

**A  
HANDBOOK  
FOR  
VIRGINIA  
NOTARIES PUBLIC**



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## INTRODUCTION

This handbook is intended as a general guide and is designed to assist non-attorney notaries with the general requirements, duties, powers, limitations, liabilities, and legal significance of their actions as a notary public. Legal counsel should be consulted whenever specific problems or questions arise concerning any aspect of the office of notary public.

## THE NOTARY'S FUNCTION

A notary public is a public official whose powers and duties are defined by statute. A notary acts as an official, unbiased witness to the identity and signature of the person who comes before the notary for a specific purpose. The person may be taking an oath, giving oral or written testimony, or signing or acknowledging his or her signature on a legal document. In each case, the notary attests that certain formalities have been observed.

The key function is to be **certain** that the person appearing before the notary is who that person claims to be.

Notaries must constantly be aware that every notarial act affects the legal rights of others. Carelessness or negligence by the notary may injure these rights.

A notary who fails to perform notarial acts lawfully and in good faith may be civilly liable for damages caused by their official misconduct. The employer of a notary may also be liable for the notary's misconduct under certain conditions described later in this handbook.

## TYPES OF NOTARIES IN VIRGINIA

The Code of Virginia allows for two different types of notary commissions to be issued in the Commonwealth:

1. Traditional notary public commissions
2. Electronic notary public commissions

The difference between the two types of notary public commissions are the tools that are used to perform the notarial act and, in some cases, the criteria for establishing the identity of the person seeking a notarization.

To apply for an electronic notary public commission, the applicant must first be commissioned as a TRADITIONAL Virginia notary public.

# **TRADITIONAL NOTARY PUBLIC**

A traditional notarization is an official act performed by a traditional notary public using their seal and physical signature on documents.

## **QUALIFICATIONS FOR APPOINTMENT**

*(§ 47.1-3, § 47.1-4)*

Under the laws of Virginia, the Governor may appoint an unlimited number of notaries public.

A notary must be:

1. At least eighteen years old
2. A legal resident of the United States
3. Able to read and write the English language
4. A resident of Virginia or regularly employed in the state and perform notary services in connection with their employment. (A non-resident notary who ceases to be regularly employed in Virginia must surrender their commission.)
5. No person who has ever been convicted of a felony under the laws of the United States, the Commonwealth of Virginia, or the laws of any other state, qualify to be appointed and commissioned as a notary public unless such person has had their civil rights restored or received a pardon for the crimes –depending on where the felony was occurred.

## **OBTAINING A COMMISSION**

*(§ 47.1-5, § 47.1-8, § 47.1-9)*

Applications for appointment as a notary public are available from most Circuit Court clerk's offices, on the Secretary of the Commonwealth's website, and from the Secretary of the Commonwealth's office.

To become a commissioned notary, a completed application, along with a fee of \$45 must be sent to the Secretary of the Commonwealth's office. The name on the application and commission must exactly match the notary's state issued identification.

Each notary commission is sent to the city or county Circuit Court in which the applicant has elected to take the oath of office. A notice is sent to the preferred mailing address indicated by the applicant on their application. When an e-mail address is indicated on the application as the preferred mailing address, only an e-mail notice will be sent. It is the applicant's responsibility to go to the Circuit Court to claim his or her commission and take the oath of office. At that time, the applicant will be required to pay a fee of \$10 to the Clerk.

If a notary commission is not claimed within sixty days from its issuance, it becomes invalid. Failure to claim the commission within sixty days is not excused for ANY REASON, including non-receipt of the notice. Thereafter, if the applicant wishes to be a notary, a new application and a new fee must be submitted.

An applicant who has not received notice within four weeks of mailing their application to the Office of the Secretary of the Commonwealth, should call the Clerk of Court to verify if the commission has been received. If it has not, the applicant should contact the Secretary of the Commonwealth's office.

### **TERMS OF OFFICE**

*(§ 47.1-21, § 47.1-5.1)*

A notary's commission term is four years, expiring on the last day of the notary's birth month. The commission may be renewed every fourth year by filing a new application with the Secretary of the Commonwealth.

After their term has expired, notaries must not act as such unless a new commission has been obtained. Acting under an expired commission may constitute a criminal offense.

### **SEALS/STAMPS**

Virginia law requires a notary to affix a seal or stamp on every document they notarize. The law specifies that the seal/stamp be sharp, legible, permanent and photographically reproducible. Care should be taken not to obscure the signatures or other parts of the document when applying the seal/stamp to the document.

A Virginia notary's seal/stamp must contain the name of the notary exactly as it appears on the notary's commission, the words "Notary Public" and "Commonwealth of Virginia." The notary cannot strikethrough or white-out an area to make a change.

Stamps/seals must be obtained from an outside vendor. The Secretary of the Commonwealth's office does not sell or make notary stamps/seals. It is the responsibility of the notary to dispose of or destroy the notary seal once the notary ceases to be a notary.

### **ALLOWABLE FEES**

*(§ 47.1-19, § 47.1-20)*

By law, a notary is not required to charge a fee. However, they may charge up to \$5.00 for each notarial act performed.

The only other payment a notary may request is actual travel expenses if the notary is required to travel away from home or office to perform the notarial act. In this case, the notary and client must agree on the payment to be made.

An employer may require a notary to perform notarial acts in connection with the notary's employment without charging a fee for such notarial acts. If a fee is charged, however, an employer may not require that the fee be surrendered to the employer.

## **JOURNAL**

A traditional notary is not required to keep a notary journal. However, the Secretary of the Commonwealth recommends that each notary maintain a journal that provides a record of all notarial acts performed to provide evidence for resolving future disputes over authenticity of signatures and documents. The journal may also provide proof that the notary has lawfully performed his or her notarial duties.

## **JURISDICTION**

*(§ 47.1-13, § 47.1-13.1)*

All Virginia notaries are notaries at-large and have authority to perform all traditional notarial acts anywhere within the Commonwealth of Virginia.

Virginia notaries have limited powers in performing notarial acts outside the Commonwealth of Virginia. A traditional notary public may perform any notarial act outside the Commonwealth for any writing to be used in the Commonwealth of Virginia or by the United States government.

## **ELECTRONIC NOTARY PUBLIC**

An electronic notarization is an official act performed by an electronic notary public using their electronic seal and electronic signature on electronic documents.

## **QUALIFICATIONS AND OBTAINING A COMMISSION**

*(§ 47.1-4, § 47.1-5 § 47.1-8, § 47.1-9)*

To become an electronic notary, the applicant must first hold a valid commission as a traditional notary public in the Commonwealth of Virginia. Prior to submitting an electronic notary application, the applicant must purchase an electronic seal from an electronic notary seal provider. The electronic seal is a required item on the electronic notary application. Once the electronic seal is purchased, the applicant must submit a completed electronic notary application along with a \$45 application fee. A notice is sent to each applicant, advising that his or her electronic notary commission has been approved.

## **TERMS OF OFFICE**

The electronic notary commission will expire on the same date the notary's traditional commission expires. The electronic notary commission will need to be renewed at the same time the notary commission is renewed.

## **SEALS AND SIGNATURES**

The electronic notary seal must contain:

1. The name of the notary exactly as it appears on the notary's commission
2. The words "Electronic Notary Public" and "Commonwealth of Virginia"
3. The commission expiration date

4. The notary's registration number

The physical appearance of the seal replicates the appearance of an inked seal on paper and shall appear on any visual or printed representation of the electronic notary certificate. The electronic notary seal is attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination. The seal must be retained under the electronic notary's sole control.

### **ALLOWABLE FEES**

*(§ 47.1-19, § 47.1-20)*

By law, an electronic notary is not required to charge a fee. However, he or she may charge up to \$25 for each electronic notarial act performed.

The only other payment an electronic notary may request is actual travel expenses if the electronic notary is required to travel away from home or office to perform the electronic notarial act. In this case, the electronic notary and client must agree on the payment to be made.

An employer may require a notary to perform notarial acts in connection with the notary's employment without charging a fee for such notarial acts. If a fee is charged, however, an employer may not require that the fee be surrendered to the employer.

### **JOURNAL**

*(§ 47.1-14)*

An electronic notary is required to keep, maintain, and protect a journal of all electronic notarization acts. The electronic notary shall take reasonable steps to ensure the integrity, security, and authenticity of electronic notarizations. The electronic notary must maintain a backup for their electronic notarization journal. The electronic record of an electronic notarial act shall be maintained for a period of at least five years from the date of the transaction.

The electronic notarization journal must contain the:

1. Date and time of day of the notarial act
2. Type of notarial act
3. Type, title, or a description of the document or proceeding
4. Printed name and address of each person seeking an electronic notarization
5. Type of identification used to establish identity of each person seeking electronic notarization
6. Fee, if any, charged for the electronic notarial act

## **JURISDICTION**

*(§ 47.1-13, § 47.1-13.1)*

All electronic notarial acts performed by Virginia electronic notaries are deemed to have been performed within the Commonwealth of Virginia and are governed by Virginia law. This reflects the reality that electronic documents may not be physically stored in Virginia. In fact, the network-based digital economy has no geographic boundaries and is, therefore, borderless. Thus, regardless of the physical location of the electronic document, Virginia law governs the electronic notarial act.

Virginia electronic notaries also have limited extraterritorial powers. An electronic notary public may perform any authorized notarial act outside of the Commonwealth for any writing intended to be used in the Commonwealth of Virginia or by the United States government. Please note the remote notarial act is not extra-territorial because it is deemed to have been performed within the Commonwealth of Virginia at the place where the electronic notary is located.

## **REMOTE OR ONLINE ELECTRONIC NOTARIZATION**

Remote electronic notarization incorporates strict federal standards for determining the identity of the signer and requires the notary to keep a record of the video conference for each notarial act, which is not required in paper notarizations. Accordingly, protections against fraud with this method are much stronger than that afforded by the current paper process. It is important to remember that the Commonwealth of Virginia already uses video conferencing in courts of law, the standards for which this law expressly cross-references.

## **SATISFACTORY EVIDENCE OF THE SIGNER'S IDENTITY**

*(§ 47.1-2)*

Remote notarization requires a very high threshold for identity assurance. Not only **MUST** there be a video and audio feed, the notary public will be **REQUIRED** to assure the identity of the signer by one of the following three options:

1. Personal knowledge -- if the notary knows the signer, that will suffice.
2. Reliance on prior in-person identity proofing by a third party such as an employer, a law firm, or a bank. Otherwise known as antecedent proofing, this security standard relies upon a prior trust relationship having been created between the signer and a third party.
3. The signer has a digital certificate that is authenticated either by (i) biometrics or (ii) a Personal Identity Verification (PIV) or PIV-I card issued in conformance with strict government standards from the National Institute of Standards and Technology.



## **PERFORMANCE REQUIREMENTS**

*(§ 47.1-2, § 47.1-14 C, and § 19.2-3.1, B 1, 2, and 3)*

The two-way live teleconferencing capability must meet all of the following performance criteria for establishing personal appearance:

1. The persons communicating must simultaneously see and speak to one another
2. The signal transmission must be live, real time
3. The signal transmission must be secure from interception through lawful means by anyone other than the persons communicating.

The notary is required by law to keep a record of each video conference notarial act. This record must be kept for five years.

## ***POWERS, LIMITATIONS, AND RESPONSIBILITIES (TRADITIONAL & ELECTRONIC NOTARIES PUBLIC)***

### **THE NOTARY'S POWERS**

*(§ 32.1-272, § 47.1-12, § 55-118.1 – § 55-118.6)*

A notary has the power to perform various official acts, known as “notarial acts.”

*The Code of Virginia* specifies five basic notarial acts:

1. Taking acknowledgments
2. Administering oaths and affirmations
3. Certifying affidavits or depositions
4. Certifying “true copies” of documents
5. Verification of fact\*

A notary should keep the following things in mind:

- Virginia notaries may perform their duties outside of the Commonwealth if the document is for use in the Commonwealth.
- In necessary cases, a child’s signature may be notarized. The required proof of the identity of a child is the same as an adult.
- Virginia notaries may notarize powers of attorney and wills.
- Virginia notaries are not authorized to certify true copies of birth, death, or marriage certificates. Only the Division of Vital Records/Statistics may perform such a certification.
- Virginia notaries are not authorized to certify true copies of court issued documents.
- Virginia notaries are not authorized to perform marriage ceremonies.
- A Virginia notary is not authorized to notarize his/her own signature.

*\*notary directly accessing public or vital records to confirm or validate a signer’s identity credentials or to confirm facts about an individual’s identity or authorization. A notary may also access public records to confirm facts about such matters as corporate status, date of birth, or date of marriage*

## THE NOTARY'S GREATEST RESPONSIBILITY

(§ 47.1-2, § 47.1-11, § 47.1-14, § 47.1-15)

It is the notary's responsibility to be familiar with and understand everything contained in "The Handbook for Virginia Notaries Public" throughout their term as a notary.

Before performing a notarial act, a notary must be certain of the identity of each person whose signature will be notarized. A notary is required to exercise a high degree of care in determining the identity of any person whose identity is the subject of a notarial act.

Unless such person is known by the notary, identity shall be ascertained by examination of one or more of the following nine unexpired documents:

1. A United States Passport
2. A United States Passport Card
3. A certificate of United States citizenship
4. A certificate of naturalization
5. A foreign passport
6. A United States green card with photograph
7. A state issued driver's license
8. State-issued identification card
9. A United States military identification card

A notary must never accept any signature as genuine on the word of a third party. An acknowledgment must be made by the person whose signature is the subject of the acknowledgment. Oaths must be administered by a notary for any sworn document and the person giving the oath must appear, in person, before the notary who administers the oath. A notary who fails to establish the identity of a person runs the risk of being sued for negligence or malfeasance in office.

Except with respect to a remote electronic notarization, in taking an acknowledgment or administering an oath, the person whose act is the subject of the notarial act must personally appear before the notary.

A Virginia notary may refuse to notarize a document for any reason.

If a notary has any questions or concerns regarding any act of a Notary Public, he or she should contact the Notary Division of Secretary of the Commonwealth's office before performing the act. However, all notaries public should be aware the Secretary of the Commonwealth's Office cannot give legal advice.

## REQUIRED INFORMATION WHEN NOTARIZING A DOCUMENT

(§ 47.1-2, § 47.1-15, § 47.1-16)

Every notarial certificate must contain the below seven items:

1. Notarial statement
2. The date of the notarial act
3. The location of the notarial act in the city or county where notarization occurs
4. The expiration date of the notary's commission
5. Notary's signature
6. Notary's registration number
7. Photographically reproducible notary seal/stamp

If the notarial act was done electronically, the notarial certificate must contain the above seven items as well as:

1. County/city within Virginia where the electronic notary public was physically located at the time the notarization was performed
2. Whether the notarization was done in person or by remote notarization

Each of the following accurate items is required by law:

1. A notarial statement must identify the specific notarial act that has been performed (acknowledgment, true copy of an original document, etc.).
2. The date and location of the notarial act must be clearly indicated.  
*\*Usually, the language of a notarial act contains a place for this information. When it does not, the best place to put the date is immediately above where the notary will sign. Both the state and the city/county in which the act was performed must appear. In most cases, this information appears above the language of the notarial act.*
3. The date of notary's commission expires  
*\*generally appears after the signature of the notary in this form: "My commission expires, \_\_\_\_\_, 20\_\_."*
4. A notarial act requires the original signature of the notary. Signature stamps and other facsimiles or photocopies do not satisfy this requirement.
5. The notary's registration number. If a form or certificate lacks space for this information, the notary must provide it somewhere on the form or certificate.
6. A stamp or seal. In the case of an electronic notary, the attached seal must be capable of independent verification.

Every effort should be made for notarial statement to be on the same page as the signature being notarized, however, if they are on different pages, the notarial statement must include the name of the person whose signature is being notarized.

## SAMPLE ACKNOWLEDGEMENTS

(§ 55-118.1, § 55-118.2, § 55-118.3, § 55-118.4, § 55-118.5, § 55-118.6)

The Uniform Recognition of Acknowledgments Act (Section 55-118.1 through 55-121 of the *Code of Virginia*) outlines the format a notary should use for various acknowledgments. Please find those and other examples below.

### A) Certificate of Acknowledgment:

City/County of \_\_\_\_\_

Commonwealth of Virginia

The foregoing instrument was acknowledged before me

this \_\_\_ day of \_\_\_, 20 \_\_\_\_ by

\_\_\_\_\_  
(Name of person seeking acknowledgment)

\_\_\_\_\_  
Notary Public's signature

*Notary Seal*

Notary registration number: \_\_\_\_\_

My commission expires: \_\_\_\_\_

### B) Certified Copy of an Original:

City/County of \_\_\_\_\_

Commonwealth of Virginia

I certify this to be a complete, full, true and exact reproduction  
of the original document.

Certified this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
Notary Public's signature

*Notary Seal*

Notary registration number: \_\_\_\_\_

My commission expires: \_\_\_\_\_

### C) Jurat (requires that an oath be administered by the notary):

City/County of \_\_\_\_\_

Commonwealth of Virginia

The foregoing instrument was subscribed and sworn  
before me this \_\_\_ day of \_\_\_, 20 \_\_\_\_ by

\_\_\_\_\_  
(name of person seeking jurat)

*Notary Seal*

\_\_\_\_\_  
Notary Public's signature

Notary registration number: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**D) Electronic Notarization**

City/County of \_\_\_\_\_ [Notary Public’s physical location]

Commonwealth of Virginia

The foregoing instrument was acknowledged before me

this \_\_\_ day of \_\_\_, 20 \_\_\_\_ by

\_\_\_\_\_  
*(Name of person seeking acknowledgment)*

This notarial act was performed: (check one)     in person     remote notarization

Notary Public’s signature: \_\_\_\_\_ *ENotary Seal*

Notary registration number: \_\_\_\_\_

My commission expires: \_\_\_\_\_

For any notarial act that includes the words “*sworn*” or “*affirm*,” an oath must be administered by a notary. In administering the oath, the notary must require that the person taking the oath swear or affirm that the sworn statement is true and correct to the best of that person’s knowledge.

**CHANGE OF NAME**

*(§ 47.1-17)*

A notary whose name is legally changed during his or her term must indicate in writing the name in which the commission was issued. For example, if Mary Jane Smith, a notary public commissioned on July 1, 2010, changed her legal name to Mary Smith Jones, she must indicate on all notarial acts the original name in which her commission was issued. The following language should appear on all documents notarized:

**“I was commissioned a notary public as Mary Jane Smith.”**

By using this additional language, Mrs. Jones will avoid confusion over her ability to serve as a notary. The stamp/seal must match the name as you are commissioned. When she reapplies for a commission, she may do so in her new name.

**CHANGE OF CONTACT INFORMATION**

*(§ 47.1-18)*

If a notary has any changes to their contact information (i.e. address, phone number, business address, business phone number, etc.) during their commission, they must notify the Secretary of the Commonwealth’s Office in writing or via email.

**REPORTING LOST OR STOLEN NOTARY INFORMATION**

*(§ 47.1-14)*

A notary must immediately report, in writing or via email, any lost or stolen electronic notary

items to the Secretary of the Commonwealth's office. If the items are believed to have been stolen, the electronic notary must also inform a law-enforcement agency.

## **RESIGNATION**

*(§ 47.1-22)*

A notary who wishes to resign may do so by sending a letter of resignation and his or her commission to the Secretary of the Commonwealth.

A Virginia notary who moves outside of the state must surrender his or her commission unless the notary continues to be regularly employed in Virginia. If the notary continues to be regularly employed in Virginia he or she may continue to serve by notifying the Secretary of the Commonwealth of such employment.

## **CONFLICTS OF INTEREST**

*(§ 47.1-30)*

Notaries may not perform any notarial act, which presents a conflict between their personal interest and their official duty.

Under the Virginia Notary Act, a notary may not perform any notarial act with respect to any document if the notary:

1. Is a party to the document
2. Their spouse is a party to the document
3. A signatory or is named in the document
4. Them or their spouse has a “direct beneficial interest” in the document

Notaries should not notarize documents when:

1. There is any possibility that the contents of the document will benefit them or their spouse
2. They are named beneficiaries of a will in which they’ve been asked to notarize
3. They are a paid employee of a political campaign, including a referendum or petition effort, and a notarial act is needed in regard to petitions for that campaign

Notaries may notarize wills in which they are the fiduciary. If you are uncertain about the difference between a fiduciary and a beneficiary, please consult an attorney before notarizing.

Regardless of whether any beneficial or other interests exist, a notary may never take his or her own acknowledgment, oath, affidavit, or deposition.

## **BONDS AND INSURANCE**

Virginia notaries are not required to post a bond in order to obtain their commission. All notaries may wish to consider liability insurance for their own protection. Notaries who perform notarial duties in connection with their employment should consult their employer to determine whether they are covered, or could be covered, by the employer’s policy.

## **VIOLATIONS OF NOTARY LAW**

*(§ 47.1-15, § 47.1-15.1, § 47.1-23, § 47.1-24, § 47.1-25, § 47.1-26,  
§ 47.1-27, § 47.1-28, § 47.1-29, § 47.1-29.1)*

### **Official Misconduct**

Any violation of the Virginia Notary Act by a notary constitutes “official misconduct.”

### **Removal from Office**

The Secretary of the Commonwealth may remove any notary from office for official misconduct, or for other specific reasons, including:

1. Falsifying an application for appointment
2. Being convicted of a felony anywhere in the United States
3. Misleading the public as to the powers of a notary
4. Being convicted of the unauthorized practice of law

The most frequent charge of official misconduct involves a notary's failure to require the personal appearance of an individual before the notary when acknowledging that person's signature.

If a notary fails to properly notarize a document, the Secretary of the Commonwealth may send a letter warning that notary public of the notary's misconduct.

In cases where a notary is charged with official misconduct or other grounds for removal, the Secretary of the Commonwealth has discretion to conduct hearings in cases of serious misconduct should they choose.

After a hearing is conducted by the Secretary, a notary may be suspended from notarial duties. If a notary is found guilty of official misconduct or is otherwise subject to removal, the Secretary may discipline the notary by reprimand, suspension from practice, or removal from office. A court may review the findings of the hearing by the Secretary of the Commonwealth if an appeal is made within 30 days of the Secretary's action.

A notary removed from office is disqualified from being reappointed in Virginia for 20 years.

All legal complaints about notaries public should be directed to the Commonwealth Attorney's Office in the jurisdiction where the complaint occurred.

### **Prohibitions**

No notary public shall offer legal advice on immigration nor shall he or she represent any person in immigration proceedings or other legal matters unless such notary public is authorized or licensed to practice law in the Commonwealth or is accredited to practice immigration law.

A notary public shall not assume, use, or advertise under any of the titles: "notario", "notario publico", "licenciado" or any other term in any language other than English that indicates the notary is authorized to provide legal advice or practice law. The notary public will be subject to a civil penalty not to exceed \$500 for the first violation and a penalty not to exceed \$1000 for the second or subsequent violation.

### **Civil Liability**

A notary may be liable for any notarial act performed unlawfully and not in good faith that causes injury or damages to another person.

Notaries must keep in mind that they are acting as official witnesses to the identity and actions of the person who appears before them. The public is entitled to assume that the notary has acted in good faith and according to law.

### **Criminal Liability**

Any notary, who knowingly and willfully commits official misconduct under the Virginia Notary Act, may be convicted of a misdemeanor.



Notaries who intentionally use their powers to perpetrate a fraud or to embezzle or steal from another may be found guilty of a felony.

A notary who knowingly makes a false oath or certificate may be guilty of perjury.

### **Liability of the Notary's Employer**

The employer of a notary may be civilly or criminally liable for certain acts. The employer may be liable for damages caused by the notary's official misconduct if:

1. The misconduct was performed as part of the notary's employment
2. The employer knew about the misconduct, or should have known about it

Any employer who encourages, threatens, or otherwise intentionally causes an employee to violate the notary laws may be found guilty of a misdemeanor.

### **Impersonation of a Notary**

If a person who is not a notary attempts to notarize a document or otherwise acts as a notary without authority, the impersonator may be found guilty of felony charges.

It should be noted that notaries whose commissions have expired and persons who have not yet received a commission do not have authority to act as a notary. A valid commission is necessary to perform any notarial act.

Any legal questions about notary public duties, responsibilities, or prohibitions should be directed to an attorney for clarification. The Secretary of the Commonwealth's office cannot answer legal questions.