject of the action, in whole or in part, occurred primarily or substantially outside the commonwealth.

(e)

(1) Whenever the state secretary has cause to believe that a notary public registered pursuant to section 28 has engaged in any conduct, practice or procedure that the state secretary determines is contrary to section 46E of chapter 221, the state secretary may revoke the notary public's ability to perform notarial acts, or order the notary public to comply with the law. The state secretary may adopt regulations governing administrative proceedings under this section.

(2) The attorney general may enforce an order issued by the state secretary pursuant to this section by civil action as provided in said section 46E of said chapter 221.

(3) The remedies provided by this section shall not limit the availability of judicial remedies to any person or official.

History

2016, 289, § 6, effective January 4, 2017; 2023, 2, § 28, effective June 27, 2023.

§ 19. Notaries Public — Persons Requesting Acts.

A notary public shall perform a notarial act for any person requesting such act who tenders the fee provided for in section 41 of chapter 262 or any other general or special law or executive order, unless:

(i) the notary public knows or has reason to believe that the notarial act or the associated transaction is unlawful;

(ii) the principal has a demeanor that causes the notary public to have a compelling doubt about whether the principal knows the consequences of the transaction or document requiring the notarial act;

(iii) the act is prohibited by this chapter or any other applicable law; or

(iv) the number of notarial acts requested practicably precludes completion of all acts at once, in which case, the notary public shall arrange for later completion of the remaining acts.

History

2016, 289, § 6, effective January 4, 2017.

§ 20. Notaries Public — Failure of Document.

(a) A notary public shall not be authorized or required to investigate, ascertain or attest to the

lawfulness, propriety, accuracy or truthfulness of a document or transaction involving a notarial act.

(b) Except as may be required by the office of the state secretary for the issuance of an apostille and provided the form of acknowledgement, jurat, signature witnessing or copy certification otherwise is substantially similar in legal meaning and effect to the texts of the several forms set forth in this chapter or in the appendix to chapter 183:

(i) failure of a document to contain the forms of acknowledgement, jurat, signature witnessing or copy certification set forth in section 15 or otherwise to comply with the requirements set forth in sections 8 to 23, inclusive, shall not have any effect on the validity of the underlying document or the recording of the underlying document;

(ii) failure of a document to contain the forms of acknowledgement, jurat, signature witnessing or copy certification set forth in said section 15 shall not be the basis of a refusal to accept the document for filing, recordation, registration or acceptance by a third party; and

(iii) failure of a document executed in a representative capacity to contain an acknowledgment that the instrument was also the voluntary or free act and deed of the principal or grantor shall not affect the validity of the underlying document or the recording of the document.

(c) Nothing shall prevent the land court from issuing rules, regulations, directives, orders and guidelines governing the forms of acknowledgements and jurats to be complied with for the filing and registration of documents with the land court and its land registration districts.

History

2016, 289, § 6, effective January 4, 2017.

§ 21. Notaries Public — Notice Required for Non-English Advertising.

A notary public who is not an attorney who advertises notarial services in a language other than English shall include in the advertisement, notice, letterhead or sign the following statement prominently displayed in the same language: “I am not an attorney and I have no authority to give advice on immigration or other legal matters.”

History

2016, 289, § 6, effective January 4, 2017.

§ 22. Notaries Public — Journal Requirement.

(a) Except as provided in subsection (f), a notary public shall keep, maintain, protect and provide for lawful inspection a chronological official journal of notarial acts performed by the notary public. A journal may be created on a fixed tangible medium or in an electronic format. 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 the rules of the state secretary, including rules concerning the regular transfer of electronic journal entries to the secretary.

(b) A notary public shall keep not more than 1 tangible journal at any time. A notary may keep more than 1 electronic journal; provided, however, that each electronic journal shall conform to the requirements of subsection (a).

(c) For every notarial act, except for the issuance of a summons or subpoena or the administration of an oral oath, the notary public shall record in the journal at the time of the notarization:

- (i) the date and time of the notarial act, proceeding or transaction;
- (ii) the type of notarial act;

(iii) the type, title or a description of the document, transaction or proceeding; provided, however, that if multiple documents are signed by the same principal in the course of a transaction or during a single date, a single journal entry shall be sufficient;

(iv) the signature and printed name and address of each principal and witness, except that if a principal or witness informs the notary public that the principal or witness is a battered person, the notary public shall make a note in the journal that the person's address shall not be subject to public inspection; and

(v) a description of the satisfactory evidence of identity of each person, including:

(1) a notation of the type of identification document, the issuing agency, its serial or identification number and its date of issuance or expiration; provided, however, that if the identification number on the document is the person's social security number then, instead of including the number, the notary public shall write in the words "Social Security number" or the acronym "SSN";

(2) a notation if the notary public identified the individual on the oath or affirmation of a credible witness or based on the notary public's personal knowledge of the individual;

(3) a notation indicating whether the notarial act was conducted in person or remotely;

(4) the fee, if any, charged for the notarial act, including whether a technology services fee was charged and the amount of the technology services fee; and

(5) the address where the notarization was performed; provided, however, that if the notarial act was performed remotely, the notary shall include the address of the notary and each principal and witness.

(d) A notary public shall not record a social security or credit card number in the journal.

(e) A notary public shall record in the journal the reason for not completing a notarial act requested by a principal.

(f) A journal shall not be required for a notary public who is an attorney admitted to practice law in any jurisdiction or who is employed by any such attorney. If an attorney or person employed by an attorney elects to maintain a journal, this section shall not be construed to impair or infringe on the attorney-client privilege or the attorney work product doctrine.

A notary public who works for a government entity shall not be required to maintain a journal for the notarial acts performed in the course of that employment.

(g) Except as provided in subsection (f), a journal may be examined without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order or surrendered at the direction of the state secretary. Nothing in this section shall prevent a notary public from seeking appropriate judicial protective orders.

(h) A notary public shall maintain and safeguard a journal and all other notarial records and shall surrender or destroy such records only as directed by law, court order or regulation or at the direction of the state secretary.

(i) If not in use, a journal shall be kept under the exclusive control of the notary public or a third-party technology service provider designated by the notary public; provided, however, that there is a mutual agreement by both the notary public and the third-party service provider; and provided further, that a journal shall not be used by any other notary public or surrendered to an employer upon termination of employment.

History

2016, 289, § 6, effective January 4, 2017; 2023, 2, §§ 29-32, effective June 27, 2023.

§ 23. Notaries Public — Prohibited Acts — Fee for Certain Documents.

Notwithstanding section 41 of chapter 262, no fee shall be charged by a notary public to notarize

a signature on an absentee ballot identification envelope or other voting materials or on any application or claim by a United States military veteran for a pension, allotment, allowance, compensation, insurance or other veterans' benefit.

History

2016, 289, § 6, effective January 4, 2017.

§ 24. Notaries Public — Requirement on Expiration, Resignation or Revocation.

If a notary public's commission expires, is resigned or revoked, the notary public shall, as soon as reasonably practicable, destroy or deface all notary seals and stamps so that they shall not be used and shall retain the journal and records for 7 years after the date of expiration, resignation or revocation.

History

2016, 289, § 6, effective January 4, 2017.

§ 25. Notaries Public — Requirement on Change of Address.

Within 10 days after the change of a notary public's name, residence, business address or mailing address, the notary public shall send to the state secretary a signed notice of the change, providing both the old and new information.

History

2016, 289, § 6, effective January 4, 2017.

§ 26. Notaries Public — Revocation.

A notary public's commission may be revoked for official misconduct as defined in section 1 or for other good cause as determined by the governor with the consent of the governor's council.

History

2016, 289, § 6, effective January 4, 2017.

§ 27. Notaries Public — Selection of Tamper-Evident Technology; Tangible Copy of Electronic Record.

(a) A notary public may select 1 or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person shall not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected. Any technology approved by the state secretary pursuant to subsection (h) of section 28 and selected by a notary public shall require the notary public's electronic signature and electronic seal to be:

- (i) unique to the notary public;
- (ii) capable of independent verification;
- (iii) retained under the sole control of the notary public; and
- (iv) attached to or logically associated with the electronic record in a tamper-evident manner.

(b) A tangible copy of an electronic record shall be accepted as the equivalent of an original document for purposes of recording said copy; provided, however, that: (i) the copy contains a notarial certificate that satisfies all requirements for an original document to be accepted for recording; (ii) the copy satisfies all requirements for recording an original document set forth in chapters 183 and 185, as applicable; and (iii) the notary public executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

History

2023, 2, § 33, effective January 1, 2024.

§ 28. Notaries Public — Requirements for Notarial Act Using Communication Technology for Remotely-Located Individual; Prohibited Use; Annual Fee Assessed on Service Providers; Real Estate Closings; Errors and Omissions Insurance.

(a) A notary public physically located in the commonwealth may perform a notarial act using communication technology for a remotely-located individual who is the principal in a notarial act if the notary public:

(i)

(A) has personal knowledge of the identity of the remotely-located individual; (B) has identified the remotely-located individual by means of an oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the remotely-located individual; or (C) can reasonably identify the remotely-located individual by not less than 2 different types of identity proofing processes or services;

(ii) is able to execute the notarial act in a single, real-time session;

(iii) is reasonably able to confirm that a record before the notary public is the same record in which the remotely-located individual made a statement or on which the remotely-located individual executed a signature; and

(iv) the notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act.

(b) A notary public physically located in the commonwealth may perform a notarial act using communication technology for a remotely-located individual who is the principal in a notarial act and is located outside the United States if the: (i) record: (A) 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; or (B) involves property located in the territorial jurisdiction of the United States or a transaction substantially connected with the United States; and (ii) 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) A notary public shall not use communication technology to notarize a record related to the electoral process, or a will, codicil or document purporting to be a will or codicil.

(d) Before a notary public performs the notary public's initial notarization using communication technology, the notary public shall: (i) register as a remote notary with the state secretary; (ii) inform the state secretary that the notary public intends to perform remote notarizations; and (iii) identify the communication technology that the notary public will use. The communication technology shall conform to the requirements of this chapter and any rules adopted by the state secretary. The notice shall be submitted in the form prescribed by the state secretary and shall: (A) include an affirmation that the notary public has read and will comply with this section and all rules adopted by the state secretary; (B) be accompanied by proof that the notary public has successfully completed any training that may be required by the state secretary; and (C) identify a usual place of business in the commonwealth or, if a foreign entity, identify a registered agent, and in either case identify an address for service of process in connection with a civil action or other proceeding.

(e) If a notarial act is performed pursuant to this section, the certificate of notarial act required by section 15 shall indicate that the notarial act was performed remotely using communication technology and identify the venue for the notarial act as the county within the commonwealth where the notary public was physically located while performing the notarial act.

(f) A notary public, a guardian, conservator or agent of a notary public or a personal

representative of a deceased notary public shall retain the audio-visual recording created under clause (iv) of subsection (a) or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. The recording shall be retained for 10 years after the recording is made.

(g) Upon request, the notary public shall make available electronic copies of the pertinent entries in the electronic journal and provide access to any related audio-video communication recording to the following persons: (i) the parties to an electronic record notarized by the notary public; (ii) the title insurer reviewing an insured transaction in the context of an audit of its agent, if the agent conducted the electronic notarial act as an element of the insured transaction; and (iii) any other persons pursuant to a subpoena, court order, law enforcement investigation or other lawful inspection demand.

(h) The state secretary shall establish standards, in conformity with national standards, for the use of communication technology and identity proofing by notaries public commissioned by the commonwealth. The state secretary shall create and maintain a registry of communication technology service providers who meet the established standards as certified by the communication technology service provider. A notary public who uses communication technology shall utilize communication technology and identity proofing from communication technology service providers included on the state secretary's registry.

(i) The state secretary shall assess on each communication technology service provider approved by the secretary an annual fee to be proportioned equally among registered providers. The annual fee shall not exceed, in the aggregate, the actual and reasonable costs incurred by the state secretary for administering the requirements imposed under this section. The costs may include acquiring additional software and other such costs and expenses as determined by the state secretary as reasonable and necessary to meet such requirements. The annual fee shall not be greater than \$500,000, in the aggregate.

(j) The secretary shall adopt rules regarding performance of the notarial act that: (i) prescribe the means of performing a notarial act involving a remotely-located individual using communication technology; (ii) establish standards for identity proofing by means of credential analysis using 1 or more commercially available automated software or hardware processes that, consistent with sound commercial practices: (A) aid the notary public in verifying the authenticity of the credential by analyzing the integrity of visual, physical or cryptographic security features to indicate that the credential is not fraudulent or inappropriately modified; and (B) use information held or published by the issuing source or authoritative source to confirm the validity of credential details; provided, however, that the results of the credential analysis process shall be provided to the notary public performing the notarial act; and (iii) provide for the use of audio-video communication technology that: (A) allows the signal transmission to be reasonably secure from interception, access or viewing by anyone other than the participants communicating; (B) provides sufficient audio clarity and video resolution to enable the notary to communicate with the remotely-located individual and any witness and to confirm the identity of the remotely-located individual and any witness, as required, using identity proofing; and (C) meets tamper-evident technological requirements by the use of additional technology that renders any subsequent change or modification to the electronic record evident.

(k) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely-located individual or by providing storage of the audio-visual recording created under clause (iv) of subsection (a), the provider of the communication technology, identity proofing or storage shall appoint the state secretary as the provider's agent for service of process

in any civil action in the commonwealth related to the notarial act.

(l) With respect to notarial acts conducted during a closing, as defined in section 46E of chapter 221, the communication technology shall be engaged by the closing attorney with the approval of the lender. Upon successful verification of the identity of the remotely-located individual by the notary as required by clause (i) of subsection (a), such attorney, or the attorney directing or managing the closing who is directly supervising a non-attorney notary public, shall enter and affirm the attorney's board of bar overseers registration number prior to the conduct of the first notarial act. The communication technology shall record such information in a manner that is logically associated with the transaction and shall retain such information for the same length of time and in the same manner as it retains all other information regarding the notarial act.

(m) In addition to any coverage it elects to provide for individual notaries public, a communication technology service provider shall provide maintenance of errors and omissions insurance coverage in a total amount of not less than \$250,000 in the annual aggregate with respect to potential errors or omissions in or relating to the technology or processes provided by the communication technology service provider. A notary public shall not be responsible for the security of the systems used by the remotely-located individual or others to access the notarization session.

(n) Prior to a notary public's initial notarization using communication technology, the state secretary may require the notary public to complete a course, either in-person or online, addressing the duties, obligations and technology requirements for conducting remote notarizations offered by the state secretary or a vendor approved by the state secretary; provided, however, that if such course is required the course's duration shall not exceed 3 hours. Each such provider of communication technology shall make the in-person or online course generally available to all applicants. Regardless of membership in the provider's organization, the provider shall charge each attendee the same cost for the course unless the course is provided in conjunction with a regularly scheduled meeting of the provider's membership.

(o) Notwithstanding any general or special law to the contrary, with respect to any document executed in the course of a closing, as defined in section 46E of chapter 221, involving a mortgage or other conveyance of title to residential real property, only a notary public appointed pursuant to this chapter who is an attorney licensed to practice law in the commonwealth, or a non-attorney who is under the direct supervision of, or acting pursuant to a direct request by, the attorney directing or managing the closing, shall perform an acknowledgment, affirmation or other notarial act utilizing communication technology. The notarial certificate affixed to any such document shall recite the board of bar overseers registration number of the attorney notary, or of the supervising attorney for a document notarized by a non-attorney.

(p) The chief justice of the land court department may promulgate rules, orders, guidelines and directives to implement this section and section 27 as said sections pertain to the execution, acknowledgment and registration of documents affecting title to land whose title has been registered and confirmed by the land court department pursuant to chapter 185.

History

2023, 2, § 33, effective January 1, 2024.

§ 29. Notaries Public — Use or Sale of Personal Information Prohibited.

A notary public shall not use, sell or offer to sell to another person or transfer to another person for use or sale any personal information obtained under section 28 that identifies a remotely-located individual, a witness to a remote notarization or a person named in a record presented for

remote notarization, except: (i) as necessary to facilitate performance of a notarial act; (ii) to effect, administer, enforce, service or process a record provided by or on behalf of the individual or the transaction of which the record is a part; (iii) in accordance with said section 28, including the rules adopted pursuant thereto; or (iv) in accordance with other applicable federal or state law, or to comply with a lawful subpoena or court order.

History

2023, 2, § 33, effective January 1, 2024.