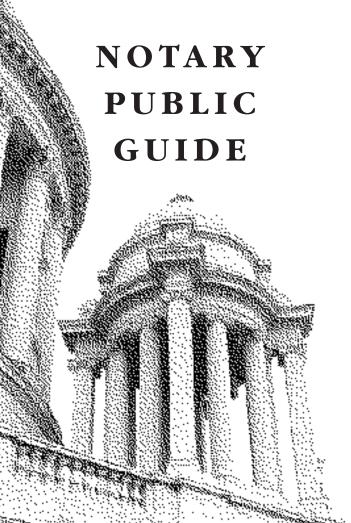


STATE
OF
RHODE ISLAND
AND
PROVIDENCE
PLANTATIONS

Office of the Secretary of State

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### PRACTICAL GUIDE FOR A NOTARY PUBLIC

This booklet is intended to be used as a guide for persons serving as Notaries Public in the State of Rhode Island. While a Notary Public may not give legal advice or prepare legal documents, he or she does serve an important role in connection with validating legal documents within the State of Rhode Island

This booklet is not intended to be a legal instrument nor does it purport to offer legal advice. Persons with questions concerning their duties as Notaries Public should contact the Office of the Secretary of State or an attorney.

# Who may become a Rhode Island Notary Public?

A person who is (1) a Rhode Island resident and a registered voter, or (2) a member of the state bar, or (3) certain elected officials, is eligible to serve as a Notary Public by applying to the Office of the Secretary of State and paying the requisite fee.

### Where may a Notary Public act?

A Rhode Island Notary Public may only act within the State of Rhode Island. A Notary Public cannot act outside the State of Rhode Island.

### What are the duties of a Notary Public?

A Notary Public generally takes **acknowledgements** and administers oaths in connection with **affidavits.** According to Rhode Island law, a Notary Public may also (1) transact, do, and finish all matters and things relating to protests, and protesting bills of exchange and promissory notes, and (2) take depositions. "Protests" are statements of nonpayment of negotiable instruments and should be dealt with only by persons having expertise in commercial transactions. A deposition refers to testimony taken down in writing under oath and should only be taken by a qualified stenographer.

### **ACKNOWLEDGEMENTS**

### What is an acknowledgement?

An **acknowledgement** is a declaration by the parties to a deed or other legal instrument avowing the fact of their signing. Acknowledgements identify the parties who signed the instrument and establish that they did not sign under coercion. Parties signing an acknowledgement are not required to take an oath as to truthfulness

While there is no prescribed form of acknowledgement in Rhode Island, state law does require the acknowledgement to convey the following:

- (1) that the Notary Public knows the identity of the persons who signed the instrument;
- (2) that the Notary Public knows that these persons actually signed the instrument; and
- (3) that the persons signing the instrument state to the Notary Public that they signed the instrument willingly as their own free act and deed.

In addition, the acknowledgement will usually state that the parties appeared personally before the Notary Public.

Sample acknowledgement forms appear on page 9 and 10 in this booklet.

### Establishing the identity of the parties.

The parties must appear before the Notary Public in person. A Notary Public must identify the parties signing the instrument. Although not required, a Notary Public should establish their identities by requesting the parties produce identification, preferably with a photograph and signature such as a driver's license.

# Establishing that the parties signed the instrument.

Parties do not have to sign the instrument in front of the Notary Public, but if they do not, the Notary Public should ask each party to confirm his or her signature.

### Establishing that the parties signed willingly.

A Notary Public should require each party to state

that he or she signed the instrument as his or her free act and deed.

### Special rules pertaining to recorded deeds.

If the acknowledgement appears on a deed that is to be recorded, then the Notary Public's name must be printed or typed beneath his or her signature. Failure to do so does not invalidate the deed but it will increase the recording fee.

# <u>Persons signing on behalf of others (attorneys-in-fact).</u>

Sometimes a person will sign an instrument as "attorney-in-fact" for another. A person is appointed attorney-in-fact by a written legal instrument known as a "power of attorney."

The person appointing the attorney-in-fact (known as the **principal**) may do so for many reasons. For example, the principal may live in another state, may have anticipated mental or physical incompetency or may otherwise be unavailable or unable to act.

An attorney-in-fact can act on behalf of an incompetent principal only if the power of attorney contains proper statutory language that it is not affected by competency. In order for its validity to be unaffected, the power of attorney must specifically state that it will not be invalidated by incompetency.

Before a Notary Public takes the acknowledgement of an attorney-in-fact, he or she should ask to see the power of attorney or obtain some other proof of the attorney-in-fact's power to act. While a Notary Public has no duty to inquire into the reasons for the attorney-in-fact's appointment, he or she should try to make sure the power of attorney is valid. If a Notary Public has any questions as to the validity of a power of attorney, he or she may wish to contact a lawyer.

An individual signing an instrument as an attorney-in-fact for another will generally sign his or her own name along with his or her title and the name of the principal. For example, the signature might read: "Jane Smith as attorney-in-fact for Mary Smith," or "Jane Smith power of attorney for Mary Smith."

Both names should appear in the acknowledgement form and the Notary Public should be sure that the words "attorney-in-fact" appear after the name of the attorney-in-fact and that the acknowledgement contains the language that the signing is the free act and deed of the principal.

### Persons signing on behalf of corporations.

Because corporations are considered to be individuals under the law, an instrument may be in the name of a corporation. In that case, an officer, agent or employee of the corporation with the appropriate authority must sign the instrument. In taking the acknowledgement, the Notary Public should make certain that the officer's, agent's or employee's title appears after his or her signature and should include the title when writing the officer's, agent's or employee's name in the acknowledgement form itself. For example, the signature might read: "ABC Bank and Trust Company by Jill Martin, its Vice President." If it is necessary to verify the identity and authority of the officer, agent or employee, the Notary Public may wish to ask for a certificate of a corporate vote signed by the secretary of the corporation.

### Completing the acknowledgement.

The acknowledgement form generally will appear at the bottom of the instrument. Often there will be blank spaces for the Notary Public to print the state, county and city or town of execution and the date on which the acknowledgement was taken. Even if the parties signed the instrument on an earlier date a Notary Public should always write the date on which the acknowledgement was actually taken. The Notary Public will also write in the names of the parties to the instrument.

If there is a preprinted acknowledgement form and an attorney-in-fact or an officer of a corporation is involved, then the Notary Public may have to revise the form slightly.

Reviewing the sample acknowledgement forms in this booklet will assist a Notary Public in becoming familiar with completing them.

### **AFFIDAVITS**

### What is an affidavit?

An **affidavit** is a sworn written statement made under oath as to the truthfulness therein, before an authorized person such as a Notary Public. Affidavits are often signed in connection with lawsuits. Special affidavits, called "**self-proving affidavits**" are signed by witnesses to a will in order to exempt the witnesses from having to appear in court and swear to the validity of the will when the testator dies.

If a person (the "affiant") wishes to swear to an affidavit before a Notary Public, the Notary Public must administer an oath to the affiant and complete a clause at the end of the affidavit known as the "jurat." The jurat establishes that the information sworn to by the affiant is true. An example of a jurat might be: "Subscribed and sworn to before me in Providence, Rhode Island on the 13th day of January, 2004."

### Subscribing the jurat.

It is imperative that the affidavit be subscribed (i.e., signed) in the Notary Public's presence. A Notary Public should refuse to complete a jurat if the affidavit has not been signed in front of him or her.

### Administering the oath.

There is no requisite ceremony for administering an oath. The affiant need only swear or, if he or she prefers, "affirm" that the affidavit is true.

If a Notary Public wishes to take a more formal approach, he or she may ask the affiant to raise his or her right hand while swearing (or affirming) as to the truth of the information in the affidavit. Such formality may be advisable in situations where the Notary Public wishes to emphasize the solemnity of the oath. In some situations, the Notary Public may even wish to add that false swearing may constitute a criminal offense.

### QUESTIONS OFTEN ASKED BY A NOTARY PUBLIC

### When does a notary have to use a seal?

Although Rhode Island does not require notaries to put seals on documents, it is generally prudent for a Notary Public to do so. Some other states require notaries to use a seal as do certain corporations or government agencies. Since a Notary Public will not always know how or where an instrument he or she is notarizing is to be used, it is safest to always use a seal.

# When does a notary have to include the expiration date of his or her commission?

The same advice given with respect to the use of seals applies here. While Rhode Island does not require a Notary Public to include the date on which his or her commission expires, some situations and other states do so require. Therefore, it is advisable for a Notary Public to include this information as a matter of course.

# How should the notary sign his or her name?

A Notary Public should always sign his or her name exactly as it appears on his or her commission. The Notary Public should then write "Notary Public" after the signature. Many people recommend doing this even if these words are preprinted under the signature line.

### Can photocopied instruments be notarized?

A photocopy can be notarized so long as there is an original signature on it.

# When should a notary refuse to notarize documents?

It is inadvisable for a Notary Public to notarize documents for relatives as so doing may cause his or her impartiality to be questioned.

A Notary Public should never notarize his or her own signature.

A Notary Public should not notarize a document for a person who does not appear to understand what he or she is signing or who appears to have been coerced into signing.

# Can a notary act both as a witness and a notary?

Under most circumstances, an individual may act as both a witness and a notary to the same instrument. A Notary Public who is acting only as a witness, should sign as an individual and should not include the words "Notary Public" after his or her signature.

There are instances, however, where a Notary Public cannot act as both witness and notary. For example, if an individual acts as a witness to a will, he or she may be asked to sign a "self-proving affidavit" to the will in which he or she swears that the formalities of execution were adhered to. In such a case, a Notary Public could not complete the jurat to the affidavit with respect to his or her own oath as a witness. A Notary Public could, however, sign the jurat with respect to the other witness to the will.

It is prudent to get into the habit of acting as either a witness or a Notary Public to a given instrument but not as both.

### Prohibited Acts.

In Rhode Island (and in most states) a Notary Public may not perform marriages.

Only a lawyer can prepare legal documents or give legal advice, a Notary Public may not do so. Failure to abide by this rule could constitute a criminal offense.

People sometimes believe that a Notary Public can validate wills that individuals have prepared themselves without legal assistance. Rhode Island has strict rules as to what constitutes a valid will. Any Notary Public who is approached by someone who has prepared his or her own will would be wise to advise the person to contact a lawyer.

If a Notary Public has any questions or concerns about a document he or she is asked to notarize, he or she should seek legal advice.

### **Additional Notes.**

A Notary Public will be called upon to notarize numerous instruments and as a result will not be able to remember the details of every oath or every acknowledgement; consequently, each Notary Public should develop and adhere to his or her own "standard operating procedure" when notarizing instruments. This will benefit the Notary Public if he or she is ever required to testify as to how a particular instrument was notarized; by following his or her "standard operating procedure," the Notary Public will be able to cite his or her own procedure and state that he or she always follows it. For this reason, it is prudent for a Notary Public to always use a seal, include the date on which his or her commission expires, administer oaths using the same formalities and take every acknowledgement in the same way.

## SAMPLE FORMS

### ACKNOWLEDGEMENTS Individual Form

State of Rhode Island County of	
	in said day of _, 20, before me
personally appeared _ each and all to me knot the party(ies) executing	own, and known by me to be g the foregoing instrument, acknowledged said executed to be
	(Signature of Notary, title)
ACKNOV	VLEDGEMENTS
	y-In-Fact Form
State of Rhode Island County of	
In	in said
County on the	in said day of , 20
and known by me to be foregoing instrument, a edged said instrument,	appeared, attorney-in-fact for the principal, to me known be the party executing the and acknowl- by exe free act and deed deed of said principal.

(Signature of Notary, title)

# SAMPLE FORMS

# **ACKNOWLEDGEMENTS Corporate Form**

State of Rhode Island County of	
In day of	in said County
20, be	efore me personally appeared of
known by me to be the ing instrument on beha	, to me known and e party executing the forego- ulf of said corporation and knowledged said instrument, executed to be the free act and deed of said
	(Signature of Notary, title)
ACKNOWLEDGEMENTS Affidavit	
State of Rhode Island County of	
I,hereby under oath dep	ose and say that:
	(Signature)
	l sworn to before me in, Rhode Island on the,
	(Signature of Notary, title)

# TITLE 42 CHAPTER 30 NOTARIES AND JUSTICES OF THE PEACE

### SECTION.

- **42-30-1**. Election of justices by town council.
- 42-30-2. Governor's appointment power preserved.
- **42-30-3.** Appointment of notaries and justices.
- **42-30-4.** Certificate of engagement Term of engagement.
- **42-30-5.** Application for appointment.
- **42-30-6.** [Repealed.]
- **42-30-7.** Powers of notaries and justices.
- **42-30-8.** Powers of notaries.
- **42-30-9.** List of appointees— Certificates of appointments.
- **42-30-10**. Removal of notaries, justices, and commissioners.
- **42-30-11.** Continuation of powers without reappointment.
- **42-30-12.** Continuation of powers without new engagement.
- **42-30-13.** Fees of notaries.
- **42-30-14.** Public officers having notarial powers.
- **42-30-15.** Fees for authentication of a notary public signature.
- **42-30-16**. Notary public Fraud or deceit in office.

### 42-30-1. Election of justices by town council.—

The town or city council of any town or city of this state may appoint and fix the terms of justices of the peace, and no justice of the peace shall be elected by the qualified electors in any town or city at any regular or special election held for the purpose of electing officers of the town or city, or otherwise.

### 42-30-2. Governor's appointment power pre-

**served.**— Nothing in §42-30-1 shall be construed to impair the authority of the governor to appoint justices of the peace, in accordance with the provisions of \$42-30-5.

### 42-30-3. Appointment of notaries and jus-

**tices.**— The governor shall appoint as many notaries public for the state, and as many justices of the peace for the several towns and cities, as he or she may deem expedient; and every notary public and justice of the peace, so appointed, shall hold office for four (4) years.

**42-30-4. Certificate of engagement— Term of engagement.—** (a) Except as otherwise provided, each notary public and justice of the peace shall, at the time of receiving his or her commission, file with the secretary of state a certificate that he or she has been duly engaged thereon, signed by the person before whom the engagement shall have been taken, and the secretary of state shall, at the request of the notary public or justice of the peace and upon payment of the actual cost thereof, issue a wallet-size identification card to such person.

(b) The term of engagement for each notary public and justice of the peace shall be for a period of four (4) years.

# **42-30-5. Application for appointment.**— (a) Any qualified elector of this state desiring to be appointed a notary public, or a justice of the peace, shall make written application to the governor over his or her own signature, stating that he or she is a qualified elector who is an actual resident of the state of Rhode Island.

- (b) Qualification as an elector of the state at the time of making application is to be certified to by a member of the board of canvassers and registration, in cities having such boards, or by the city or town clerk of the city or town in which the applicant claims a right to vote, and except for members of the bar of this state, the member of the board of canvassers and registration or the city or town clerk shall satisfy himself or herself that the applicant for appointment to the office of notary public or justice of the peace can speak, read, and write the English language and has sufficient knowledge of the powers and duties pertaining to that office.
- (c) A member of the Rhode Island bar shall, regardless of residence, be appointed a notary public upon application and presentment of a certified

copy of his or her certificate of admission to the bar.

(d) Any such person making written application to be appointed a notary public or justice of the peace shall, at the time of application, pay to the secretary of state the sum of eighty dollars (\$80.00).

### 42-30-6. [Repealed]

**42-30-7. Powers of notaries and justices.**— The officers mentioned in §\$42-30-3 — 42-30-5, inclusive, shall possess all the powers which now are or hereafter may be conferred by law upon justices of the peace or notaries public.

**42-30-8. Powers of notaries.**— Notaries public may, within this state, act, transact, do, and finish all matters and things relating to protests and protesting bills of exchange and promissory notes, and all other matters within their office required by law, take depositions as prescribed by law, and acknowledgements of deeds and other instruments.

42-30-9.Lists of appointees— Certificates of appointment.— It shall be the duty of the secretary of state to make a list of all notaries public and justices of the peace appointed by the governor and duly qualified, and send a copy thereof to each of the clerks of the supreme, superior and family courts and to the clerks of the district courts for the second, third, fourth, ninth, tenth, eleventh and twelfth judicial districts, to be kept in the files of those courts, and the clerks shall, upon application, issue certificates of office to the person entitled thereto, and shall receive a fee of one dollar (\$1.00) for every certificate.

**42-30-10. Removal of notaries, justices, and commissioners.**— Any notary public, justice of the peace or commissioner of deeds, appointed by the governor, may be removed for cause by the governor, in his or her discretion, within the term for which that officer shall have been appointed, after giving to that officer a copy of the charges against him or her and an opportunity to be heard in his or her defense; provided, however, that any notary public, justice of the peace or commissioner of

deeds who is convicted of a felony and incarcerated shall have his or her commission revoked. Said notary public, justice of the peace or commissioner of deeds shall not be eligible to apply for a new commission until his or her voting rights are restored pursuant to Article 2, Section 1 of the Rhode Island Constitution.

**42-30-11. Continuation of powers without reappointment.**— Every justice of the peace and notary public appointed by the governor and not reappointed, may continue to officiate for a space of thirty (30) days after the date on which his or her commission expires.

**42-30-12. Continuation of powers without new engagement.**— Every such officer listed in §42-30-14 who may be reappointed or continued in office, may continue to officiate while in office without taking a new engagement.

# **42-30-13. Fees of Notaries.**— The fees of notaries public shall be as follows:

- (1) For noting a marine protest, one dollar (\$1.00);
- (2) For drawing and extending a marine protest and recording it, one dollar and fifty cents (\$1.50);
- (3) For taking affidavits, twenty-five cents (\$.25);
- (4) For travel, per mile, ten cents (\$.10);
- (5) For taking acknowledgement of any instrument and affixing his seal, one dollar (\$1.00);
- (6) For the protest of a bill of exchange, order or draft, for nonacceptance or nonpayment, or of a promissory note or check for nonpayment, if the amount thereof is five hundred dollars (\$500) or more, one dollar (\$1.00), if it is less than five hundred dollars (\$500), for recording the same, fifty cents (\$.50);
- (7) For noting the nonacceptance or nonpayment of a bill of exchange, order or draft, or the nonpayment of a promissory note or check, seventy-five cents (\$.75); and
- (8) For each notice of the nonacceptance or nonpayment of a bill, order, draft, check, or note, given to a party liable for the payment thereof, twenty-five cents (\$.25) provided, that the whole cost of protest, including necessary notices and the

record, shall not exceed two dollars (\$2.00), and the whole cost of noting, including notices, shall in no case exceed one dollar and twenty-five cents (\$1.25).

### 42-30-14. Public officers having notarial pow-

ers.— Every state senator, state representative, member of a city or town council, chief, deputy, and assistant clerk of any state court, clerks of the board of canvassers, and worker's compensation court, and municipal clerk and the board of canvassers registrar during the period for which he or she has been elected or appointed, shall, upon completion of the certificate of engagement as set forth in §42-30-4, have the power to act as a notary public as provided in this chapter. Two police officers from each state and local police department, as identified in writing by the chief of police, shall, upon completion of the certificate of engagement as set forth in §42-30-4, have the power to act as a notary public as provided in this chapter. No office holder set forth in this section shall be required to pay the commission fee as provided in \$42-30-5. The office holders must complete the certificate of engagement as set forth in \$42-30-4.

**42-30-15. Fees for authentication of a notary public signature.**— A fee of five dollars (\$5.00) shall be charged and collected by the secretary of state for the authentication or certification of the signature of a notary public. A fee of no more than one hundred fifty dollars (\$150.00) shall be charged and collected by the secretary of state for the authentication or certification of the signature(s) of a notary public on all relevant documents filed at one time which pertain to the same matter or transaction.

**42-30-16. Notary public—Fraud or deceit in office.**— A notary public, who in the exercise of the powers, or in the performance of the duties of such office, shall practice any fraud or deceit, the punishment for which is not otherwise provided for by law, shall be guilty of a misdemeanor and fined not more than one thousand dollars (\$1,000) or imprisoned not more than one (1) year or both.

# TITLE 42 CHAPTER 31 COMMISSIONERS

### SECTION.

- **42-31-1.** Appointment of commissioners.
- **42-31-2.** Oath of office.
- **42-31-3.** Powers of commissioners.
- **42-31-4.** Effectiveness of acts of commissioners.

### 42-31-1. Appointment of commissioners.—

The governor may appoint, in any foreign country and in any state of the United States and in any territory of the United States and in the District of Columbia, one or more commissioners, under the seal of the state, to continue in office for the period of five (5) years.

- **42-31-2. Oath of office.** Before any commissioner shall perform any duty of his or her office, he or she shall take and subscribe an oath before some officer authorized to administer oaths in the state, country or territory, or District of Columbia, for which the commissioner is appointed, that he or she will faithfully discharge all the duties of his or her office; a certificate of which shall be filed in the office of the secretary of state of this state within six (6) months after the taking of the oath.
- **42-31-3. Powers of commissioners.** The commissioners may administer oaths and take depositions and affidavits to be used in this state; and may also take the acknowledgement of any deed or other instrument to be used or recorded in this state.

### 42-31-4. Effectiveness of acts of commission-

**ers**.— All oaths administered by commissioners, and all affidavits and depositions taken by them, and all acknowledgements aforesaid certified by them, shall be as effectual in law, to all intents and purposes, as if certified by any judge, justice of the peace, or notary public, within this state.

# TITLE 34 CHAPTER 12 ACKNOWLEDGEMENTS AND NOTARIAL ACTS

### SECTION.

- **34-12-1.** Form of acknowledgement—Foreign acknowledgements.
- **34-12-2.** Officers authorized to take acknowledgements.
- **34-12-3.** Acknowledgements in good faith before person claiming to be authorized—Penalty for misrepresentation.
- **34-12-4.** Instruments executed by diplomatic officials outside United States.
- **34-12-5.** Power of armed forces officers to take acknowledgements.
- **34-12-6.** Effect of acknowledgement before armed forces officer.
- **34-12-7.** Contents of certificate of armed forces officer.
- **34-12-8.** Proof of authority of armed forces officer.
- **34-12-9.** Validation of prior acknowledgements before foreign notary public.

34-12-1. Form of acknowledgement — Foreign acknowledgements.— Acknowledgement of any instrument hereafter made need not be in any set form, but shall be made by all the parties executing the instrument and the certificate thereof shall express the ideas that the parties were each and all known to the magistrate taking the acknowledgement, and known by the magistrate to be the parties executing the instrument, and that they acknowledge the instrument to be their free act and deed: provided, however, that in case of any such instrument executed without this state, and within the limits of the United States or of any dependency thereof, if the instrument is acknowledged or proved in the manner prescribed by the law of the state, District of Columbia, territory or such dependency, where executed, it shall be deemed to be legally executed, and acknowledged and shall have the same effect as if executed and acknowledged in the mode above

prescribed, including an acknowledgement by less than all parties if made in a jurisdiction the laws of which permit acknowledgements in that manner; provided, however, that instruments requiring acknowledgements by parties having opposing interests must be acknowledged by at least one party of each interest.

# **34-12-2. Officers authorized to take acknowledgements.**— Acknowledgement of any instrument required by any statute of this state to be acknowledged shall be made:

- (1) Within this state, before any state senator, any state representative, judge, justice of the peace, clerk or assistant clerk of the superior court, mayor, notary public, town clerk or recorder of deeds.
- (2) Without this state and within the limits of United States or any dependency thereof, before any judge or justice of a court of record or other court, justice of the peace, mayor or notary public, of the state, District of Columbia, territory or such dependency, in which such acknowledgement is made, or before any commissioner appointed by the governor of this state, or before any officer authorized by law to take acknowledgements of deeds in the place in which the acknowledgement is made.
- (3) Without the limits of the United States, before any of the following officers acting within his territorial jurisdiction or within that of the court of which he or she is an officer:
- (i) An ambassador, envoy, minister, charge d'affaires, secretary of legation, consul-general, consul, vice-consul, consular agent, vice-consular agent, or any other diplomatic or consular agent or representative of the United States, appointed or accredited to, and residing within the country where the acknowledgement or proof is taken.
- (ii) A judge or other presiding officer of any court having a seal or the clerk or other certifying officer thereof.
- (iii) A mayor or other chief civil officer of any city or other political subdivision.
  - (iv) A notary public.
- (v) A person residing in, or going to, the country where the acknowledgement or proof is to be taken, and specially authorized for that purpose by a com-

mission issued to him or her under the seal of the superior court.

(vi) Any person authorized, by the laws of the country where the acknowledgement or proof is made, to take acknowledgements of conveyances of real estate or to administer oaths in proof of the execution thereof.

34-12-3. Acknowledgements in good faith before person claiming to be authorized — **Penalty for misrepresentation.** — Any acknowledgement made in good faith before a person claiming to be one of the foregoing officials authorized to take acknowledgements within the respective jurisdictions as above, shall be valid, although the official before whom the acknowledgement is made was not duly qualified in that office; but every person who shall, within this state, willfully take and certify to the taking of any such acknowledgement, without being lawfully qualified thereunto, shall be liable in a criminal proceeding to a fine not exceeding fifty dollars (\$50.00), one-half (1/2) to the use of the complainant and the other half thereto to the use of this state

34-12-4. Instruments executed by diplomatic officials outside United States.— Every instrument requiring acknowledgement, executed without the limits of the United States, concerning lands lying within this state, in which instrument any ambassador, minister, charge d'affaires, consul general, vice-consul general, consul, vice-consul, consular agent, commercial agent, of the United States, or commissioner appointed by the governor of this state, shall be grantor, may be executed in the presence of two (2) witnesses; and when so executed, an official certificate under the hand and official seal of the grantor that such instrument is his or her act and deed shall be equivalent to an acknowledgement of such instrument in the manner required by law.

**34-12-5. Power of armed forces officers to take acknowledgements.** — In addition to the acknowledgement of instruments and the performance of other notarial acts in the manner and form and as otherwise authorized by law, instruments may be

acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed, before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army, air force, or marine corps, or with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States, by any person without the limits of the United States, and to any person who is a member of the armed forces who is within or without the limits of the United States and their lawful dependents.

34-12-6. Effect of acknowledgement before armed forces officer.— An acknowledgement of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts, made or taken before an armed forces officer, are hereby declared legal, valid and binding, and instruments and documents so acknowledged, authenticated, or sworn to shall be admissible in evidence and eligible to be recorded in this state under the same circumstances and with the same force and effect as if the acknowledgement, attestation, oath, affirmation, deposition, affidavit, or other notarial act had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

**34-12-7.** Contents of certificate of armed forces officer.— In the taking of acknowledgements and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument or documents, which shows the date of the notarial act and which states, in substance that the person appearing before the officer acknowledged the instrument as his or her act or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgement.

### 34-12-8. Proof of authority of armed forces

**officer.**— If the signature, rank, and branch of service or subdivision thereof, of any such commissioned officer appear upon such instrument or document or certificate, no further proof of authority of the officer so to act shall be required and the action by the commissioned officer shall be prima facie evidence that the person making the oath or acknowledgement is within the purview of \$\mathbb{S}34-12-5—34-12-7.

34-12-9. Validation of prior acknowledgements **before foreign notary public.**— Any acknowledgement taken or made prior to April 27, 1928, of or upon any instrument used in conveying, directly or indirectly, any interest in real estate in this state, including power of attorney, and any other instruments heretofore acknowledged prior to April 27, 1928, before any notary public in any foreign country or territory without the United States, which instrument appears of record to have been duly recorded in any of the records of land evidence in this state, and the acknowledgement therein appearing was taken before a notary public outside the United States, which notary public was duly commissioned in the foreign place where the acknowledgement was taken, to take the acknowledgement, and the acknowledgement is accredited, approved or affirmed, or the commission of the foreign notary public is, attested or certified by any ambassador, minister, charge d'affaires, consul general, vice-consul general, consul, vice consul, or consular agent of the United States, or any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army, air force, or marine corps, or with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component of the armed forces of the United States, duly establishing the fact that the notary public was at the time of taking the acknowledgement duly authorized by the law, rules or regulations of his or her particular country or territorial section thereof, in which the acknowledgement was taken, to duly administer oaths or take acknowledgements, then the acknowledgement and conveyance in connection with which

the acknowledgement was taken shall, for the purpose of the acknowledgement and execution thereof, be deemed a valid ackknowledgement, and shall have the same effect as if acknowledged before a notary public in this state.

# TITLE 36 CHAPTER 2 POWER OF OFFICERS TO ADMINISTER OATHS

### SECTION.

- **36-2-1.** Officers with statewide powers.
- **36-2-2.** Officers with power in county or town.
- **36-2-3.** Power in connection with duties of office.
- **36-2-4.** Fees for acknowledgements and engagements.

**36-2-1. Officers with statewide power.**— The following persons may administer oaths anywhere within the state: the governor, lieutenant governor, secretary of state, attorney general, assistant attorneys general, general treasurer, active and retired justices of the supreme, superior, family and district courts, each member of the general assembly after he or she has filed his or her signature with the secretary of state, commissioners appointed by other states to take acknowledgements of deeds and depositions within this state, and notaries public.

# **36-2-2.** Officers with power in county or town.— The following persons may administer oaths within the respective counties and towns for which they may be elected or appointed to office: clerks of courts, justices of the peace, mayors of cities, judges of probate, presidents of town councils, or persons acting as such, town clerks, and

**36-2-3. Power in connection with duties of office.**— The following persons may administer oath in relation to all matters connected with, or in

town wardens.

administering the duties of, their respective offices: The director of each state department, forepersons of grand juries, members of committees of either house of the general assembly or of joint committees thereof, chairpersons of committees of either board of a city council or of joint committees thereof, members of town councils, auditors, referees, masters in chancery, commissioners on insolvent estates, the bank commissioner, the insurance commissioner, the securities commissioner, the tax administrator, the public utilities administrator, assessors of taxes, and other officers as may be authorized by the acts creating their respective offices to administer oaths.

# **36-2-4. Fees for acknowledgements and engagements.**— To all officers empowered to take acknowledgements of deeds and administer oaths of engagement to office, there shall be allowed:

# TITLE 9 COURTS AND CIVIL PROCEDURE — PROCEDURE GENERALLY

### 9-17-3. Subpoenas issued by other officials.—

Auditors, referees, masters in chancery, and commissioners may issue subpoenas to witnesses in all cases and matters pending before them, respectively; and justices of the peace and notaries public may issue subpoenas to witnesses in any case, civil or criminal, before any court, and in any matter before any body or person authorized by law to summon witnesses.

### 9-18-1. Officials authorized to take deposi-

**tions.**— Any justice of the supreme or superior or family court, justice of the peace, or notary public may take the deposition of any witness to be used in the trial of any civil suit, action, petition, or pro-

ceeding in which he or she is not interested, nor counsel, nor the attorney of either party, and which shall then be commenced or pending in this state, or in any other state, or in the District of Columbia, or in any territory, government, or country.

# CONTACTING THE OFFICE OF THE SECRETARY OF STATE

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# Notes

# Notes