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**GLOSSARY**

**TEXAS NOTARY PUBLIC LAW**
Thank you for your interest in our Texas Notary Public Manual. Adhering to notary law and sound notary practices will ensure your success and help you reduce liabilities and lawsuits resulting from notarial errors or omissions. Learning to avoid conflicts of interest and to recognize unlawful notary requests adds professionalism to your practice and ensures your compliance with the law.

Notaries across the country frequently face penalties and charges for failing to follow proper notarial procedures or for performing unlawful notarial acts. For example, a notary may notarize a signature on a document when the signer isn’t present, neglect to require proper identification from a signer, or perform an improper notarization at the request of an employer, family member, or friend. It is vital that you adhere to notary laws and sound notary practices to avoid lawsuits that may result in the suspension or revocation of your notary commission, severe financial penalties, criminal charges, or even imprisonment.

In fact, according to the Idaho Secretary of State’s office, “[o]ne of the fast-growing areas of litigation in the country is action against notaries for losses caused by improper notarial acts.”

There is a direct correlation between education and reduction of liability, and it is in every notary’s best interest to obtain quality education on proper notarization principles. The American Association of Notaries, Inc. offers a modestly priced Texas Notary Online Training Course at www.becomeanotarypublic.com. If you have not yet completed this course, it is recommended that you do so immediately.

This book is not a substitute for legal advice. The American Association of Notaries, Inc. neither practices law nor gives legal advice.

The American Association of Notaries, Inc. attempts to provide quality information, but makes no claims, promises, or guarantees about the accuracy, completeness, or adequacy of the information contained in this manual. Readers should not act upon this information without first consulting with an attorney.

By using this manual you agree that the American Association of Notaries, Inc. or American Association of Notaries, its owners, officers or shareholders shall not be liable for any damages suffered as a result of using, modifying, contributing, copying, distributing, or downloading these materials. In no event shall the American Association of Notaries, Inc. or American Association of Notaries, its owners, officers or shareholders be liable for any indirect, punitive, special, incidental, or consequential damage (including but not limited to loss of business
revenue, profits, use, data or other economic advantage), however it arises, whether in an action of contract, negligence, or other tortuous action, arising out of or in connection with the use or performance of information available from this manual.

The American Association of Notaries, Inc. is the Texas notary’s premier source for information and education. Visit our website, www.texasnotary.com, for all your bonding, errors and omissions insurance, online notary training, and notary supply needs. Sign up for membership in our organization today and benefit from our expertise and quality products. We make it our business to serve you.

Thank you.

American Association of Notaries, Inc.
Chapter 1

WHY IS A NOTARY SO IMPORTANT?

NOTARY PUBLIC DEFINED

A notary public is a person of proven integrity appointed by the Texas Secretary of State to serve the public as an impartial witness in taking acknowledgements, administering oaths and affirmations, and performing other notarial acts authorized by law.

According to the Texas Secretary of State’s office,

“The primary duty of a Notary Public is to show a disinterested party (the Notary Public) has admonished the signer of an instrument as to the importance of such document, and the signer of such document has declared that his/her identity, his/her signature and his/her reasons for signing such instrument are genuine. The signature and seal of a Notary Public do not prove these facts conclusively, but they do provide prima facie proof of them, and allow persons in trade and commerce to rely upon the truth and veracity of the Notary Public as a third party who has no personal interest in the transaction.”

The office of notary public is a ministerial office. An Ohio lawsuit in 1933 (Ex Parte Bevan, 126 Ohio St. 126) clearly established that notaries are ministerial, and not judicial, officers of the state. Black’s Law dictionary defines ministerial as “of or relating to an act that involves obedience to instruction or laws instead of discretion, judgment, or skill.” Notarial acts do not involve judicial discretion or significant legal judgment.

However, a notary’s role is quasi-judicial in that notaries are required to exercise some discretion, for example by making a layman’s determination of a signer’s competency or by determining if the identification presented by the signer is satisfactory.

So, while the notary public’s position is not an executive, judicial, or legislative one, it is a role of great importance and should be taken seriously by notaries and by the public they serve.

THE IMPORTANCE OF A NOTARY IN SOCIETY

Notaries hold a position of trust in our society and play an essential role in our legal and commercial systems. The public relies upon notaries to ensure integrity in the execution and signing of business, personal, and legal documents. Properly notarized documents can help bind agreements, prevent disputes, and deter
fraud. Notaries should be proud to serve the public in such a vital role, and they should be appreciated and rewarded for their diligence and proper adherence to laws in that service.

As long as people continue to do business, they will continue to value the services and security that notaries provide.

**ORIGIN AND HISTORY OF THE OFFICE**

The office of the notary public is the oldest surviving branch of the legal profession. The function of the notary can be traced back to pre-biblical times, when ancient Egyptians and Greeks employed individuals to perform notarial-like duties.

In ancient Rome, public officials called scribes were responsible for the writing and recording of facts or speeches, as well as the transcribing of documents. Many of these scribes grew in prominence to become permanent members of the Roman senate and were responsible for recording judicial proceedings, transcribing government papers, supplying legal forms, and registering the decrees and judgments of magistrates. Subsequently, the term notarius (“one who takes notes”) was applied exclusively to record-keepers associated with high-level government officials.

Notaries continued to remain prominent in Europe throughout history. They were central figures in the rise of civil law in medieval Italy. In the 13th and 14th centuries, notaries were often clergyman appointed by representatives of the Pope.

**THE NOTARY IN THE NEW WORLD**

As this country became established, notarial services became necessary. In 1639, Connecticut (then called New Haven) appointed the first notary public, and other settlements followed suit with New Amsterdam (New York), Massachusetts, and Virginia appointing notaries. In the beginning, newly formed legislatures appointed the first notaries. Through the years, states developed laws and requirements for notaries that have grown to include an extensive and thorough definition of duties, jurisdiction, and responsibilities.

**THE NOTARY IN TEXAS**

On February 28, 1845, the Congress of the United States extended an offer to the Republic of Texas to join the Union as the 28th state. The “Annexation of Texas” was accomplished on December 29 of that year, and on February 19, 1846, the flag of the Republic was lowered for the last time. This resulted in the establishment of the United States as a power that stretched from the Atlantic to the Pacific. Texas becoming a U.S. state was an event of incalculable importance to world history.
The Texas Constitution of 1845 authorized “a convenient number of notaries, not to exceed six for each county.” A constitutional amendment in 1940 established that the Secretary of State was responsible for the appointment of notaries. Since then, Texas notary laws have evolved from a few paragraphs to a comprehensive collection of statutes carefully crafted to protect the public and the notary.

Your role as a Texas notary will gain increasing importance as we enter the electronic environment of the 21st century. Laws are being revised on both state and national levels to further the notary’s involvement in interstate and international commerce. As Texas statutes change, the AAN will keep notaries informed of new laws that affect them.

**U.S. NOTARIES VS. NOTARIES IN OTHER COUNTRIES**

Notaries in many other countries have the authority to draft legal documents and perform other attorney-like duties, as well as the power to perform notarial acts. The authorized duties of U.S. notaries’ are drastically limited by comparison. (Notaries in Louisiana and Puerto Rico, however, have extended duties similar to those of civil-law notaries in Europe.)

Since notaries in the U.S. are commissioned by their respective states, their authorized acts and requirements of office vary slightly. Notably, in all states, notaries public (note that the plural is notaries public, NOT “notary publics”) have the power to administer oaths (sworn affidavits, for example) and take acknowledgments.

With few exceptions, U.S. notaries are restricted to performing notarizations only within the state that has commissioned them.
UNDERSTANDING THE OFFICE OF NOTARY PUBLIC

WHO APPOINTS NOTARIES?

Texas Constitution article IV, §26; Tex. Gov’t. Code §406.001; §406.012; Tex. Admin. Code §87.2(a)

The Secretary of State’s office is solely responsible for appointing Texas notaries and maintaining their commission records and bonds. The Secretary of State handles the commissioning process and all records, including complaints against notaries.

Contact the Texas Secretary of State’s Office:

Office of the Secretary of State
Notary Public Unit
P. O. Box 13375
Austin, TX  78711-3375
(512) 463-5705
Website: www.sos.state.tx.us/statdoc/notary-public.shtml
Email: notary@sos.texas.gov

NOTARY’S AUTHORIZED DUTIES

Tex. Gov’t. Code §406.016

Texas statute limits a Texas notary’s authority to five basic notarial acts:
• Taking acknowledgments
• Administering oaths and affirmations
• Taking depositions
• Certifying copies of documents not recordable in the public records
• Protesting instruments

Notarization is a generic term used by notaries and the general public. In most cases, a notary is required to take an acknowledgment or administer an oath and to complete a notarial certificate when performing a notarial act. A document that does not contain a notarial certificate cannot be notarized without first determining the type of notarial act that is desired by the signer and attaching an appropriate notarial certificate.
It is important to know that affixing a notary’s signature and seal on a document does not legalize, validate, or certify the truthfulness of a document. However, a properly notarized document enables a higher level of trust among the parties involved in a business transaction, thus giving them the confidence to proceed even if they have never met.

**NOTARY’S UNAUTHORIZED DUTIES**

**Tex. Admin. Code §87.31**

As mentioned in the previous section, notaries are limited in the type of notarial acts they can perform. Many notaries unintentionally go beyond their authorized duties and face penalties. A notary is strictly prohibited from using his or her notary seal or title for non-notarial services, advertising as an immigration consultant, issuing identification cards, giving advice, helping to prepare legal documents, or providing any other assistance that could be considered “practicing law without a license,” or “the unauthorized practice of law.”

You should make it a rule of thumb to never exercise a duty that is not clearly prescribed by law.

**JURISDICTION**

**Tex. Gov’t. Code §406.003**

Texas notaries have statewide jurisdiction. They have absolutely no jurisdiction outside of the State of Texas.

In Garza v. Serrato, 699 S.W.2d 275 (Tex. App.-San Antonio 1985), the record showed that a doctor’s videotaped deposition was taken before a certified shorthand reporter and a Texas notary public in a medical office in Coahuila, Mexico, just a few blocks from the Mexican border. The court ruled that the notary had no authority to administer an oath or take an affidavit outside of the State of Texas for use in Texas courts.
NOTARY QUALIFICATION & APPOINTMENT

STEPS TO BECOME A NOTARY
Tex. Admin. Code §87.10; §87.13; Tex. Gov’t. Code §406.004; 406.006; 406.007 & 406.10

To be appointed as a Texas notary public, you must:

• Be at least 18 years old and a legal resident of Texas
• Have not been convicted of a felony or crime involving moral turpitude (wrongdoing)
• Submit the required application forms to the Secretary of State
• Obtain a notary bond in the amount of $10,000 from a bonding or insurance company authorized to do business in Texas
• Pay the state fees ($21)
• Execute the statement of officer and oath of office as required by Section 1, Article XVI of the Texas Constitution

The Secretary of State’s office may also require additional information to determine if an applicant is eligible for a notary commission.

The American Association of Notaries will handle your commission application process from start to finish. When your commission is issued, the AAN will manufacture your notary stamp. The AAN can also handle your notary commission renewal at the end of your term.

NOTARY APPLICATION PROCESS FOR STATE EMPLOYEES
Tex. Admin. Code §87.20 & 87.21

State employees who wish to become notaries at the request of their employer (i.e., the State of Texas) must use application form 2301-NB, “An Application for Appointment as a Notary Public without Bond.” This process differs from an ordinary notary application in that the applicant is not required to post a surety bond with the Secretary of State. The state agency that is employing the applicant must submit the application to the State Office of Risk Management, which will in turn complete the verification section on the application and forward it with the $21.00 fee to the Secretary of State’s office for processing. If the notary transfers to another state agency, that agency must notify the State Office of Risk
Management and the Secretary of State concerning the transfer.

In contrast to notaries with bonds:

- State employees or officers who have become notaries through their employment with the State of Texas cannot notarize outside the course of their employment.
- Stamp requirements for state notary employees are the same as prescribed in Tex. Gov’t. Code §406.013, but such stamps must also include the wording “Notary without a Bond.”
- If a notary with this type of commission wishes to perform notarial acts for the general public, then he or she must resign and apply for a new notary commission with a bond for that purpose.

**OATH OF OFFICE**
Tex. Gov’t. Code §406.008 & §406.010(c)(d)

The Secretary of State will mail or email a notary commission certificate immediately after a notary’s application is approved, along with the oath of office form, materials outlining the powers and duties of the office, a list of prohibited acts, and a sample form of an acknowledgment, jurat, and oath.

You cannot begin performing notarial acts until you take the official oath of office as required under Section 1, Article 16, of the Texas Constitution. The oath form must be signed in front of a notary public or another person authorized to administer an oath. A notary cannot execute his or her own oath of office.

**REJECTION OF A NOTARY APPOINTMENT**
Tex. Admin. Code §87.30; §87.31; Tex. Gov’t. Code §406.009

The Secretary of State may deny a notary appointment for ineligibility or “good cause” as prescribed in Tex. Gov’t. Code Ann. §406.009; Tex. Admin. Code §87.30 & §87.31. Also, applications that contain errors or that are improperly completed will be rejected. The Secretary of State will notify the submitter electronically of any errors or of what is needed to make the application acceptable.

**NOTARY SEAL REQUIREMENTS**
Tex. Gov’t. Code §406.013; Tex. Admin. Code §87.44 & 87.31(22)

Texas law requires you to affix your notary seal to every document you notarize at the same time the notarization takes place. This seal authenticates the notarial act. Texas notaries may use a metal embosser or an inked stamp to affix their notary seals. The seal impression may be either circular or rectangular, and must include –

- the notary’s name exactly as commissioned
• the notary’s commission expiration date
• the notary’s ID number
• the words “Notary Public, State of Texas” around a star of five points
• a serrated or milled edge border that conforms to one of the following shapes:
  1. a rectangular form of not more than 1 inch in width and 2 1/2 inches in length or
  2. a circular form of not more than 2 inches in diameter

The notary seal must clearly imprint the required elements when affixed on a document. Permanent ink must be used when using an inked stamp; dark ink is strongly recommended. When using an embossing seal, you must darken the raised letters of the impression so the required notary seal elements are reproduced legibly when the document is scanned or copied. To order an impression inker, contact our office at 1-800-721-2663 or visit our website at www.texasnotary.com.

Notaries should always keep record books and notary seals under their exclusive control and locked securely in a drawer or other safe place. Never share your notary seal or record book; they are strictly for your use. If you leave your employer, take your seal and record book with you.

Failure to maintain notary materials safely and securely is a good cause of disciplinary action or revocation of your notary commission.

### NOTARY’S OFFICIAL NAME

Tex. Admin. Code §87.2(1)

When you are completing the notary application, it is important to select a name that you will be comfortable using as a notary. This will be the official notary name that you use when notarizing documents. Your notary commission certificate and your notary stamp will also be issued using the same name you indicated on the notary application. After your appointment, it will be costly and time consuming to change the name, so give it some thought.

The name you choose must be your legal name, a nickname based on your legal name, or any variation or preference of your legal name. For example, John Doe can apply using the following variations of his legal name:

- John Doe  
- J. T. Doe  
- J. Doe  
- John T. Doe  
- Johnny Doe
NOTARY’S OFFICIAL SIGNATURE
Tex. Gov’t. Code §406.016 (b); Tex. Admin. Code §87.1 (d)

You are recommended to sign your notary application using the exact name you used on the application. For example, if John is applying for a notary commission using the name “John T. Doe,” then John can sign “John T. Doe” when signing the notary application and when performing notarial acts.

TERM OF OFFICE

Texas notaries are commissioned for a four-year term. It is unlawful to perform notarial acts after your term of office has expired without first renewing your notary commission and obtaining a new seal.

NOTARY BONDS VS. ERRORS AND OMISSION INSURANCE
Tex. Gov’t. Code §406.010; Tex. Admin. Code §87.2(c) & §87.13(b)

As with other public officials, a Texas notary is required to post a $10,000 notary bond to protect members of the public against losses that may result from improper notarial acts performed by a notary. However, a notary bond does not protect the notary against liability from mistakes. Even if a lawsuit is not valid, Texas notaries could still face high legal bills for defending themselves in court. If a member of the public files a claim against a notary’s bond, the bonding company is very likely to sue the notary to recoup the funds it paid on the notary’s behalf. This is where notary errors and omissions insurance (commonly known as “E&O” or “E&O insurance”) is vital.

Currently, Texas law does not require notaries to carry E&O insurance, but it is a wise practice for all notaries to do so. This insurance is your first line of defense; it will cover any unintentional errors on your part, such as completing a certificate incorrectly or inadvertently accepting a forged identification document. This insurance will not cover intentional violations of the law, such as notarizing a document without the signer being physically present.

If someone sues you over unintentional notary misconduct, your E&O insurance policy will pay your legal expenses. These reasonably priced policies are available with different coverage limits, ranging from $5,000 to $100,000. We recommend that you maintain E&O insurance that covers at least the amount of your notary public bond. Remember: notary bonds protect the public; errors and omissions insurance protects the notary.

The American Association of Notaries is a leading provider of both notary bonds and notary E&O insurance policies for notaries across the United States. For more information, please contact AAN by calling (800) 721-2663 or by visiting our website at www.texasnotary.com.
MAINTAINING YOUR NOTARY COMMISSION

REAPPOINTMENT

Notary commissions are not automatically renewed. You must apply to renew your notary commission every four years. Your notary commission appointment expires 4-years after the commission effective date listed on your notary commission certificate. Keep in mind that the Texas Secretary of State will not notify you that it is time to renew; it is your responsibility as a notary to renew your commission before it lapses. If the commission appointment lapses, you must cease performing notarizations and apply as a new applicant.

The process to renew your commission is the same as the process for applying to become a notary for the first time. You must complete a new application, pay the $21.00 state filing fee, purchase a new notary bond and stamp, and take a new oath of office. If desired, you may change your notary official name on your commission certificate.

If all the information on the application is complete, the renewal process takes from three to ten working days. The Texas Secretary of State will not accept a renewal application submitted more than 90 days before the commission expiration date.

Do not start using your new stamp until your current commission expires. When you begin using your new stamp, destroy the old one so that it can’t be used for fraudulent purposes.

You may renew your commission online at www.texasnotary.com.

ADDRESS CHANGE
Tex. Gov’t. Code §406.019; Tex. Admin. Code §87.60

If your address on file with the Secretary of State changes, it is mandatory that you notify the state within ten days of the change.

You can update your new address information online at https://webservices.sos.state.tx.us/notary/index.aspx or by completing and mailing “Form 2302 Notary Public Change of Address” to:
Office of the Secretary of State Notary Public Unit  
P. O. Box 13375  
Austin, TX 78711-3375

The Secretary of State sends all official notices, including notices of complaints and requests to respond to complaints, to the notary public at the address on file with the state. Failure to change the address may, consequently, result in a revocation of the notary commission if, for example, the notary fails to respond in a timely manner to a complaint or to a request for public information.

The American Association of Notaries recommends that you contact your bonding agency immediately upon making a change of address or any contact information in order to ensure prompt receipt of any mailings, including your renewal information.

NAME CHANGE ON A NOTARY COMMISSION

Tex. Admin. Code §87.61 & 87.62

If your legal name changes through marriage or divorce, you are not required by law to change your name on your notary commission as long as you continue using your official notary name on file with the Secretary of State. However, if you want to perform notarial acts using your new name, you must submit the following to the Secretary of State:

• A completed Name Change Application Form 2305.
• A rider or endorsement to the bond on file with the Secretary of State from the bonding company reflecting your new notary name.  
  (Contact AAN for assistance.)
• Your current notary commission certificate.
• A fee of $20.00.

Important! If you choose to change your name, you must refrain from performing any notarial acts from the time you submit your name change application to the Secretary of State until you receive your updated notary commission certificate. You must take a new oath of office and obtain a new notary stamp that is engraved with your new name. Destroy your old stamp immediately to prevent fraudulent use.

RESIGNATION

Tex. Gov’t. Code §406.020; §406.022; Tex. Admin. Code §87.60(c)

If you move out of the State of Texas, or if you simply choose to terminate your notary commission, you must resign your commission by writing to the Secretary of State’s office and advising them of the resignation. Send your notary commission certificate and signed letter of resignation to:
Send a copy of your resignation letter to your bonding agent and deliver your notary public record book to the county clerk’s office of the county in which you reside. Be sure to destroy your seal so that it cannot be used fraudulently.

**NOTARY FEES AND RECORD KEEPING**

Tex. Gov’t. Code §406.014; 406.024; Tex. Admin. Code §87.31(19)

Notaries are required to record, in a notary record book, the details of each notarization performed, including every fee charged. Failure to properly record notarial acts may result in disciplinary action by the Texas Secretary of State or revocation of your notary commission. Please refer to Chapter 6 for details on record keeping and Chapter 7 for allowable fees for notarial acts.

**SUSPENSION OR REVOCATION OF COMMISSION**

Tex. Gov’t. Code §406.018; Tex. Admin. Code §87.10; 87.30 & 87.31

A notary can be removed from office for malfeasance or willful neglect of duty or if the notary was convicted of a felony or a crime involving moral turpitude or class A or B misdemeanors that have not been set aside or for which no pardon or certificate of restoration of citizenship rights has been granted. A crime involving moral turpitude means a crime involving dishonesty, fraud, deceit, misrepresentation, deliberate violence, or one that reflects adversely on a person’s honesty, trustworthiness, or fitness to be a notary.

The law gives authority to the Secretary of State to revoke or suspend a notary public’s commission for “good cause” as defined by Tex. Admin. Code §87.31. This includes:

1. A false statement knowingly made in a notary public application
2. A final conviction for the violation of any law concerning the regulation of the conduct of notaries public in this state or any other state
3. Use of the phrase "notario" or "notario publico" in connection with advertising or offering the services of a notary public
4. False representation as an attorney as specified in §406.017, Government Code
5. A failure to discharge fully and faithfully any of the duties or responsibilities required of a notary public
6. The unauthorized practice of law
7. A failure to utilize a correct notary seal as described in §406.013 and §406.101(5), Government Code and this chapter
8. A failure to administer an oath or affirmation as required by law
10. The execution of any certificate as a notary public containing a statement known to the notary public to be false
11. A failure to complete the notarial certificate at the time the notary public’s signature and seal are affixed to the document;
12. Advertising or holding out in any manner that the notary public is an immigration specialist, immigration consultant, or any other title or description reflecting an expertise in immigration matters
13. The use of false or misleading advertising of either an oral or written nature, whereby the notary public has represented or indicated that he or she has duties, rights, powers, or privileges that are not possessed by law
14. Performing a notarization when the purported principal did not personally appear before the notary public at the time the notarization was executed
15. Previous disciplinary action against the notary public in accordance with these sections
16. A failure to comply with, or a violation of, a previous disciplinary action taken pursuant to §87.34 of this title (relating to Disciplinary Action)
17. A failure to promptly respond to a request for public information in accordance with §87.52 of this title (relating to Public Information)
18. A failure to properly identify the individual whose signature is being notarized
19. A failure to keep a notary record as described in §406.014 and §406.108, Government Code, and Chapter 87 of this title
20. A failure to include in the notarial certificate for an online notarization a notation that the notarization is an online notarization
21. A failure to take reasonable steps to ensure that the two-way audio-visual communication used during an online notarization is secure from unauthorized interception
22. A failure to maintain notary materials safely and securely
23. Performing a notarial act that the notary public is not authorized to perform
24. Use of a digital certificate or electronic seal that has expired or is no longer valid
25. A failure to report a new digital certificate or electronic seal as required by §87.63 of this title (relating to Changes to Digital Certificate and Electronic Seal for Online Notary)
26. Notarizing one’s own signature
27. A failure to pay the filing fee required by §406.007, Government Code, and §87.13 and §87.14 of this title (relating to Issuance of the Traditional Notary Public Commission by the Secretary of State and Issuance of the Online Notary Public Commission by the Secretary of State) or when such
payment was made by an instrument that was dishonored when presented by the state for payment

28. A failure to respond in a timely manner to a request for information from the Secretary of State

29. A failure to maintain a current address as required by §406.019, Government Code

DEATH OF A NOTARY PUBLIC

Tex. Gov’t. Code §406.022

It is also important at the beginning of your term to place a note or instructions on the first page of the record book detailing what actions your personal representative must take in the event of your death. We recommend that every notary include the following instructions on the first page of the record book:

Upon my death, please —

• Deliver this record book to the county clerk’s office [provide the address].
• Destroy or deface my notary stamp to prevent any unauthorized use.
• Notify the Secretary of State in writing and return my notary commission certificate to —

Office of the Secretary of State Notary Public Unit
P. O. Box 13375
Austin, TX 78711-3375
THE NOTARY’S LIABILITY

CIVIL LIABILITY
Tex. Civ. Prac. & Rem. Code §121.014

According to Texas law, “...a person injured by the failure, refusal, or neglect of an officer to comply with a provision of this chapter has a cause of action against the officer to recover damages resulting from the failure, refusal, or neglect of the officer.”

In other words, notaries can be sued for negligence or wrongful acts. Many notaries are unaware that they have total liability for damages caused by notarial errors or improper notarial acts.

If a notary is negligent or makes an error that causes financial loss to a client, the client could sue, even if the notary had no idea of the wrongdoing. Ignorance of the law is not considered an excuse.

If a notary is sued and the notary’s bonding company pays the claim, the notary is then expected to repay the bonding company for the amount paid.

CRIMINAL LIABILITY

Any breach of Texas notary law by a notary, whether intentional or not, constitutes “official misconduct,” which means unauthorized, unlawful wrongdoing, including abusive, negligent, reckless, or injurious performance of a duty.

For instance, if a notary executes a notarial certificate that states “sworn to and subscribed before me,” yet the notary intentionally did not administer an oath or witness the signer sign the document, the notary would be committing an act of intentional misconduct. Notaries accused of intentional misconduct may face criminal charges, fines, or even imprisonment. (A guilty verdict for almost any type of crime is good cause for revocation of a notary’s commission.)

STEPS TO AVOID LIABILITY

Notaries must never bend the rules for anyone, especially for friends or family. Notaries should use reasonable care when performing notarial acts, adhere to proven principles and notary laws, and carefully document every notarial act and fee in a record book.
The next few sections list a few items that every notary must know. Study this section very carefully to avoid serious liabilities that could include charges, fines, and even imprisonment.

1 - Record All Notarial Acts in a Record Book

A Texas notary is required to maintain in a record book specific details about every notarial act performed.

A record book provides protection in the event that the notary is requested to testify about a notarial act. For instance, if a signer insists that he or she never signed a document, but did in fact appear before the notary on a particular date, the notary will have the notarial act documented in the record book to prove it.

2 - Identify Signers Properly

If you do not know the signer personally, you must insist on examining acceptable identification documents. Alternatively, a credible witness must appear before you and take an oath regarding the identity of the signer. Never rely on a copy of any identification document to identify a signer. Only current, original, government-issued identification documents should be used. (Properly identifying signers will be discussed in Chapter 14.)

3 - Require the personal appearance of the signer(s)

Many acts of notarial misconduct stem from an employer pressuring a notary to perform notarial acts without the signer present and from family or friends requesting favors that involve breaking the law. You must be firm and remind employers, family members, and friends that as a notary public, the allegiance you owe to the State of Texas supersedes your duty to an employer and your valued relationships with friends and family. Make no exceptions to any rule for any reason.

4 - Avoid Unauthorized Practice of Law

Clients from foreign countries often expect notaries to be able to advise them regarding immigration matters and the preparation of wills and other legal documents. Some people even expect notaries to be able to represent them in court. Unless you are an attorney, you may not give legal advice or accept fees for legal advice.

A notary public who participates in such unlawful practices may be charged with a Class A misdemeanor for the first offense and a third-degree felony for each subsequent offense. Notaries may also face a charge of deceptive trade practices as described in Chapter 17, Business & Commerce Code and Tex. Gov’t. Code § 406.017 (d) (e) (f).
5 - Avoid Conflict of Interest

A notary who stands to gain (even nominally) from a transaction, apart from his or her notarial fee, may not act as a notary in that particular transaction. If you are not sure if you stand to gain from notarizing a document, ask yourself these three questions: Are you named in the document? Do you care whether the document is signed by the signer? Will you, your spouse, or any close relative or close friend benefit from the transaction? If you cannot decisively answer “no” to all three questions, you must refuse to notarize the document.

6 - Unlawful Advertisement

Notaries in Latin America and other countries are actually lawyers, or persons with significant legal training, who have the authority to draft legal documents and give legal advice, whereas notaries in Texas and most other states do not have this authority. It is illegal for a notary in Texas to advertise himself or herself as a “notario publico” or to translate the phrase “notary public” into any language other than English.

A notary public who is not an attorney and who advertises his or her services as a notary public in any language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, MUST also include with the advertisement a notice that the notary public is not an attorney.

In addition to English, the notice must also be written in the language of the advertisement, appearing in letters of a conspicuous size. If the advertisement is made by radio or television, the statement may be modified, but must include substantially the same message. The notice must include the fees that a notary public may charge, along with the following statement:

“I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”


7 - Avoid Prejudice and Discrimination

Notaries must treat all persons with respect; they must never discriminate or refuse to provide notarial services based on a person’s race, age, sex, ethnic background, national origin, religion, or sexual orientation. Doing so is unacceptable. There are several valid reasons why a notary may refuse to notarize for a client (as will be discussed in Chapter 15); however, discrimination is not among them.
8 - Charge Lawful Fees and Provide Itemized Receipts

A Texas notary may charge no more than the maximum fee allowed by law. Overcharging by just one cent is good cause to revoke a notary’s commission (Tex. Admin. Code §87.31(9)). Texas law does not, however, prohibit notaries from charging their clients for business-related services in addition to the notary fees allowed by law. For instance, if a notary travels to a customer’s home or business to notarize documents, the notary may charge a reasonable travel fee in addition to notarial fees. However, before departing for the meeting location, the notary should discuss the fees with the client.

Always provide clients with an itemized receipt that separates notary fees from non-notary fees (such as travel, postage, copies, etc.) and list those itemized fees in your record book.

9 - Use Reasonable Care and Good Judgment

When performing notarial acts, use reasonable care and good judgment as any prudent notary would do under similar circumstances. Visually scan documents for blanks, scrutinize identification documents for authenticity, and make detailed entries in your record book to document every notarial act that you perform. Never notarize a signature when you feel the signer is being coerced into signing a document or if you have reason to suspect fraud.

Finally, as allowed by Tex. Admin. Code §87.42, you may decline to notarize a document if you are unfamiliar with certain types of notarial acts. In such cases, suggest that the client contact another notary who may be able to accommodate him or her.

10 - Obtain Training

There is a direct correlation between education and reduction of liability, and it is in every notary’s best interest to obtain quality education on proper notarization principles. Notaries of proven integrity generally exhibit the characteristics of someone who has been well-trained in his or her duties. They realize the seriousness of their roles as notaries public and recognize that they are responsible for educating themselves on notarial laws.

For this reason, the AAN created the Texas Notary Online Training Course as an enhancement to this manual. The Texas Notary Online Training Course teaches the established standards of sound notary practices. It also outlines unique and seldom-requested notarial acts so that notaries are equipped for any situation and can quickly build a reputation as knowledgeable assets to the community. New and experienced notaries alike will benefit from the AAN’s online training course available at www.becomeanotarypublic.com.
11 - Stay Informed of Changes to Notary Laws by Joining a Professional Notary Organization

Notary laws can change without warning. Texas notaries will benefit greatly by becoming members of a professional notary organization, such as the American Association of Notaries, through which they will receive updates and news on changes in notary law, information on proper notarial procedures, expert advice, assistance with notary questions and concerns, and commission renewal reminders. We (the AAN) make it our business to keep you informed. Make sure you are on our mailing list to receive our newsletters and notary bulletin updates. You can sign up at http://texasnotary.com/signup.asp.

12 - Carry Errors and Omissions Insurance

Many notaries feel that having errors and omissions insurance (E&O) is the best way to limit their liability related to notarial errors or oversights. This type of insurance policy is extremely affordable and strongly recommended for all Texas notaries. E&O covers legal fees and losses; however, it does not cover fraudulent acts intentionally performed by a notary.
RECORDING NOTARIAL ACTS

WHY RECORD KEEPING IS VITAL

Texas law requires every notary to record specific information about every notarial act he or she performs and provide a certified copy to the public upon request.

Even when you refuse to notarize or you do not charge for your notarial services, you must document those events in your record book. (A notary’s record book may also be referred to as a “journal of notarial acts” or a “journal.”)

Most people have difficulty remembering what they were doing three years ago on a given day; notaries are no exception. Records clearly documented in a journal enable the notary to testify confidently in a court of law regarding a particular notarization and the signer who made a personal appearance at that time.

The American Association of Notaries recommends that Texas notaries complete record book entries prior to performing a notarial act so that all necessary information is recorded properly before the signing parties leave.

INFORMATION TO BE RECORDED

Tex. Gov’t. Code §406.014(a); Tex. Gov’t. Code §603.006; Tex. Admin. Code §87.50; §87.51

According to Texas notary law, a notary public (other than a court clerk notarizing instruments for the court) must record:

- The date of each instrument notarized
- The date of the notarization (Backdating or forward dating a notarial certificate or record book entry is an act of fraud and/or tampering with government records. Always enter the exact date and, whenever possible, the time that the notarial act was performed.)
- Type of notarial act performed
- The name of the signer, grantor, or maker
- The signer’s, grantor’s, or maker’s mailing address
- Method of identification used to identify the signer: whether the signer, grantor, or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public by a
person personally known to both the notary and the signer (If introduced, the name and mailing address of the individual introducing the signer must also be recorded.)

- If the instrument is proved by a witness, the mailing address of the witness, whether the witness is personally known by the notary public or was introduced to the notary public, and, if introduced, the name and mailing address of the individual introducing the witness

- The name and mailing address of the grantee

- If land is conveyed or charged by the instrument, the name of the original grantee and the county where the land is located

- A brief description of the instrument

- Fees charged for notary services (Tex. Gov’t. Code §603.006)

**THINGS TO KEEP IN MIND WHEN RECORDING NOTARIAL ACTS**

- **Prohibition against entering personal information in a notary record book.**

  Tex. Admin. Code §87.50 prohibits notaries from recording the signer’s Social Security number, date of birth, identification numbers that are assigned by a government agency to the signer such as passports, driver license numbers, etc., or any personal information not required to be recorded in the notary book. In addition, a notary should never retain a copy of a notarized document. A notary who violates these rules risks the suspension or revocation of his or her notary commission.

  A notary who inadvertently records information prohibited under this section must redact such information prior to providing public access to or copies of the notary record book.

- **Note any unusual circumstances.**

  If you decline a notarial act, you should note the reason in your record book. You should also reference unusual circumstances such as “the signer was physically impaired,” “vision impaired,” or “unable to read” and that you were requested to read the document for the signer.

- **Ask the signer to sign the record book.**

  Though the practice is not specifically stated in the law, it is critical that the notary request the signer of the document to sign the record book also. This proves that the signer did personally appear before you for this notarial act. The same is true for witnesses or credible witnesses. However, if a signer or other party declines to sign your record book, you should NOT refuse to perform the notarial act.
• Collecting a thumbprint or other biometric identifiers is not allowed in Texas.

Tex. Admin. Code §87.50 (3) is clear, a Texas notary is prohibited from recording any biometric identifiers including a fingerprint, voice print, or retina or iris image. A notary who inadvertently records information prohibited under this section shall redact such information prior to providing public access to or copies of the notary record book.

• Prohibition against recording a signer’s resident address

Tex. Gov’t. Code §406.014(4)

Due to privacy concerns, Texas law allows the signer, grantor, or maker of an instrument the option to provide a mailing address, rather than a residence address, to a notary public to protect the person’s privacy.

• Sharing a record book with another notary is prohibited.

Many employers allow (if not encourage) notaries to share a notary journal at their workplace. A notary must never share a journal with another notary. Maintain only one notary record book at a time, even if you work in two separate offices. Always complete entries in ink (either black or blue) to make it more difficult for entries to be altered by someone else.

• Maintaining an electronic record book is permissible.

A Texas notary may maintain the notary records electronically in a computer or other storage device as long as the electronic records are adequately backed-up and are capable of being printed in a tangible medium when requested (Tex. Admin. Code §87.51). The American Association of Notaries offers its members access to an electronic record book that complies with Texas law. Visit the AAN’s Member Center to learn more.

• Destruction, alteration, or removal of records is not allowed.

Destroying pages or altering entries (except for making legitimate corrections, as described in the next section) is a criminal violation of Texas notary law, which could result in revocation of your notary commission, fines, or even imprisonment.

CORRECTING ERRORS IN THE NOTARY’S RECORD BOOK

As a notary, you should never white-out or blacken-out incorrect information in your record book. Changes made to entries in a notary record book using correction products are not likely to be accepted in a court of law. This is especially true for entry corrections involving conveyances of real estate.
The recommended correction method is to draw a single line through the incorrect information and enter the correction right above it. Place your initials by the correction to indicate that you made the correction. This method is simple, clear, and unlikely to be challenged.

**HOW LONG TO KEEP NOTARY RECORD BOOKS**

T ex. Admin. Code §87.54; T ex. Gov’t. Code §Sec. 406.022

The best practice is to keep your notary record books permanently. However, Texas law requires commissioned notaries to keep notarial records at least until their notary commission terms expire or keep records of the notarial act for three years from the notarization date, whichever is longer.

For example, if you notarized a document on October 5, 2017, and your commission term ends on January 12, 2019, keep the record book entry of that transaction at least through October 5, 2020. In this example, three years from the date of notarization is longer than the time until the end of the commission term.

If your commission is revoked or you decide to resign or move out of state during your commission term, T ex. Gov’t. Code §406.022 requires you to return your record book to the county clerk’s office of the county in which you reside. Be sure to obtain a receipt. Also, as mentioned in Chapter 4, you should place a note in each of your record books describing where to deliver them in the event of your death.
NOTARY FEES

ALLOWABLE FEES

Tex. Gov’t. Code §406.024; Tex. Admin. Code §87.31(9)

Texas law allows notaries to charge fees for notarial services they perform. You are not required to charge a fee, but overcharging by even one cent could result in an accusation of malfeasance and the suspension or revocation of your commission. A record of all fees charged must be maintained. Most record books allocate space for fees to be recorded.

Here is a list of allowable fees for the most common notarial acts:

- Taking acknowledgments or proofs
  1. For the first signature ................................................................. $6.00
  2. For each additional signature ...................................................... $1.00
- Administering an oath or affirmation .............................................. $6.00
- Swearing a witness for a deposition .............................................. $6.00
- Taking a deposition of a witness (for each 100 words) .................... $0.50
- Certifying a photocopy .................................................................. $6.00
- Providing a copy of an entry from a notary’s record book
  (per page) .................................................................................. $0.50
- Providing a certified copy of an entry from a notary's
  record book .................................................................................. $6.00

A notary is permitted to charge up to $6.00 for completing a notarial certificate. If the same notarial certificate lists two names (i.e., a husband and wife), then the notary could charge $7.00 to complete the notarial certificate ($6.00 for the first name listed on the notarial certificate and $1.00 for the additional name).

If a customer presents a document to be signed by two individuals and the document contains two separate notarial certificates (each person’s name is listed on a separate notarial certificate), the notary in this case could charge $6.00 for completing each notarial certificate for a total of $12.00.

FEES AND EMPLOYERS

Tex. Gov’t. Code §406.024

If your employer paid for your notary commission and supplies, or if you
perform notarial services within the scope of your employment, your employer may set the amount of notarial fees (if any) that you may collect from clients (up to the maximum allowed by law). Your employer may also decide who keeps the fees.

Notaries should discuss notarial fees with their employers when they are newly hired or if/when they are asked by their employers to become notaries. Be sure to reach an agreement with your employer on this issue.

**POSTING OF FEES**

Tex. Gov’t. Code §603.008

Texas law is clear: if you are going to charge a fee for notarial services, you are required to post, at all times in a conspicuous location within your office, a fee sign listing the maximum allowable fees for all notarial acts, as set forth in Tex. Gov’t. Code § 406.024.

**RECEIPT FOR FEES**

Tex. Gov’t. Code §603.006

Always record notarial fees in your record book and provide your clients with an itemized receipt that separates notarial fees from non-notarial fees.

**FEES ARE TAXABLE INCOME**

Your fees, if not turned in to your employer, are taxable. Please consult your tax advisor for details.

**OVERCHARGING FEES**

Tex. Gov’t. Code 406.024(b); Tex. Admin. §87.31(9); Tex. Gov’t. Code 603.010

Notaries can be suspended or have their commissions revoked if they charge higher fees than those authorized by Tex. Gov’t. Code §406.024.
NOTARIAL CERTIFICATES

DEFINITION & IMPORTANCE
Tex. Admin. Code §87.31 (11)

A notarial certificate is the wording that appears at the end of documents and contains blanks to be completed, signed, and sealed by a notary. Notarial certificates may be handwritten, but in today’s modern society, notarial certificates are generally typed.

The wording in the notarial certificate indicates what type of notarial act must be performed.

By completing the notarial certificate, the notary is certifying that the signer –
1. personally appeared before the notary,
2. was properly identified, and
3. either acknowledged signing the document willingly or made a sworn statement about certain facts.

ELEMENTS OF A NOTARIAL CERTIFICATE

Required Elements of a Notarial Certificate

Venue - the geographic location where the notarial act is taking place.
Type of ID used to identify the signer. (In this example a Texas driver’s license is used.)
A statement by the notary certifying that the signer personally appeared before the notary.

State of Texas
County of Harris

Before me, _____________________, on this day personally appeared _____________________, known to me or proved to me on the oath of ______________ or through _____________________ to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _________ day of __________, ________.

notary public

The date the notarial act took place.
Notary Seal

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The notarial certificate consists of a venue (State of___; County of___) describing the location where the notarial act took place; the body, which describes the type of notarial act to be performed (acknowledgment or oath); a list of the participating signer(s); the date of the notarial act; and the official name, signature, and seal of the notary.

**LOOSE NOTARIAL CERTIFICATES**

Many documents drafted by lawyers or financial institutions contain either an acknowledgment notarial certificate or a jurat notarial certificate (for use when administering an oath). However, most documents that are not professionally prepared do not include a notarial certificate.

When presented with a document that does not have a proper notarial certificate attached to it, a notary may decline to perform the notarial act or the notary may give the signer the option to select a loose notarial certificate from the notary’s inventory and then firmly staple it to the document after the notarial act is completed.

Keep in mind that, unless the notary is an attorney, it is considered an unauthorized practice of law for him or her to advise the signer as to which type of notarial certificate is required. If the signer cannot choose, the notary must refuse to notarize and refer the signer to an attorney or to the person requesting the notarization for clarification.

If attaching a loose notarial certificate, the notary should note at the top of the certificate all identifying information regarding the document to which it will be attached. This prevents the certificate from being used fraudulently on a completely different document.

**Sample of a Loose Notarial Certificate**

This certificate is attached to a ____ page document dated _____________ titled ______________________.

State of _________________
County of _________________

I _____________________________________(Name of person making statement), swear/affirm before _____________________________________(Notary Public’s Name) that the attachment is true and correct.

Sworn to and subscribed before me this ___________ day of ____________________, ___________ (Year), by
____________________________________(Name of person making statement).

____________________________________(Notary Public’s Signature)
____________________________________(Notary Public’s Name)

(NOTARY SEAL)

Signer’s Identity verified by:
- Personally known to me
- Identity proven on the oath of _________________(Name of credible witness)
- Identity proven on the basis of _________________(Description of identity card or other document)
Loose certificates are available for purchase on the American Association of Notaries website at www.texasnotary.com.

CORRECTING A NOTARIAL CERTIFICATE

Often a document will be presented that contains incorrect information in the notarial certificate. If the venue, date, or signer’s name is incorrect on the notarial certificate, simply correct it by crossing out the incorrect information with a single line, printing the correct language above it, and initialing the change. If the venue is missing, print the appropriate venue immediately above the notarial certificate wording.

Record all alterations you make on notarial certificates in your record book. Only you, as the notary, may make corrections to the notarial certificate.

Please note: If there are other parties involved who have already signed a document before a notary on a different occasion, and for some reason the signer before you makes a change to the actual document presented to you, you should refuse to notarize it. Even the smallest change to the document could change its intent and adversely affect the other parties.

FALSE STATEMENTS ON NOTARIAL CERTIFICATES
Tex. Admin. Code §87.31(10)(23)(26)

Knowingly executing a notarial certificate that contains a false statement is good cause for revocation of your notary commission and is also a criminal offense.

Do not state that a signer appeared before you if he did not; do not adjust dates to suit your client’s needs; and if you know a statement within the document is false, refuse to notarize.
HOW TO TAKE ACKNOWLEDGMENTS

ACKNOWLEDGMENT DEFINED

An acknowledgment is an unsworn statement or declaration by an individual who acknowledges before a notary that he or she signed a document voluntarily and for the purposes stated therein.

The majority of notarial acts performed by notaries are acknowledgment acts. Examples of documents that are generally acknowledged are deeds and other real estate documents, deeds of trust, agreements, contracts, and powers of attorney.

When a notary is performing an acknowledgment notarial act, the document does not have to be signed in the presence of a notary. It may be signed two days, two months, or years in the past. However, the signer MUST appear before a notary to acknowledge his or her signature and that he or she signed the document for the purposes stated in it. Upon doing so, the notary completes a certificate of acknowledgment. The notary must date the notarial certificate with the date on which the signer appeared before the notary to acknowledge his or her signature.

WHO IS AUTHORIZED TO TAKE ACKNOWLEDGMENTS?

Tex. Civ. Prac. & Rem. Code §121.001

In Texas, the following officials are permitted to take an acknowledgment:

- A clerk of a district court
- A judge or clerk of a county court
- A notary public
- A county tax assessor-collector or an employee of the county tax assessor-collector if the instrument is required or authorized to be filed in the office of the county tax assessor-collector

Outside of Texas but within the United States or its territories, the following officials may take an acknowledgment or proof of a written instrument:

- A clerk of a court of record having a seal
- A commissioner of deeds appointed under the laws of the state
- A notary public
Outside the United States or its territories, an acknowledgment or proof of a written instrument may be taken by one of the following officials:

- A minister, commissioner, or charge d’affaires of the United States who is a resident of and is accredited in the country where the acknowledgment or proof is taken
- A consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who is a resident of the country where the acknowledgment or proof is taken
- A notary public or any other official authorized to administer oaths in the jurisdiction

HOW TO TAKE AN ACKNOWLEDGMENT

Tex. Civ. Prac. & Rem. Code §121.004(a)

When taking an acknowledgment, the notary must:

- Require the personal appearance of the signer at the time the notarization takes place
- Properly identify the signer
- Determine the signer's competency, understanding of the document's content, and willingness to sign the document without any coercion.
- Perform the verbal part of the notarial act by asking the signer, “Do you acknowledge that this is your signature and that you signed the document willingly for the purposes stated in it?” Do not proceed if the signer doesn’t respond affirmatively.
- Ask the signer to sign the document if it has not already been signed
- Record details of the notarial act in the notary’s record book
- Complete and sign the notarial certificate and affix the notarial seal

**Important!** The notarial act is invalid if the notary fails to have the signer verbally acknowledge his or her signature.

WHEN IS A NOTARY DISQUALIFIED FROM TAKING AN ACKNOWLEDGMENT?


A notary must decline to perform a notarial act under any of the following conditions:

- The notary has a reason to believe that the person executing the document is not the person named in the document.
- The person named in the document does not make a personal appearance at the time of notarization.
• The notary is asked to complete an acknowledgment certificate that the notary knows to be untrue.
• The notary is named in the document or has a financial interest in the transaction.

NOTE: An employee of a corporation is not disqualified because of his employment from taking an acknowledgment or proof of a written instrument in which the corporation has an interest.

An officer who is a shareholder in a corporation is not disqualified from taking an acknowledgment or proof of an instrument in which the corporation has an interest unless (1) the corporation has 1,000 or fewer shareholders and (2) the officer owns more than one-tenth of one percent of the issued and outstanding stock (Tex. Civ. Prac. & Rem. Code §121.002).

Also, a notary public is not disqualified from taking an acknowledgment or proof of a written instrument solely because of the notary’s ownership of stock or a participatory interest in or employment by a financial institution that is an interested party to the underlying transaction.

TYPES OF ACKNOWLEDGEMENTS

Generally speaking, there are two types of acknowledgment notarial acts that you may perform:

1. Taking the acknowledgment of an individual acting on his or her own behalf.
2. Taking the acknowledgment of an individual acting on behalf of others (in a representative capacity).

Taking the acknowledgment of an individual acting on his or her own behalf.

Most acknowledgment notarial acts you perform will be of this type. This is when an individual appears before a notary to acknowledge that he or she signed a document voluntarily and for the purposes stated therein.

The following standard forms are most frequently used when taking an acknowledgement:
Ordinary Certificate of Acknowledgment (Individual)
Tex. Civ. Prac. & Rem. Code §121.007

State of Texas
County of ______________

Before me (name of notary) on this day personally appeared (name of person acknowledging signature), known to me (or proved to me on the oath of (name of credible witness) or through (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of ______________, A.D. ______________.

______________________________
(Signature of Notary)

______________________________                   (NOTARY SEAL)
(Name of Notary Type, Stamped, or Printed)

Notary Public, State of Texas

or

Short Form Acknowledgment Certificate (Individual)

State of Texas
County of ______________

This instrument was acknowledged before me on (date) by (name of person acknowledging).

______________________________                   (NOTARY SEAL)
(Signature of Notary)

______________________________
(Name of Notary Typed, Stamped, or Printed)

Notary Public, State of Texas
Again, the notary must always remember to obtain the verbal, spoken acknowledgment from the signer. Otherwise, the notarial statement “acknowledged before me” would be a false statement.

Taking the acknowledgment of an individual acting on behalf of others (in a representative capacity)

On occasion, you may be asked to notarize a document presented by a person who is authorized to sign on behalf of another person, group, or entity. For example, the document to be acknowledged may be executed by an officer of a corporation, the representative of an estate, or simply by a person who holds a power of attorney to sign documents on behalf of another person.

The following standard forms are most frequently used when taking an acknowledgement in a representative capacity:

Short Form Acknowledgment Certificate for a Person Acting in a Representative Capacity (Public Officer, Administrator or Executor, Guardian, Trustee, or Other Representative)


State of Texas  
County of ______________

This instrument was acknowledged before me on (date) by (name of representative) as (title of representative) for (name of entity or person represented).

______________________________________________________                       (NOTARY SEAL)
(Signature of Notary)

______________________________________________________
(Name of Notary Typed, Stamped, or Printed)
Notary Public, State of Texas
Short Form Acknowledgment Certificate for a Corporate Officer

State of Texas
County of ____________

This instrument was acknowledged before me on (date) by (name of acknowledging corporate officer) as (title of corporate officer) of (name of corporation), a (state of incorporation, i.e. Texas corporation) corporation, on behalf of said corporation.

______________________________________________________                       (NOTARY SEAL)
(Signature of Notary)

______________________________________________________
(Name of Notary Typed, Stamped, or Printed)
Notary Public, State of Texas

Short Form Acknowledgment Certificate
for a Partner in a Partnership

State of Texas
County of ____________

This instrument was acknowledged before me on (date) by (name of acknowledging partner or partners) as partner on behalf of (name of partnership represented), a partnership.

______________________________________________________                       (NOTARY SEAL)
(Signature of Notary)

______________________________________________________
(Name of Notary Typed, Stamped, or Printed)
Notary Public, State of Texas
Short Form Acknowledgment Certificate for an Attorney-in-fact

State of Texas
County of _____________

This instrument was acknowledged before me on (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

______________________________________________________                       (NOTARY SEAL)
(Signature of Notary)

______________________________________________________
(Name of Notary Typed, Stamped, or Printed)
Notary Public, State of Texas
ADMINISTERING OATHS AND AFFIRMATIONS

OATH DEFINED

Another common notarial act is administering oaths. An oath is a sacred declaration or statement attesting to the truth of the contents of a document that is signed before the notary. Oaths are required on written affidavits, transcribed depositions, and other sworn statements.

Some people have religious convictions against taking an oath. The notary may instead allow the signer to make an affirmation, meaning a promise made on one’s own conscience without addressing a supreme being. Oaths and affirmations are equivalent in the eyes of the law. Making a false statement under either is a criminal offense called perjury.

When a document requires an oath or affirmation, it must be signed in the presence of the notary. It is not sufficient for the signer to simply acknowledge having previously signed the document, as with an acknowledgment. The person signs the document after the notary administers an oath and the signer swears to the truth of the document’s contents.

If a document requiring an oath was signed before the signer appeared before the notary, the document must be signed again in the notary’s presence. An entry on the document should be made by the notary that states, “Duplicate signature at notary’s request” to explain the extra signature.

When performing a notarial act that requires an oath, the notary may ask the signer to raise his or her right hand before administering the oath and ask the signer:

“Do you solemnly swear (or affirm), under penalties of perjury, that the statements that you are making in this document are truthful?”

The signer must answer “Yes” or provide another affirmative response.

Failing to administer an oath (or affirmation) can invalidate the notarial act and is a “good cause” to revoke the notary’s commission as stated in Tex. Admin. Code §87.31(8).

It is important to remember that unlike an acknowledgment, an oath cannot be taken on behalf of someone else. For example, a person with a power of attorney cannot take an oath on behalf of another individual, and, as with any other notarial
transaction, a notary cannot administer an oath over the phone.

When an oath or affirmation is required, the notary must complete a notarial certificate called a “Jurat,” which contains language similar to the example below:

**Oath/Affirmation Notarial Certificate (Jurat)**

![Oath/Affirmation Notarial Certificate (Jurat)](image)

This type of notarial certificate attests that (1) the signer appeared personally before you; (2) the signer signed the document in your presence; (3) you positively identified the signer; and (4) you administered an oath or affirmation to the signer and received a confirming statement attesting to the truth.

**HOW TO ADMINISTER AN OATH OR AFFIRMATION**

In order to properly administer an oath or take an affirmation, you must complete the following steps:

- Require the signer to appear personally before you
- Identify the signer
- Ask the signer to raise his or her right hand, or tell the signer that you are putting him or her under oath
- Perform the verbal part of the notarial act by asking the signer, “Do you swear …”
- Witness the signing of the document
- Record details of the act in your record book
- Complete, sign, and seal the notarial certificate
PERSONS AUTHORIZED TO ADMINISTER AN OATH/AFFIRMATION
Tex. Gov’t. Code §602.002; §602.003; §602.004

An oath made in this state may be administered and a certificate of the fact given by:

1. a judge, retired judge, or clerk of a municipal court;
2. a judge, retired judge, senior judge, clerk, or commissioner of a court of record;
3. a justice of the peace or a clerk of a justice court;
4. an associate judge, magistrate, master, referee, or criminal law hearing officer;
5. a notary public;
6. a member of a board or commission created by a law of this state, in a matter pertaining to a duty of the board or commission;
7. a person employed by the Texas Ethics Commission who has a duty related to a report required by Title 15, Election Code, in a matter pertaining to that duty;
8. a county tax assessor-collector or an employee of the county tax assessor-collector if the oath relates to a document that is required or authorized to be filed in the office of the county tax assessor-collector;
9. the Secretary of State or a former secretary of state;
10. an employee of a personal bond office, or an employee of a county, who is employed to obtain information required to be obtained under oath if the oath is required or authorized by Article 17.04 or by Article 26.04(n) or (o), Code of Criminal Procedure;
11. the Lieutenant Governor or a former lieutenant governor;
12. the Speaker of the House of Representatives or a former speaker of the house of representatives;
13. the Governor or a former governor;
14. a legislator or retired legislator;
15. the Attorney General or a former attorney general;
16. the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality;
17. a peace officer described by Article 2.12, Code of Criminal Procedure, if:
   1. the oath is administered when the officer is engaged in the performance of the officer's duties and
   2. the administration of the oath relates to the officer's duties
18. a county treasurer.
An oath made outside this state but inside the United States or its territories may be administered and a certificate of the fact given by:

- A clerk of a court of record having a seal
- A commissioner of deeds appointed under a law of this state
- A notary public

An oath made outside the United States and its territories may be administered and a certificate of the fact given by:

- A minister, commissioner, or charge d’affaires of the United States who resides in and is accredited to the country where the oath or affidavit is made
- A consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who resides in the country where the oath or affidavit is made
- A notary public
HANDLING AFFIDAVITS

DEFINITION

In an affidavit, the signer is swearing or attesting before the notary to the truthfulness of a statement, usually in a written form. The person swearing to the affidavit is called an affiant. When a notary is notarizing an affidavit, he or she must administer an oath or affirmation to the affiant. This requires the notary to complete a jurat notarial certificate, not an acknowledgment certificate. The jurat notarial certificate usually appears below the affiant’s statement and signature.

Business transactions, legal matters, and trial procedures routinely require the written testimony of an involved party. For these purposes, an affidavit is usually required. Therefore, notaries should be familiar with handling them.

You should note that the jurat in the above example does not require a venue (“State of _____, County of ______”) because the venue is already stated at the top of the affidavit form.

Occasionally, a document drafter will insert an acknowledgment certificate, rather than a jurat, at the end of the affidavit. In this instance, the conflicting
wording (“being duly sworn” in the preamble and “acknowledged before me” at the end of the affidavit) poses a problem for the notary. It is generally not appropriate for an affidavit to contain an acknowledgment notarial certificate. In these instances, you may choose to advise the signer of the conflict and to contact the person who drafted the document for information about how to proceed. DO NOT replace the certificate with a jurat unless specifically authorized to do so by the signer or the document drafter.

**HOW TO ADMINISTER AN OATH FOR AN AFFIDAVIT**

As discussed in the previous chapter on oaths you must:

- Require that the signer appear personally before you
- Identify the signer
- Ask the signer to raise his or her right hand or tell the signer that you are putting him or her under oath
- Perform the verbal part of the notarial act by asking the signer, “Do you swear or affirm …”
- Witness the signing of the document
- Record details of the act in your record book
- Complete, sign, and seal the notarial certificate
DEPOSITIONS

DEFINITION

A deposition is testimony under oath made by a witness (called the “deponent”) in a court proceeding, under questioning, and is normally taken outside of a court in advance of a trial or hearing. The testimony is usually converted to writing (transcribed) and used in the court trial.

A deposition is different from an affidavit in that a deposition typically cannot be said to be voluntary, and the person making the deposition may be open to cross-examination, while an affiant is not.

PERSONS AUTHORIZED TO TAKE A DEPOSITION

A deposition must be taken before someone authorized to administer an oath. A deposition may be taken before a notary, a clerk of a district court, or a judge or clerk of a county court.

HOW TO TAKE A DEPOSITION

Even though it is rare that a Texas notary is called upon to take a deposition, you need to have a basic knowledge of how to take a deposition and administer an oath to a deponent if the need arises.

Usually, this type of notarization is handled by a certified court stenographer (who is also a notary) and is familiar with administering oaths and recording testimonies.

There are three basic types of depositions:

• Live deposition
• Deposition by written questions
• Telephonic/video conference deposition

In a live deposition, the lawyers, the notary, and the deponent will be present in the same room. Before the lawyers conduct the interview, you must administer an oath to the deponent similar to the one below:

“Do you swear or affirm that the statements you are about to make will be the truth, the whole truth and nothing but the truth?”
You must identify the deponent and record the notarial act in your record book before you administer the oath. If anything further is required, the attorneys conducting the deposition will advise you; otherwise, you will be free to go.

In a deposition by written questions, the lawyers send a set of questions to the deponent to complete. After the deponent answers the questions, your duties as a notary will be to administer an oath regarding the written questions and complete the jurat certificate.

A telephonic/video conference deposition is similar to a live deposition except that the lawyers and the deponent are not present in the same location. The lawyers will interview the deponent over the phone or through a video conference. You and the deponent must be present at the same location, and you will administer an oath to the deponent before the interview starts.

**Deposition Notarial Certificate Example**

```
Certificate to Deposition Upon Written Questions

State of Texas
County of ____________

________________________(Plaintiff)            In the ____________ Court of
____________________ County, Texas

v.
________________________(Defendant)                   Cause No. ____________

I hereby certify that the foregoing answers of ____________, the witness
forenamed, were signed and sworn to before me on (date), by said witness.

______________________________________________________                       (NOTARY SEAL)
(Signature of Notary Public)

______________________________________________________
(Printed Name of Notary Public)
Notary Public, State of Texas
```
CERTIFYING COPIES

DEFINITION

A certified copy is a document certified by a notary as a true and correct copy of an original unaltered document.

DOCUMENTS THAT CAN/CANNOT BE CERTIFIED

The most common question that notaries ask about certifying copies of originals is “What types of documents may I certify?” A Texas notary may only make a certified copy of an original, unaltered document that is not a public record or a public recordable document.

If a client appears before you and requests that you certify a copy of a birth certificate, you must decline and refer the client to the government agency that would have the original birth certificate on file.

When a state or local government issues a birth certificate, it is issuing a certified copy, while the original document remains on file with the government office.

College and high school transcripts of a student’s grades are another example of documents that cannot be certified. Anyone requesting a transcript from a school receives a copy of the transcript; the original transcript remains on file in the university’s archives. However, a copy of a diploma can be certified by the notary, because the document custodian has the original.

Below are few examples of documents that can or cannot be certified

You may certify copies of:

- School and college forms, diplomas, and reports, but not official school records or transcripts
- Insurance forms
- Student permission forms
- Consent forms
- Travel forms as long as they are not immigration papers
- Invoices and contracts replace
- Lease agreements and bills of sale replace; with and
- An entry from a notarial record book
- Personal documents and letters
You may not certify copies of:

• Birth certificates
• Death certificates
• Marriage or divorce licenses
• Deeds, deeds of trust, or other real estate documents
• Wills and powers of attorney
• Official school records and transcripts
• Immigration papers
• Military records

HOW TO CERTIFY COPIES

1. Make sure that the document presented by the document’s custodian is an unaltered original.
2. Verify that the document is not a publicly recordable document.
3. Make one copy from the original. (You must decline to perform the notarial act if the client presents a copy to be certified instead of an original.)
4. Identify the signer.
5. Record the notarial act in your record book.
6. Staple, print, type, or stamp a notarial certificate titled “Certified Copy of a Non-Recordable Document” on the copy you made (see example below).
7. Sign and seal the notarial certificate.

Example of a Notarial Certificate for Certifying Copies of Non-Recordable Documents

State of Texas
County of ____________

On this ________ day of __________, (year), I certify that the preceding or attached document is a true, exact, complete, and unaltered copy made by me of (description of document), presented to me by the document’s custodian, ________________, and that, to the best of my knowledge, the photocopied document is neither a public record nor a publicly recordable document, certified copies of which are available from an official source other than a notary.

Given under my hand and seal of office this ___ day of _____________, A.D. ________ (year).

______________________________                       (NOTARY SEAL)
(Signature of Notary Public)
____________________________________________________
(Printed Name of Notary Public)
Notary Public, State of Texas
CERTIFYING A COPY OF A RECORD BOOK ENTRY

Tex. Gov’t. Code Ann. §406.014(b)(c); Tex. Admin. Code §87.31(17); §87.52 & §87.53

In Texas, notary record books are considered public records that can be viewed by any member of the public upon request. However, you should not allow any member of the public to fish through your journal without having a general idea as to which record he or she wishes to get a certified copy of. There may be times when you are asked to issue a copy or a certified copy of an entry from your notary record book, and this is entirely permissible in Texas. Failure to provide such copies may result in suspension or revocation of your notary commission.

Typically, an individual would submit a request to you for a copy or certified copy of a record book entry for a notarization that you performed (for example, a deed of trust). Upon payment, you must promptly produce the certified copy. If you are unable to do so within ten business days, the law requires that you notify the requesting individual of that fact in writing no later than the tenth business day from the date of receipt of the fees and set a date and hour within a reasonable timeframe that you will provide the certified copy.

Here are the steps for handling such a request:

1. Make a copy of the record book entry.
2. Redact any personal information that is not required to be recorded by Texas law. (For example, signature, DOB, DL#, thumbprints.)
3. Stamp or type the copy with the notarial certificate as shown on the next page.
4. Complete, sign, and seal the notarial certificate.
5. Make an entry in your record book for this notarial act.
6. Note: If you are merely asked to provide a copy of a record book entry (not a certified copy), skip steps 2-4 and just follow steps 1 and 5 above.
When issuing a certified copy from your journal, we recommend using this notarial certificate:

State of Texas

County of _____________

On this __________ day of __________, (year), I certify, pursuant to Tex. Gov’t Code §406.014(c), that the preceding or attached document is a true, exact, complete, and unaltered copy made by me of (description of notarial record), the original of which is held in my custody as a notarial record.

______________________________________________________                       (NOTARY SEAL)

(Signature of Notary Public)

______________________________________________________

(Printed Name of Notary Public)

Notary Public, State of Texas
HOW TO NOTARIZE STEP BY STEP

There are certain steps that a notary must follow in order to complete a notarial act properly. These steps are imperative and none can be disregarded or ignored. Consider this section your notarization guide for every notarial act you perform.

1. Require the personal appearance of the signer(s)
2. Properly verify the identity of the signer(s)
3. Review the document
4. Never act as a lawyer, give legal advice, or help prepare documents
5. Determine the signer’s awareness and understanding of the transaction
6. Perform the verbal element of the notarial act
7. Record all details in your record book
8. Ask the signer to sign your record book
9. Stamp/seal the notarial certificate

Following the above checklist in the order listed will eliminate any possibility for errors or omissions and greatly reduce any chance of liability.

1- REQUIRE THE PERSONAL APPEARANCE OF THE SIGNER(S)
Tex. Civ. Prac. & Rem. §121.004; Tex Admin Code 87.31(14)

A traditional notary public must always require that the principal signer personally appear physically in the presence of the notary. “Personal appearance” means that the signer and notary public are in the same room and close enough to be able to see each other, hear each other, and speak with each other. A notary public may not perform any notarial act when the individual whose signature is being notarized does not personally appear before the notary public at the time of the notarization.

This means that a notary public may not:
1. rely on the statement of another person that the signature on the document is that of the purported signer;
2. rely on the notary’s own familiarity with the signature; or
3. perform a notarial act by telephone, email, teleconference, or any other telecommunication equipment for the execution of a notarization unless the notary is commissioned as an online notary. (More details on becoming an online notary in chapter 16).
If the principal signer is not physically present before the notary public at the time of the notarization, the notary must decline to perform the notarization. There are no exceptions to the requirement of the personal appearance of the signer at the time of the execution of the notarization. For the notary public, this rule is not discretionary.

In fact, notarizing a document without the signer being present completely defeats the purpose of notarization. Unless the signer is in the notary’s physical presence, the notary cannot determine if the signer understands the document’s contents or if he or she is alive, competent, or sober.

2 - PROPERLY VERIFY THE SIGNER’S IDENTITY

Positively identifying the signer is a critical step in every notarial act. If you omit this step, you have failed your primary duty as a notary. The notarial act you have performed will be invalidated should this negligence ever be discovered or challenged in the future.

In Texas, a notary public may verify the identity of a signer using any of the following methods:

1. Personal knowledge
2. A current state or federal identification card
3. The oath of a credible witness

Each method is discussed in the following sections.

1- Personal Knowledge

If you know the signer personally, that is sufficient evidence to proceed with the notarization. However, you must actually know him or her; don’t just take the word of another person. For instance, if a neighbor says, “This is my brother Bill,” that statement alone is not sufficient for the purposes of ensuring identity. You must have actual knowledge of a signer in order to claim “personally known” as a method of identification. Personal knowledge of the signer is the best form of ID.

Use common sense to determine if the signer is “personally known” to you.

1. Would you immediately recognize this person if you saw him or her on the street?
2. Could you accurately describe this individual?
3. Do you know the full name of the signer?
4. Most importantly, would you be willing to testify in court regarding the identity of this person?
2 - A Current State or Federal Identification Card

If you do not know the signer personally, and he or she has no proof of identification, simply request that the signer return with acceptable identification.

The most reliable type of identification documentation is a driver’s license, passport, military ID, or any card containing a signature and photograph issued by a state or a United States federal government office. A passport issued by a foreign government is acceptable to identify signers relating to documents involving real estate transaction.

The card should typically detail eye and hair color, height, weight, and date of birth. The ID card must be current, and the notary should carefully verify the signature on the ID matches the signature on the document.

Beware of fake identification documents! Although even the most expert identity authority may be fooled by a carefully crafted false identification document, a prudent notary will take every precaution when checking credentials. If an identity document appears suspicious or seems to have been altered in any way, it is best to refuse to notarize.

The American Association of Notaries recommends that every notary keep a copy of the most recent issue of the I.D. Checking Guide, the most effective guidebook available for recognizing official state-issued ID cards and confirming the authenticity of those cards.

3 - The Oath of a Credible Witness Personally Known to the Signer and to the Officer

On occasion, a notary may be asked to notarize a document for a client who is not personally known to the notary and who is unable to present a reliable form of identification. In such cases, notaries may rely on the testimony of an impartial person (called a “credible witness”) to identify the signer.

This form of identification has three important requirements:
1- the credible witness must personally know the document signer;
2- the notary must personally know the credible witness; and
3- the credible witness must neither have a financial interest in the document nor be named as a beneficiary in the document.

This establishes a chain of personal knowledge between the notary and the signer.

When you use this form of identification, it is important to place the credible witness under oath as follows:
Credible Witness Oath:

“Do you swear under penalties of perjury that you personally know this person as (name of person whose signature is to be notarized) and that he/she is the person named in the document requiring notarization, so help you God?”

Do not proceed if the credible witness is unable to swear or affirm to the truthfulness of his statement.

Have the credible witness sign an entry in your record book for the transaction, and of course have the signer of the document sign in the next entry for that notarial act.

3 - REVIEW THE DOCUMENT

Notaries are NOT required to read every word of documents they notarize, and they are not responsible for the document’s contents or for its compliance with the state’s statutory requirements. Your duties and responsibilities in any notarization are restricted only to the execution of proper notarial procedures. However, to prevent fraud, you should always visually scan the document to —

- Check the venue on the notarial certificate. Is it accurate? If changes are needed, you should make and initial the changes.
- Look carefully for any alterations made to the document. Have the signer or signers initial the alterations. Under no circumstances should the notary knowingly allow any change to a document once it has been notarized.
- Determine the type of notarial act required. Is the signer acknowledging signing the document, (acknowledged before me...”), or is the signer taking an oath or making an affirmation (“sworn to [or affirmed] and signed before me...”)?
- Be sure there are no blank spaces on the document. Have the signer complete the blank spaces or write N/A or strike through the blanks in such a way that will prevent information from being added later. Do not provide any instructions to the customer on how to fill in the blank spaces; that is considered practicing law without a license. Do not notarize a signature on a document with blank spaces! Information could be filled in after the document is notarized.
- Scan the document to determine who has signed or is required to sign, that all signers are present before you, and all spaces are filled in.
- Record any changes or corrections made in your record book.

4 - NEVER ACT AS A LAWYER, GIVE LEGAL ADVICE, OR HELP PREPARE DOCUMENTS

Clients from foreign countries often expect notaries to be able to advise them regarding immigration matters and the preparation of wills and other documents.
Some people even expect notaries to be able to represent them in court. Unless you are an attorney, you may not give legal advice or accept fees for legal advice. (See Chapter 5.)

5 - DETERMINE THE SIGNER’S AWARENESS AND UNDERSTANDING OF THE TRANSACTION

Most notaries are not medically trained to recognize mental illness or disease. However, in order to provide a level of trust and security, the notary must determine that the signer understands the contents of the document being executed. Tex. Civ. Prac. & Rem. Code §121.006 states that “the person who executed the instrument must appear before an officer and state that he executed the instrument for the purposes and consideration expressed in it.”

The notary must be able to communicate with the signer and both must understand the transaction taking place. It is the notary’s obligation to determine that the signer understands and is aware of the act being executed and that he or she is signing willingly for that purpose. If there are communication barriers of any kind, please do not proceed until understanding is reached.

6 - PERFORM THE VERBAL ELEMENT OF THE NOTARIAL ACT

This is a vital part of your responsibility. Here are the tough questions to ask:

For an acknowledgment:

“Do you acknowledge that this is your signature, that you signed the document willingly for the purposes stated in it?”

For an oath:

“Do you swear, under penalties of perjury, that the information included in this document is the truth, the whole truth, and nothing but the truth, so help you God?”

For an affirmation:

“Do you affirm under penalties of perjury that the information included in this document is the truth, the whole truth and nothing but the truth?”

Do not proceed with the notarial act if the signer is unable to affirm or swear to the truthfulness of his or her statement.
7 - RECORD ALL DETAILS IN YOUR RECORD BOOK

Tex. Gov’t Code 406.014

Texas law directs you to record details of each and every notarial act you perform. The benefits of recording your notarial services have been proven over time. Below is a list of the benefits:

- **Obeying the Law** – If you don’t obey the law requiring the use of a notary record book, you may lose your notary commission in an administrative penalty action against you.

- **Reminder** – The record book is a reminder to follow all the essential steps for a notarization. For example, it will remind you to obtain identification from your client and to perform the notarial act.

- **Compliance** – If a complaint is filed against you related to a notarization that you performed, you may rely upon the entry you made in the record book to prove that you properly performed your duties.

- **Evidence** – Record book entries may be used in court as evidence to settle a dispute about a transaction.

- **Memory** – Appearing in court to talk about a notarization that you performed, but don’t remember, can be intimidating. However, your record book entry can give you confidence to testify under oath about the facts of any notarization.

- **Prevention** – Your use of the record book may instill customer confidence in you and discourage fraudulent transactions. Because of the information you will record for each notarization, the record book will also serve to reduce your liability as a notary.

- **Bookkeeping** – Recording your notary fees for each transaction will make it simple to report your notary fees as income at the end of the year. Make sure to provide an itemized receipt to your customer separating notarial fees from any other fees, such as mileage or a travel fee.

8 - ASK THE SIGNER TO SIGN YOUR RECORD BOOK

Although Texas notary law does not require the signer of the document to sign your record book, it is recommended that you ask him or her to do so. This will provide an additional assurance that the signer is the person he or she claims to be and will prove, if you are later called to testify in court, that the signer did personally appear before you for this notarial act. However, if a customer declines to sign the notary record book, you should NOT refuse to perform the notarial act.
9 - COMPLETE THE NOTARIAL CERTIFICATE

Once you have performed the verbal part of the notarial act and witnessed the signer(s) sign the document, you can proceed with completing the notarial certificate. Merely placing your signature and official notary seal on the document without completing the notarial certificate has no purpose, and it renders the document invalid for the intended purpose of the notarization.

10 - STAMP/SEAL THE NOTARIAL CERTIFICATE

Tex. Gov’t. Code §406.013; Tex. Gov’t. Code §406.016(b); Tex. Civ. Prac.& Rem. §121.004(b)

The notarial act is incomplete and invalid without a properly completed notarial certificate containing a notary’s official signature and seal. Always sign and seal the document after verifying the signers’ identifications, following the steps listed in this section, and fully documenting the transaction in your record book.
UNUSUAL SITUATIONS

Notaries encounter difficult and unusual situations just as other professionals do. When faced with such challenges:

- Never deviate from the steps required for a proper notarization. Follow the steps that are discussed in Chapter 14, and you will be able to handle any challenges.

- Follow Texas notary laws. Always ask yourself, “Do Texas laws address how to handle this situation?” If yes, make sure you follow every step. Do not allow a client to persuade you to perform an unlawful notarization. Review your notary laws often to be aware of any changes.

- Use caution if Texas law does not address solutions to a specific situation. Use reasonable care and common sense to handle situations that are not addressed in the notary statutes. If you feel uncomfortable, do not proceed. It is best to decline to perform a notarial act that may be unlawful or invalid.

- Refer the client to someone else if you cannot handle the request. If you are unfamiliar with performing a notarial act, refer the client to another notary who can handle those requests. If the notarial request is beyond the scope of your authority, refer the client to an attorney.

- Carefully record detailed circumstances about notarial acts. As mentioned in previous chapters, properly recording notarial acts in your record book will provide invaluable evidence that you acted properly. Should the notarization be questioned in the future, you will have a clear account of what took place on that day, the steps you took to serve that client, or the reasons you declined a notarization.

FOREIGN LANGUAGE DOCUMENTS

According to the Secretary of State, you are not prohibited from notarizing a document written in a language that you cannot read and understand. Nevertheless, such a document must contain a notarial certificate written in English.

To be in compliance with notary laws, you must record a brief description of the document in your notary record book. If you rely on the signer to provide you those details, the signer may misrepresent information to you.
Another possibility is that the signer speaks English or speaks the same language used in the document but cannot read that language. The best approach is to decline to perform the notarial act. Instruct the signer to seek another notary who understands the language in which the document is written. Alternatively, the signer may have someone translate the document into a language that both the signer and you understand. The translator will swear to the accuracy of the document’s translation in an affidavit, which will be attached to the notarized document. If no translator is available, refuse to notarize. As explained in the next section, you cannot act in the dual capacity as a notary and a translator.

Exercise utmost caution when dealing with foreign documents. If you do not feel comfortable with the notarization, you may refuse to perform it.

**CERTIFYING TRANSLATIONS**

Even if you are bilingual, you cannot translate a document to another language and then certify that the translation is accurate. As discussed in previous chapters, a notary should be an impartial witness to the signing of documents. When you translate a document, you are named in the document as a translator, and notarizing that document could be construed as a conflict of interest. Of course, you cannot notarize your own signature when certifying the translation. Therefore, if you translate a document, you must have the affidavit of translation notarized by another notary.

The proper approach to certifying a translation is to have an impartial translator translate the document. The translator generally prepares a statement as written below, wherein the translator certifies under oath in front of a notary that the translation is a true and correct version of the original document.

**Affidavit of Translator**

```
State of Texas
County of ______________
I, (name of person providing translation) do swear (or affirm) that I speak both the English and the ___________________ languages and can accurately translate from one to the other and that the attached is an exact and complete translation of (description of document) made by me from
___________________ into ___________________.
______________________________________________________
(Signature of Translator)
______________________________________________________
(Name of Translator Typed, Stamped, or Printed
Sworn to (or affirmed) and subscribed before me this _________ day of ____________, (year),
by (name of person making translation).
______________________________________________________
(Signature of Notary Public) (NOTARY SEAL)
______________________________________________________
(Printed Name of Notary Public)
Notary Public, State of Texas
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SIGNER UNABLE TO READ (ILLITERACY OR BLINDNESS)

You must exercise the utmost care when dealing with signers who are unable to read due to learning disabilities, illiteracy, or vision impairment.

To ensure that the signer is aware of what he or she is signing, ask the signer few general questions about the document. Next, read the entire document before he or she signs it (do not attempt to explain it).

When it comes to signing, you may help direct the visually impaired signer’s hand to the appropriate space for the signature, but you should not physically move the client’s hand while he or she is signing the document. If the signer is unable to make a proper signature, use the “signature by mark” method as discussed in the next section.

SIGNER UNABLE TO WRITE (SIGNING BY MARK)
Business and Commerce Code Sec. §3.401(b)

Occasionally, a client may be unable or unwilling to execute a document with a traditional signature because of a physical disability or injury or because the signer has designated a mark as his or her official signature, which is allowed by Texas law.

When performing a notarization, you must treat a signature by mark, symbol, or “X” no differently than a traditional signature.

HEARING/SPEECH IMPAIRED SIGNER

There are many ways to communicate with a signer who is hearing or speech impaired. You can write notes asking the signer if he or she understands the document; you can also write your notary questions such as “Do you swear…” or “Do you acknowledge…,” to which the signer can nod (or make another affirmative gesture) or respond in writing. Such details should be noted in the notary’s record book. An entry of this type serves as evidence that the notary took reasonable care to determine that the signer acknowledged signing the document willingly for the purposes stated in it, or that the signer took an oath attesting to the truthfulness of the document.

SIGNING A DOCUMENT FOR AN INDIVIDUAL WITH A DISABILITY
Texas Gov’t. Code §406.0165

A Texas notary is authorized to sign a document for an individual with a disability. “Disability” means a physical impairment that impedes the ability to sign or make a mark on a document. This in no way means you may sign for someone for the sake of convenience or if they are unable or unwilling to appear before you. This concession is made for the assistance of those who are unable to sign or make a mark. Texas law states:
A notary may sign the name of an individual who is physically unable to sign or make a mark on a document presented for notarization if directed to do so by that individual, in the presence of a witness who has no legal or equitable interest in any real or personal property that is the subject of, or is affected by, the document being signed. The notary shall require identification of the witness in the same manner as from an acknowledging person under Section 121.005, Civil Practice and Remedies Code.

A notary who signs a document under this section of law must then write beneath the signature the following statement:

“Signature affixed by notary in the presence of (name of witness), a disinterested witness, under Section 406.0165, Government Code.”

A signature made under this section is as effective as the signature of the individual on whose behalf the signature was made for any purpose. A subsequent bona fide purchaser for value may rely on the signature of the notary as evidence of the individual’s consent to execution of the document.

**NOTARIZING FOR MINORS**

There are occasions when minors are required to have legal documents notarized. There is generally no prohibition against notarizing the signature of a minor. In fact, notarizing the signature of a minor is really no different than notarizing the signature of an adult.

Interview the minor separately from the parents to ensure that there is no possibility of coercion. Determine if the child understands the meaning of an oath or acknowledgment and what he or she is signing. A minor who is fifteen years of age, for example, is likely to understand the consequences of signing a document, but a child who is three years of age is unlikely to comprehend what he or she is signing.

The most common problem notaries face when dealing with minors is lack of identification. Even though there is no minimum age requirement to receive a Texas ID card, most minors do not have one, and a school identification card is not an acceptable form of identification. In such cases, you must rely on an impartial credible witness who knows the minor and you, or the minor must be personally known to you. To avoid potential conflict of interest, a credible witness should not be an immediate family member of the child.

If you are unable to identify the minor using the credible witness or proper identification methods, the ideal solution is to advise the party to contact a notary on the minor’s school campus who knows the minor well and can perform the notarial act based on the “personally known” identification method.
NOTARIZING FOR AN ATTORNEY-IN-FACT

Most notarizations that you will perform will involve an individual signing on his or her own behalf. On occasion, however, a client may have the authority to sign on behalf of another person because the client has been granted a “power of attorney.”

A power of attorney is a legal document signed by a person (the “principal”) who gives authority to another person (the “attorney-in-fact”) to sign documents on the principal's behalf.

If an attorney-in-fact is signing documents for a principal, your duties are to identify the attorney-in-fact, complete an entry in your record book, and perform the verbal part of the notarial act. After you complete your notary record book entry, you will ask the signer, “Do you acknowledge that you have voluntarily executed this document as attorney-in-fact for John Doe, on his behalf?”

Three points to remember:

1- Ask the signer to show satisfactory evidence of his authority and/or to swear under penalty of perjury that he does possess the authority he is claiming.
2- An attorney-in-fact cannot take an oath and swear to facts on behalf of a principal.
3- Include the name of the principal and the attorney-in-fact in your record book and note that the document was signed under the authority of an “attorney-in-fact.”

This is a typical signature line for a document signed under a power of attorney:

*Jane M. Doe*

Jane M. Doe, as attorney-in-fact for John Doe

OPENING SAFE DEPOSIT BOXES

Tex. Fin. Code §59.109

Texas law states that if the rental for a safe deposit box is delinquent for at least six months, the bank or safe deposit company may send notice to each lessee informing them that the bank will remove the contents of the box if the rent is not paid before the date specified in the notice. After that date, the bank may open the box in the presence of an officer or manager of the bank and a notary public. Usually, the bank will provide the notary with clear instructions on how to proceed.

HANDLING APOSTILLES AND OFFICIAL CERTIFICATES REQUESTS

An apostille or an official certificate is provided by the Texas Secretary of State to authenticate the notary’s signature and certifies that the notary was authorized to act in the capacity as a public official at the time the document was notarized.
Apostille forms are attached to documents so that they will be accepted in foreign countries that are signatories to the Hague Convention. The apostille ensures that documents issued in one signatory country will be recognized as valid in another signatory country without any further legalization requirements. Countries that are not signatories to the Hague Convention will instead be issued an “official certificate” which requires further legal authentication by the U.S. Department of State and the Foreign Embassy of the country where it is intended to be used.

To obtain an apostille or official certificate, your client should submit the notarized document to the Texas Secretary of State along with a completed apostille application, a stamped, return-addressed envelope, and a $15 fee. The Secretary of State will issue either an apostille or official certificate, depending on the country where the document will be used.

Even though it is the client’s responsibility to obtain an apostille, you may, as a courtesy, provide your client with the Secretary of State’s website (https://www.sos.state.tx.us/statdoc/forms/2102.pdf) to download the forms.

PROTESTS

A protest is a statement issued by a notary public that a certain bill or note was presented for payment or acceptance and that such payment or acceptance was refused. The notary public attests that the refuser shall be held liable for any losses arising from the dishonor of the document. This issue has been virtually obsolete since the Uniform Commercial Code has been in place.

THE NOTARY ACTING AS WITNESS

In Texas, notary law does not explicitly prohibit a notary public from functioning in the dual role of witness and notary on the same document. You can act as a witness on a document that you notarize as long as you are not named in the document, do not benefit from the transaction, and the document does not require that your signature be notarized. However, it is better if you can avoid serving this dual role.

ELECTRONIC NOTARIZATION

Texas Uniform Electronic Transactions Act §32.001 (UETA)
Texas Civ. Prac. & Rem. Code §121.004

The concept of electronic notarization is fairly new to the notary world. Even though there is a tremendous growth in e-commerce, there is still little demand for e-notarization and the uniform acceptability of electronically notarized documents. However, in the future, this may change.

The American Association of Notaries advises notaries not to invest in expensive
e-notarization equipment unless they will be executing a considerable number of electronic notarizations. For instance, having e-notarization tools may be advisable if a lender or corporation executes transactions electronically and requires you to be equipped for this. Otherwise, it would be an unnecessary expense and investment.

In Texas, the electronic notarization process is almost as simple as a traditional pen-and-paper notarization and requires little technological knowledge. Typically, you obtain your electronic signature and seal through an online provider. Most often, the electronic document will be presented to you in the form of a PDF file or as a document created using a word processor. You upload the document to the online provider’s website and then complete on-screen instructions to allow the signer to sign or initial electronically using a signature pad or other tools. As with traditional notarial acts, the signer must be in your physical presence and you must verify identification documents and perform the verbal part of the notarial act. After the signer signs his or her name electronically, you will add your electronic signature and seal to the electronic document and send it electronically to the intended recipient.

The Texas UETA provides that the technology to be used when performing electronic notarizations must be agreed upon between parties. For example, if the parties agree that all electronic signatures used for notarial purposes must be secured and must provide evidence that the document is not modified or tampered with, then the notary must use one of several technologies that can provide secure signatures.

**REFUSING TO NOTARIZE**

Tex. Admin. Code §87.42

Many members of the public believe that, because notaries are state officers, they may not refuse a request for notarization. This is true to a certain extent. While you should not refuse to notarize for a discriminatory purpose or because the signer refuses to sign your record book, you can refuse to notarize for a number of reasons, including, but not limited to, the following:

- You are not familiar with performing the type of notarial act requested.
- The signer does not possess valid identification.
- The signer appears to be intoxicated or coerced into signing.
- The signer does not understand the contents of the document.
- The signer refuses to acknowledge, swear, or affirm.
- The signer is unable to pay your notarial fees.
- Your employer limits or prohibits your provision of notarial services during business hours.
- The service is being requested after your normal business hours.
- You do not have your seal and/or record book at the time.
• The document does not contain a pre-printed notarial certificate, and the signer is unable to choose one.

• You are named in the document or have a beneficial interest in the execution of the document.

• You cannot act as an impartial witness (i.e., the signer is a close family member such as a spouse, child, or parent).

• You suspect or have knowledge that the transaction is fraudulent.

If you refuse to notarize, make sure you are able to justify your refusal.

When refusing to notarize, explain to the customer the precise reason for your refusal. Irate customers may want to view the state handbook or the law that prohibits you from notarizing in that circumstance. Always offer some type of a remedy to the situation.

Tex. Admin. Code § 87.42 (d)(e) states that a notary may not refuse a request for notarial services on the basis of sex, age, religion, race, ethnicity, or origin of the requesting party. A notary should refuse a request for notarial services only after careful deliberation.

**DOCUMENT EVERYTHING**

Always document anything unusual, such as the above circumstances, in your record book. You will not remember details of every notarial act years from now, and your documentation may be invaluable at some point in the future.

Documentation will be critical if any future questions arise about a particular notarization and may be used to prove that you handled the transaction properly. Any detail regarding a transaction may prove relevant in the future, so document well.
ONLINE NOTARY PUBLIC

Until June 30th, 2018, a Texas notary could only perform his or her duties face-to-face with the affiant, or the person signing the document. Today, a person can appear face-to-face via audio/video conference technologies with anyone located across the state, the country, or the globe. Texas, Montana, Virginia, and a few other states treat this online notarization the same as being face-to-face in the same room. Below is an overview of the new online notary process and the laws you need to know.

HOW TO BECOME AN ONLINE NOTARY

To become an online notary, you must meet the following requirements:

1. Hold a traditional notary commission.
2. Purchase an electronic image of your notary seal in one of the following formats: MP, JPEG, PNG, or TIF.
3. Purchase a digital certificate that is X.509 complaint from a 3rd party vendor who has demonstrated evidence to the notary of its ability to utilize Public Key Infrastructure technology. The purpose of signing a document with a digital certificate is to provide evidence to the receiving parties that the notarized document has not been altered or changed since it was signed.
4. Change the digital certificate appearance so, when applied to a document, it will show your electronic signature and electronic seal. Here is a helpful link that details how to make these changes: https://www.adobe.com/devnet-docs/acrobatetk/tools/DigSig/appearances.html.

You can purchase a signing digital certificate from https://www.entrustdata card.com or from https://www.identrust.com. The American Association of Notaries does not endorse any of these companies. You can also perform a search on Google using the key words “signing digital certificate providers.”

Once you have acquired these items, you can apply for an online notary commission at the Texas Secretary of State’s website: https://www.sos.state.tx.us/statdoc/gettingstarted.shtml#. During the application process, you will be asked to agree with the standards set forth in Chapter 87 of the Texas Administrative Code relating to identify proofing and credential analysis. You will also be asked to confirm
that the X.509 digital certificate provider has demonstrated evidence that its certificate complies with Chapter 87 of the Texas Administrative Code.

Next, you will need to upload a copy of your electronic seal and a digitally signed statement of officer and pay the $50.00 filing fee.

Within three business days, the Secretary of State will notify you via email if your online notary application is accepted. The online notary commission is issued with the same expiration date as a traditional notary commission.

**HOW TO PERFORM ONLINE NOTARIZATIONS**

Tex. Gov’t. Code §406.101(9); Tex. Admin. Code §87.1(1) (b), §87.41 §87.70; §87.71; Civil Practice and Remedies §121.006

A Texas notary can perform an online notarization for anyone anywhere in the world as long as (1) the notary is located in Texas and (2) the affiant has an unexpired identification document issued by a state or the U.S. Federal Government with a photograph and signature of the signer. A current passport issued by a foreign country may also be used for a deed or other instrument relating to a residential real estate transaction. (Tex. Admin. Code §87.1(1) (b))

The process for performing online notarizations is straightforward. However, acquiring the technology to perform it securely and in compliance with Chapter 87 of the Texas Administrative Code can be difficult and pricey. It is expensive to develop your own platform to meet the specific standards required by Texas law. Consequently, most likely employers will need to develop platforms to allow employed notaries to perform online notarizations.

**Below is a summary of how online notarization works:**

A signer uploads a document on a notary’s website, and the signer’s identity is analyzed by a third-party application. The signer must then answer five Knowledge Base Authentication (KBA) questions about his or her personal life based on information and relevant facts from public and proprietary data sources. The KBA questions must be answered within two minutes, or the signer will get locked out for 24 hours after the second try.

KBA questions can ask about the last two digits of your social security number or, for example, in 2010 where you purchased a house or on what street. The law requires a minimum of five possible answers for each question.

For the purposes of credential analysis, the signer must then upload a clear, sharp image of the back and front of an identification card issued by his or her state or the U.S. Federal Government. A third-party provider will analyze the credentials and verify the information, bar codes, and text layout listed on the credentials to determine if they are valid or fraudulent.

For the notarization to be valid, the third-party credential analysis provider
Online Notary Public / Chapter 16

must provide confirmation of the identity proofing and credential analysis test to the notary. In addition, the online notary public is required to compare the following for consistency: the information and photo presented on the credential itself and the principal as viewed in real time through audio/visual transmission.

When the signer successfully completes all the identity proofing and credential analysis steps, the signer can invite a notary in real time to the secured uninterrupted video recording session.

The notary and the signer are required to share a computer screen and use two-way, audio/video conferencing technology that allows the individual and the notary to communicate with each other simultaneously. The audio/video signal must be live, and the remote notarization session must be recorded showing both the signer and the notary from the shoulders up.

The American Association of Notaries recommends the notary state in the audio/video recording his or her name, commission ID number and expiration date, and the state in which he or she is commissioned. The notary should also make a declaration to all participants that the notarization is being recorded electronically and mention the date and time, the state and county in which the notary is located, how the individual is being identified, the title and date of the document, and the type of notarial act being performed (oath or acknowledgment). The notary should also have the signer acknowledge that he or she is e-signing the document. Furthermore, the recording must include a statement that the signer is not signing under duress and understands the contents of the document he or she is signing.

In addition, the recording must include a recitation by the signer stating his name, where he is physically located, the state and country where he resides, the date and time of the signing, and the type of identification he is using.

The notary’s website should have some type of annotation tools to allow the signer to add signatures, initials, names, text, etc. The notary then will administer an oath or take the signer’s acknowledgment and witness the signer in real time on the shared screen inserting his or her electronic signature.

The notary completes the electronic notarial certificate according to Tex. Admin. Code §87.41(9), inserts his or her digital seal and signature, and completes an electronic notary journal record according to Tex. Gov’t. Code §406.108. Finally, the signer can download a digitally notarized document.

Please note:

1. The notarial certificate must include a notation that the notarial certificate was performed online.

2. If the signer is personally known to the notary, that is sufficient and the signer can omit the identity and credential analysis process. However, the audio/visual conference shall include a statement by the notary to that effect and a recording of the actual notarial act performed. A credible witness can be used to identify the signer in cases in which the signer does not have a valid U.S. identification
document. The credible witness must go through the identity proofing and credential analysis process in order for the notarial act to be valid. Tex. Admin. Code §87.1

**ONLINE NOTARY AUTHORIZED DUTIES**
Tex. Gov’t. Code §406.107; §406.016

An online notary public has the same authority as a traditional notary to perform any of the functions authorized under Tex. Gov’t. Code §406.016:

1. take acknowledgments or proofs of written instruments;
2. protest instruments permitted by law to be protested;
3. administer oaths;
4. take depositions; and
5. certify copies of documents not recordable in the public records.

**ELECTRONIC RECORD KEEPING**
Tex. Gov’t. Code §406.108

An online notary must keep a secure electronic record of all online notarial acts. The electronic record must contain the following:

1. the date and time of the notarization;
2. the type of notarial act;
3. the type, the title, or a description of the electronic document or proceeding;
4. the printed name and address of each principal involved in the transaction or proceeding;
5. evidence of identity of each principal involved in the transaction or proceeding in the form of:

   (a) a statement that the person is personally known to the online notary public;
   (b) a notation of the type of identification document provided to the online notary public;
   (c) a record of the identity verification made under Section 406.110, if applicable; or
   (d) the following: (i) the printed name and address of each credible witness swearing to or affirming the person’s identity and (ii) for each credible witness not personally known to the online notary public, a description of the type of identification documents provided to the online notary public;
6. a recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence; and
7. the fee, if any, charged for the notarization.
In addition, Tex. Admin. Code §§ 87.41(g)(3) requires the notary’s electronic record to include at a minimum a recording of the following:

1. confirmation by the notary public that the principal has successfully completed identity proofing and credential analysis;
2. visual confirmation of the identity of the principal through visual inspection of the credential used during credential analysis; and
3. the actual notarial act performed.

ALLOWABLE NOTARIAL FEES FOR ONLINE NOTARIZATION

Tex. Gov’t. Code § 406.111

An online notary public, or the online notary public’s employer, may charge a fee in an amount not to exceed $25 for performing an online notarization in addition to any other fees authorized under Tex. Gov’t. Code § 406.111.

REFUSAL TO PERFORM ONLINE NOTARIAL ACTS

Tex. Admin. Code § 87.43.87.42

A notary public is authorized to refuse to perform a notarial act under the following circumstances:

1. the notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence;
2. the notary public has reasonable grounds to believe that the document in connection with which the notarial act is requested may be used for an unlawful or improper purpose;
3. the notary public has reasonable grounds to believe the signing party does not have the capacity to understand the contents of the document;
4. the notary public is not familiar with the type of notarization requested;
5. the online notary public is unable to verify the identity of the principal using an acceptable means of identification in accordance with Subchapter H;
6. the online notary public is unable to verify the security of the two-way audio/visual transmission;
7. the signature of the principal cannot be attached to the electronic document;
8. the digital certificate or electronic seal of the online notary public cannot be attached to the electronic document in a manner that renders any subsequent change or modification to the document evident; or
9. the notary’s employer has limited or prohibited the notary from notarizing during work hours.

A notary public may not refuse a request for notarial services on the basis of the sex,
age, religion, race, ethnicity, or national origin of the requesting party and should refuse a request for notarial services only after careful deliberation.

**RETENTION & STORAGE OF ELECTRONIC JOURNAL ENTRIES AND VIDEO RECORDING**

Tex. Admin. Code §§87.51 (b) (c)(d); §87.54

Online notaries are required by Texas law to keep and backup copies of electronic journal records, including audio/video recordings, for five years, and they must provide copies to any member of the public upon request. The notary is required to redact any portion of the audio/visual recording that includes biometric information or an image of the identification card used to identify the principal. That portion of the recording is confidential and must not be released without the consent of the individual whose identity is being established, unless the notary is ordered by a court of competent jurisdiction or has received a request from the Secretary of State.

Tex. Admin. Code §87.51 allows online notaries to contract with a third party to provide such storage if the third party: (1) has provided reasonable evidence to the online notary public that it is capable of providing such services and (2) provides complete access to the online notary public to all the notary’s records for an agreed period of time, which at minimum, complies with the retention requirements in Tex. Admin. Code §87.54. If the contract between the online notary public and the third party is terminated, all records must be transferred to the online notary public.

**SECURITY OF ONLINE NOTARY TOOLS**

Tex. Gov’t. Code §406.109; Tex. Admin. Code §§87.31(22); §87.71(7)

It is the notary’s and NOT the employer’s responsibility to back up and safeguard the notary electronic records, the audio/video recording, and the online notary tools. If you leave your employer, take the electronic records with you, including all audio/video recordings. When you start a new job, explain to your employer that the electronic journal records, audio/video recordings, and the digital notary certificate belong to you. If you are ever called to testify in a court about a notarial act that you performed years back, you must present these records and video/audio recordings to the judge to prove that you performed your notarial duties according to the law.

An online notary is required to protect the notary public’s electronic record, electronic signature, and electronic seal and keep them secure and under the online notary public’s exclusive control. The online notary public may not allow another person to use these tools.

An online notary public must take reasonable steps to ensure that any registered
device used to create an electronic signature is current and has not been revoked or terminated by the device’s issuing or registering authority.

An online notary public must immediately notify an appropriate law enforcement agency and the Secretary of State of the theft or vandalism of the online notary public’s electronic record, electronic signature, or electronic seal. Additionally, an online notary public must immediately notify the secretary of state of the loss or use by another person of his or her electronic record, electronic signature, or electronic seal.

**REPLACING A DIGITAL CERTIFICATE OR ELECTRONIC SEAL FOR AN ONLINE NOTARY**

Tex. Admin. Code §87.63

An online notary must replace his or her digital certificate or electronic seal if:

1. the electronic seal or digital certificate has expired;
2. the electronic seal or digital certificate has been revoked or terminated by the device’s issuing or registering authority;
3. the electronic seal or digital certificate is for any reason no longer valid or capable of authentication; or
4. the notary updated his or her name on the notary commission.

An online notary public who replaces an electronic seal or digital certificate must provide the following to the Secretary of State within ten days of the replacement:

1. the electronic technology or technologies to be used in attaching or logically associating the new electronic seal or digital certificate to an electronic document;
2. the applicant’s new digital certificate, if applicable;
3. a copy of the applicant’s new electronic seal, if applicable; and
4. any necessary instructions or techniques supplied by the vendor that allow the notary’s electronic seal or digital certificate to be read and authenticated.

**EXPIRATION OF AN ONLINE NOTARY COMMISSION**

Tex. Gov’t. Code §406.122

If you decide not to renew your online notary commission, then you are required to destroy the digital certificate and notify the Secretary of State. However, Texas law allows online notaries to use the same unexpired digital certificate if they renew their online notary commissions within ninety days of the commission expiration date provided that there have been no changes to the name or signature and the digital certificate does not change.
RENEWAL OF ONLINE NOTARY COMMISSION
Tex. Admin. Code §87.15

As mentioned before, your online notary commission is issued with the same expiration date as your traditional notary commission. The Secretary of State will not renew your online notary commission until your traditional notary commission is renewed. The renewal process is the same as the process to become an online notary for the first time. You are required to complete a renewal application at the Secretary of State's website and upload a new digital certificate, electronic seal, and pay the $50 renewal fee. You can renew ninety days before your commission expiration date.

CHANGE OF ADDRESS/NAME
Tex. Admin. Code §87.60; §87.62; §87.63

If your address on file with the Texas Secretary of State changes, you are required to notify the State within ten days by completing and submitting Form 2302 (Notary Public Change of Address Form). This form is available on the Secretary of State’s website.

If your name changes due to marriage or divorce, you can continue using the digital certificate, signature, and seal on file with the Texas Secretary of State provided you use the same name under which you are commissioned. If you decide to change the name on your notary commission, then you need to purchase a new electronic seal and digital certificate that contains the new name, as specified on the amended commission, and provide the following to the Secretary of State within ten days:

1. the electronic technology or technologies to be used in attaching or logically associating the new electronic seal or digital certificate to an electronic document;
2. the applicant’s new digital certificate, if applicable;
3. a copy of the applicant’s new electronic seal, if applicable;
4. any necessary instructions or techniques supplied by the vendor that allow the notary's electronic seal or digital certificate to be read and authenticated.
Acknowledgment: a formal declaration before an authorized official (such as a notary public) by a person signing an instrument that such execution is his or her free act and deed.

Acknowledgment Certificate: a written statement, in a form at the end of or attached to a document, signed and stamped by an authorized official such as a notary, that states that the official took the acknowledgment of the person who signed the document.

Administer: to discharge the duties of a notary, as in the giving of an oath. A notary administers an oath.

Affidavit: a document containing a statement of truth under penalties of perjury, made under oath or affirmation, signed by the affiant before a notary, that includes a jurat (oath/affirmation statement) signed and sealed by the notary.

Affirmation: a solemn statement of truth made under penalties of perjury, equivalent by law to an oath, but without any reference to a supreme being. This statement is legally binding.

Affix: to stamp or impress the notary seal to a document.

Apostille: a certificate issued by the Texas Secretary of State attesting to a notary’s authority, usually required for notarized documents being sent out of Texas to those countries that are parties to the international treaty commonly known as the Hague Convention.

Attest: to bear witness to, sign a document as a witness, or to certify. To state as truth.

Attorney-in-Fact: an individual authorized by a written power of attorney to act on behalf of another person.

Authentication: a process by which the Texas Secretary of State certifies or verifies the official status and authenticity of a commissioned notary. This generally results in an Apostille or a Certificate of Authority attached to the notarized document, usually when being sent to another country.

Bill of Sale: a document that conveys title or ownership of personal property.

Certified Copy: a copy of a document signed and attested to as a genuine copy by the public official with possession of the original record. A notary may make a certified copy of an original document only if it is not a “publicly recordable” document such as a birth, marriage, or death certificate.
Certify: to attest as being true.

Codicil: a document modifying the stipulations of a will.

Coerce: to force another into compliance or submission. Never notarize if evidence of coercion exists.

Commission: the certificate issued by the Secretary of State substantiating the notary’s appointment as a notary public, authorizing the notary to perform the official acts of that office, and defining the expiration date of the appointment.

Contract: a binding agreement between two or more individuals or representatives to perform in a certain way.

Conveyance: a document that transfers ownership of real property.

Credential analysis: a process or service operating according to criteria approved by the Secretary of State through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

Deed: a document by which a person transfers ownership of real property.

- Quitclaim Deed: a deed transferring ownership, title, or interest in a real property but not professing that such title is valid.

- Warranty Deed: a deed wherein the grantor guarantees a clear title to a parcel of real property.

Deposition: the testimony of a witness, or deponent, under oath or affirmation, usually taken outside of a courtroom, during which attorneys verbally interrogate the witness. The testimony is typically then transferred to a written document and notarized to be used in a court trial.

Digital Certificate: a computer-based record or electronic file issued to a notary public or applicant for appointment as a notary public for the purpose of creating an official electronic signature. The digital certificate shall be kept in the exclusive control of the notary public.

Duress: cruel, unscrupulous, or illegal manipulation of a reluctant or unwilling individual in an attempt to force a desired performance, behavior or action. If a signer is under duress, refuse to notarize.

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

Electronic document: information that is created, generated, sent, communicated, received, or stored by electronic means.

Electronic notarial certificate: the portion of a notarized electronic document that is completed by an online notary public and contains the following: (A) the online notary public’s electronic signature, electronic seal, title, and commission expiration date; (B) other required information concerning the
date and place of the online notarization; and (C) the facts attested to or certified by the online notary public in the particular notarization.

**Electronic seal:** information within a notarized electronic document that confirms the online notary public’s name, jurisdiction, identifying number, and commission expiration date and generally corresponds to information in notary seals used on paper documents.

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

**Execute a Document:** to act as necessary to make a document fully effective, typically by signing before a notary public.

**Executor:** an individual appointed to carry out the requirements of a will.

**Felony:** a crime punishable by imprisonment or death.

**Free Act and Deed:** an individual’s actions performed willingly for the purposes stated. One who signs or acknowledges an act in such terms accepts complete responsibility for the act.

**Grantee:** an individual receiving a deed of real property from a grantor, typically the buyer.

**Grantor:** an individual transferring a deed of real property, typically the seller.

**Guardian:** an individual responsible for a minor and/or the minor’s property.

**Identification Document:** a current identification card or document issued by a federal or any state government agency that contains the photograph and signature of the signer. The best types of identification documents also include:

- The holder’s detailed physical description such as height, weight, and eye color
- An official seal of the agency that issued the card
- An identifying number
- An expiration date

**Identity proofing:** a process or service operating according to criteria approved by the Secretary of State through which a third person affirms the identity of an individual through review of personal information from public and proprietary data sources.

**Instrument:** a written document.

**Judgment:** a court declaration stating that one individual owes another and the amount of the indebtedness.

**Jurat:** a written notarial certificate on any sworn statement or affidavit, attesting that the document was signed and sworn to or affirmed by the signer in the presence of the notary public.
**Lease**: an agreement between two or more individuals or representatives, where one party is the owner of a certain property and grants to another or others the right to use this property for a specific period of time in exchange for periodic payment of a set price (rent).

**Lessee**: one who rents property from another.

**Lessor**: one who rents property to another.

**Lien**: an attachment by a seller or mortgagor to real estate or personal property withholding ownership until the payment is received in full, at which time the seller conveys full ownership to the buyer.

**Litigation**: a lawsuit or legal action.

**Misdemeanor**: any crime other than a felony.

**Mortgage on Real Property**: a document establishing a seller’s or mortgagor’s lien on a property.

**Negligence**: the failure to use reasonable care.

**Notarial Act**: any official act that a notary public is authorized to perform. Texas notaries are authorized to:

- Take acknowledgments or proofs of written instruments
- Protest instruments permitted by law to be protested
- Administer oaths and affirmations
- Take depositions
- Certify copies of documents not recordable in the public records

Notaries may also be present at the opening of a safe deposit box.

**Notarial Certificate**: a written, signed, and sealed declaration made by the notary as a part of or attached separately to a document, certifying details of the notarial act performed.

**Notary Public (Notarial Officer)**: a public officer appointed by the Secretary of State whose function is to administer oaths and affirmations, to take acknowledgments and proofs, to certify copies of certain documents, and to perform other duties specified by law.

**Oath**: any form of confirmation or testimony in which a person gives evidence that he or she is bound by a supreme being to tell the truth in a statement. Swearing to a false statement is perjury.

**Online notarization**: a notarial act performed by means of two-way video and audio conference technology that meets the standards adopted under Section 406.104.

**Online Notary Public**: an individual commissioned by the Secretary of State as an online notary. An online notary has authority (A) as a traditional notary
public, and (B) to perform an online notarization as provided by Subchapter C, Chapter 406 of the Government Code and this chapter.

**Perjury:** making a false statement under oath or affirmation. Perjury is a felony that often results in fines and/or prison.

**Personal appearance: or personally appear:** (A) when performing a notarization other than an online notarization, the principal for whom the notarization is being performed physically appeared before the notary public at the time of the notarization in a manner permitting the notary public and the principal to see, hear, communicate and give identification credentials to each other, and (B) for an online notarization, the principal for whom the notarization is being performed appeared through an interactive two-way audio and video communication that meets the online notarization requirements as provided by Subchapter C, Chapter 406 of the Government Code and this chapter.

**Personally Known:** knowing an individual sufficiently to have faith and trust in that person’s identity.

**Power of Attorney (POA):** a document authorizing a person to act or sign legally in place of another.

**Prima Facie Evidence:** evidence that would, if uncontested, establish a fact or raise a presumption of a fact.

**Principal:** an individual: (A) whose electronic signature is notarized in a traditional or online notarization; or (B) who is taking an oath or affirmation from the online notary public but not in the capacity of a witness for the online notarization.

**Proof:** a declaration made by one who saw a document’s execution (signing) take place - a subscribing witness.

**Protest:** a formal statement made by a notary for another declaring a failure to pay on a promissory note.

**Reasonable Care:** care a person of normal judgment and intelligence would take in a given circumstance. Failure to exhibit such care is negligence.

**Remote presentation:** transmission to the online notary public through communication technology an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to:

(A) identify the individual seeking the online notary public’s services and (B) perform credential analysis.

**Rent:** agreed-upon payment to an individual or entity for the use of property for an established period of time.

**Representative Capacity:** acting in place of a person, corporation, partnership, trust, or other entity.
Statute: a law established by legislative action.

Subscribe: to sign.

Swear: to take an oath.

Testator: the person making a will.

Texas Statutes: legislatively enacted laws governing the state, as opposed to court-determined or unwritten common laws.

Traditional Notary Public: an individual commissioned by the Secretary of State under Subchapter A, Chapter 406 of the Government Code. A traditional notary public does not have the authority to perform an online notarization unless also commissioned as an online notary public.

Venue: the location where the notarial act takes place, usually stated in the following form:

    State of Texas
    County of____

    Note: If the venue on a document is completed before the notarization occurs and states a different state or county than where the notary and signer are standing at the time of the notarization, the venue must be corrected when presented to the notary in order for the notarial act to be valid.

Will: a legal instrument by which an individual disposes of funds and real and personal property after death.
THE TEXAS CONSTITUTION

Article 4 - EXECUTIVE DEPARTMENT
Section 26 - NOTARIES PUBLIC

(a) The Secretary of State shall appoint a convenient number of Notaries Public for the state who shall perform such duties as now are or may be prescribed by law. The qualifications of Notaries Public shall be prescribed by law.

(b) The terms of office of Notaries Public shall be not less than two years nor more than four years as provided by law.

Article 5 - JUDICIAL DEPARTMENT
Section 19 - JUSTICES OF THE PEACE; JURISDICTION; EX OFFICIO NOTARIES PUBLIC

Justice of the peace courts shall have original jurisdiction in criminal matters of misdemeanor cases punishable by fine only, exclusive jurisdiction in civil matters where the amount in controversy is two hundred dollars or less, and such other jurisdiction as may be provided by law. Justices of the peace shall be ex officio notaries public.

Article 16 - GENERAL PROVISIONS
Section 1 - OFFICIAL OATH

(a) All elected and appointed officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation: "I, ______________________, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of __________________ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

(b) All elected or appointed officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement: "I, ______________________, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God."

(c) Members of the Legislature, the Secretary of State, and all other elected and appointed state officers shall file the signed statement required by Subsection (b) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (a) of this section. All other officers shall retain the signed statement required by Subsection (b) of this section with the official records of the office. (Amended Nov. 8, 1938, and Nov. 6, 1956; Subsecs. (a)-(c) amended and (d)-(f) added Nov. 7, 1989; Subsecs. (a) and (b) amended, Subsecs. (c) and (d) deleted, and Subsecs. (e) and (f) amended and redesignated as Subsec. (c) Nov. 6, 2001.)
Article 16 - GENERAL PROVISIONS

Section 40 - HOLDING MORE THAN ONE OFFICE; EXCEPTIONS; RIGHT TO VOTE

(a) No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace, County Commissioner, Notary Public and Postmaster, Officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, and retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and the officers and directors of soil and water conservation districts, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer or enlisted man of the National Guard, and the National Guard Reserve, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States, or retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and officers of the State soil and water conservation districts, from holding at the same time any other office or position of honor, trust or profit, under this State or the United States, or from voting at any election, general, special or primary in this State when otherwise qualified.

(b) State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts. Such State employees or other individuals may not receive a salary for serving as members of such governing bodies, except that a schoolteacher, retired schoolteacher, or retired school administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district, including a water district created under Section 59, Article XVI, or Section 52, Article III.

(c) It is further provided that a nonelective State officer may hold other nonelective offices under the State or the United States, if the other office is of benefit to the State of Texas or is required by the State or Federal law, and there is no conflict with the original office for which he receives salary or compensation.

(d) No member of the Legislature of this State may hold any other office or position of profit under this State, or the United States, except as a notary public if qualified by law. (Amended Nov. 2, 1926, Nov. 8, 1932, Nov. 7, 1972, and Nov. 6, 2001.)

Article 16 - GENERAL PROVISIONS

Section 61 - COMPENSATION OF DISTRICT, COUNTY, AND PRECINCT OFFICERS; SALARY OR FEE BASIS; DISPOSITION OF FEES

(a) All district officers in the State of Texas and all county officers in counties having a population of twenty thousand (20,000) or more, according to the then last preceding Federal Census, shall be compensated on a salary basis.

(b) In all counties in this State, the Commissioners Courts shall be authorized to determine whether precinct officers shall be compensated on a fee basis or on a salary basis, with the exception that it shall be mandatory upon the Commissioners Courts, to compensate all justices of the peace, constables, deputy constables and precinct law enforcement officers on a salary basis.
(c) In counties having a population of less than twenty thousand (20,000), according to the then last preceding Federal Census, the Commissioners Courts have the authority to determine whether county officers shall be compensated on a fee basis or on a salary basis, with the exception that it shall be mandatory upon the Commissioners Courts to compensate all sheriffs, deputy sheriffs, county law enforcement officers including sheriffs who also perform the duties of assessor and collector of taxes, and their deputies, on a salary basis.

(d) All fees earned by district, county and precinct officers shall be paid into the county treasury where earned for the account of the proper fund, provided that fees incurred by the State, county and any municipality, or in case where a pauper's oath is filed, shall be paid into the county treasury when collected and provided that where any officer is compensated wholly on a fee basis such fees may be retained by such officer or paid into the treasury of the county as the Commissioners Court may direct.

(e) All Notaries Public, county surveyors and public weighers shall continue to be compensated on a fee basis.

TEXAS ADMINISTRATIVE CODE

PART 4. OFFICE OF THE SECRETARY OF STATE
CHAPTER 87, NOTARY PUBLIC
SUBCHAPTER A - GENERAL PROVISIONS

§ 87.1. Definitions

Words and terms defined in the Texas Government Code, Chapter 406, shall have the same meaning in this chapter. For the purposes of this chapter the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Credential means a valid, unexpired identification card or other document issued by the federal government or any state government, as defined by §311.05 of the Government Code, that contains the photograph and signature of the principal. With respect to a deed or other instrument relating to a residential real estate transaction, credential also includes a current passport issued by a foreign country.

(2) Credential Analysis means the process which complies with Subchapter H of this chapter by which the validity of a government-issued identification credential is affirmed by a third party through review of public and proprietary data sources.

(3) Digital Certificate means a computer-based record or electronic file issued to a notary public or applicant for appointment as a notary public for the purpose of creating an official electronic signature. The digital certificate shall be kept in the exclusive control of the notary public.

(4) Identity Proofing means the process which complies with Subchapter H of this chapter by which the identity of an individual is affirmed by a third party through review of public and proprietary data sources.

(5) Online Notary Public means an individual commissioned by the secretary of state as an online notary. An online notary has authority:

(A) as a traditional notary public; and

(B) to perform an online notarization as provided by Subchapter C, Chapter 406 of the Government Code and this chapter.
(6) Personal appearance or personally appear means:
(A) when performing a notarization other than an online notarization, the principal for whom the notarization is being performed physically appeared before the notary public at the time of the notarization in a manner permitting the notary public and the principal to see, hear, communicate and give identification credentials to each other; and
(B) for an online notarization, the principal for whom the notarization is being performed appears by an interactive two-way audio and video communication that meets the online notarization requirements as provided by Subchapter C, Chapter 406 of the Government Code and this chapter.

(7) Principal means an individual:
(A) whose signature is notarized in a traditional or online notarization; or
(B) taking an oath or affirmation from a notary public but not in the capacity of a witness for the online notarization.

(8) Notary Public means an individual commissioned by the secretary of state under both Subchapters A and C, Chapter 406 of the Government Code.

(9) Traditional Notary Public means an individual commissioned by the secretary of state under Subchapter A, Chapter 406 of the Government Code. A traditional notary public does not have the authority to perform an online notarization unless also commissioned as an online notary public.

§87.2. Application for Commission as a Traditional Notary Public

(a) The secretary of state appoints notaries public under the provisions of article IV, §26 of the Texas Constitution and Chapter 406, Government Code.

(b) An individual applying for a traditional notary public commission shall use the application form prescribed by the secretary of state. The application shall include:
(1) the applicant's name to be used in acting as a traditional notary public;
(2) the applicant's mailing address;
(3) the applicant's county of residence;
(4) the applicant's date of birth;
(5) the applicant's driver's license number or the number of other official state-issued identification; and
(6) the applicant's social security number.

(c) An applicant must secure a bond if required to do so by §406.010 of the Government Code. To evidence the bond, the application shall include the signature of a person authorized by the surety company providing the bond.

(d) The applicant shall execute, in the name under which the commission is sought, the statement of officer as required by article XVI, §1 of the Texas Constitution.

(e) The application form is available on the secretary of state web site or may be obtained by writing the Office of the Secretary of State, Notary Public Unit, P.O. Box 13375, Austin, Texas 78711. See Form 2301. The application form for a notary who is an officer or employee of a state agency is Form 2301-NB, available on the web site maintained by the State Office of Risk Management.
§87.3. Electronic Submission of Traditional Notary Public Application

(a) The secretary of state has developed a system for electronic submission of the application for a traditional notary public commission, the bond required under §406.010 of the Government Code, and the statement of officer. The secretary of state authorizes the submission of these documents electronically on behalf of a traditional notary public under the following terms and conditions:

(1) the submitter must comply with the technical specifications contained in the eNotary Web Service Consumer’s Guide available through the Information Technology Division of the Office of the Secretary of State;

(2) the traditional notary public application and the statement of officer signed by the applicant and the surety bond signed by an officer or attorney-in-fact for the surety must be attached to the electronic submission as an image in the format specified in the eNotary Web Service Consumer’s Guide; and;

(3) all fees must be paid by prepaid account, LegalEase® or credit card.

(b) If the applicant is qualified, the secretary of state shall cause the commission to be issued and the educational materials to be sent to the traditional notary public. On commission, the applicable fees will be charged to the prepaid account, LegalEase® or the credit card.

(c) If the application is rejected, the secretary of state will return a notice of the rejection to the submitter electronically. On rejection, no fees are charged to the account, LegalEase® or to the credit card.

(d) Status of a traditional notary public application submission may be checked through use of a web service interface.

(e) If the submitter is not able to consistently comply with the technical specifications and the submissions are failing as a result, the secretary of state may revoke the privilege of the submitter to submit electronically until all technical issues are resolved to the satisfaction of the secretary of state.

(f) As part of the electronic submission, the submitter is responsible for accurately entering the data elements related to the application. Repeated and consistent entry errors may result in a revocation of the privilege of the submitter to submit electronically.

(g) The submitter shall retain the original signed application, surety bond and statement of officer until the commission is issued by the secretary of state.

(h) The secretary of state will not accept electronic applications on behalf of an applicant who has been convicted of a felony or a crime of moral turpitude. The application under these circumstances (along with the statement of officer, the bond, the explanation of the criminal conviction and the applicable fees) must be delivered to the secretary of state by mail, courier or personal delivery.

§87.4. Submission of Online Notary Public Application

(a) An individual applying for an online notary public commission shall use the electronic submission platform developed by the secretary of state.

(b) The application shall include:

(1) the applicant’s name to be used in acting as an online notary public, which shall match the name on the applicant’s traditional notary public commission;

(2) the applicant’s email address;
the applicant's digital certificate;

(4) a copy of applicant's electronic seal in an acceptable file format;

(5) the applicant's notary public identification number, as assigned by the secretary of state;

(6) an executed statement of officer, as required by article XVI, §1 of the Texas Constitution; and

(7) a statement certifying that the applicant:
   (A) will comply with the standards set forth in this chapter relating to identity proofing and credential analysis;
   (B) will use a third-party provider who has provided the notary with evidence of its ability to provide an electronic technology standard that utilizes Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant when attaching or logically associating the notary's electronic seal and digital certificate to an electronic document;
   (C) will, upon request by the secretary of state, promptly provide any necessary instructions or techniques supplied by a vendor that allow the online notary public's digital certificate and seal to be read and authenticated; and
   (D) is at least 18 years of age, a resident of the State of Texas, and has not been convicted of a felony or a crime involving moral turpitude.

SUBCHAPTER B - ELIGIBILITY AND QUALIFICATION

§87.10. Eligibility to Hold the Office of Notary Public

(a) Subject to the provision in subsection (b) of this section and §87.12 of this title (relating to Qualification by an Escrow Officer Residing in an Adjacent State), a person is eligible to be a notary public if the person is 18 years of age or older and a resident of Texas.

(b) A person is not eligible to be a notary public if the person was convicted of a crime involving moral turpitude or a felony and the conviction has become final, has not been set aside, and no pardon or certificate of restoration of citizenship rights has been granted.

(c) A crime involving moral turpitude includes the commission of a crime involving dishonesty, fraud, deceit, misrepresentation, deliberate violence, moral depravity, or that reflects adversely on the applicant's honesty, trustworthiness, or fitness as a notary public, which may include, but not be limited to:

   (1) Class A and B type misdemeanors which have not been set aside, or for which no pardon or certificate of restoration of citizenship rights have been granted; and

   (2) felony convictions which have not been set aside, or for which no pardon or certificate of restoration of citizenship rights have been granted.

(d) Class C type misdemeanor convictions shall not be considered in determining eligibility.

(e) If the secretary of state discovers, at any time, that an applicant or commissioned notary public is not eligible, the secretary of state will reject the notary public application or revoke the notary public commission.

§87.11. Eligibility to be Commissioned as an Online Notary Public

In addition to the eligibility requirements in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public), an applicant must hold a commission as a traditional notary public before being eligible for appointment as an online notary public.
§87.12. Qualification by an Escrow Officer Residing in an Adjacent State

(a) An applicant who is qualified as an escrow officer within the meaning assigned by §2652.051, Insurance Code, is not required to be a resident of Texas if the applicant is a resident of New Mexico, Oklahoma, Arkansas or Louisiana.

(b) The secretary of state shall commission the applicant if, notwithstanding the residency requirements, the applicant satisfies the conditions of subsection (a) of this section and §87.13 and §87.14 of this title (relating to Issuance of the Traditional Notary Public Commission by the Secretary of State and Issuance of the Online Notary Public Commission by the Secretary of State).

(c) A notary public, appointed under this section, who ceases to be qualified under this section, must voluntarily surrender the notary public commission.

§87.13. Issuance of the Traditional Notary Public Commission by the Secretary of State

(a) The secretary of state shall issue a traditional notary public commission to a qualified applicant. An applicant is qualified if:

1. the applicant meets the eligibility requirements stated in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public);

2. the applicant submits:
   (A) a properly completed and executed application;
   (B) the bond as provided in §406.010, Government Code, if required;
   (C) the statement of officer required by article XVI, §1 Texas Constitution;
   (D) payment to the secretary of state of fees required by §406.007, Government Code; and

3. no good cause exists for rejecting the application.

(b) The secretary of state shall not commission an applicant if the applicant had a prior application rejected or a commission revoked due to a finding of ineligibility or good cause and the reason for ineligibility or grounds for good cause continues to exist.

(c) When all conditions for qualification have been met, the application shall be approved and filed. The secretary of state shall cause a commission to be issued and sent to each traditional notary public who has qualified. A commission is effective as of the date of qualification.

§87.14. Issuance of the Online Notary Public Commission by the Secretary of State

(a) The secretary of state shall issue an online notary public commission to a qualified applicant. An applicant is qualified if:

1. the applicant meets the eligibility requirements stated in §87.11 of this title (relating to Eligibility to be Commissioned as an Online Notary Public);

2. the applicant submits:
   (A) a properly completed and executed application;
   (B) the statement of officer required by article XVI, §1 Texas Constitution;
   (C) payment to the secretary of state the application fee of $50; and

3. no good cause exists for rejecting the application.

(b) The secretary of state shall not commission an applicant if the applicant had a prior application rejected or a commission revoked due to a finding of ineligibility or good cause and the reason for ineligibility or grounds for good cause continues to exist.
(c) When all conditions for qualification have been met, the application shall be approved and filed. The secretary of state shall cause a commission to be issued and sent to each online notary public who has qualified. A commission is effective as of the date of qualification and shall expire on the same date as applicant’s corresponding traditional notary public commission.

§ 87.15. Renewal of Commission
(a) A notary public seeking to renew either a traditional commission or both a traditional and online commission shall file an application for renewal in the same manner and on the same form as if filing an original application for commission. The secretary of state will accept applications for renewal not sooner than 90 days before the expiration of the notary public’s current commission. The renewal must be received by the secretary of state no later than the expiration date of the notary public’s current commission.

(b) The secretary of state shall determine eligibility for renewals according to the same standards as initial applicants, in accordance with this chapter and §406.004, Government Code. The secretary of state is not bound by prior determinations of eligibility.

SUBCHAPTER C - NOTARIES WITHOUT BOND
§87.20. Qualification by an Officer or Employee of a State Agency
(a) An applicant who is an officer or employee of a state agency is not required to provide a surety bond. For the purpose of this chapter, "state agency" has the meaning assigned by §2052.101, Government Code.

(b) An applicant who is an officer or employee of a state agency and does not provide a surety bond must complete the traditional notary public application entitled "Application for Appointment as a Notary Public Without Bond" (Form 2301-NB).

(c) The State Agency employing the applicant must submit the completed application to the State Office of Risk Management.

(d) The State Office of Risk Management shall complete the verification certificate on the application and forward the completed application to the Office of the Secretary of State for processing.

(e) The secretary of state shall commission the applicant if:
   (1) the applicant meets the eligibility requirements stated in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public);
   (2) the applicant submits:
      (A) a properly completed and executed application verified by the State Office of Risk Management;
      (B) the statement of officer required by article XVI, §1 Texas Constitution;
      (C) the payment of fees required by §406.007(a)(2) and§406.007(b), Government Code; and
   (3) no good cause exists for rejecting the application.

§ 87.21. Change in Employment Status by an Officer or Employee of a State Agency Who Has Qualified Without a Surety Bond
(a) If a notary public who has qualified without a surety bond transfers to another state agency, the agency to which the notary public transfers shall notify the State Office of Risk Management and the Office of the Secretary of State of the transfer.
(b) If a notary public terminates state employment, the notary public shall:
   (1) voluntarily surrender the notary public commission;
   (2) purchase and provide evidence to the secretary of state of the purchase of a notary public bond for the time period remaining on the notary's current term of office; or
   (3) voluntarily surrender the notary public commission and apply for a new term of office, provide a notary public bond, and pay the applicable fees.

(c) Failure to take one of the actions set forth in subsection (b) of this section within 30 days of termination of state employment is good cause for revocation of the notary public's commission.

§ 87.22. Special Requirements for Notaries Without Bond

(a) A notary public commissioned as a notary public without bond shall obtain a seal which complies with the requirements of §406.013, Government Code and §87.44 of this title (relating to Notary Seal) and which contains an additional line reading "Notary without Bond".

(b) A state employee is not prohibited from purchasing a notary bond at personal expense. However, an individual commissioned as a notary without bond shall only notarize documents pursuant to their official state duties.

(c) Agencies shall require notaries without bond to attend a notary training class, either provided internally or externally.

(d) Notaries without bond who notarize documents outside of their official state duties or who fail to use the "Notary without Bond" seal shall be subject to disciplinary action by their respective agencies and such action may constitute good cause under §87.31 of this title (relating to Good Cause).

SUBCHAPTER D - ADMINISTRATIVE ACTION

§ 87.30. Rejection of Application and Revocation of Commission

The secretary of state shall, for ineligibility or good cause, reject any application, revoke the commission of any notary public, or take other disciplinary action, as outlined in §87.34 of this title (relating to Disciplinary Action), against a notary public as the secretary of state deems appropriate. Rejection, revocation, and suspension proceedings will be held pursuant to the right of notice, hearing, and adjudication as set out in the rules of practice and procedure before the Office of the Secretary of State, the rules of the State Office of Administrative Hearings and the Administrative Procedure Act, Government Code, §§2001.001 - 2001.902. Any party to a contested case has the right to be represented by legal counsel. Such action will be subject to the right of appeal to a district court of Travis County.

§ 87.31. Good Cause

Good cause may include the following:

(1) a false statement knowingly made in a notary public application;

(2) a final conviction for the violation of any law concerning the regulation of the conduct of notaries public in this state or any other state;

(3) use of the phrase "notario" or "notario publico" in connection with advertising or offering the services of a notary public;
false representation as an attorney as specified in §406.017, Government Code;

a failure to discharge fully and faithfully any of the duties or responsibilities required of a notary public;

the unauthorized practice of law;

a failure to utilize a correct notary seal as described in §406.013 and §406.101(5), Government Code and this chapter;

a failure to administer an oath or affirmation as required by law;

the collection of a fee in excess of the fees authorized by §406.024 and §406.111, Government Code;

the execution of any certificate as a notary public containing a statement known to the notary public to be false

a failure to complete the notarial certificate at the time the notary public’s signature and seal are affixed to the document;

the advertising or holding out in any manner that the notary public is an immigration specialist, immigration consultant, or any other title or description reflecting an expertise in immigration matters;

the use of false or misleading advertising of either an oral or written nature, whereby the notary public has represented or indicated that he or she has duties, rights, powers, or privileges that are not possessed by law;

performing a notarization when the purported principal did not personally appear before the notary public at the time the notarization is executed;

previous disciplinary action against the notary public in accordance with these sections;

a failure to comply with, or violation of, a previous disciplinary action taken pursuant to §87.34 of this title (relating to Disciplinary Action);

a failure to promptly respond to a request for public information in accordance with §87.52 of this title (relating to Public Information);

a failure to properly identify the individual whose signature is being notarized;

a failure to keep a notary record as described in §406.014 and §406.108, Government Code, and Chapter 87 of this title;

a failure to include in the notarial certificate for an online notarization a notation that the notarization is an online notarization;

a failure to take reasonable steps to ensure that the two-way audio-visual communication used during an online notarization is secure from unauthorized interception;

a failure to maintain notary materials safely and securely;

performing a notarial act that the notary public is not authorized to perform;

use of a digital certificate or electronic seal that has expired or is no longer valid;
(25) a failure to report a new digital certificate or electronic seal as required by §87.63 of this title (relating to Changes to Digital Certificate and Electronic Seal for Online Notary);

(26) notarizing one’s own signature;

(27) a failure to pay the filing fee required by §406.007, Government Code, and §87.13 and §87.14 of this title (relating to Issuance of the Traditional Notary Public Commission by the Secretary of State and Issuance of the Online Notary Public Commission by the Secretary of State) or when such payment was made by an instrument that was dishonored when presented by the state for payment;

(28) a failure to timely respond to a request for information from the secretary of state; and

(29) a failure to maintain a current address as required by §406.019, Government Code.

§ 87.32. Submitting a Complaint

(a) The jurisdiction of the secretary of state to investigate a complaint is limited to individuals who are commissioned or have applied for commission or renewal of a commission as a Texas notary public. The jurisdiction of the secretary of state to investigate a complaint ceases upon the expiration, revocation or surrender of a notary public commission, except as provided in §87.35 of this title (relating to Time for Action).

(b) A person harmed by the actions of a notary public may file a complaint with the secretary of state on a form prescribed by the secretary of state. The complaint shall include:

(1) the name of the notary public who is the subject of the complaint;
(2) the expiration date of the notary public’s current commission;
(3) the name, mailing address, and email address of the individual filing the complaint;
(4) whether the notary was performing an online notarization;
(5) a recitation of the facts, within the personal knowledge of the complainant, relating to the alleged misconduct by the notary public; and
(6) copies of the notarized documents that are the subject of the complaint.

(c) The complaint shall be signed and verified by the person alleging misconduct on the part of the notary public.

(d) The secretary of state may, for good cause, as defined in §87.31 of this title (relating to Good Cause), and/or as otherwise referenced in this title, initiate its own complaint against a notary public.

§ 87.33. Complaint Procedures

(a) The secretary of state may determine that the allegations in the complaint are not sufficient to warrant formal disciplinary action. In such case, the secretary of state may:

(1) take no action on the complaint;
(2) informally advise the notary public of the appropriate conduct and the applicable statutes and rules governing the conduct; or
(3) request further information from the complainant or the notary public prior to taking action.

(b) If the secretary of state determines that the complaint alleges sufficient facts to constitute good cause for disciplinary action against the notary public, and the complaint complies with §87.32 of this title (relating to Submitting a Complaint), the secretary of state shall send a copy of the complaint, with any attachments the secretary of state deems to be relevant, to the notary public with a request to the notary to respond to the statements in the complaint.

(c) The notary public must respond to the complaint in writing. The response must:

1. specify any disputed facts and provide such additional information as the notary public shall desire;
2. be signed and sworn to by the notary public before a person authorized to administer oaths;
3. include copies of the pages of the notary record book referencing the notarization that is the subject of the complaint; and
4. be received by the secretary of state within 21 days of the date of the secretary of state’s notice of the complaint to the notary public.

(d) The secretary of state shall review the response and determine whether further administrative action is appropriate. If the secretary determines that no further action is appropriate, the secretary shall notify the notary public and the complainant of the determination in writing.

(e) If the secretary determines that further administrative action is appropriate, the secretary shall follow the procedures set forth in this §87.34 of this title (relating to Disciplinary Action).

§ 87.34. Disciplinary Action

(a) The secretary of state has discretion to determine that the conduct that forms the basis of a complaint against a notary public does not warrant disciplinary action against the notary public and take no further action on the complaint. If the secretary of state determines that disciplinary action should be taken, the secretary of state may pursue the following disciplinary actions against individuals commissioned pursuant to Subchapter A or C, Chapter 406, Government Code:

1. issue a written reprimand to the notary public; or
2. require the notary public to enter into an agreement to:
   A. not engage in any further misconduct;
   B. agree to voluntarily surrender the notary public commission;
   C. accept a suspension of the notary public commission for a set period of time;
   D. complete a course of study relating to the powers, duties, and responsibilities of a notary public;
   E. not seek renewal of the notary public commission for a specified period of time; or
   F. take such other action as the secretary deems appropriate; or
3. take action to revoke the notary public commission.
(b) If an individual has been commissioned as a notary public under both Subchapters A and C of Chapter 406, Government Code, the office has the discretion to pursue revocation of either the online notary public commission alone or both the traditional and online notary public commission.

(c) If no agreement can be reached, before taking action to suspend or revoke the notary public commission, the secretary of state shall give written notice to the notary of a right to a hearing in accordance with the rules of practice and procedure before the secretary of state. If a hearing is timely requested, the secretary of state shall follow the provisions of the Administrative Procedure Act, Chapter 2001, Texas Government Code governing the initiation and conduct of a contested case proceeding.

(d) It is within the secretary of state's discretion to determine that no action should be taken or to enter into an agreement with the notary public regarding the appropriate action. The secretary of state shall close a complaint file upon a determination that no further action is necessary or conclusion of an agreement with the notary public. After a complaint file is closed, the secretary of state will take no further action on the complaint and will not accept an additional complaint with the same or substantially similar allegations.

§ 87.35. Time for Action
The secretary of state may take disciplinary action for an act or omission which occurred during a prior term of office. The secretary may also require any pending complaints against a notary public that remain at the expiration of the notary public's prior commission to be resolved prior to accepting a renewal or new application for appointment as a notary public. Failure to reach a resolution on an unresolved complaint may result in the rejection of an application for appointment or renewal.

SUBCHAPTER E - NOTARY PROCEDURES

§ 87.40. Traditional Notarization Procedures
(a) A traditional notary public shall not perform a notarization if the principal does not personally appear before the notary at the time of notarization in accordance with §87.1 of this title (relating to Definitions).

(b) The methods by which a traditional notary public identifies a principal are as follows:
   (1) Traditional notary public personally knows the principal; or
   (2) Principal is introduced by oath of credible witness who personally knows the principal and either is personally known to the traditional notary public or provides qualifying identification in accordance with paragraph (3) of this subsection; or
   (3) Identification by a credential.

(c) For all notarial acts that require a notarial certificate, the traditional notary public shall attach a notarial certificate that names the principal, the date of the notarization, the state and county in which the notarization is performed, and language evidencing the type of notarial act performed. The notarial certificate shall be signed and include an impression of the notary’s seal.

(d) The traditional notary public shall keep a record of all notarial acts in accordance with §406.014, Government Code, and this chapter.

(e) This section shall apply to a traditional notary public who performs notarizations on tangible or electronic records.
§ 87.41. Online Notarization Procedures

(a) An online notarization may only be performed by a notary who is commissioned as an online notary public.

(b) An online notary public shall not perform an online notarization if the online notary public is not physically in Texas at the time of the notarization.

(c) An online notary public shall not perform an online notarization if the principal does not personally appear before the notary public at the time of notarization in accordance with §87.1 of this title (relating to Definitions).

(d) The methods by which an online notary public identifies a principal are as follows:
   (1) Online notary public personally knows the principal; or
   (2) Principal is introduced by oath of credible witness who personally knows the principal and either is personally known to the online notary public or provides qualifying identification in accordance with paragraph (3) of this subsection; or
   (3) Principal or credible witness is identified using the identity proofing and credential analysis standards in accordance with subchapter H of this chapter.

(e) For all notarial acts that require a notarial certificate, the online notary public shall attach an electronic notarial certificate that identifies the principal, the date of the notarization, the state and county in which the notarization was performed, that the notarial act was an online notarization, and language evidencing the type of the notarial act performed. The notarial certificate shall be signed by affixing the online notary public’s digital certificate and include an attachment of the online notary public’s electronic seal.

(f) The liability, sanctions, and remedies for the improper performance of online notarial acts are the same as described and provided by law for the improper performance of traditional notarial acts.

(g) An online notary public shall keep a record of all notarial acts in accordance with §406.108, Government Code, and Chapter 87 of this title. The record shall include a recording of the audio-visual conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence by the principal, if the principal is not personally known to the online notary public. The recording shall include, at minimum:
   (1) confirmation by the notary public that the principal has successfully completed identity proofing and credential analysis;
   (2) visual confirmation of the identity of the principal through visual inspection of the credential used during credential analysis; and
   (3) the actual notarial act performed.

(h) If the principal is personally known to the online notary public, the audio-visual conference shall include a statement to that effect and a recording of the actual notarial act performed.

(i) The online notary public shall not disclose any access information used to affix the notary’s digital certificate and seal except when requested by the secretary of state, law enforcement, the courts, and with reasonable precautions, electronic document preparation and transmission vendors.
Online notaries public shall attach their digital certificate and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

§ 87.42. Refusal of Requests for Notarial Services
(a) A notary public is authorized to refuse to perform a notarial act if:
   (1) the notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence;
   (2) the notary public has reasonable grounds to believe that the document in connection with which the notarial act is requested may be used for an unlawful or improper purpose;
   (3) the notary public has reasonable grounds to believe the signing party does not have the capacity to understand the contents of the document; or
   (4) the notary public is not familiar with the type of notarization requested.
(b) A notary public who is employed by a governmental body shall not perform notarial services that interfere with the notary’s discharge of the notary’s duties as a public employee.
(c) An employer may limit or prohibit an employee who is a notary public from notarizing during work hours.
(d) A notary public may not refuse a request for notarial services on the basis of the sex, age, religion, race, ethnicity or national origin of the requesting party.
(e) A notary public should refuse a request for notarial services only after careful deliberation.

§ 87.43. Reasons to Refuse Online Notarization
In addition to those in §87.42 of this title (relating to Refusal of Requests for Notarial Services) in which a notary public is authorized to refuse a notarization, an online notary shall refuse to perform an online notarization if:
   (1) The online notary public is unable to verify the identity of the principal using an acceptable means of identification in accordance with Subchapter H;
   (2) The online notary public is unable to verify the security of the two-way audio visual transmission;
   (3) The signature of the principal cannot be attached to the electronic document; or
   (4) The digital certificate or electronic seal of the online notary public cannot be attached to the electronic document in a manner that renders any subsequent change or modification to the document evident.

§ 87.44. Notary Seal
(a) The name on the notary public seal must match the name, as stated on the application, under which the notary public is commissioned and performs all notarial acts.
(b) For all applicants commissioned or recommissioned on or after January 1, 2016, the notary public seal must contain the identifying number issued by the secretary of state.
(c) For notaries public who were commissioned or recommissioned prior to January 1, 2016, the seal of such notaries is not required to contain the identifying number issued.
by the secretary of state until the notary is recommissioned in accordance with the
procedures specified in §406.011, Texas Government Code, and §87.15 of this title
(relating to Renewal of Commission). The seal of notaries who were commissioned
or recommissioned prior to January 1, 2016, may, however, contain the identifying
number issued by the secretary of state prior to the notary being recommissioned in
accordance with the procedures specified in §406.011, Texas Government Code, and
§87.15 of this title.

(d) The notary seal shall remain within the exclusive control of the notary public at all
times.

SUBCHAPTER F - NOTARY RECORDS

§ 87.50. Prohibition Against Entering Personal Information in a Notary Record Book

(a) A notary public (other than a court clerk notarizing instruments for the court) shall
not record in the notary's record book:

(1) an identification number that was assigned by a governmental agency or by the
United States to the principal and that is set forth on the identification card or
passport presented as identification;

(2) any other number that could be used to identify the principal of the document;
or

(3) a biometric identifier, including a fingerprint, voice print, and retina or iris
image.

(b) This section does not prohibit a notary public from recording a number related to the
mailing address of the principal of the document or the instrument.

(c) This section does not apply to the audio-visual recording required by an online notary
public performing an online notarization.

(d) A notary public who inadvertently records information prohibited under subsection
(a) of this section shall redact such information prior to providing public access to or
copies of the notary record book.

§ 87.51. Form of Record Book

(a) Notary records, other than records of online notarizations, may be maintained either
in a book or electronically in a computer or other storage device so long as the records
are adequately backed-up and are capable of being printed in a tangible medium when
requested.

(b) Records of an online notarization shall be maintained electronically in computers or
other storage devices that are capable of recording the information required by
§406.108, Government Code, including a recording of any video and audio conference
that is the basis for identifying the principal. An online notary public may contract
with a third party to provide such storage if the third party:

(1) has provided reasonable evidence to the online notary public that it is capable of
providing such services; and

(2) provides complete access to the online notary public of all the notary's records
for an agreed period of time, which at minimum, complies with the retention
requirements in §87.54 of this title (relating to Records Retention) even if such a
contract is terminated. If the contract between the online notary public and the
third party is terminated, all records must be transferred to the online notary
public.
(c) The records of a notary public shall remain within the exclusive control of the notary public at all times.

(d) A notary public who performs multiple notarizations for the same principal within a single document may abbreviate the entry of those notarizations in the notary record book, except that a separate entry must be made for each type of notarial act. The abbreviated entry must contain all the information required by §406.014, Government Code, and must include the number of notarizations performed within the specified document.

§ 87.52. Public Information

(a) Subject to subsection (b) of this section, records regarding notarial acts performed are public information. On payment of all fees, the notary public shall promptly provide a certified copy of any entries in the notary public’s records to any person requesting the copy. The notary shall provide the certified copy no later than 10 business days from the date of receipt of the fees, unless the notary cannot produce the certified copy within 10 business days from the date of receipt of the fees, in which case the notary shall certify that fact in writing to the person requesting the copy on or before the 10th business day from the date of receipt of the fees, and set a date and hour within a reasonable time when the certified copy will be provided, and shall provide the information by that date and hour. If the notary has inadvertently included personal identifiable information in the record contrary to §87.50 of this title (relating to Prohibition Against Recording Personal Information), the notary must redact that personal information prior to release of the information.

(b) If any portion of the audio visual recording of an online notarization includes biometric information or includes an image of the identification card used to identify the principal, that portion of the recording is confidential and shall not be released without consent of the individual(s) whose identity is being established, unless ordered by a court of competent jurisdiction or upon request by the secretary of state.

§ 87.53. Failure to Provide Public Information

Failure of a notary public to promptly and adequately respond to a request for public information in accordance with §87.52 of this title (relating to Public Information) may be good cause for suspension or revocation of a notary commission or other disciplinary action against the notary.

§ 87.54. Records Retention

(a) Records of a notarization other than an online notarization shall be retained, in a safe and secure manner, for the longer of the term of the commission in which the notarization occurred or three years following the date of notarization.

(b) Records of an online notarization shall be retained, in a safe and secure manner, for five years following the date of the notarization. An online notary public must also maintain a back-up of the electronic records for the same period of time. Both the original records and the back-up shall be protected from unauthorized use.

SUBCHAPTER G - CHANGES AFTER COMMISSIONING

§ 87.60. Change of Address

(a) A notary public must notify the secretary of state in writing of a change in address within 10 days of the change. To notify the secretary of state of a change of address, the notary...
public should complete and submit Form 2302 (Notary Public Change of Address Form). This form is available on the secretary of state web site.

(b) The secretary of state sends all official notices, including notices of complaints and requests to respond to complaints, to the notary public at the address on file with the secretary’s office. Failure to change the address may, consequently, result in a revocation of the notary commission if, for example, the notary fails to timely respond to a complaint or to a request for public information.

(c) A notary public who removes his or her residence from Texas or no longer qualifies under the residency exceptions provided under §87.12 of this title (relating to Qualification by an Escrow Officer Residing in an Adjacent State) vacates the office of notary public and must surrender the notary commission to the secretary of state.

§ 87.61. Qualification Under New Name

(a) During the four-year term of office, a notary public may change the name on the notary commission by submitting the following to the secretary of state:

(1) an Application for Change of Name as a Texas Notary Public (Form 2305 available on the secretary of state web site);

(2) for traditional notaries public, a rider or endorsement to the bond on file with the secretary of state from the surety company or its agent or representative specifying the change of name;

(3) the current certificate of commission or a signed and notarized statement that the notary public will perform all future notarial acts under the name specified on the amended commission; and

(4) the statutory fee equal to the sum of the fee for the issuance of a commission and the fee for filing of a bond.

(b) An online notary public shall check the appropriate box on Form 2305 to update the name on both the traditional and online notary commission and shall pay the fee for issuance of two commissions and the bond.

§ 87.62. Issuance of Amended Commission

(a) If the submission of the change of name complies with §87.61 of this title (relating to Qualification Under New Name), the secretary of state shall issue an amended commission to the notary public in the name requested. Upon issuance of the amended commission, the notary public must perform all notarial acts using the name on the amended commission.

(b) Upon qualifying under a new name, a notary public must obtain a new seal that contains the name, as specified on the amended commission, under which the notary will perform all future notarial acts.

(c) If the notary public who qualifies under a new name is commissioned as both a traditional and online notary, the notary shall obtain both a new traditional seal and new electronic seal and digital certificate that contains the name, as specified on the amended commission, under which the notary will perform all future notarial acts.

§ 87.63. Changes to Digital Certificate and Electronic Seal for Online Notary

(a) An online notary public shall at all times maintain an electronic seal and a digital certificate that includes the online notary’s electronic signature. Both the electronic
(b) An online notary public shall replace an electronic seal or digital certificate under the following circumstances:

1. the electronic seal or digital certificate has expired;
2. the electronic seal or digital certificate has been revoked or terminated by the device’s issuing or registering authority; or
3. the electronic seal or digital certificate is for any reason no longer valid or capable of authentication.

(c) An online notary public who replaces an electronic seal or digital certificate shall provide the following to the secretary of state within 10 days of the replacement:

1. the electronic technology or technologies to be used in attaching or logically associating the new electronic seal or digital certificate to an electronic document;
2. applicant’s new digital certificate, if applicable;
3. a copy of applicant’s new electronic seal, if applicable; and
4. any necessary instructions or techniques supplied by the vendor that allow the notary’s electronic seal or digital certificate to be read and authenticated.

SUBCHAPTER H - MINIMUM REQUIREMENTS FOR ONLINE NOTARIZATIONS

§ 87.70. Identity Proofing and Credential Analysis Standards

(a) Identity proofing and credential analysis must be performed by a reputable third party who has provided evidence to the online notary public of the ability to satisfy the requirements of this chapter.

(b) Identity proofing is performed through dynamic knowledge-based authentication which meets the following requirements:

1. principal must answer a quiz consisting of a minimum of five questions related to the principal’s personal history or identity, formulated from public and proprietary data sources;
2. each question must have a minimum of five possible answer choices;
3. at least 80% of the questions must be answered correctly;
4. all questions must be answered within two minutes;
5. if the principal fails their first attempt, they may retake the quiz one time within 24 hours;
6. during the retake, a minimum of 60% of the prior questions must be replaced; and
7. if the principal fails their second attempt, they are not permitted to retry with the same online notary public for 24 hours.

(c) Credential analysis is performed utilizing public and proprietary data sources to verify the credential presented by the principal.

(d) Credential analysis shall, at a minimum:
(1) use automated software processes to aid the online notary public in verifying the identity of a principal or any credible witness;

(2) ensure that the credential passes an authenticity test, consistent with sound commercial practices that:
   (A) Use appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;
   (B) Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;
   (C) Use information held or published by the issuing source or authoritative source(s), as available, to confirm the validity of personal details and credential details; and
   (D) Provide output of the authenticity test to the notary public.

(3) Enable the online notary public to visually compare the following for consistency: the information and photo presented on the credential itself and the principal as viewed by the online notary public in real time through audio-visual transmission.

(e) If the principal must exit the workflow, the principal must meet the criteria outlined in this section and must restart the identity proofing and credential analysis from the beginning.

§ 87.71. Online Notarization System

An online system used to perform online notarial acts by means of audio-video communication shall:

   (1) provide for continuous, synchronous audio-visual feeds;
   (2) provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak to each other simultaneously through live, real time transmission;
   (3) provide sufficient captured image resolution for credential analysis to be performed in accordance with subchapter H of this chapter.
   (4) include a means of authentication that reasonably ensures only the proper parties have access to the audio-video communication;
   (5) provide some manner of ensuring that the electronic record that is presented for online notarization is the same record electronically signed by the principal;
   (6) be capable of securely creating and storing or transmitting securely to be stored an electronic recording of the audio-video communication, keeping confidential the questions asked as part of any identity proofing quiz, and the means and methods used to generate the credential analysis output; and
   (7) provide reasonable security measures to prevent unauthorized access to:
      (A) the live transmission of the audio-video communication;
      (B) a recording of the audio-video communication;
      (C) the verification methods and credentials used to verify the identity of the principal; and
      (D) the electronic documents presented for electronic notarization.
CHAPTER 322. UNIFORM ELECTRONIC TRANSACTIONS ACT
SUBTITLE B. ELECTRONIC COMMUNICATIONS

§322.002. DEFINITIONS. In this chapter:

(1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

(5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(9) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(10) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(11) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic
record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(15) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

§322.005. Use Of Electronic Records And Electronic Signatures; Variation By Agreement.

(a) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties’ conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

§322.007. Legal Recognition Of Electronic Records, Electronic Signatures, And Electronic Contracts.

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

§322.011. Notarization And Acknowledgment.

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.
Sec. 3.401. Signature.

(a) A person is not liable on an instrument unless the person:

(1) signed the instrument; or

(2) is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3.402.

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

Sec. 3.402. Signature By Representative.

(a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signor, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to Subsection (c), the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity, or (ii) the represented person is not identified in the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.
CHAPTER 503. BIOMETRIC IDENTIFIERS

SUBTITLE A. IDENTIFYING INFORMATION

Sec. 503.001. Capture Or Use Of Biometric Identifier.
(a) In this section, "biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
(b) A person may not capture a biometric identifier of an individual for a commercial purpose unless the person:
   (1) informs the individual before capturing the biometric identifier; and
   (2) receives the individual's consent to capture the biometric identifier.
(c) A person who possesses a biometric identifier of an individual that is captured for a commercial purpose:
   (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
      (A) the individual consents to the disclosure for identification purposes in the event of the individual's disappearance or death;
      (B) the disclosure completes a financial transaction that the individual requested or authorized;
      (C) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552, Government Code; or
      (D) the disclosure is made by or to a law enforcement agency for a law enforcement purpose in response to a warrant;
   (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the person stores, transmits, and protects any other confidential information the person possesses; and
   (3) shall destroy the biometric identifier within a reasonable time, but not later than the first anniversary of the date the purpose for collecting the identifier expires, except as provided by Subsection (c-1).
   (c-1) If a biometric identifier of an individual captured for a commercial purpose is used in connection with an instrument or document that is required by another law to be maintained for a period longer than the period prescribed by Subsection (c)(3), the person who possesses the biometric identifier shall destroy the biometric identifier within a reasonable time, but not later than the first anniversary of the date the instrument or document is no longer required to be maintained by law.
   (c-2) If a biometric identifier captured for a commercial purpose has been collected for security purposes by an employer, the purpose for collecting the identifier under Subsection (c)(3) is presumed to expire on termination of the employment relationship.
(d) A person who violates this section is subject to a civil penalty of not more than $25,000 for each violation. The attorney general may bring an action to recover the civil penalty.
The following definitions apply unless a different meaning is apparent from the context of the statute in which the word appears:

1. "Affidavit" means a statement in writing of a fact or facts signed by the party making it, sworn to before an officer authorized to administer oaths, and officially certified to by the officer under his seal of office.

8. "Oath" includes affirmation.

9. "Official oath" means the oath required by Article XVI, Section 1, of the Texas Constitution.

14. "Signature" includes the mark of a person unable to write, and "subscribe" includes the making of such a mark.

16. "Swear" or "sworn" includes affirm or affirmed.

17. "Written" or "in writing" includes any representation of words, letters, or figures, whether by writing, printing, or other means.

Sec. 406.001. Appointments
(a) The secretary of state may appoint a notary public at any time.

(b) The secretary of state shall assign each notary public an identifying number and keep a record of the number assigned to each notary public.

Sec. 406.002. Term
The term of a notary public expires four years after the date the notary public qualifies.

Sec. 406.003. Jurisdiction
A notary public has statewide jurisdiction.

Sec. 406.004. Eligibility
(a) Each person appointed and commissioned as a notary public shall be at least 18 years of age and a resident of the State of Texas and must not have been convicted of a felony or crime involving moral turpitude.
(b) If the secretary of state discovers, at any time, that an applicant to be a notary public or a commissioned notary public is not eligible to serve as a notary public, the secretary of state shall:

(1) reject the notary application; or

(2) revoke the notary commission.

Sec. 406.005. Appointment Procedure-Statement

(a) Each person to be appointed a notary public shall submit an application to the secretary of state on a form prescribed by the secretary of state. The application must satisfy the secretary of state that the applicant is qualified. The application must state:

(1) the applicant's name to be used in acting as a notary public;

(2) the applicant's post office address;

(3) the applicant's county of residence;

(4) the applicant's date of birth;

(5) the applicant's driver's license number or the number of other official state-issued identification; and

(6) the applicant's social security number.

(b) The applicant shall also execute the statement of officers as required by Section 1, Article XVI, Texas Constitution.

Sec. 406.006. Qualification

An individual qualifies by:

(1) properly completing the application form;

(2) executing the statement;

(3) providing the bond, if required;

(4) paying the required filing fees; and

(5) meeting the eligibility requirements.

Sec. 406.007. Fees Paid To Secretary Of State

(a) The applicant must submit to the secretary of state:

(1) a fee of $10 for approving and filing the bond of the notary public, if required; and

(2) a fee of $1 to be appropriated to and used by the secretary of state only for hiring an investigator and for preparing and distributing the materials required to be distributed under Section 406.008.

(b) The secretary of state shall charge for use of the state a fee of $10 for a notary public commission. The applicant must pay the fee in advance to the secretary of state.
Sec. 406.008. Commission; Notary Materials

(a) Immediately after the qualification of a notary public, the secretary of state shall send notice of appointment along with a commission to the notary public. The commission is effective as of the date of qualification.

(b) When the commission is issued, the secretary of state shall supply the notary public with:

   (1) materials outlining the powers and duties of the office;

   (2) a list of prohibited acts;

   (3) sample forms for an acknowledgment, jurat, and verification and for the administering of an oath, protest, and deposition; and

   (4) the identifying number assigned to the notary public.

Sec. 406.009. Rejection of Appointment; Suspension or Revocation of Commission

(a) The secretary of state may, for good cause, reject an application or suspend or revoke the commission of a notary public.

(b) An action by the secretary of state under this section is subject to the rights of notice, hearing, adjudication, and appeal.

(c) An appeal under this section is to the district court of Travis County. The secretary of state has the burden of proof, and the trial is conducted de novo.

(d) In this section, "good cause" includes:

   (1) a false statement knowingly made in an application;

   (2) the failure to comply with Section 406.017;

   (3) a final conviction for a violation of a law concerning the regulation of the conduct of notaries public in this or another state;

   (4) the imposition on the notary public of an administrative, criminal, or civil penalty for a violation of a law or rule prescribing the duties of a notary public; or

   (5) performing any notarization when the person for whom the notarization is performed did not personally appear before the notary at the time the notarization is executed.

(e) The following may not be considered a conviction for the purposes of determining eligibility and good cause:

   (1) a dismissal of a proceeding against the defendant and discharge of the defendant before an adjudication of guilt; and

   (2) a finding of guilt that has been set aside.
Sec. 406.010. Bond; Oath

(a) Each person to be appointed a notary public shall, before entering the official duties of office, execute a bond in the amount of $10,000 with a solvent surety company authorized to do business in this state as a surety. The bond must be approved by the secretary of state, payable to the governor, and conditioned on the faithful performance of the duties of office. The secretary of state has the authority to accept an electronic filing of the notary public bond if an agreement has been made with the surety company.

(b) The notary bond shall be deposited in the office of the secretary of state, is not void on first recovery, and may be sued on in the name of the injured party from time to time until the whole amount of the bond is recovered.

(c) A notary public, before entering on the duties of office, shall take the official oath required by Section 1, Article XVI, Texas Constitution.

(d) The oath shall be signed and sworn to or affirmed by the notary public in the presence of a notary public or other person authorized to administer oaths in this state. A notary public cannot execute his or her own oath of office.

(e) The secretary of state shall provide an oath of office form along with the commission and educational materials.

(f) Subsections (a) and (b) do not apply to a person whose services as a notary public are performed primarily as a state officer or employee.

Sec. 406.011. Reappointment

(a) Not earlier than 90 days prior to the expiration date of the notary's term, a notary public may apply for reappointment on submission of a new application to the secretary of state.

(b) A notary public who is not reappointed on or before the expiration date of the term the notary public is serving will be appointed for a new term expiring four years from the date of qualification.

Sec. 406.012. Inspection of Records

All records concerning the appointment and qualification of the notary public shall be kept in the office of the secretary of state. The records are public information.

Sec. 406.013. Seal

(a) A notary public shall provide a seal of office that clearly shows, when embossed, stamped, or printed on a document, the words "Notary Public, State of Texas" around a star of five points, the notary public's name, the notary public's identifying number, and the date the notary public's commission expires. The notary public shall authenticate all official acts with the seal of office.

(b) The seal may be a circular form not more than two inches in diameter or a rectangular form not more than one inch in width and 2-1/2 inches in length. The seal must have a serrated or milled edge border.

(c) The seal must be affixed by a seal press or stamp that embosses or prints a seal that legibly reproduces the required elements of the seal under photographic methods. An indelible ink pad must be used for affixing by a stamp the impression of a seal on an instrument to authenticate the notary public's official act.
Subsection (c) does not apply to an electronically transmitted authenticated document, except that an electronically transmitted authenticated document must legibly reproduce the required elements of the seal.

Sec. 406.014. Notary Records

(a) A notary public other than a court clerk notarizing instruments for the court shall keep in a book a record of:

1. the date of each instrument notarized;
2. the date of the notarization;
3. the name of the signer, grantor, or maker;
4. whether the signer, grantor, or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and mailing address or alleged mailing address of the individual introducing the signer, grantor, or maker;
5. if the instrument is proved by a witness, the mailing address of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and mailing address of the individual introducing the witness;
6. the name and mailing address of the grantee;
7. if land is conveyed or charged by the instrument, the name of the original grantee and the county where the land is located; and
8. a brief description of the instrument.

(b) Entries in the notary’s book are public information.

(c) A notary public shall, on payment of all fees, provide a certified copy of any record of official acts in the notary public’s book of record to any person requesting the copy.

(d) A notary public who administers an oath pursuant to Article 45.019, Code of Criminal Procedure, is exempt from the requirement in Subsection (a) of recording that oath.

(e) A notary public may maintain the records required by Subsection (a) electronically in a computer or other storage device.

Sec. 406.015. Copies Certified by County Clerk

(a) A copy of a record, declaration, protest, or other official act of a notary public may be certified by the county clerk with whom the instrument is deposited.

(b) A copy of an instrument certified by the county clerk under Subsection (a) has the same authority as if certified by the notary public by whom the record, declaration, protest, or other official act was originally made.
Sec. 406.016. Authority
(a) A notary public has the same authority as the county clerk to:
   (1) take acknowledgments or proofs of written instruments;
   (2) protest instruments permitted by law to be protested;
   (3) administer oaths;
   (4) take depositions; and
   (5) certify copies of documents not recordable in the public records.
(b) A notary public shall sign an instrument in Subsection (a) in the name under which
   the notary public is commissioned.
(c) A notary public may not issue an identification card.
(d) A notary public not licensed to practice law in this state may not give legal advice or
   accept fees for legal advice.

Sec. 406.0165. Signing Document for Individual with Disability
(a) A notary may sign the name of an individual who is physically unable to sign or make
   a mark on a document presented for notarization if directed to do so by that individual,
   in the presence of a witness who has no legal or equitable interest in any real or personal
   property that is the subject of, or is affected by, the document being signed. The notary
   shall require identification of the witness in the same manner as from an acknowledging
   person under Section 121.005, Civil Practice and Remedies Code.
(b) A notary who signs a document under this section shall write, beneath the signature,
   the following or a substantially similar sentence:
   "Signature affixed by notary in the presence of (name of witness), a disinterested
   witness, under Section 406.0165, Government Code."
(c) A signature made under this section is effective as the signature of the individual on
   whose behalf the signature was made for any purpose. A subsequent bona fide
   purchaser for value may rely on the signature of the notary as evidence of the
   individual's consent to execution of the document.
(d) In this section, "disability" means a physical impairment that impedes the ability to
   sign or make a mark on a document.

Sec. 406.017. Representation as Attorney
(a) A person commits an offense if the person is a notary public and the person:
   (1) states or implies that the person is an attorney licensed to practice law in this state;
   (2) solicits or accepts compensation to prepare documents for or otherwise represent
      the interest of another in a judicial or administrative proceeding, including a
      proceeding relating to immigration or admission to the United States, United States
      citizenship, or related matters;
   (3) solicits or accepts compensation to obtain relief of any kind on behalf of another
      from any officer, agency, or employee of this state or the United States;
(4) uses the phrase "notario" or "notario publico" to advertise the services of a notary public, whether by signs, pamphlets, stationery, or other written communication or by radio or television; or

(5) advertises the services of a notary public in a language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, if the person does not post or otherwise include with the advertisement a notice that complies with Subsection (b).

(a-1) A person does not violate this section by offering or providing language translation or typing services and accepting compensation.

(b) The notice required by Subsection (a)(5) must state that the notary public is not an attorney and must be in English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice must include the fees that a notary public may charge and the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

(c) It is an exception to prosecution under this section that, at the time of the conduct charged, the person is licensed to practice law in this state and in good standing with the State Bar of Texas.

(d) Except as provided by Subsection (e) of this section, an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

(f) Failure to comply with this section is, in addition to a violation of any other applicable law of this state, a deceptive trade practice actionable under Chapter 17, Business & Commerce Code.

Sec. 406.018. Removal from Office

(a) A notary public guilty of wilful neglect of duty or malfeasance in office may be removed from office in the manner provided by law.

(b) A notary public indicted for and convicted of a wilful neglect of duty or official misconduct shall be removed from office. The court shall include the order for removal as part of its judgment.

Sec. 406.019. Change of Address

A notary public shall notify the secretary of state of a change of the notary public’s address not later than the 10th day after the date on which the change is made.

Sec. 406.020. Removal from State

A notary public who removes his residence from this state vacates the office.

Sec. 406.021. Removal from Precinct

An ex officio notary public who moves permanently from the notary public’s precinct vacates the office.
Sec. 406.022. Effect of Vacancy
If the office of a notary public becomes vacant due to resignation, removal, or death, the county clerk of the county in which the notary public resides shall obtain the record books and public papers belonging to the office of the notary public and deposit them in the county clerk’s office.

Sec. 406.023. Administration and Enforcement
(a) The secretary of state shall adopt rules necessary for the administration and enforcement of this subchapter. The rules must be consistent with the provisions of this subchapter.

(b) The secretary of state may employ an investigator to aid in the enforcement of this subchapter.

(c) The secretary of state may provide for the appointment of county clerks as deputy custodians for the limited authentication of notary public records deposited in the clerks’ offices.

Sec. 406.024. Fees Charged by Notary Public
(a) A notary public or its employer may charge the following fees:

1. for protesting a bill or note for nonacceptance or nonpayment, register and seal, a fee of $4;
2. for each notice of protest, a fee of $1;
3. for protesting in all other cases, a fee of $4;
4. for certificate and seal to a protest, a fee of $4;
5. for taking the acknowledgment or proof of a deed or other instrument in writing, for registration, including certificate and seal, a fee of $6 for the first signature and $1 for each additional signature;
6. for administering an oath or affirmation with certificate and seal, a fee of $6;
7. for a certificate under seal not otherwise provided for, a fee of $6;
8. for a copy of a record or paper in the notary public’s office, a fee of 50 cents for each page;
9. for taking the deposition of a witness, 50 cents for each 100 words;
10. for swearing a witness to a deposition, certificate, seal, and other business connected with taking the deposition, a fee of $6; and
11. for a notarial act not provided for, a fee of $6.

(b) A notary public may charge a fee only for an acknowledgment or official act under Subsection (a). The fee charged may not exceed the fee authorized by Subsection (a).

Sec. 406.025. Signature on Commissions After Change in Office
If the governor or secretary of state ceases to hold or perform the duties of office, existing stocks of commissions bearing the person’s printed name, signature, or facsimile signature may be used until they are exhausted, and the person succeeding to the office or the duties of the office shall have the commissions issued with:

1. the obsolete printed name, signature, or facsimile signature struck through;
(2) the successor's printed name submitted for the obsolete printed name, signature, or facsimile signature; and

(3) the inscription "Printed name authorized by law" near the successor's printed name.

Sec. 406.026. Electronic Notarization
In a proceeding filed under Title 5, Family Code, if a signature is required to be notarized, acknowledged, verified, or made under oath, the requirement may be satisfied if the electronic signature of the person authorized to perform that act, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature required to be notarized, acknowledged, verified, or made under oath.

SUBCHAPTER B. COMMISSIONER OF DEEDS

Sec. 406.051. Appointment
(a) The governor may biennially appoint and commission one or more individuals in other states, territories, or foreign countries or in the District of Columbia to serve as commissioner of deeds.

(b) An appointment may be made only on the recommendation of the executive authority of the state, territory, or foreign country or of the District of Columbia.

Sec. 406.052. Term
The term of office of a commissioner of deeds is two years.

Sec. 406.053. Oath
Before performing the duties of office, a commissioner of deeds shall take and subscribe an oath to well and faithfully perform the duties of office under the laws of this state. The oath shall be:

(1) taken before the clerk of a court of record in the city, county, or country in which the commissioner resides;

(2) certified to by the clerk under the clerk's hand and seal of office; and

(3) filed in the office of the secretary of state of this state.

Sec. 406.054. Seal
A commissioner of deeds shall provide a seal with a star of five points in the center and the words "Commissioner of the State of Texas" engraved on the seal. The seal shall be used to certify all official acts of the commissioner of deeds. An instrument that does not have the impression of the seal, or an act of the commissioner of deeds that is not certified by the impression of the seal, is not valid in this state.

Sec. 406.055. Authority
A commissioner of deeds has the same authority as a notary public to take acknowledgments and proofs of written instruments, to administer oaths, and to take depositions to be used or recorded in this state.
SUBCHAPTER C. ONLINE NOTARY PUBLIC

Sec. 406.101. DEFINITIONS

In this subchapter:

(1) "Credential analysis" means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

(4) "Electronic notarial certificate" means the portion of a notarized electronic document that is completed by an online notary public and contains the following:
   (A) the online notary public's electronic signature, electronic seal, title, and commission expiration date;
   (B) other required information concerning the date and place of the online notarization; and
   (C) the facts attested to or certified by the online notary public in the particular notarization.

(5) "Electronic seal" means information within a notarized electronic document that confirms the online notary public's name, jurisdiction, identifying number, and commission expiration date and generally corresponds to information in notary seals used on paper documents.

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

(7) "Identity proofing" means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the identity of an individual through review of personal information from public and proprietary data sources.

(8) "Notarial act" means the performance by an online notary public of a function authorized under Section 406.016.

(9) "Online notarization" means a notarial act performed by means of two-way video and audio conference technology that meets the standards adopted under Section 406.104.

(10) "Online notary public" means a notary public who has been authorized by the secretary of state to perform online notarizations under this subchapter.

(11) "Principal" means an individual:
   (A) whose electronic signature is notarized in an online notarization; or
   (B) taking an oath or affirmation from the online notary public but not in the capacity of a witness for the online notarization.

(12) "Remote presentation" means transmission to the online notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to:
(A) identify the individual seeking the online notary public's services; and
(B) perform credential analysis.

Sec. 406.102. APPLICABILITY OF SUBCHAPTER
This subchapter applies only to an online notarization.

Sec. 406.103. RULEMAKING
The secretary of state may adopt rules necessary to implement this subchapter, including rules to facilitate online notarizations.

Added by Acts 2017, 85th Leg., R.S., Ch. 340 (H.B. 1217), Sec. 3, eff. July 1, 2018.

Sec. 406.104. STANDARDS FOR ONLINE NOTARIZATION
(a) The secretary of state by rule shall develop and maintain standards for online notarization in accordance with this subchapter, including standards for credential analysis and identity proofing.

(b) The secretary of state may confer with the Department of Information Resources or other appropriate state agency on matters relating to equipment, security, and technological aspects of the online notarization standards.

Sec. 406.105. APPLICATION; QUALIFICATIONS
(a) A notary public or an applicant for appointment as a notary public under Subchapter A may apply to the secretary of state to be appointed and commissioned as an online notary public in the manner provided by this section.

(b) A person qualifies to be appointed as an online notary public by:

   (1) satisfying the qualification requirements for appointment as a notary public under Subchapter A;

   (2) paying the application fee described by Subsection (d); and

   (3) electronically submitting to the secretary of state an application in the form prescribed by the secretary of state that satisfies the secretary of state that the applicant is qualified.

(c) The application required by Subsection (b) must include:

   (1) the applicant's name to be used in acting as a notary public;

   (2) a certification that the applicant will comply with the secretary of state's standards developed under Section 406.104; and

   (3) an e-mail address of the applicant.

(d) The secretary of state may charge a fee for an application submitted under this section in an amount necessary to administer this subchapter.
Sec. 406.106. PERFORMANCE OF NOTARIAL ACTS

An online notary public:

(1) is a notary public for purposes of Subchapter A and is subject to that subchapter to the same extent as a notary public appointed and commissioned under that subchapter;

(2) may perform notarial acts as provided by Subchapter A in addition to performing online notarizations; and

(3) may perform an online notarization authorized under this subchapter.

Sec. 406.107. AUTHORITY TO PERFORM ONLINE NOTARIZATIONS

An online notary public has the authority to perform any of the functions authorized under Section 406.016 as an online notarization.

Sec. 406.108. ELECTRONIC RECORD OF ONLINE NOTARIZATIONS

(a) An online notary public shall keep a secure electronic record of electronic documents notarized by the online notary public. The electronic record must contain for each online notarization:

(1) the date and time of the notarization;

(2) the type of notarial act;

(3) the type, the title, or a description of the electronic document or proceeding;

(4) the printed name and address of each principal involved in the transaction or proceeding;

(5) evidence of identity of each principal involved in the transaction or proceeding in the form of:

   (A) a statement that the person is personally known to the online notary public;

   (B) a notation of the type of identification document provided to the online notary public;

   (C) a record of the identity verification made under Section 406.110, if applicable; or

   (D) the following:

      (i) the printed name and address of each credible witness swearing to or affirming the person’s identity; and

      (ii) for each credible witness not personally known to the online notary public, a description of the type of identification documents provided to the online notary public;

   (6) a recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence; and

   (7) the fee, if any, charged for the notarization.

(b) The online notary public shall take reasonable steps to:
(1) ensure the integrity, security, and authenticity of online notarizations;
(2) maintain a backup for the electronic record required by Subsection (a); and
(3) protect the backup record from unauthorized use.

(c) The electronic record required by Subsection (a) shall be maintained for at least five years after the date of the transaction or proceeding.

Sec. 406.109. USE OF ELECTRONIC RECORD, SIGNATURE, AND SEAL

(a) An online notary public shall take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device’s issuing or registering authority.

(b) An online notary public shall keep the online notary public’s electronic record, electronic signature, and electronic seal secure and under the online notary public’s exclusive control. The online notary public may not allow another person to use the online notary public’s electronic record, electronic signature, or electronic seal.

(c) An online notary public may use the online notary public’s electronic signature only for performing online notarization.

(d) An online notary public shall attach the online notary public’s electronic signature and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(e) An online notary public shall immediately notify an appropriate law enforcement agency and the secretary of state of the theft or vandalism of the online notary public’s electronic record, electronic signature, or electronic seal. An online notary public shall immediately notify the secretary of state of the loss or use by another person of the online notary public’s electronic record, electronic signature, or electronic seal.

Sec. 406.110. ONLINE NOTARIZATION PROCEDURES

(a) An online notary public may perform an online notarization authorized under Section 406.107 that meets the requirements of this subchapter and rules adopted under this subchapter regardless of whether the principal is physically located in this state at the time of the online notarization.

(b) In performing an online notarization, an online notary public shall verify the identity of a person creating an electronic signature at the time that the signature is taken by using two-way video and audio conference technology that meets the requirements of this subchapter and rules adopted under this subchapter. Identity may be verified by:

(1) the online notary public’s personal knowledge of the person creating the electronic signature; or

(2) each of the following:
   (A) remote presentation by the person creating the electronic signature of a government-issued identification credential, including a passport or driver’s license, that contains the signature and a photograph of the person;
   (B) credential analysis of the credential described by Paragraph (A); and
   (C) identity proofing of the person described by Paragraph (A).
(c) The online notary public shall take reasonable steps to ensure that the two-way video 
and audio communication used in an online notarization is secure from unauthorized 
interception.

(d) The electronic notarial certificate for an online notarization must include a notation 
that the notarization is an online notarization.

Sec. 406.111. FEES FOR ONLINE NOTARIZATION
An online notary public or the online notary public’s employer may charge a fee in an 
amount not to exceed $25 for performing an online notarization in addition to any other 
fees authorized under Section 406.024.

Sec. 406.112. TERMINATION OF ONLINE NOTARY PUBLIC’S COMMISSION
(a) Except as provided by Subsection (b), an online notary public whose commission ter-
minates shall destroy the coding, disk, certificate, card, software, or password that 
enables electronic affixation of the online notary public’s official electronic signature 
or seal. The online notary public shall certify compliance with this subsection to the 
secretary of state.

(b) A former online notary public whose commission terminated for a reason other than 
revocation or a denial of renewal is not required to destroy the items described by 
Subsection (a) if the former online notary public is recommissioned as an online 
notary public with the same electronic signature and seal within three months after the 
former online notary public’s former commission terminated.

Sec. 406.113. WRONGFUL POSSESSION OF SOFTWARE OR HARDWARE; 
CRIMINAL OFFENSE
(a) A person who, without authorization, knowingly obtains, conceals, damages, or destroys 
the certificate, disk, coding, card, program, software, or hardware enabling an online 
notary public to affix an official electronic signature or seal commits an offense.

(b) An offense under this section is a Class A misdemeanor.

TEXAS STATUTES, GOVERNMENT CODE
CHAPTER 552. PUBLIC INFORMATION
SUBCHAPTER I. CRIMINAL VIOLATIONS

Sec. 552.351. Destruction, Removal, or Alteration of Public Information
(a) A person commits an offense if the person wilfully destroys, mutilates, removes without 
permission as provided by this chapter, or alters public information.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $25 or more than $4,000;

(2) confinement in the county jail for not less than three days or more than three 
months; or

(3) both the fine and confinement.

(c) It is an exception to the application of Subsection (a) that the public information was 
transferred under Section 441.204.
Sec. 552.352. Distribution or Misuse of Confidential Information

(a) A person commits an offense if the person distributes information considered confidential under the terms of this chapter.

(a-1) An officer or employee of a governmental body who obtains access to confidential information under Section 552.008 commits an offense if the officer or employee knowingly:

(1) uses the confidential information for a purpose other than the purpose for which the information was received or for a purpose unrelated to the law that permitted the officer or employee to obtain access to the information, including solicitation of political contributions or solicitation of clients;

(2) permits inspection of the confidential information by a person who is not authorized to inspect the information; or

(3) discloses the confidential information to a person who is not authorized to receive the information.

(a-2) For purposes of Subsection (a-1), a member of an advisory committee to a governmental body who obtains access to confidential information in that capacity is considered to be an officer or employee of the governmental body.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not more than $1,000;

(2) confinement in the county jail for not more than six months; or

(3) both the fine and confinement.

(c) A violation under this section constitutes official misconduct.

Sec. 552.353. Failure or Refusal of Officer for Public Information to Provide Access to or Copying of Public Information

(a) An officer for public information, or the officer’s agent, commits an offense if, with criminal negligence, the officer or the officer’s agent fails or refuses to give access to, or to permit or provide copying of, public information to a requestor as provided by this chapter.

(b) It is an affirmative defense to prosecution under Subsection (a) that the officer for public information reasonably believed that public access to the requested information was not required and that:

(1) the officer acted in reasonable reliance on a court order or a written interpretation of this chapter contained in an opinion of a court of record or of the attorney general issued under Subchapter G;

(2) the officer requested a decision from the attorney general in accordance with Subchapter G, and the decision is pending; or

(3) not later than the 10th calendar day after the date of receipt of a decision by the attorney general that the information is public, the officer or the governmental body for whom the defendant is the officer for public information filed a petition for a declaratory judgment against the attorney general in a Travis County district court seeking relief from compliance with the decision of the attorney general, as provided by Section 552.324, and the cause is pending.
(c) It is an affirmative defense to prosecution under Subsection (a) that a person or entity has, not later than the 10th calendar day after the date of receipt by a governmental body of a decision by the attorney general that the information is public, filed a cause of action seeking relief from compliance with the decision of the attorney general, as provided by Section 552.325, and the cause is pending.

(d) It is an affirmative defense to prosecution under Subsection (a) that the defendant is the agent of an officer for public information and that the agent reasonably relied on the written instruction of the officer for public information not to disclose the public information requested.

(e) An offense under this section is a misdemeanor punishable by:
   (1) a fine of not more than $1,000;
   (2) confinement in the county jail for not more than six months; or
   (3) both the fine and confinement.

(f) A violation under this section constitutes official misconduct.

TEXAS STATUTES, GOVERNMENT CODE

CHAPTER 602. ADMINISTRATION OF OATHS

Sec. 602.001. Definition

In this chapter, "oath" includes the oath in an affidavit.

Sec. 602.002. Oath Made in Texas

An oath made in this state may be administered and a certificate of the fact given by:

   (1) a judge, retired judge, or clerk of a municipal court;
   (2) a judge, retired judge, senior judge, clerk, or commissioner of a court of record;
   (3) a justice of the peace or a clerk of a justice court;
   (4) an associate judge, magistrate, master, referee, or criminal law hearing officer;
   (5) a notary public;
   (6) a member of a board or commission created by a law of this state, in a matter pertaining to a duty of the board or commission;
   (7) a person employed by the Texas Ethics Commission who has a duty related to a report required by Title 15, Election Code, in a matter pertaining to that duty;
   (8) a county tax assessor-collector or an employee of the county tax assessor-collector if the oath relates to a document that is required or authorized to be filed in the office of the county tax assessor-collector;
   (9) the secretary of state or a former secretary of state;
   (10) an employee of a personal bond office, or an employee of a county, who is employed to obtain information required to be obtained under oath if the oath is required or authorized by Article 17.04 or by Article 26.04(n) or (o), Code of Criminal Procedure;
   (11) the lieutenant governor or a former lieutenant governor;
(12) the speaker of the house of representatives or a former speaker of the house of representatives;
(13) the governor or a former governor;
(14) a legislator or retired legislator;
(15) the attorney general or a former attorney general;
(16) the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality;
(17) a peace officer described by Article 2.12, Code of Criminal Procedure, if:
   (A) the oath is administered when the officer is engaged in the performance of the officer’s duties; and
   (B) the administration of the oath relates to the officer’s duties; or
(18) a county treasurer.

Sec. 602.003. Oath Made Outside Texas but Inside United States
An oath made outside this state but inside the United States or its territories may be administered and a certificate of the fact given by:
   (1) a clerk of a court of record having a seal;
   (2) a commissioner of deeds appointed under a law of this state; or
   (3) a notary public.

Sec. 602.004. Oath Made Outside United States
An oath made outside the United States and its territories may be administered and a certificate of the fact given by:
   (1) a minister, commissioner, or charge d’affaires of the United States who resides in and is accredited to the country where the oath or affidavit is made;
   (2) a consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who resides in the country where the oath or affidavit is made; or
   (3) a notary public.

Sec. 602.005. Oath Made By Member of Armed Forces or by Member's Spouse.
(a) A commissioned officer of the United States armed forces or of a United States armed forces auxiliary may administer an oath made by a member of the armed forces, a member of an armed forces auxiliary, or a member’s spouse and may give a certificate of the fact.
(b) Unless there is pleading or evidence to the contrary, a certificate signed under this section that is offered in evidence establishes that:
   (1) the commissioned officer who signed was a commissioned officer on the date the officer signed; and
   (2) the person who made the oath or affidavit was a member of the armed forces or an armed forces auxiliary or was a member's spouse when the oath was made.
(c) An oath is not invalid because the commissioned officer who certified the oath did not attach an official seal to the certificate.
Sec. 602.006. Oath of Office
An oath of office may be administered and a certificate of the fact given by a member of
the legislature.

TEXAS STATUTES, GOVERNMENT CODE

CHAPTER 603.
PROVISION OF DOCUMENTS AND FEES OF OFFICE

Sec. 603.001. Definition
In this chapter, "document" includes any instrument, paper, or other record.

Sec. 603.002. Copies of Documents Available to Public
The secretary of state, Commissioner of the General Land Office, comptroller, commis-
sioner of agriculture, Banking Commissioner, state librarian, or attorney general:

(1) shall furnish to a person on request a certified copy, under seal, of any document in the
officer's office that is available under law to that person; and

(2) may not demand or collect a fee from an officer of the state for a copy of any document
in the respective offices or for a certificate in relation to a matter in the respective
offices if the copy is required in the performance of an official duty of the office of the
state officer requesting the copy.

Sec. 603.003. Copies for Claims Relating to Military Service
(a) A county clerk, district clerk, or other public official on request shall furnish without
cost to a person or the person's guardian, dependent, or heir one or more certified
copies of a document that is in the custody of or on file in the county clerk's, district
clerk's, or other public official's office if:

   (1) the person or the person's guardian, dependent, or heir is eligible to make a claim
       against the United States government because of service in the United States armed
       forces or an auxiliary service, including the maritime service or the merchant
       marine; and

   (2) the document is necessary to prove the claim.

(b) The issuance of a certified copy under this section may not be considered in determining
the maximum fee of the office.

Sec. 603.004. Fees for Certificates or Copies of Documents
(a) Except as otherwise provided by law, the secretary of state, land commissioner,
comptroller, commissioner of agriculture, Banking Commissioner, state librarian,
attorney general, or other officer of the state or a head of a state department shall
collect the following fees for the following services:

   (1) a copy, other than a photographic copy, of a document in an office in English, for
each page or fraction of a page, $1.50;

   (2) a copy, other than a photographic copy, of a document in an office in a language
other than English, for each page or fraction of a page, $2;
(3) a translated copy of a document in an office, the greater of $.03 for each word or $5;

(4) a copy of a plat or map in an office, a fee the officer of the office in which the copy is made may establish with reference to the amount of labor, supplies, and materials required; or

(5) a sealed certificate affixed to a copy, including a certificate affixed to a photographic copy, $1.

(b) The state librarian may charge for a photographic copy a fee determined by the Texas State Library and Archives Commission with reference to the amount of labor, supplies, and materials required.

Sec. 603.005. Fee for Acknowledgment

An officer who is authorized by law to take acknowledgment or proof of a deed or other written instrument shall receive the same fee a notary public may receive for the same service.

Sec. 603.006. Fee Book

An officer who by law may charge a fee for a service shall keep a fee book and shall enter in the book all fees charged for services rendered.

Sec. 603.007. Bill for Fees

A fee under this chapter is not payable to a person until a clerk or officer produces, or is ready to produce, a bill in writing containing the details of the fee to the person who owes the fee. The bill must be signed by the clerk or officer to whom the fee is due or who charges the fee or by the successor in office or legal representative of the clerk or officer.

Sec. 603.008. Posting of Fees Required

A county judge, clerk of a district or county court, sheriff, justice of the peace, constable, or notary public shall keep posted at all times in a conspicuous place in the respective offices a complete list of fees the person may charge by law.

Sec. 603.010. Overcharging of Fees; Penalty

An officer named in this chapter who demands and receives a higher fee than authorized under this chapter or a fee that is not authorized under this chapter is liable to the aggrieved person for four times the amount unlawfully demanded and received.

Texas Statutes, Civil Practice & Remedies Code


Chapter 121. Acknowledgments and Proofs of Written Instruments

Sec. 121.001. Officers Who May Take Acknowledgments or Proofs

(a) An acknowledgment or proof of a written instrument may be taken in this state by:
(1) a clerk of a district court;
(2) a judge or clerk of a county court;
(3) a notary public;
(4) a county tax assessor-collector or an employee of the county tax assessor-collector if the instrument is required or authorized to be filed in the office of the county tax assessor-collector; or
(5) an employee of a personal bond office if the acknowledgment or proof of a written instrument is required or authorized by Article 17.04, Code of Criminal Procedure.

(b) An acknowledgment or proof of a written instrument may be taken outside this state, but inside the United States or its territories, by:

(1) a clerk of a court of record having a seal;
(2) a commissioner of deeds appointed under the laws of this state; or
(3) a notary public.

(c) An acknowledgment or proof of a written instrument may be taken outside the United States or its territories by:

(1) a minister, commissioner, or charge d'affaires of the United States who is a resident of and is accredited in the country where the acknowledgment or proof is taken;
(2) a consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who is a resident of the country where the acknowledgment or proof is taken; or
(3) a notary public or any other official authorized to administer oaths in the jurisdiction where the acknowledgment or proof is taken.

(d) A commissioned officer of the United States Armed Forces or of a United States Armed Forces Auxiliary may take an acknowledgment or proof of a written instrument of a member of the armed forces, a member of an armed forces auxiliary, or a member's spouse. If an acknowledgment or a proof is taken under this subsection, it is presumed, absent pleading and proof to the contrary, that the commissioned officer who signed was a commissioned officer on the date that the officer signed, and that the acknowledging person was a member of the authorized group of military personnel or spouses. The failure of the commissioned officer to attach an official seal to the certificate of acknowledgment or proof of an instrument does not invalidate the acknowledgment or proof.

Sec. 121.002. Corporate Acknowledgments

(a) An employee of a corporation is not disqualified because of his employment from taking an acknowledgment or proof of a written instrument in which the corporation has an interest.

(b) An officer who is a shareholder in a corporation is not disqualified from taking an acknowledgment or proof of an instrument in which the corporation has an interest unless:

(1) the corporation has 1,000 or fewer shareholders; and

(2) the officer owns more than one-tenth of one percent of the issued and outstanding stock.
Sec. 121.003. Authority of Officers

In a proceeding to prove a written instrument, an officer authorized by this chapter to take an acknowledgment or a proof of a written instrument is also authorized to:

1. administer oaths;
2. employ and swear interpreters; and
3. issue subpoenas.

Sec. 121.004. Method of Acknowledgment

(a) To acknowledge a written instrument for recording, the grantor or person who executed the instrument must appear before an officer and must state that he executed the instrument for the purposes and consideration expressed in it.

(b) The officer shall:
1. make a certificate of the acknowledgment;
2. sign the certificate; and
3. seal the certificate with the seal of office.

(c) The failure of a notary public to attach an official seal to a certificate of an acknowledgment or proof of a written instrument made outside this state but inside the United States or its territories renders the acknowledgment or proof invalid only if the jurisdiction in which the certificate is made requires the notary public to attach the seal.

(d) The application of an embossed seal is not required on an electronically transmitted certificate of an acknowledgment.

Sec. 121.005. Proof of Identity of Acknowledging Person

(a) An officer may not take the acknowledgment of a written instrument unless the officer knows or has satisfactory evidence that the acknowledging person is the person who executed the instrument and is described in it. An officer may accept, as satisfactory evidence of the identity of an acknowledging person, only:
1. the oath of a credible witness personally known to the officer;
2. a current identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging person; or
3. with respect to a deed or other instrument relating to a residential real estate transaction, a current passport issued by a foreign country.

(b) Except in a short form certificate of acknowledgment authorized by Section 121.008, the officer must note in the certificate of acknowledgment that:
1. he personally knows the acknowledging person; or
2. evidence of a witness or an identification card or other document was used to identify the acknowledging person.
Sec. 121.006. Alteration of Authorized Forms; Definition

(a) An acknowledgment form provided by this chapter may be altered as circumstances require. The authorization of a form does not prevent the use of other forms. The marital status or other status of the acknowledging person may be shown after the person’s name.

(b) In an acknowledgment form "acknowledged" means:

(1) in the case of a natural person, that the person personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument for the purposes and consideration expressed in it;

(2) in the case of a person as principal by an attorney-in-fact for the principal, that the attorney-in-fact personally appeared before the officer taking the acknowledgment and that the attorney-in-fact acknowledged executing the instrument as the act of the principal for the purposes and consideration expressed in it;

(3) in the case of a partnership by a partner or partners acting for the partnership, that the partner or partners personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument as the act of the partnership for the purposes and consideration expressed in it;

(4) in the case of a corporation by a corporate officer or agent, that the corporate officer or agent personally appeared before the officer taking the acknowledgment and that the corporate officer or agent acknowledged executing the instrument in the capacity stated, as the act of the corporation, for the purposes and consideration expressed in it; and

(5) in the case of a person acknowledging as a public officer, trustee, executor or administrator of an estate, guardian, or other representative, that the person personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument by proper authority in the capacity stated and for the purposes and consideration expressed in it.

(c) For purposes of Subsection (b), a person may personally appear before the officer taking the acknowledgment by:

(1) physically appearing before the officer; or

(2) appearing by an interactive two-way audio and video communication that meets the online notarization requirements under Subchapter C, Chapter 406, Government Code, and rules adopted under that subchapter.

(d) The acknowledgment form provided by this chapter must include a space for an online notarization as defined by Section 406.101, Government Code, to indicate by which method described by Subsection (c) the acknowledging person appeared before the officer.
Sec. 121.007. Form for Ordinary Certificate of Acknowledgment

The form of an ordinary certificate of acknowledgment must be substantially as follows:

"The State of ____________,
County of ____________,

Before me ________________ (here insert the name and character of the officer) on this day personally appeared ________________, known to me (or proved to me on the oath of ________________ or through ________________ (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal) "Given under my hand and seal of office this ________ day of ____________, A.D., ________."
(3) **For a partnership acting by one or more partners:**

State of Texas  
County of ____________

This instrument was acknowledged before me on (date) by (name of acknowledging partner or partners), partner(s) on behalf of (name of partnership), a partnership.

(Signature of officer)  
(Title of officer)

My commission expires: ________

(4) **For a corporation:**

State of Texas  
County of ____________

This instrument was acknowledged before me on (date) by (name of officer), (title of officer) of (name of corporation acknowledging) a (state of incorporation) corporation, on behalf of said corporation.

(Signature of officer)  
(Title of officer)

My commission expires: ________

(5) **For a public officer, trustee, executor, administrator, guardian, or other representative:**

State of Texas  
County of ____________

This instrument was acknowledged before me on (date) by (name of representative) as (title of representative) of (name of entity or person represented).

(Signature of officer)  
(Title of officer)

My commission expires: ________

Sec. 121.009. **Proof of Acknowledgment by Witness**

(a) To prove a written instrument for recording, at least one of the witnesses who signed the instrument must personally appear before an officer who is authorized by this chapter to take acknowledgments or proofs and must swear:

(1) either that he saw the grantor or person who executed the instrument sign it or that person acknowledged in the presence of the witness that he executed the instrument for the purposes and consideration expressed in it; and

(2) that he signed the instrument at the request of the grantor or person who executed the instrument.

(b) The officer must make a certificate of the testimony of the witness and must sign and officially seal the certificate.
(c) The officer may take the testimony of a witness only if the officer personally knows or has satisfactory evidence on the oath of a credible witness that the individual testifying is the person who signed the instrument as a witness. If evidence is used to identify the witness who signed the instrument, the officer must note the use of the evidence in the certificate of acknowledgment.

Sec. 121.010. Form of Certificate for Proof by Witness

When the execution of a written instrument is proved by a witness, the certificate of the officer must be substantially as follows:

The State of ____________,
County of ____________.

Before me, ________ (here insert the name and character of the officer), on this day personally appeared ____________, known to me (or proved to me on the oath of ____________), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw ____________, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same.)

(Seal) "Given under my hand and seal of office this ________ day of ____________, A.D., ________.”

Sec. 121.011. Proof of Acknowledgment by Handwriting

(a) The execution of an instrument may be established for recording by proof of the handwriting of persons who signed the instrument only if:

1. the grantor of the instrument and all of the witnesses are dead;
2. the grantor and all of the witnesses are not residents of this state;
3. the residences of the grantor and the witnesses are unknown to the person seeking to prove the instrument and cannot be ascertained;
4. the witnesses have become legally incompetent to testify; or
5. the grantor of the instrument refuses to acknowledge the execution of the instrument and all of the witnesses are dead, not residents of this state, or legally incompetent or their places of residence are unknown.

(b) If the grantor or person who executed the instrument signed his name to the instrument, its execution must be proved by evidence of the handwriting of that person and at least one witness who signed the instrument. If the grantor or person who executed the instrument signed the instrument by making his mark, its execution must be proved by the handwriting of at least two of the witnesses who signed the instrument.

(c) Evidence taken for proof of handwriting must give the residence of the testifying witness. A testifying witness must have known the person whose handwriting is being proved and must be well acquainted with the handwriting in question and recognize it as genuine.
(d) Evidence offered for proof of handwriting must be given in writing by the deposition or affidavit of two or more disinterested persons. The evidence must satisfactorily prove to the officer each of the requirements provided by this section. The officer taking the proof must certify the witnesses’ testimony. The officer must sign, officially seal, and attach this certificate to the instrument with the depositions or affidavits of the witnesses.

Sec. 121.012. Record of Acknowledgment

(a) An officer authorized by law to take an acknowledgment or proof of a written instrument required or permitted by law to be recorded must enter in a well-bound book and officially sign a short statement of each acknowledgment or proof. The statement must contain the date that the acknowledgment or proof was taken, the date of the instrument, and the names of the grantor and grantee of the instrument.

(b) If the execution of the instrument is acknowledged by the grantor of the instrument, the statement must also contain:
   (1) the grantor’s known or alleged residence;
   (2) whether the grantor is personally known to the officer; and
   (3) if the grantor is unknown to the officer, the name and residence of the person who introduced the grantor to the officer, if any.

(c) If the execution of the instrument is proved by a witness who signed the instrument, the statement must also contain:
   (1) the name of the witness;
   (2) the known or alleged residence of the witness;
   (3) whether the witness is personally known to the officer; and
   (4) if the witness is unknown to the officer, the name and known or alleged residence of the person who introduced the witness to the officer, if any.

(d) If land is charged or conveyed by the instrument, the statement must also contain:
   (1) the name of the original grantee; and
   (2) the name of the county in which the land is located.

(e) The statements of acknowledgment recorded by the officer are original public records, open for public inspection and examination at all reasonable times. The officer must deliver the book to his successor in office.

Sec. 121.013. Subpoena of Witness; Attachment

(a) On the sworn application of a person interested in the proof of an instrument required or permitted by law to be recorded, stating that a witness to the instrument refuses to appear and testify regarding the execution of the instrument and that the instrument cannot be proven without the evidence of the witness, an officer authorized to take proofs of instruments shall issue a subpoena requiring the witness to appear before the officer and testify about the execution of the instrument.

(b) If the witness fails to obey the subpoena, the officer has the same powers to enforce the attendance and compel the answers of the witness as does a district judge. Attachment may not be issued, however, unless the witness receives or is tendered the same compensation that is made to witnesses in other cases. An officer may not require the
witness to leave his county of residence, but if the witness is temporarily present in the county where the execution of the instrument is sought to be proven for registration, he may be required to appear.

Sec. 121.014. Action for Damages

A person injured by the failure, refusal, or neglect of an officer to comply with a provision of this chapter has a cause of action against the officer to recover damages resulting from the failure, refusal, or neglect of the officer.

Sec. 121.015. Private Seal or Scroll Not Required

A private seal or scroll may not be required on a written instrument other than an instrument made by a corporation.

Sec. 121.016. EFFECT OF OTHER LAW

To the extent that a provision of this chapter conflicts with Subchapter C, Chapter 406, Government Code, that subchapter controls with respect to an online notarization as defined by Section 406.101, Government Code.

CIVIL PRACTICE & REMEDIES CODE

TITLE 6. MISCELLANEOUS PROVISIONS

CHAPTER 132. UNSWORN DECLARATIONS

Sec. 132.001. UNSWORN DECLARATION.

(a) Except as provided by Subsection (b), an unsworn declaration may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law.

(b) This section does not apply to a lien required to be filed with a county clerk, an instrument concerning real or personal property required to be filed with a county clerk, or an oath of office or an oath required to be taken before a specified official other than a notary public.

(c) An unsworn declaration made under this section must be:

(1) in writing; and

(2) subscribed by the person making the declaration as true under penalty of perjury.

(d) Except as provided by Subsections (e) and (f), an unsworn declaration made under this section must include a jurat in substantially the following form:

“My name is ________________ ________________, my date of birth is ________________,
and my address is ____________________, __________________, ________________,
 __________________, __________________, __________________.
and __________________. I declare under penalty of perjury that the foregoing is true and correct.

Executed in _______ County, State of _____, on the ______ day of ________, ________.
_________________________________________ Declarant”
(e) An unsworn declaration made under this section by an inmate must include a jurat in substantially the following form:

"My name is _________ ________ ____________, my date of birth is ______________, and my inmate identifying number, if any, is _________________.

I am presently incarcerated in ________________________________
in ________________________________, ______________________,_______________.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on the day of _____________, __________.
_________________________________________ Declarant"

(f) An unsworn declaration made under this section by an employee of a state agency or a political subdivision in the performance of the employee’s job duties, must include a jurat in substantially the following form:

"My name is __________________ _______________ ______________________, and I am an employee of the following governmental agency: _____________________.

I am executing this declaration as part of my assigned duties and responsibilities.

I declare under penalty of perjury that the foregoing is true and correct.
Executed in _______ County, State of _____, on the ______ day of ________, ________.
_________________________________________ Declarant"

TEXAS STATUTES, FINANCE CODE

CHAPTER 59. MISCELLANEOUS PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.003. Authority of Notary Public

A notary public is not disqualified from taking an acknowledgment or proof of a written instrument as provided by Section 406.016, Government Code, solely because of the person’s ownership of stock or a participation interest in or employment by a financial institution that is an interested party to the underlying transaction.

SUBCHAPTER B. SAFE DEPOSIT BOXES

Sec. 59.101. DEFINITION.

In this subchapter, "safe deposit company" means a person who maintains and rents safe deposit boxes.

Sec. 59.109. DELINQUENT RENTAL; LIEN; SALE OF CONTENTS.

(a) If the rental for a safe deposit box is delinquent for at least six months, the safe deposit company may send notice to each lessee that the company will remove the contents of
the box if the rent is not paid before the date specified in the notice, which may not be earlier than the 60th day after the date the notice is delivered or sent. If the rent is not paid before the date specified in the notice, the safe deposit company may open the box in the presence of two employees, at least one of whom is an officer or manager of the safe deposit company and at least one of whom is a notary public. The safe deposit company shall inventory the contents of the box in detail as provided by the comptroller’s reporting instructions and place the contents of the box in a sealed envelope or container bearing the name of the lessee.

(b) The safe deposit company has a lien on the contents of the box for an amount equal to the rental owed for the box and the cost of opening the box. The safe deposit company may retain possession of the contents. If the rental and the cost of opening the box are not paid before the second anniversary of the date the box was opened, the safe deposit company may sell all or part of the contents at public auction in the manner and with the notice prescribed by Section 51.002, Property Code, for the sale of real property under a deed of trust. Any unsold contents of the box and any excess proceeds from a sale of contents shall be remitted to the comptroller as provided by Chapters 72-75, Property Code.
(F) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.

(42) "Reasonable belief" means a belief that would be held by an ordinary and prudent man in the same circumstances as the actor.

(47) "Swear" includes affirm.

(48) "Unlawful" means criminal or tortious or both and includes what would be criminal or tortious but for a defense not amounting to justification or privilege.

TEXAS STATUTES, PENAL CODE

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION
CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

Sec. 36.02. Bribery

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

(1) any benefit as consideration for the recipient’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient’s decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or

(4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.

(c) It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:

(1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or

(2) the public servant ceases to be a public servant.

(d) It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) that the benefit is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.

(e) An offense under this section is a felony of the second degree.
Sec. 36.03. Coercion of Public Servant or Voter

(a) A person commits an offense if by means of coercion he:

(1) influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty or influences or attempts to influence a public servant to violate the public servant’s known legal duty; or

(2) influences or attempts to influence a voter not to vote or to vote in a particular manner.

(b) An offense under this section is a Class A misdemeanor unless the coercion is a threat to commit a felony, in which event it is a felony of the third degree.

(c) It is an exception to the application of Subsection (a)(1) of this section that the person who influences or attempts to influence the public servant is a member of the governing body of a governmental entity, and that the action that influences or attempts to influence the public servant is an official action taken by the member of the governing body. For the purposes of this subsection, the term "official action" includes deliberations by the governing body of a governmental entity.

Sec. 36.09. Offering Gift to Public Servant

(a) A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.

(b) An offense under this section is a Class A misdemeanor.

TEXAS STATUTES, PENAL CODE

CHAPTER 37. PERJURY AND OTHER FALSIFICATION

Sec. 37.02. Perjury

(a) A person commits an offense if, with intent to deceive and with knowledge of the statement’s meaning:

(1) he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath; or

(2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.

(b) An offense under this section is a Class A misdemeanor.

Sec. 37.03. Aggravated Perjury

(a) A person commits an offense if he commits perjury as defined in Section 37.02, and the false statement:

(1) is made during or in connection with an official proceeding; and

(2) is material.

(b) An offense under this section is a felony of the third degree.
Sec. 37.09. Tampering with or Fabricating Physical Evidence

(a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) This section shall not apply if the record, document, or thing concealed is privileged or is the work product of the parties to the investigation or official proceeding.

(c) An offense under Subsection (a) or Subsection (d)(1) is a felony of the third degree, unless the thing altered, destroyed, or concealed is a human corpse, in which case the offense is a felony of the second degree. An offense under Subsection (d)(2) is a Class A misdemeanor.

(c-1) It is a defense to prosecution under Subsection (a) or (d)(1) that the record, document, or thing was visual material prohibited under Section 43.261 that was destroyed as described by Subsection (f)(3)(B) of that section.

(d) A person commits an offense if the person:

(1) knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of or official proceeding related to the offense; or

(2) observes a human corpse under circumstances in which a reasonable person would believe that an offense had been committed, knows or reasonably should know that a law enforcement agency is not aware of the existence of or location of the corpse, and fails to report the existence of and location of the corpse to a law enforcement agency.

(e) In this section, "human corpse" has the meaning assigned by Section 42.08.

Sec. 37.10. Tampering with Governmental Record

(a) A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, a governmental record;

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;

(4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;

(5) makes, presents, or uses a governmental record with knowledge of its falsity; or

(6) possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.
(b) It is an exception to the application of Subsection (a)(3) that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.

(c)(1) Except as provided by Subdivisions (2), (3), and (4) and by Subsection (d), an offense under this section is a Class A misdemeanor unless the actor’s intent is to defraud or harm another, in which event the offense is a state jail felony.

(2) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was:

(A) a public school record, report, or assessment instrument required under Chapter 39, Education Code, data reported for a school district or open-enrollment charter school to the Texas Education Agency through the Public Education Information Management System (PEIMS) described by Section 42.006, Education Code, under a law or rule requiring that reporting, or a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States, unless the actor’s intent is to defraud or harm another, in which event the offense is a felony of the second degree;

(B) a written report of a medical, chemical, toxicological, ballistic, or other expert examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action;

(C) a written report of the certification, inspection, or maintenance record of an instrument, apparatus, implement, machine, or other similar device used in the course of an examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action; or

(D) a search warrant issued by a magistrate.

(3) An offense under this section is a Class C misdemeanor if it is shown on the trial of the offense that the governmental record is a governmental record that is required for enrollment of a student in a school district and was used by the actor to establish the residency of the student.

(4) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the governmental record is a written appraisal filed with an appraisal review board under Section 41.43(a-1), Tax Code, that was performed by a person who had a contingency interest in the outcome of the appraisal review board hearing.

(d) An offense under this section, if it is shown on the trial of the offense that the governmental record is described by Section 37.01(2)(D), is:

(1) a Class B misdemeanor if the offense is committed under Subsection (a)(2) or Subsection (a)(5) and the defendant is convicted of presenting or using the record;
(2) a felony of the third degree if the offense is committed under:

(A) Subsection (a)(1), (3), (4), or (6); or

(B) Subsection (a)(2) or (5) and the defendant is convicted of making the record; and

(3) a felony of the second degree, notwithstanding Subdivisions (1) and (2), if the actor’s intent in committing the offense was to defraud or harm another.

(e) It is an affirmative defense to prosecution for possession under Subsection (a)(6) that the possession occurred in the actual discharge of official duties as a public servant.

(f) It is a defense to prosecution under Subsection (a)(1), (a)(2), or (a)(5) that the false entry or false information could have no effect on the government’s purpose for requiring the governmental record.

(g) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more of the same type of governmental records or blank governmental record forms and if each governmental record or blank governmental record form is a license, certificate, permit, seal, title, or similar document issued by government.

(h) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 or 37.13, the actor may be prosecuted under any of those sections.

(i) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

(j) It is not a defense to prosecution under Subsection (a)(2) that the record, document, or thing made, presented, or used displays or contains the statement "NOT A GOVERNMENT DOCUMENT" or another substantially similar statement intended to alert a person to the falsity of the record, document, or thing, unless the record, document, or thing displays the statement diagonally printed clearly and indelibly on both the front and back of the record, document, or thing in solid red capital letters at least one-fourth inch in height.

Sec. 37.11. Impersonating Public Servant

(a) A person commits an offense if he:

(1) impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts; or

(2) knowingly purports to exercise any function of a public servant or of a public office, including that of a judge and court, and the position or office through which he purports to exercise a function of a public servant or public office has no lawful existence under the constitution or laws of this state or of the United States.

(b) An offense under this section is a felony of the third degree.
Sec. 39.02. Abuse of Official Capacity

(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant’s office or employment; or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant’s custody or possession by virtue of the public servant’s office or employment.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is:

(1) a Class C misdemeanor if the value of the use of the thing misused is less than $100;

(2) a Class B misdemeanor if the value of the use of the thing misused is $100 or more but less than $750;

(3) a Class A misdemeanor if the value of the use of the thing misused is $750 or more but less than $2,500;

(4) a state jail felony if the value of the use of the thing misused is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the value of the use of the thing misused is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the value of the use of the thing misused is $150,000 or more but less than $300,000; or

(7) a felony of the first degree if the value of the use of the thing misused is $300,000 or more.

(d) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.

(e) If separate transactions that violate Subsection (a)(2) are conducted pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense and the value of the use of the things misused in the transactions may be aggregated in determining the classification of the offense.

(f) The value of the use of a thing of value misused under Subsection (a)(2) may not exceed:

(1) the fair market value of the thing at the time of the offense; or

(2) if the fair market value of the thing cannot be ascertained, the cost of replacing the thing within a reasonable time after the offense.
Sec. 39.03. Official Oppression

(a) A public servant acting under color of his office or employment commits an offense if he:
   (1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;
   (2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or
   (3) intentionally subjects another to sexual harassment.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) In this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(d) An offense under this section is a Class A misdemeanor, except that an offense is a felony of the third degree if the public servant acted with the intent to impair the accuracy of data reported to the Texas Education Agency through the Public Education Information Management System (PEIMS) described by Section 42.006, Education Code, under a law requiring that reporting.

Sec. 39.06. Misuse of Official Information

(a) A public servant commits an offense if, in reliance on information to which the public servant has access by virtue of the person’s office or employment and that has not been made public, the person:
   (1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;
   (2) speculates or aids another to speculate on the basis of the information; or
   (3) as a public servant, including as a school administrator, coerces another into suppressing or failing to report that information to a law enforcement agency.

(b) A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that:
   (1) he has access to by means of his office or employment; and
   (2) has not been made public.

(c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that:
   (1) the public servant has access to by means of his office or employment; and
   (2) has not been made public.

(d) In this section, "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 552, Government Code.

(e) Except as provided by Subsection (f), an offense under this section is a felony of the third degree.

(f) An offense under Subsection (a)(3) is a Class C misdemeanor.
TEXAS STATUTES, ESTATES CODE

TITLE 2. ESTATES OF DECEDEANTS; DURABLE POWERS OF ATTORNEY. SUBTITLE F. WILLS

CHAPTER 251. FUNDAMENTAL REQUIREMENTS AND PROVISIONS RELATING TO WILLS

SUBCHAPTER A. WILL FORMATION

Sec. 251.001. Who May Execute Will

Under the rules and limitations prescribed by law, a person of sound mind has the right and power to make a last will and testament if, at the time the will is made, the person:

(1) is 18 years of age or older;
(2) is or has been married; or
(3) is a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

Sec. 251.002. Interests that May Pass by Will; Disinheritance

(a) Subject to limitations prescribed by law, a person competent to make a last will and testament may devise under the will and testament all the estate, right, title, and interest in property the person has at the time of the person's death.

(b) A person who makes a last will and testament may:

(1) disinherit an heir; and
(2) direct the disposition of property or an interest passing under the will or by intestacy.

SUBCHAPTER B. WILL REQUIREMENTS

Sec. 251.051. Written, Signed, and Attested

Except as otherwise provided by law, a last will and testament must be:

(1) in writing;
(2) signed by:

(A) the testator in person; or
(B) another person on behalf of the testator:

(i) in the testator's presence; and
(ii) under the testator's direction; and
(3) attested by two or more credible witnesses who are at least 14 years of age and who subscribe their names to the will in their own handwriting in the testator's presence.

Sec. 251.052. Exception for Holographic Wills

Notwithstanding Section 251.051, a will written wholly in the testator's handwriting is not required to be attested by subscribing witnesses.
Sec. 251.053. Exception for Foreign and Certain Other Wills

Section 251.051 does not apply to a written will executed in compliance with:

1. the law of the state or foreign country where the will was executed, as that law existed at the time of the will’s execution; or
2. the law of the state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will’s execution or at the time of the testator’s death.

Sec. 251.101. Self-proved Will

A self-proved will is a will:

1. to which a self-proving affidavit subscribed and sworn to by the testator and witnesses is attached or annexed; or
2. that is simultaneously executed, attested, and made self-proved as provided by Section 251.1045.

Sec. 251.102. Probate and Treatment of Self-proved Will

(a) A self-proved will may be admitted to probate without the testimony of any subscribing witnesses if:

1. the testator and witnesses execute a self-proving affidavit; or
2. the will is simultaneously executed, attested, and made self-proved as provided by Section 251.1045.

(b) A self-proved will may not otherwise be treated differently than a will that is not self-proved.

Sec. 251.103. Period for Making Attested Wills Self-proved

A will or testament that meets the requirements of Section 251.051 may be made self-proved at:

1. the time of the execution of the will or testament; or
2. a later date during the lifetime of the testator and the witnesses.

Sec. 251.104. Requirements for Self-proving Affidavit

(a) An affidavit that is in form and content substantially as provided by Subsection (e) is a self-proving affidavit.

(b) A self-proving affidavit must be made by the testator and by the attesting witnesses before an officer authorized to administer oaths. The officer shall affix the officer’s official seal to the self-proving affidavit.

(c) The self-proving affidavit shall be attached or annexed to the will or testament.

(d) An affidavit that is in substantial compliance with the form of the affidavit provided by Subsection (e), that is subscribed and acknowledged by the testator, and that is subscribed and sworn to by the attesting witnesses is sufficient to self-prove the will. No other affidavit or certificate of a testator is required to self-prove a will or testament other than the affidavit provided by Subsection (e).

(e) The form and content of the self-proving affidavit must be substantially as follows:
The State of Texas
County of ____________

Before me, the undersigned authority, on this day personally appeared ________________, ______________, and ______________, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said ______________, testator, declared to me and to the said witnesses in my presence that said instrument is [his/her] last will and testament, and that [he/she] had willingly made and executed it as [his/her] free act and deed; and the said witnesses, each on [his/her] oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is [his/her] last will and testament, and that [he/she] executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said testator and at [his/her] request; that [he/she] was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States, or an auxiliary of the armed forces of the United States, or the United States Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

____________________________
(Testator)

____________________________   ___________________________
(Witness)                                                                   (Witness)

My commission expires: ________

Subscribed and sworn to before me by the said ______________, testator, and by the said ______________ and ______________, witnesses, this ______ day of __________, 20________________.

(Signed) ______________________________________________________________________

(Official Capacity of Officer)

Sec. 251.1045. Simultaneous Execution, Attestation, and Self-proving

(a) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses as provided by Section 251.104, a will may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of the following in form and contents substantially as follows:

I, ______________, as testator, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my will, that I willingly make and execute it in the presence of the undersigned witnesses, all of whom are present at the same time, as my free act and deed, and that I request each of the undersigned witnesses to sign this will in my presence and in the presence of each other. I now sign this will in the presence of the attesting witnesses and the undersigned authority on this ______ day of __________, 20________________.

____________________________
(Testator)
The undersigned, _______________ and _______________, each being at least fourteen years of age, after being duly sworn, declare to the testator and to the undersigned authority that the testator declared to us that this instrument is the testator’s will and that the testator requested us to act as witnesses to the testator’s will and signature. The testator then signed this will in our presence, all of us being present at the same time. The testator is eighteen years of age or over (or being under such age, is or has been lawfully married, or is a member of the armed forces of the United States or of an auxiliary of the armed forces of the United States or of the United States Maritime Service), and we believe the testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the testator, each other, and the undersigned authority on this _______ day of ________________, 20____.

____________________________   ___________________________
(Witness)                                                                   (Witness)

Subscribed and sworn to before me by the said ____________, testator, and by the said ___________________ and __________________, witnesses, this _______ day of ________________ A.D. _____________.

(SEAL)
(Signed) __________________________________________
(Official Capacity of Officer)

(b) A will that is in substantial compliance with the form provided by Subsection (a) is sufficient to self-prove a will.

Sec. 251.105. Effect of Signature on Self-proving Affidavit

A signature on a self-proving affidavit is considered a signature to the will if necessary to prove that the will was signed by the testator or witnesses or both, except that, in that case, the will may not be considered a self-proved will.

Sec. 251.106. Contest, Revocation, or Amendment of Self-proved Will

A self-proved will may be contested, revoked, or amended by a codicil in the same manner as a will that is not self-proved.

Sec. 251.107. Self-proved Holographic Will

Notwithstanding any other provision of this subchapter, a will written wholly in the testator's handwriting may be made self-proved at any time during the testator's lifetime by the attachment or annexation to the will of an affidavit by the testator to the effect that:

(1) the instrument is the testator’s last will;
(2) the testator was 18 years of age or older at the time the will was executed or, if the testator was younger than 18 years of age, that the testator:
(A) was or had been married; or
(B) was a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service at the time the will was executed;

(3) the testator was of sound mind; and

(4) the testator has not revoked the will.

NOTARY PUBLIC EDUCATIONAL INFORMATION FROM THE TEXAS SECRETARY OF STATE

FOREWORD
The following educational materials are provided to you in accordance with Tex. Gov’t Code Ann. §406.008(b).

This information should be kept for reference throughout your four-(4) year term. Please read through this information at least once before you begin to perform your notarial duties.

THE STATUTES REFERRED TO IN THESE MATERIALS ARE SUBJECT TO LEGISLATIVE CHANGE. The Secretary of State will provide a copy of these changes only upon request. Contact the Secretary of State, Notary Public Unit, P.O. Box 13375, Austin, Texas 78711 3375 or call (512) 463 5705 following each legislative session.

The Secretary of State’s office would like to thank the Texas Young Lawyers Association for permitting us to use excerpts from their former publication, Texas Notary Public Handbook.

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INTRODUCTION
A Notary Public is a public servant with statewide jurisdiction who is authorized to take acknowledgments, protest instruments permitted by law to be protested (primarily negotiable instruments and bills and notes), administer oaths, take depositions, and certify copies of documents not recordable in the public records.

A Notary Public is, in the true sense of the word, "a public servant" and "an officer of the State of Texas", conveniently located in the community so that the notary may be of service to the public. Each Notary Public takes an official oath of office to faithfully perform the duties of the office, and to insure such performance, a notary public is required to post a $10,000.00 bond with the Secretary of State.

The primary duty of a Notary Public is to show that a disinterested party (the Notary Public) has duly notified the signer of an instrument as to the importance of such document, and the signer of such document has declared that the signer’s identity, signature, and reasons for signing such instrument are genuine. The signature and seal of a Notary Public do not prove these facts conclusively, but provide prima facie proof of them, and allow persons in trade and commerce to rely upon the truth and veracity of the Notary Public as a third party who has no personal interest in the transaction.

A Notary Public is personally liable for negligence or fraud in the performance of the duties of the office. The bond is to insure that the person injured can recover at least $10,000.00, but this does not protect the Notary Public from personal liability for the full extent of damages caused by a breach of official duty. In addition to civil liability, Notaries Public may be subject to criminal prosecution and the revocation or suspension of their notary public commission by the Secretary of State’s office.

STATUTES
RECORD BOOK AND PUBLIC RECORDS
Tex. Gov’t. Code Ann. § 406.014 requires that a Notary Public maintain a record book. This record book must be maintained whether or not any fees are charged for your notary public services.

A notary public other than a court clerk notarizing instruments for the court shall keep in a book a record of: (1) the date of each instrument notarized; (2) the date of the notarization; (3) the name of the signer, grantor, or maker; (4) the signer’s, grantor’s, or maker’s residence or alleged residence; (5) whether the signer, grantor, or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and residence or alleged residence of the individual introducing the signer, grantor, or maker; (6) if the instrument is proved by a witness, the residence of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the witness; (7) the name and residence of the grantee; (8) if land is conveyed or charged by the instrument, the name of the original grantee and the county where the land is located; and (9) a brief description of the instrument.

NOTE: 1 T.A.C. §87.40 prohibits a notary from recording in the notary’s book of record the identification number that was assigned by the governmental agency or by the United States to the signer, grantor or maker and that is set forth on the identification card or passport; or any other number that could be used to identify the signer, grantor or maker of the document. Section 87.40 does not prohibit a notary from recording a number related
to the residence or alleged residence of the signer, grantor or maker of the document or the instrument.

Entries in the notary's book are public information. A notary public shall, on payment of all fees, provide a certified copy of any record in the notary public’s office to any person requesting the copy.

A notary public who administers an oath pursuant to Article 45.019 of the Code of Criminal Procedure is exempt from the requirement of recording that oath in the notary public’s record book.

**NOTARY SEAL**

Tex. Gov’t. Code Ann. § 406.013 requires a Notary Public to use a seal of office to authenticate the Notary Public’s official acts. Section 406.013 states:

a. A notary public shall provide a seal of office that clearly shows, when embossed, stamped, or printed on a document, the words "Notary Public, State of Texas" around a star of five points, the notary public’s name, and the date the notary public’s commission expires. Notaries public commissioned for the first time on or after January 1, 2016, and notaries public renewing their commissions on or after that date must have their notary ID number on their seal of office. See Section 406.013 of the Texas Government Code as amended by HB 1683 (PDF). The notary public shall authenticate all official acts with the seal of office.

b. The seal may be a circular form not more than two inches in diameter or a rectangular form not more than one inch in width and 2½ inches in length. The seal must have a serrated or milled edge border.

c. The seal must be affixed by a seal press or stamp that embosses or prints a seal that legibly reproduces the required elements of the seal under photographic methods. An indelible inkpad must be used for affixing by a stamp the impression of a seal on an instrument to authenticate the notary public’s official act.

d. Subsection (c) does not apply to an electronically transmitted authenticated document, except that an electronically transmitted authenticated document must legibly reproduce the required elements of the seal.

**CHANGE OF ADDRESS**

Tex. Gov’t. Code Ann. § 406.019 requires a Notary Public to notify the Secretary of State of any change of address within ten (10) days of the date on which the change is made. You may fill out a Notary Public Change of Address form or send a letter with your name, social security number, old address, and new address to: Secretary of State, Notary Public Unit, P. O. Box 13375, Austin, Texas 78711-3375. You may also file your change of address online. The failure to update your address may result in revocation of your commission if you fail to respond to a complaint or a request for information (1 TAC §87.50(b)).

**UNAUTHORIZED PRACTICE OF LAW**

An attorney or similar trained legal professional often holds the position of a Notary Public in Mexico and many foreign countries. To avoid deception by such persons and to dispel erroneous assumptions, the Texas Legislature enacted § 406.017 of the Government Code. Section 406.017 states:

a. A person commits an offense if the person is a notary public and the person:

   1. states or implies that the person is an attorney licensed to practice law in this state;
2. solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters;
3. solicits or accepts compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or the United States;
4. uses the phrase “notario or “notario publico” to advertise the services of a notary public, whether by signs, pamphlets, stationary or other written communication or by radio or television.
5. advertises the services of a notary public in a language other than English, whether by signs, pamphlets, stationary or other written communication or by radio or television; if the person does not post or otherwise include the notice with the advertisement a notice that complies with Subsection (b).

b. The notice required by Subsection (a)(5) must state that the notary public is not an attorney and must be in English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice must include the fees that a notary public may charge and the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

c. It is an exception to prosecution under this section that, at the time the conduct charged, the person is licensed to practice law in this state and is in good standing with the State bar of Texas.

d. Except as provided by Subsection (e) of this section, an offense under this section is a Class A misdemeanor.

e. An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

f. Failure to comply with this section is, in addition to a violation of any other applicable law of this state, a deceptive trade practice actionable under Chapter 17, Business & Commerce Code.

REVOCATION OR SUSPENSION OF COMMISSION BY THE SECRETARY OF STATE

Tex. Gov’t Code Ann. § 406.004 requires that if the secretary of state discovers, at any time, that an applicant to be a notary public or a commissioned notary public is not eligible to serve as a notary public, the secretary of state shall:

a. reject the application; or

b. revoke the commission.

Tex. Gov’t. Code Ann. § 406.009 gives the Secretary of State the authority to reject an application, or suspend or revoke the commission of any Notary Public for "good cause".

a. The secretary of state may, for good cause, reject an application or suspend or revoke the commission of a notary public.

b. An action by the secretary of state under this section is subject to the rights of notice, hearing, adjudication, and appeal.

c. An appeal under this section is to the district court of Travis County. The secretary of state has the burden of proof, and the trial is conducted de novo.
d. in this section, "good cause" includes:

1. a false statement knowingly made in an application;
2. the failure to comply with Section 406.017;
3. a final conviction for a violation of law concerning the regulation of the conduct of notaries public in this or another state;
4. the imposition on the notary public of an administrative, criminal, or civil penalty for a violation of a law or rule prescribing the duties of a notary public;
5. performing any notarization when the person for whom the notarization is performed did not personally appear before the notary at the time he notarization is executed.

FEES POSTED

Section 603.008 of the Government Code requires a Notary Public to keep posted the fees that a notary is authorized by law to charge.

A county judge, clerk of a district or county court, sheriff, justice of the peace, constable, or notary public shall keep posted at all times in a conspicuous place in the respective offices a complete list of fees the person may charge by law.

FEE BOOK

Section 603.006 of the Government Code requires a Notary Public who charges a fee for notary services to keep a fee book.

An officer who by law may charge a fee for a service shall keep a fee book and shall enter in the book all fees charged for services rendered.

TO ITEMIZE COSTS

Section 603.007 of the Government Code states that a Notary Public must itemize or be prepared to itemize the fees that the notary charges for performing notarial services.

A fee under this chapter is not payable to a person until a clerk or officer produces, or is ready to produce, a bill in writing containing the details of the fee to the person who owes the fee. The bill must be signed by the clerk or officer to whom the fee is due or who charges the fee or by the successor in office or legal representative of the clerk or officer.

FEES

Tex. Gov’t. Code Ann. § 406.024 sets out the maximum fees a Notary Public, or their employer, may charge for notary public services. A Notary Public who charges more than the maximum set out below subjects the notary to possible criminal prosecution and suspension or revocation of the notary’s notary public commission by the Secretary of State’s office.

Notaries Public may charge the following fees:

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protesting a bill or note for non-acceptance or non-payment, register and seal</td>
<td>$4.00</td>
</tr>
<tr>
<td>Each notice of protest</td>
<td>$1.00</td>
</tr>
<tr>
<td>Protesting in all other cases</td>
<td>$4.00</td>
</tr>
<tr>
<td>Certificate and seal to a protest</td>
<td>$4.00</td>
</tr>
</tbody>
</table>

Taking the acknowledgment or proof of any deed or other instrument in writing, for registration, including certificate and seal:

(1) for the first signature $6.00
(2) for each additional signature $1.00
Administering an oath or affirmation with certificate and seal $6.00
All certificates under seal not otherwise provided for $6.00
Copies of all records and papers in the Notary Public’s office, for each page $.50
Taking the depositions of witnesses, for each 100 words $.50
Swearing a witness to a deposition, certificate, seal, and other business connected with taking the deposition $6.00
All notarial acts not provided for $6.00

QUESTIONS FREQUENTLY ASKED
The following section consists of questions Notaries Public often have about their office. If you have any questions about notarizing a document you should contact the maker of the document, the Notary Public Unit of the Secretary of State’s office, or an attorney.

1. May I Notarize my Spouse’s Signature?
2. May I Notarize for my Spouse’s Business?
3. May I Notarize for my Relatives?

The basic rules are: the act of taking and certifying acknowledgments cannot be performed by a notary public financially or beneficially interested in the transaction; and one who is a party to an instrument, cannot act as a notary public. There is no specific prohibition against a notary public notarizing another spouse’s signature or a notary public notarizing for a spouse’s business. The facts in each situation will determine whether such action is proper.

4. May I Alter or Change the Instrument I Notarize?

To answer this question, a distinction must be made between the instrument and the acknowledgment. A Notary Public is not authorized to change, alter or draft any instrument. However, a Notary Public may correct the certificate of acknowledgment to reflect the proper facts. For example, if an acknowledgment is taken in Webb County and the certificate shows Marion County, the certificate may be corrected as follows:

The State of Texas -
County of Marion Webb
Before me, (Notary Public’s name), a Notary Public, on this day personally ... etc.

5. I May Perform Notarial Acts in Other Counties?
Yes. A notary public has statewide jurisdiction and may perform notarial acts in any county in the state of Texas.

No. A notary public’s authority is limited to those acts authorized in §406.016. A Notary Public may not charge more than the prescribed fees for performance of notarial acts.

7. What if There is a Difference Between the Date the Instrument is Signed and the Date the Acknowledgment is Actually Taken?
To answer this question, an example is given. If an instrument ends with the wording: "Signed and executed at Tyler, Smith County, Texas, this 25th day of October, 2001,” and the party whose name appears on such instrument appears before the Notary Public on October 27th, 2001, the Notary Public would fill in the acknowledgment with the true and correct date when the signer personally appeared before the Notary Public.
8. May I Take an Acknowledgment Over the Telephone?
No. The person whose signature is notarized must personally appear before the notary at the time the notarization is performed.

9. May I Change my Name From the Name Shown on my Notary Public Commission?
Yes. A Notary Public may change the name on their commission by sending the Secretary of State a name change application, your current certificate of commission, a rider or endorsement from the insurance agency or surety, and a $20.00 filing fee. The above four elements must be sent at the same time. For an instruction sheet, please contact the Notary Public Unit at (512) 463-5705.

10. May I Make a Certified Copy of a Birth Certificate or a Marriage License:
No. Birth certificates and marriage licenses are recordable documents. A recordable document is one that is recorded with some type of entity whether it be the Secretary of State's Office, a court of law, a county clerk, or the Bureau of Vital Statistics. Certified copies may be obtained by contacting such entities.
A non-recordable document is one that has not been nor will ever be recorded with any type of entity. For instance, a letter is not recorded with anyone but there are times the sender of the letter would like to obtain a certified copy of that letter for his or her file.

11. May a Notary Public Determine Which Type of Notarial Certificate Should be Attached to a Document?
No. A Notary Public who is not an attorney should only complete a notarial certificate which is already on the document or type a certificate of the maker’s choosing. If a notary public is brought a document without a certificate and decides which certificate to attach, that notary public would be "practicing law." However, a notary public is provided copies of sample notarial certificates with his or her notary commission. A person for whom a notarization is performed may choose the notarial certificate, and the notary may add such certificate to the document.

12. Should a Notary Public Rely Only on a Credit Card in Determining the Identification of a Signer?
No. If the signer is not personally known by the Notary Public or identified by a credible witness, the Notary Public must use an identification card issued by a governmental agency or a passport issued by the United States to identify the signer.

13. Is a Notary Required to Administer an Oath to a Deponent Served Deposition Upon Written Questions?
Yes. The deposition officer ("notary public") must: record the testimony of the witness under oath in response to the written questions and prepare, certify and deliver the deposition transcript in accordance with Rule 203 of the Texas Rules of Civil Procedure.

PROHIBITED ACTS

The section below provides a notary public with a list of prohibited acts that a notary public may not do in carrying out the duties of the notary’s office. If a notary public performs any of the following acts, the notary may be subject to possible criminal prosecution, civil liability, and the revocation or suspension of the notary's notary public commission.

A Notary Public may not:
1. perform acts, which constitute the practice of law;
2. prepare, draft, select, or give advice concerning legal documents;
3. use the phrase “notario” or “notario publico” to advertise notary services;
4. overcharge for notary public services;
5. notarize a document without the signer being in the notary’s presence;
6. notarize the notary’s own signature;
7. issue identification cards;
8. sign a notarial certificate under any other name than the one under which the
   notary was commissioned; or
9. certify copies of documents recordable in the public records.
10. record in the notary’s record book the identification number that was assigned by
    the governmental agency or by the United States to the signer, grantor or maker
    and that is set forth on an identification card or passport; or any other number that
    could be used to identify the signer, grantor or maker of the document. (This does
    not prohibit a notary from recording a number related to the residence or alleged
    residence of the signer, grantor or maker of the document or the instrument.
11. using the translation into a foreign language of a title or other word, including
    "notary" and "notary public" in reference to a person who is not an attorney in
    order to imply that the person is authorized to practice law in the United States.

NOTARIAL DEFINITIONS

ACKNOWLEDGMENT: A formal declaration before an authorized official, such as a
notary public, by someone who signs a document and confirms that the signature is
authentic. Also, the certificate of the officer on such instrument indicating that the
document has been so acknowledged.

AFFIDAVIT: A voluntary declaration of facts, written down and sworn to or affirmed by
the declarant ("affiant") before a Notary Public or other officer having the authority to
administer an oath.

AFFIRMATION: The act of affirming the truth of a document, not an oath. "I solemnly
affirm and declare the foregoing to be a true statement..." Note that an affidavit
may appear in two forms: a sworn affidavit with oath, or an affirmed affidavit with
affirmation. Each has the same legal import.

JURAT: A certification added to an affidavit or document stating when, where and before
whom such affidavit was made.

OATH: A solemn declaration, accompanied by a swearing to God or a revered person or
thing, that one’s statement is true or that one will be bound to a promise. The person
making the oath implicitly invites punishment if the statement is untrue or the
promise is broken.

PROTEST: A Notary Public’s written statement that, upon presentment for payment or
acceptance, a negotiable instrument was neither paid nor accepted.

VERIFICATION: A formal declaration by which one swears to or affirms the truth of the
statements in a document. Also, the statement of a Notary Public that the person
appearing before the notary has been properly identified as being the person
purported to be appearing.
SAMPLE FORMS

“(Personalized Seal)” in the following examples means a seal containing the words "Notary Public, State of Texas" around a star of five points, the notary public’s name, and the date the notary public’s commission expires.

ACKNOWLEDGMENTS

I. Form for Ordinary Certificate of Acknowledgment

State of Texas

County of _______________

Before me, (insert the name and character of the officer), on this day personally appeared ____________________, known to me (or proved to me on the oath of _____________, or through (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this __________ day of __________, (year).

(Personalized Seal)  ______________________

Notary Public’s Signature

II. Short Forms

A. For a natural person acting in his/her own right:

State of Texas

County of _______________

This instrument was acknowledged before me on (date) by (name or names of person or persons acknowledging).

(Personalized Seal)  ______________________

Notary Public’s Signature

B. For a natural person as principal acting by attorney-in-fact:

State of Texas

County of _______________

This instrument was acknowledged before me on (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

(Personalized Seal)  ______________________

Notary Public’s Signature
C. For a partnership acting by one or more partners:

State of Texas
County of _______________

This instrument was acknowledged before me on (date) by (name of acknowledging partner or partners), partner(s) on behalf of (name of partnership), a partnership.

(Personalized Seal) _____________________________________________________________________
Notary Public’s Signature

D. For a corporation:

State of Texas
County of _______________

This instrument was acknowledged before me on (date) by (name of officer), (title of officer) of (name of corporation acknowledging), a (state of incorporation) corporation, on behalf of said corporation.

(Personalized Seal) _____________________________________________________________________
Notary Public’s Signature

E. For a public officer, trustee, executor, administrator, guardian, or other representative:

State of Texas
County of _______________

This instrument was acknowledged before me on (date) by (name of representative) as (title of representative) of (name of entity or person represented).

__________________________________________________________________________________ (Personalized Seal)
Notary Public’s Signature
F. Form of Certificate for Proof by Witness

State of Texas  
County of _______________

Before me, (insert the name and character of the officer), on this day personally appeared ________________, known to me (or proved to me on the oath of ________________), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw ______, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same.)  
Given under my hand and seal of office this __________ day of __________, (year).

(Personalized Seal)   
Notary Public’s Signature

JURAT

State of Texas  
County of _______________

Sworn to and subscribed before me on the ________ day of ____________, (year), by (name of signer).

(Personalized Seal)   
Notary Public’s Signature

VERIFICATIONS

Form 1:

State of Texas  
County of _______________

__________________, personally appeared before me, and being first duly sworn declared that he/she signed this application in the capacity designated, if any, and further states that he/she has read the above application and the statements therein contained are true.

(Personalized Seal)   
Notary Public’s Signature
Form 2:

State of Texas
County of _______________

Before me, a notary public, on this day personally appeared ________________, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

(Personalized Seal)                                                                                                      ______________________
                                                                                                            Notary Public’s Signature

OATH OR AFFIRMATION

State of Texas  
County of _______________

I, (affiant), do solemnly swear (or affirm), that I will faithfully execute the duties of the office of ________________ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

____________________
Signature of Affiant

Sworn to and subscribed before me by (affiant) on this __________ day of ______________, (year).

(Personalized Seal)                                                                                                      ______________________
                                                                                                            Notary Public’s Signature

DEPOSITION

Certificate to Deposition Upon Written Questions
State of Texas
County of _______________

(Plaintiff)  ) In the _________________ Court
v.                                                  ) of _____________________ County, Texas
(Defendant)  ) Cause No. ____________

I hereby certify that the foregoing answers of ____________, the witness forenamed, were signed and sworn to before me on (date), by said witness.

(Personalized Seal)                                                                                                      ______________________
                                                                                                            Notary Public’s Signature
PROTESTS

(Insert bill or note or copy thereof)

United States of America
State of Texas
County of _______________

Be it known that on the __________ day of __________, (year), at the request of _______________ (name), of _______________, I, (Notary Public’s name), a Notary Public duly commissioned and sworn, residing in _______________ County, Texas, did present the original (instrument), hereto attached, for $__________, with accrued interest thereon of $__________, dated __________, and demanded payment (or acceptance) thereof, which was refused.

Whereupon I, at the request of the aforesaid _______________, did protest, and by these presents do protest, as well against the drawer, maker, endorsers, and acceptors of said instruments as against all others whom it may concern, for exchange, costs, charges, damages, and interest already incurred and hereinafter to be incurred by reason of non-payment thereof. I further certify that on (date), notice in writing of the foregoing presentment, demand, refusal and protest was given by (persons and status) by depositing notices thereof in the post office at _______________, Texas, postage paid, directed as follows: ____________________. I further certify that notices were left as follows:

Notice left for _______________ at _______________
Notice left for _______________ at _______________

Each of the named places the reputed place of residence of the person for whom the notice was left.

In testimony whereof I have hereunto set my hand and affixed my seal of office at _______________, Texas, on ____________ day of ____________, (year).

(Personalized Seal)                                                             ______________________
Notary Public’s Signature

CERTIFIED COPY OF A NOTARIAL RECORD

State of Texas
County of _______________

On this __________ day of __________, (year), I certify, pursuant to Tex. Gov’t Code §406.014(c), that the preceding or attached document is a true, exact, complete, and unaltered copy made by me of (description of notarial record), the original of which is held in my custody as a notarial record.

(Personalized Seal)                                                             ______________________
Notary Public’s Signature
CERTIFIED COPY OF A NON-RECORDABLE DOCUMENT

State of Texas
County of _______________

On this __________ day of __________, (year), I certify that the preceding or attached document photocopy is a true, exact, complete, and unaltered photocopy made by me of (description of document), presented to me by the document’s custodian, ________________________________, and that, to the best of my knowledge, the photocopied document is neither a public record nor a publicly recordable document, certified copies of which are available from an official source other than a notary.

(Personalized Seal)                                                  ______________________
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