



KANSAS
NOTARY PUBLIC
HANDBOOK



Prepared by the
Office of Secretary of State

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I. Purpose of Notaries Public

As a notary public, you hold an important position in the state of Kansas. It is essential that you understand the notarial duties and responsibilities given in Kansas law. The purpose of this handbook is to help you understand notary laws so that you can perform your duties correctly.

The purpose of a notary public is to prevent fraud and forgery. The notary acts as an official, unbiased witness to the identity of the person who signs the document. A Kansas notary public has six major duties:

1. Take acknowledgments,
2. Administer oaths and affirmations,
3. Take a verification upon oath or affirmation,
4. Witness or attest a signature,
5. Certify or attest a copy, and
6. Note a protest of a negotiable instrument.

(K.S.A. 53-107)

II. History of Notaries Public

The office of notary public had its birth in ancient Roman times when most citizens did not read and write. The notary public was a public servant, who would act as scrivener and legal advisor to individuals drawing up contracts, deeds and other documents. Because most people could not write and therefore could not sign their name, seals were used to sign and seal the document, evidencing the formal execution and acceptance of the document. Documents executed with the aid of the notary public were highly regarded as legitimate and authentic.

For hundreds of years, the notary public was a public officer appointed or elected by high officials. In the United States, notaries were originally appointed by the President. Eventually this control was passed to the states, which often delegate the appointment process to the secretary of state. The duties of the notary public have changed over the years, evolving from legal advisor to ministerial officer; however, the tradition of the notary seal has continued into present day practice.

III. Duties of Notaries Public

Kansas notaries public are commissioned by the secretary of state. A commissioned notary may notarize anywhere within the state, but the powers do not extend beyond the borders of the state.

Under Kansas law, a notary public can take acknowledgments, administer oaths and affirmations, take verifications, witness or attest a signature, certify a copy, and note a protest of negotiable instruments.

- (A) **Acknowledgments:** Person appears before the notary and acknowledges or declares to the notary that he or she signed the document.

- (B) **Witnessing:** Person signs in the presence of the notary public. The notary public must witness the signature.

- (C) **Verification:** Person appears before the notary who administers an oath before he or she signs the document. The signing party signs in the presence of the notary following the oath (see procedure below for administering oaths).

- (D) **Administering an Oath/Affirmation:** The person raises the right hand or places the right hand on the Bible. The notary administers the oath, which must begin with the words “You do solemnly swear” and end with the words “So help you God.” Those opposed to oaths may perform an affirmation, which begins with the words “You do solemnly, sincerely, and truly declare and affirm” and ends with the words “And this you do under the pains and penalties of perjury.”

- (E) **Certifying Copies:** The notary certifies that the document is a true and correct copy of the original document. The notary pub-

lic must be presented with the original document and make the copy so as to ensure that the copy is in fact a true copy of the original. *This procedure should not be used for publicly recorded documents as the notary public cannot obtain the original.* Original documents on file with an office/entity must be certified by that entity (i.e., court documents are certified by the court clerk who retains the originals; corporation documents filed with the Secretary of State's office are certified by the secretary of state; birth/death certificates are certified by the Kansas Department of Health and Environment, Office of Vital Statistics, which maintains the original records, etc.).

(F) Noting a Protest: A protest is a certificate of dishonor made by a notary public or other person authorized by the law where dishonor occurs. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest also may certify that notice of dishonor has been given to some or all parties.

IV. Guidelines for Notaries Public

Personal Appearance Required

All notary acts require that the person signing the document appear before the notary public. *Never notarize a document outside the presence of the signing party.* A notary is required to properly identify the person to ensure that he or she signed the document; the only way to perform this duty is to have the person appear before the notary. Failure to require a personal appearance by the signing party is the leading cause of notary civil and criminal liability and loss of the notary commission (K.S.A. 53-503).

Notary Seal; Signature; Date of Expiration

Each notary public must have a notarial seal, which shall contain the notary's name exactly as it appears on the notary application. The seal must include the words "Notary Public" and "State of Kansas." This seal must be used whenever a notary performs an official act. When notarizing a document, the notary public must add to the document the date of expiration of his or her appointment. The notary public's seal must be either a seal press or a rubber stamp. If a seal press is used, the impression from the seal must be inked or blackened. If a rubber stamp is used, the stamp must have permanent ink. Both the seal press and the rubber stamp must be capable of legible reproduction after copying. No seal can be used until an impression of it has been filed with the Secretary of State's office (K.S.A. 53-105).

Failure to Attach Date of Expiration

If the notary public willfully neglects or refuses to attach his or her date of expiration of appointment when notarizing a document, the notary public shall be deemed guilty of a Class C misdemeanor (K.S.A. 53-106). Failure to attach the date of expiration also may be grounds for revocation of the notary's appointment (K.S.A. 53-118).

Verification of Identity

When notarizing a document, the notary public must exercise reasonable care in determining the identity of the person whose signature is being notarized. This is important because the public relies on the notarization as proof of the authenticity of the person's signature on the document (K.S.A. 53-107).

Determining the Type of Notarization

The type of notarization should be evident from the notary block on the document. If the notary block is not already on the document, the signing party or the party drafting/providing the document should instruct the notary public what notarial block is required (acknowledgment, witnessing or verification). The type of notarization is generally prescribed in the law that governs the document. The notary should not make the determination as to what notarization type is appropriate as this could constitute the unlawful practice of law. However, the notary should know the correct language to be used when the person explains what type of notarization is needed. Generally, if a preprinted form does not contain a notary block, the document is not required to be notarized.

Contents of a Notarial Block or Certificate

In order for a notarial block to be complete there must be specific information present every time. The required individual pieces of information are:

1. Venue (State of Kansas, County of _____).
2. Declarative wording giving the signing party's name, describing the type of notarization and stating the date of the notarization.
3. Notary's signature.
4. Notary's stamp or seal.
5. Notary's date of expiration.

(This block of information is referred to as the "notarial block or notarial certificate.")

Kansas statutes contain forms that meet all legal requirements for a notarization (K.S.A. 53-509).

Financial or Beneficial Interest

A notary public cannot perform any notarial act if the notary has a direct financial or beneficial interest in the transaction. A notary public has a direct financial interest if the notary is named individually as a principal to the financial transaction. If the transaction involves real property, the notary has direct financial or beneficial interest if named individually as a party to the transaction (i.e., grantor, grantee, mortgagor, mortgagee, etc.). A notary public does not have any financial or beneficial interest in a transaction when the notary public acts in the capacity of an agent, employee, insurer, attorney, escrow agent, or lender for a person having a direct financial or beneficial interest (K.S.A. 53-109).

Change of Status

Any changes to a notary public's name, seal, address or phone number must be filed with the Secretary of State's office within 30 days of the change. If the change is a legal name change that results in a change of seal or if the notary obtains a new seal for any reason, the seal must be on file with the Secretary of State's office prior to being used. The notification forms will be supplied by the Secretary of State's office upon request. A copy is attached in the back of this handbook (K.S.A. 53-114).

Resignation of Notary Public Appointment

If a notary public no longer wants to be a notary public in Kansas, he or she shall send a letter of resignation to the Secretary of State's office (K.S.A. 53-116).

Reappointment

A notary public's appointment is not automatically renewed. A notary public must reapply for a notary commission every four years. A new application may be submitted two months before the expiration

date. It is important to renew early so that the commission does not expire because a notary public cannot perform notarial duties after the commission has expired. The notary may want to reapply early to keep the same expiration date.

Refusal or Revocation of Appointment

The secretary of state may refuse to appoint any person as a notary public or may revoke the appointment of any notary public upon the following grounds: (1) A material misstatement or omission in the application; (2) a conviction of a felony or a lesser offense involving moral turpitude or of a nature that would be incompatible with the duties of a notary public (a plea of *nolo contendere* is deemed a conviction); (3) the revocation, suspension or denial of a professional license if such action could substantially relate to the duties of a notary public; (4) the applicant or notary is or becomes incapable of reading or writing the English language; (5) a notary fails to exercise the powers and duties of a notary public in accordance with the statutes; or (6) a violation of the requirements concerning advertising in a foreign language. Any person whose notary public appointment has been revoked due to reasons one through five may not apply for another appointment until four years from the date of revocation, and any person whose appointment is revoked due to reason six may not apply or receive an appointment for such person's lifetime (K.S.A. 53-118).

Oaths or Affirmations

All oaths must be administered with the person's right hand either uplifted or upon the Bible (K.S.A. 54-102). An oath must begin with "You do solemnly swear" and conclude with "So help you God." A person having religious or conscientious objections to oaths may affirm. An affirmation must begin with "You do solemnly, sincerely and truly declare and affirm" and conclude with "And this you do under the pains and penalties of perjury" (K.S.A. 54-103, 54-104).

Advertising in a Foreign Language

A notary public (1) who is not licensed to practice law in the state of Kansas and (2) who advertises the notarization of documents in a foreign language shall include the disclaimer: “I am not authorized to practice law and have no authority to give advice on immigration law or other legal matters.” A notary public who is not licensed to practice law within the state of Kansas shall not use the term “notario publico” or any similar language unless it is accompanied by the disclaimer. Failing to comply with this law could result in a permanent loss of notary commission; a violation of the Consumer Protection Act, K.S.A. 50-626; a fine of \$5,000 for each infraction; a Class B misdemeanor with a possible fine of up to \$1,000; and a sentence of up to six months in jail (K.S.A. 53-121).

V. Penalties for Improper Notarizations

If a notary improperly notarizes a document the following actions can be taken against the notary:

1. A claim may be filed on the notary's bond.
2. The notary may be sued individually based on negligent or willful misconduct.
3. The notary may be prosecuted on a Class C misdemeanor for failing to attach the date of expiration.
4. The notary may be prosecuted for other crimes, such as false writing.
5. The notary may have his or her commission revoked by the secretary of state.

There is a statute of limitations that limits the filing of a lawsuit on notarial acts to three years after the cause of the action accrues (K.S.A. 53-113).

VI. Electronic Notarizations

The Uniform Electronic Transaction Act (UETA) authorizes the use of electronic signatures. However, any electronic notarization must still comply with Kansas notary laws and regulations (K.S.A. 16-1611 (b)).

Notaries offering electronic notarizations must register with the secretary of state, attend a course of instruction approved by the secretary of state and pass an examination.

Kansas administrative regulations also require a notary public to obtain a Kansas digital signature issued through the Kansas Secretary of State for purposes of electronic notarization (K.A.R. 7-43-1 *et seq.*). This digital signature offers a high level of security and reliability to a notarized document.

The general rules of notarization apply to all electronic notarizations: personal appearance by the signer, verification of the signer's identity, requirement of the notarial block, etc. The only difference is the *method* of signature.

VII. Helpful Hints for Notaries Public

Signing in Representative Capacity: If the person signs in a representative capacity (i.e., John Smith, as President of ABC Corporation), the notary public is not required to check the person's *authority*, meaning the notary does not check to see if John Smith is in fact president of ABC Corporation. Notaries only must verify the person's legal name as it is the only fixed means of identifying the person; titles come and go. The notary should ensure that the notarial block indicates that the person is signing in a representative capacity for the principal (K.S.A. 53-509(b), page 39).

Signing as Attorney-in-Fact, i.e., Power of Attorney (POA): An agent authorized by power of attorney to sign for a principal is not required to show the POA at the time of notarization. The notary does not check the person's authority to sign, but merely checks the identity of the agent signing. The document should be signed with the principal's name and the agent's name, with disclosure of the relationship ("by POA" or "as Attorney-in-Fact"). The notary should ensure that the notarial block indicates that the person is signing in a representative capacity for the principal (K.S.A. 53-509 (b), page 39).

Signing Under Penalty of Perjury Instead of Under Oath: K.S.A. 53-601 allows a signature under penalty of perjury instead of a notarized, sworn statement. Whenever an affidavit or verification is required, the person can add a statement certifying that he or she is signing under penalty of perjury instead of requiring him or her to sign under oath before a notary public. The statute contains some exceptions, so notaries should consult the law before using this alternative. The statute requires the following statement prior to signature: (1) If executed outside this state: "I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct." (2) If executed in this state: "I declare under penalty of perjury that the foregoing is true and correct."

Recognition of Out-of-State Notarizations: The full faith and credit clause of the U.S. Constitution requires a state to recognize documents validly executed and notarized under another state's law. If the document satisfies the requirements of its home state it must be recognized and received by another state. K.S.A. 58-2228 says that all deeds, mortgages, POAs and other instruments for conveyance or encumbrances of lands that are executed and acknowledged in any other state in conformity with the laws of that state shall be valid in our state.

Recognition of Documents in Foreign Countries: The Kansas Secretary of State can authenticate documents bound for foreign countries. The Kansas Secretary of State either issues an "apostille" or an "authentication" depending on whether the country has adopted The Hague Convention treaty. The document must be notarized by a Kansas notary public in order for the secretary of state to issue an apostille or authentication.

Notary Journals: Although not required by law, maintaining a journal of all notarizations performed by the notary public protects the notary public. The notary public should record the name of the person signing, the date of the signature and the type of document notarized. The notary should have the signing party sign the notebook so that the notary has an example of his or her signature. Such journals are available from office supply stores and notary supply catalogs.

Charging Fees for Notarial Acts: Kansas notaries public may collect a fee for their services. There is no statutory fee schedule that a notary must follow; however, the fee must be reasonable for the service provided.

Notarizing Wills: A notary may not serve as both a witness and a notary public on a will. K.S.A. 59-606 requires the notary public to notarize the signature of the testator and the witnesses. Because a notary cannot witness and notarize his or her own signature, a nota-

ry may not serve as both a witness and the notary on a will executed in Kansas.

Notary Public's Commission is Personal Property: A notary commission belongs to the notary public, regardless of who paid the fees associated with the commission. The stamp and journal are personal property of the notary public. Upon leaving an employer, the notary public should take the notary seal and notary journal for his or her own protection.

Public Officials Serving as Notaries Public: Certain public officials may perform notarizations without receiving an official notary commission from the secretary of state. Kansas judges, court clerks and deputies, county clerks and deputies, and election commissioners and deputies can notarize documents in the state. Notarizations from other states' judges and court clerks and deputies must be given recognition in Kansas as if the notarization occurred here. Notarizations by federal judges, federal court clerks and clerk deputies, military officers, and foreign service and consular officers must be given recognition in our state as well. In addition, registers of deeds can acknowledge instruments conveying or affecting real estate within Kansas (K.S.A. 58-2211).

VIII. Kansas Statutes and Regulations

Statutes

Statute #	Subject	Issues
16-1611	Electronic notarization	Allows electronic notarization, authorizes secretary of state to promulgate rules and regulations
53-101	Notaries public	Appointment; term; qualifications
53-102	Appointment requirements	Application; oath; bond; filings
53-103	Forms	Applications; bonds; oath
53-104	Filing and Fees	Application; bond; oath; appointment fee
53-105	Seal	Date of expiration of appointment
53-105a	Certificate of appointment	Proof of appointment
53-106	Penalty	Failure to attach appointment expiration date
53-107	Powers and duties	Authorities of notaries public
53-109	Prohibited acts	Acts prohibited due to financial or beneficial interest
53-113	Statute of limitations	Limitations of actions against notaries
53-114	Change of name or seal	Seal and notification requirements
53-115	Cancellation of bond	Notice requirements
53-116	Resignation from appointment	Resignation requirements
53-117	Reappointment	Reappointment requirements
53-118	Appointment refusal/revocation	Grounds for refusal or revocation of an appointment
53-119	Recovery on bond	Rights of parties injured by notaries
53-120	Notice of claim	Required notification of claim to secretary of state
53-121	Advertising in a foreign language	Disclaimer requirement, penalties for violations
53-401	Accession to Hague Convention	Stipulations set by Hague Convention

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53-501	Citation of act	Cited as uniform law on notarial acts
53-502	Definitions	Definitions as used by this act (“Notarial act,” “Acknowledgment,” “Verification upon oath or affirmation,” “In a representative capacity”)
53-503	Notarial acts	Requirements of duties performed
53-504	Notarial acts in this state	Who can perform notarial acts
53-505	Notarial acts elsewhere	Legitimacy of notarial acts in other jurisdictions of the United States
53-506	Federal notarial acts	Legitimacy of notarial acts performed by officers elsewhere in the United States
54-105	Foreign notarial acts	Legitimacy of foreign notarial acts
53-507	Certification of notarial acts	Guidelines for certification
53-508	Short forms	Form certificates of notarial acts
53-509	Acts affected	Application to notarial acts on or after effective date of law
53-510	Uniform Application	Uniform with other states enacting these laws
53-511	Unsworn declarations	Penalty of perjury
53-601	Authorized officers	Persons authorized to administer oaths
54-101	Administering oaths	How to administer an oath
54-102	Conscientious scruples	Alternatives to an oath for those having conscientious scruples
54-103	Oath commencement/conclusion	Forming of an oath’s beginning and end
54-104	Falsifying oaths or affirmations	Penalties; false oaths or affirmations
54-106	Oaths for officers	Form of an oath for an officer
54-108	State treasurer	Authorization to administer oaths pertaining to matters of the office
54-109	Secretary of state	Authorization to administer oaths pertaining to matters of the office
54-110	City clerks	Authorization to administer oaths pertaining to matters of the office

16-1611. Notarization and acknowledgment; electronic notarization, rules and regulations.

- (a) 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.
- (b) The secretary of state is hereby authorized to promulgate rules and regulations establishing procedures for an electronic notarization.

53-101. Appointment; term; qualifications; not state officer. The secretary of state shall appoint notaries public, who may perform notarial acts in any part of this state for a term of not more than four years, unless sooner removed. Any person who is a citizen of the United States, who is at least 18 years of age and who is a resident of this state, or who is a resident of a state bordering on this state and who regularly carries on a business or profession in this state or is regularly employed in this state, shall be eligible to be appointed as a notary public as provided in this act. Notaries public shall not be considered as state officers.

53-102. Application; oath; bond; filings required. Every person, before entering upon the duties of a notary public, shall file with the secretary of state an application for appointment as a notary public, which shall also include an oath of office and a good and sufficient bond to the state of Kansas in the sum of \$7,500, with one or more sureties to be approved by the secretary of state. The bond shall be conditioned upon the faithful performance of all notarial acts in accordance with law. Every person, before receiving appointment as a notary public, shall also file with the secretary of state the official signature and an impression of the seal to be used by the notary public.

53-103. Forms for applications, bonds and oath. Forms for applications, bonds and oath of office shall be furnished by the secretary of state.

53-104. Filing and indexing application, bond, oath and record of appointment; fee. Such application, bond, oath and record of appointment shall be filed in the office of the secretary of state and properly indexed in that office. The secretary of state shall receive a fee of \$10 for such services. The secretary of state shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

53-105. Seal; statement of date of expiration of appointment. Every notary public shall provide a notarial seal containing such notary's name exactly as it appears on the application for appointment as a notary public, and the words "notary public" and "state of Kansas" or words of like import indicating statewide notarial authority, approved by the secretary of state. Such seal shall authenticate all official acts, attestations and instruments therewith. Every notary public shall add to such notary's official signature the date of expiration of appointment as a notary public. The seal of every notary public shall be either a seal press and the impression thereof inked or blackened or a rubber stamp to be used with permanent ink so that any such seal may be legibly reproduced by photographic process. No notary public shall use either such seal unless an impression thereof has been filed in the office of secretary of state.

53-105a. Certificate of appointment. Upon receipt of a completed application with sufficient corporate bond, an oath of appointment, the correct fee, the official signature and an impression of the seal to be used by such notary public, the secretary of state, if satisfied the applicant is qualified to be appointed as a notary public, shall prepare a certificate of appointment for the applicant and forward the appointment to the applicant's residence. Each certificate of appointment shall contain at least the applicant's name and the date upon which the appointment shall expire.

53-106. Penalty for failure to attach date of expiration of appointment. If any notary public shall willfully neglect or refuse to attach to the notary's official signature the date of expiration of appointment, as provided in K.S.A. 53-105, the notary shall be deemed guilty of a class C misdemeanor.

53-107. Powers and duties. Notaries public shall have authority to: (1) Take acknowledgments; (2) administer oaths and affirmations; (3) take a verification upon oath or affirmation; (4) witness or attest a signature; (5) certify or attest a copy; (6) note a protest of a negotiable instrument; and (7) perform any other act permitted by law.

53-109. Prohibited notarial acts; financial or beneficial interest.

- (a) A notary public who has a direct financial or beneficial interest in a transaction shall not perform any notarial act in connection with such transaction.
- (b) For purposes of this act, a notary public has a direct financial or beneficial interest in a transaction if the notary public:
 - (1) With respect to a financial transaction, is named, individually, as a principal to the transaction;

- (2) with respect to real property, is named, individually, as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor or lessee, to the transaction.
- (c) For purposes of this act, a notary public has no direct financial or beneficial interest in a transaction when the notary public acts in the capacity of an agent, employee, insurer, attorney, escrow agent or lender for a person having a direct financial or beneficial interest in the transaction.

53-113. Limitation of actions against notary and sureties. No suit shall be instituted against any such notary or his or her securities more than three years after the cause of action accrues.

53-114. Notary's change of name or seal; notification; new seal required.

- (a) If a notary public changes name by any legal action, such notary shall obtain a new notary seal which meets the requirements established by K.S.A. 53-105, and the seal shall contain the new name of the notary. Prior to performing any acts as a notary public after such change, the notary shall mail or deliver to the secretary of state notice of the change of name which shall include a specimen of the new seal and a specimen of the notary's new official signature.
- (b) If a notary public obtains a new seal for any reason, the notary shall mail or deliver to the secretary of state notice of the change of seal which shall include an impression of the new seal.
- (c) Such notification, as provided for in subsections (a) and (b), shall be made on forms provided by the secretary of state within thirty (30) days after such change has occurred.

53-115. Cancellation of notary public's bond; notice requirements. No surety on a notary public's bond shall cancel such bond without giving written notice thereof to the secretary of state. Fourteen (14) days after receipt of such notice by the secretary of state, said surety shall no longer be liable on such bond.

Whenever the secretary of state receives notice of a surety's intention to cancel a notary's bond, said secretary of state shall notify the affected notary public that unless such notary files another good and sufficient surety bond with the secretary of state on or before the cancellation date of such notary public's surety bond, then such notary will no longer be authorized to perform notarial acts within this state.

53-116. Resignation. If a notary public no longer desires to be a notary public in this state, the notary shall send immediately by mail or deliver to the secretary of state a letter of resignation informing the secretary of state of the notary's desire to resign as a notary public in the state of Kansas. The appointment of the notary shall thereupon cease to be in effect.

53-117. Reappointment. No person may be automatically reappointed as a notary public. Every notary public who is an applicant for reappointment as a notary public shall comply with the provisions of K.S.A. 53-102.

53-118. Appointment, refusal or revocation; grounds.

- (a) The secretary of state may refuse to appoint any person as a notary public or may revoke the appointment of any notary public upon any of the following grounds:
- (1) Substantial or material misstatement or omission in the application submitted to the secretary of state;
 - (2) conviction of a felony or of a lesser offense involving moral turpitude or of a nature incompatible with the duties of a notary public. A conviction after a plea of *nolo contendere* is deemed to be a conviction within the meaning of this subsection;
 - (3) revocation, suspension or denial of a professional license, if such revocation, suspension or denial was for misconduct, dishonesty or any cause substantially relating to the duties or responsibilities of a notary public;
 - (4) cessation of United States citizenship;
 - (5) incapacitation to such a degree that the person is incapable of reading or writing the English language;
 - (6) failure to exercise the powers and duties of a notary public in accordance with this act; or
 - (7) violation of K.S.A. 2007 Supp. 53-121, and amendments thereto.
- (b) Any person whose notary public appointment has been removed pursuant to subsection (a)(1) through (a)(6) may not apply for an appointment until the expiration of four years from the date of removal of such appointment. Any person whose notary public appointment has been removed pursuant to subsection (a)(7) may not apply or receive an appointment for such person's lifetime.

53-119. Recovery on bond of notary public. Any person injured by the failure of a notary public to faithfully perform any notarial act for which a bond is given under the laws of this state may sue on the bond in the person's own name in any court of competent jurisdiction to recover the damages the person may have sustained by such failure.

53-120. Same; notice of claim. If a surety on a notary bond receives a claim on the bond, the surety shall notify the secretary of state of the outcome of that claim.

53-121. Notaries advertising in foreign language; requirements; penalties for violations.

- (a) A notary public who is not admitted to the practice of law in this state and who advertises notarial services in a language other than English shall include, in any advertisement, notice, letterhead or sign, a statement prominently displayed, in the same language in which such notarial services are offered, as follows: “I am not authorized to practice law and have no authority to give advice on immigration law or other legal matters.”
- (b) A notary public who is not admitted to the practice of law in this state shall not use the term “notario publico” or any equivalent non-English term in any business card, advertisement, notice or sign unless it complies with the requirements of subsection (a).
- (c) Violation of this section is a class B misdemeanor.
- (d) Violation of this section constitutes a deceptive act or practice pursuant to K.S.A. 50-626, and amendments thereto, and shall be subject to the remedies and penalties provided by the Kansas consumer protection act.
- (e) This section shall be part of and supplemental to the acts contained in article 1 of chapter 53 of the Kansas Statutes Annotated, and amendments thereto.

53-401. Accession to Hague convention; procedure for certification of document.

- (a) The state of Kansas hereby declares its intent to accede to the Hague convention abolishing the requirement of legalization for foreign public documents.
- (b) Upon presentation of a public document to which the convention applies, the secretary of state, or an assistant or deputy assistant secretary of state appointed pursuant to K.S.A. 75-412, shall affix to the document the certificate required by the convention. The secretary of state shall maintain a record of all documents certified under this section and shall charge \$5 for certification of any such document.

53-501. Citation of act. K.S.A. 53-501 through 53-511 may be cited as the uniform law on notarial acts.

53-502. Definitions. As used in this act:

- (a) “Notarial act” means any act that a notary public of this state is authorized to perform, and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument.
- (b) “Acknowledgment” means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument

with proper authority and executed it as the act of the person or entity represented and identified therein.

- (c) “Verification upon oath or affirmation” means a declaration that a statement is true made by a person upon oath or affirmation.
- (d) “In a representative capacity” means:
 - (1) For and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee or other representative;
 - (2) as a public officer, personal representative, guardian or other representative, in the capacity recited in the instrument;
 - (3) as an attorney in fact for a principal; or
 - (4) in any other capacity as an authorized representative of another.
- (e) “Notarial officer” means a notary public or other officer authorized to perform notarial acts.

53-503. Notarial acts.

- (a) In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.
- (b) In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.
- (c) In witnessing or attesting a signature, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named in the instrument.
- (d) In certifying or attesting a copy of a document or other item, the notarial officer must determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.
- (e) In making or noting a protest of a negotiable instrument the notarial officer must determine the matters set forth in K.S.A. 84-3-509 and amendments thereto.
- (f) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is (1) personally known to the notarial officer; (2) identified upon the oath or affirmation of a credible witness personally known to the notarial officer or (3) identified on the basis of identification documents.

53-504. Notarial acts in this state; who may perform.

- (a) A notarial act may be performed within this state by the following persons:
 - (1) A notary public of this state;

- (2) a judge, clerk or deputy clerk of any court of this state;
 - (3) a county clerk or deputy county clerk;
 - (4) an election commissioner or assistant election commissioner; or
 - (5) any other person authorized to perform the specific act by the law of this state.
- (b) Notarial acts performed within this state under federal authority as provided in K.S.A. 53-506, and amendments thereto, shall have the same effect as if performed by a notarial officer of this state.
- (c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

53-505. Notarial acts in other jurisdictions of the United States.

- (a) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if performed in another state, commonwealth, territory, district or possession of the United States by any of the following persons:
- (1) A notary public of that jurisdiction;
 - (2) a judge, clerk or deputy clerk of a court of that jurisdiction; or
 - (3) any other person authorized by the law of that jurisdiction to perform notarial acts.
- (b) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in K.S.A. 53-506 have the same effect as if performed by a notarial officer of this state.
- (c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.
- (d) The signature and indicated title of an officer listed in subsection (a)(1) or (a)(2) conclusively establish the authority of a holder of that title to perform a notarial act.

53-506. Notarial acts under federal authority.

- (a) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed anywhere by any of the following persons under authority granted by the law of the United States:
- (1) A judge, clerk or deputy clerk of a court;
 - (2) a commissioned officer on active duty in the military service of the United States;
 - (3) an officer of the foreign service or consular officer of the United States; or
 - (4) any other person authorized by federal law to perform notarial acts.

- (b) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.
- (c) The signature and indicated title of an officer listed in subsection (a)(1), (a)(2) or (a)(3) conclusively establish the authority of a holder of that title to perform a notarial act.

53-507. Foreign notarial acts.

- (a) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multi-national or international organization by any of the following persons:
 - (1) A notary public or notary;
 - (2) a judge, clerk or deputy clerk of a court of record; or
 - (3) any other person authorized by the law of that jurisdiction to perform notarial acts.
- (b) An “Apostille” in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.
- (c) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.
- (d) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.
- (e) An official stamp or seal of an officer listed in subsection (a)(1) or (a)(2) is prima facie evidence that a person with the indicated title has authority to perform notarial acts.
- (f) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

53-508. Certificate of notarial acts.

- (a) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently

be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

- (b) A certificate of a notarial act is sufficient if it meets the requirements of subsection (a) and it:
 - (1) Is in the short form set forth in K.S.A. 53-509;
 - (2) is in a form otherwise prescribed by the law of this state;
 - (3) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or
 - (4) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.
- (c) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by K.S.A. 53-503.

53-509. Short forms. The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by subsection (a) of K.S.A. 53-508:

(a) For an acknowledgment in an individual capacity:

State of _____
(County) of _____

This instrument was acknowledged before me on ___(date)___ by
___ [name(s) of person(s)]___.

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)
[My appointment expires: _____]

(b) For an acknowledgment in a representative capacity:

State of _____
(County) of _____

This instrument was acknowledged before me on ___[date]___ by
___[name(s) of person(s)]___ as ___(type of authority, e.g., officer, trustee,
etc.)___ of ___(name of party on behalf of whom instrument was executed)___.

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My appointment expires: _____]

(c) For a verification upon oath or affirmation:

State of _____

(County) of _____

Signed and sworn to (or affirmed) before me on ____ [date] ____ by
____ [name(s) of person(s) making statement] ____.

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My appointment expires: _____]

(d) For witnessing or attesting a signature:

State of _____

(County) of _____

Signed or attested before me on ____ (date) ____ by ____ [name(s) of person(s)] ____.

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My appointment expires: _____]

(e) For attestation of a copy of a document:

State of _____
(County) of _____

I certify that this is a true and correct copy of a document in the possession of
____[name(s) of person(s)]____.

Dated: _____

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My appointment expires: _____]

53-510. Notarial acts affected by this act. This act applies to notarial acts performed on or after its effective date.

53-511. Uniformity of application and construction. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

53-601. Unsworn declarations; written declaration sufficient, form; exceptions; relationship to notarial acts.

(a) Except as provided by subsection (b), whenever a law of this state or any rules and regulations, order or requirement adopted or issued thereunder requires or permits a matter to be supported, evidenced, established or proved by the sworn written declaration, verification, certificate, statement, oath or affidavit of a person, such matter may be supported, evidenced, established or proved with the same force and effect by the unsworn written declaration, verification, certificate or statement dated and subscribed by the person as true, under penalty of perjury, in substantially the following form:

- (1) If executed outside this state: "I declare (or verify, certify or state) under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct. Executed on (date).

(Signature)"

- (2) If executed in this state: “I declare (or verify, certify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)”

- (b) The provisions of subsection (a) do not apply to the following oaths:
- (1) An oath of office.
 - (2) An oath required to be taken before a specified official other than a notary public.
 - (3) An oath of a testator or witnesses as required for wills, codicils, revocations of wills and codicils and republications of wills and codicils.
- (c) A notarial act performed prior to the effective date of this act is not affected by this act. Nothing in this act diminishes or invalidates the recognition accorded to notarial acts by other laws of this state or rules and regulations adopted thereunder.
- (d) On or after July 1, 1989, whenever an officer or partner listed in subsection (b) of K.S.A. 17-2718, subsection (c) of K.S.A. 17-7503, subsection (c) of K.S.A. 17-7504, subsection (c) of K.S.A. 17-7505, subsection (d) of K.S.A. 56-1a606 or subsection (d) of K.S.A. 56-1a607 and amendments thereto is required to execute a report before a notary or swear an oath before an officer authorized to administer oaths, in lieu thereof, such person may execute an unsworn declaration if such declaration is in substantial conformity with subsections (a), (b) and (c) of this section.
- (e) On or after July 1, 1990, subsections (a), (b) and (c) of this section shall have general application.

54-101. Officers authorized to administer oaths. Notaries public, judges of courts in their respective jurisdictions, mayors of cities and towns in their respective cities and towns, clerks of courts of record, county clerks, and registers of deeds, are hereby authorized to administer oaths pertaining to all matters wherein an oath is required.

54-102. How administered. All oaths shall be administered by laying the right hand upon the Holy Bible, or by the uplifted right hand.

54-103. Persons having conscientious scruples may affirm. Any person having conscientious scruples against taking an oath, may affirm with like effect.

54-104. Form of commencement and conclusion of oaths. All oaths shall commence and conclude as follows: “You do solemnly swear,” etc.; “So help you God.” Affirmation shall commence and conclude as follows: “You do solemnly, sincerely and truly declare and affirm,” etc.; “And this you do under the pains and penalties of perjury.”

54-105. Falsifying oaths or affirmations. All oaths and affirmations alike subject the party who shall falsify them to the pains and penalties of perjury.

54-106. Form of oath to be taken by officer. All officers elected or appointed under any law of the state of Kansas shall, before entering upon the duties of their respective offices, take and subscribe an oath or affirmation, as follows:

“I do solemnly swear [or affirm, as the case may be] that I will support the constitution of the United States and the constitution of the state of Kansas, and faithfully discharge the duties of _____. So help me God.”

54-108. Administration of oaths by state treasurer. The state treasurer may administer oaths pertaining to all matters relating to the business of his or her office.

54-109. Secretary of state and assistant authorized to administer oaths and authenticate same with seal. The secretary of state and the assistant secretary of state are hereby authorized and empowered to administer oaths pertaining to all matters wherein an oath is required, and to attest the same with seal of the secretary of state.

54-110. City clerks authorized to administer oaths. City clerks of cities of the second and third class are hereby empowered to administer oaths for all purposes pertaining to the business and affairs of their respective cities.

Regulations

Reg. #	Subject	Issues
7-43-1	Definitions	Definitions used by regulation
7-43-2	Registration requirements	Required training and testing, digital certificate, registry and fees
7-43-3	Notarization requirements	Digital signature and notarial certificate requirement
7-43-4	Personal appearance requirement	Person must appear in person before the notary
7-43-5	Evidence of authenticity	Evidence of authenticity is required on each document
7-43-6	Applicability of statutes	All notary statutes apply to electronic notarizations

7-43-1. Definitions. As used in this article, the following terms shall have the meanings specified in this regulation:

- (a) “Digital signature” has the meaning specified in K.S.A. 16-1602, and amendments thereto.
- (b) “Electronic” has the meaning specified in K.S.A. 16-1602, and amendments thereto.
- (c) “Electronic notary public,” “electronic notary,” and “e-notary” mean a notary public who has registered with the secretary of state and who provides electronic notarial acts using a digital certificate authorized by the secretary of state.
- (d) “Electronic document” means information that is created, generated, sent, communicated, received, or stored by electronic means.
- (e) “Electronic notarial act” and “electronic notarization” mean any act involving electronic documents that an electronic notary public is authorized to perform under Kansas law.
- (f) “Electronic notary seal” means the information within a notarized electronic document that includes the notary’s name, jurisdiction of appointment, and expiration date of the appointment.
- (g) “Electronic signature” has the meaning specified in K.S.A. 16-1602, and amendments thereto.
- (h) “Notarial act” and “notarization” mean any act that a notary public is authorized to perform under Kansas law.

- (i) “Notarial certificate” means the portion of a notarized document that is completed by the notary, bears the notary’s signature and seal, and states the facts attested by the notary in a particular notarization.
- (j) “Notary public” and “notary” mean any person appointed by the secretary of state to perform notarial acts.
- (k) “Principal” means the person for whom an electronic notary is providing a notarial act. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

7-43-2. Registration requirements. Each individual who wants to become an electronic notary shall meet the following requirements:

- (a) Complete a course of instruction approved by the secretary of state;
- (b) pass an examination approved by the secretary of state on the course of instruction specified in subsection (a);
- (c) obtain a digital certificate authorized by the secretary of state;
- (d) register with the secretary of state on a form prescribed by the secretary of state, which shall include providing proof of compliance with subsections (a), (b), and (c); and
- (e) pay an information and services fee of \$20. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611 and 75-438; effective Dec. 30, 2005.)

7-43-3. Notarization requirements.

- (a) Each electronic notary shall use a digital signature when performing any electronic notarization. Before performing any electronic notarization, each electronic notary shall take reasonable steps to ensure that the digital certificate used to create the digital signature is valid and has not expired, been revoked, or been terminated by its registered certification authority.
- (b) When performing any electronic notarization, each electronic notary shall complete a notarial certificate, which shall be attached to, or logically associated with, the electronic document. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

7-43-4. Personal appearance requirement. Notwithstanding any security measures used in performing any electronic notarization, an electronic notary public shall not perform any electronic notarial act if the principal does not appear in person before the electronic notary at the time of notarization. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

7-43-5. Form of evidence of authenticity of electronic notarial act. If electronic evidence of the authenticity of the official signature and seal of an electronic notary of this state is required on any notarized electronic document transmitted to another state or nation, the electronic evidence shall be attached to, or logically

associated with, the document and shall be in a form prescribed by the secretary of state in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the United States. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

7-43-6. Applicability of statutes. Except as otherwise provided in these regulations, the provisions of K.S.A. 53-101 et seq., and amendments thereto, governing notaries public and K.S.A. 16-1601 et seq., and amendments thereto, governing electronic transactions shall apply to each electronic notary public. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

IX. Frequently Asked Questions

Q. What is a Kansas notary public?

A. A Kansas notary public is a person appointed by the Kansas Secretary of State to acknowledge and witness the signing of documents, administer oaths and affirmations, take verifications and certify copies.

Q. When may I begin notarizing documents?

A. An appointed notary public may begin notarizing documents after receipt of a certificate of appointment from the secretary of state.

Q. What types of notary seals are acceptable in Kansas?

A. The notary public's seal shall either be a seal press or a rubber stamp. In either case, the notary public's seal must contain the notary public's name and the words "Notary Public" and "State of Kansas." If a seal press is used, the impression must be inked or blackened so that it may be photocopied.

Q. What is a surety?

A. A surety guarantees that if the notary public fails to properly perform a notarization the surety will indemnify a third party for any damages caused by the notary's negligence or misconduct, up to \$7,500.

Q. What is Errors and Omissions Insurance and do I need it?

A. Errors and Omissions Insurance (commonly called E & O) is a form of liability insurance that protects the notary public from claims or suits that are the result of the notary's negligent acts, errors or omissions. Much like car insurance, this type of insurance covers investigation, defense and settlement of committed or alleged acts by the insured notary public, subject to policy limits and provisions. Kansas law does not require errors and omissions insurance; therefore, it is up to the notary to determine if he or she wants the additional coverage.

Q. Can information about my notary application or appointment be given to other people?

A. Yes. All notary public applications and appointments are open records and subject to public inspection pursuant to the Kansas Open Records Act.

Q. May I notarize my own signature and the signatures of my spouse, children, parents or other relatives?

A. A notary public may not notarize his or her own signature, but may notarize the signatures of his or her spouse, children, parents or other relatives. However, the power is limited by the provisions of K.S.A. 53-109. (See Financial or Beneficial Interest on page 13.)

Q. May I notarize documents that originate from out of state?

A. Yes. Documents originating from another state may be notarized as long as the signature and the notarial act are performed in Kansas and the notarial certificate indicates “State of Kansas, County of _____” to identify the jurisdiction in which the notarial act took place.

Q. May I notarize documents when I am physically outside the state of Kansas?

A. No. A notary public only has jurisdiction to perform notarial acts while the notary public is in the state of Kansas.

Q. Why does the notary block have blanks for state and county, and how do I fill them out?

A. The beginning of each notarial certificate should include jurisdictional information that indicates where the document was notarized, similar to the following:

State of _____)
County of _____)

This information indicates where the notarization took place. The notary public completes the venue block by inserting “Kansas” and adding the county where the notarization occurred. A Kansas notary

can notarize documents in all counties of Kansas but cannot notarize outside the state of Kansas.

Q. What if the prepared form contains an inaccurate notarial block, such as a notarial block that contains references to another state?

A. The notary can cross through any incorrect information and write in the correction. The notary should place his or her initials by the correction. White-out should not be used, as the receiving party may reject the notarized document if it contains white-out. White-out raises questions as to what information was deleted, whereas simply crossing through the incorrect information allows the receiving party to see what information has been altered.

Example: STATE OF MISSOURI KANSAS **jd**
 COUNTY OF JACKSON JOHNSON **jd**

Q. Should I charge a fee for my services as a notary public?

A. There is no statutory fee schedule in Kansas that a notary public must follow, nor is there a prohibition against a notary public charging a fee. Therefore, a notary public may charge a reasonable fee for the performance of a notarial act.

Q. Should I keep a log book of the notarizations that I perform?

A. There is no statutory requirement in Kansas that a notary public keep a log book or journal. However, it is recommended that a notary public keep one for his or her own records and for protection from liability.

Q. Can my employer keep my journal or notary stamp after I leave my job?

A. No. A notary commission is personal to the notary public. The stamp and journal belong to the notary public and must be safeguarded by the notary in order to prevent forgeries and other misuse. Even if an employer pays for the notary commission, the employer

cannot convert the stamp and journal. However, if the employer provided the notary's surety bond, the employer may cancel the bond.

Q. How do I report a change in my name, address or seal while I am serving as a notary public?

A. You must report the change to the secretary of state on a form supplied by that office. One change of status form is attached in the back of this handbook.

Q. What are the most common errors or omissions made by notaries public in notarizing documents?

A. The most common errors by notaries public in notarizing documents are: (1) Failing to attach the notary seal; (2) neglecting to attach the notary public's date of expiration of appointment; (3) failing to sign the notarized document; (4) omitting names and dates from the acknowledgments, oaths and affirmations, etc.; and (5) failing to properly administer the oath.

Q. What is the most serious error made by notaries in notarizing documents?

A. The most serious error made by notaries is failure to require the person to appear before the notary before notarizing the document. The person who signed the document must *always* appear in person. Failure to observe this requirement may result in criminal and civil liability and the loss of the notary's commission.

Q. What are the liabilities and penalties for notary public misconduct?

A. A notary public who fails to carry out notary duties correctly may be subject to civil liability for any damages caused by the failure or error. If the notary's error enables a forgery, false writing or other crime to occur, the notary also may be held criminally liable as an accessory to the crime. The secretary of state also may revoke the notary's commission. Failure to attach the date of expiration to a notarization is a Class C misdemeanor.

Q. What if my boss insists that I notarize a document when the person has not signed or acknowledged his or her signature in my presence?

A. Explain to your boss that Kansas law requires that the person appear before you personally before you can notarize the document. Failure to follow this procedure could result in civil and criminal liability for both you and your boss. Also, the document may be invalidated by a court if it is improperly notarized.

Q. If my notary appointment expires but I have applied for a new appointment, may I continue to exercise my notarial powers?

A. No. There is no carryover or grace period for a notary public once his or her appointment has expired. A person whose notary public appointment has expired may not perform any notarial acts until he or she has received a new certificate of appointment.

Q. As a Kansas notary, can I take a person's acknowledgment in another state, then return to Kansas and complete the notarial certificate here?

A. No. Your authority extends no further than the geographic boundaries of Kansas. You cannot perform one part of a notarial act outside the state and the other part inside the state. Both parts must be executed at the same time and the same place inside Kansas. If the resident of another state cannot come to Kansas, he should find a notary public in his state.

Q. A person whose identification indicates a first name of "Robert" has asked me to take his acknowledgment on a document he has signed as "Bob." Should I insist that he sign as "Robert?"

A. Not necessarily. As long as the name that is printed on the document matches the name that is printed on the identification of the signer, the signature does not have to be legible or identical to the printed name.

Q. Can I notarize documents that I will be signing as an officer on behalf of a corporation?

A. No. You can never notarize your own signature, whether you are signing for yourself or for a corporation.

Q. May a notary give legal advice or draft legal documents?

A. No. Unless the notary also is an attorney, the notary cannot act as a legal advisor and cannot prepare legal documents. For example, if a document does not contain a notarial certificate, the notary public cannot advise as to the proper type of notarization. An attorney should be consulted as to the proper notarization that is required for the document (acknowledgment, witnessing or verification).

Q. Is notarization required by law?

A. Notarization is required for many documents. The Kansas law governing the document will state whether the document must be notarized. The determination whether a document is required to be notarized cannot be made by the notary public.

Q. How does a notary identify a signer?

A. A notary identifies a signer by carefully examining the identification presented by that person and comparing the signatures the person has made on the document with the signature on the identification. Proper “identification” should include a photograph and signature on a reliable identification card, such as a driver’s license. It also is considered sufficient identification if, under oath, a credible witness personally known by the notary identifies the person.

Q. Must a notary determine the competence of the person signing the document?

A. Although there are differing opinions on whether a notary public has a duty to determine the person’s competency, many experts recommend that the notary make a limited inquiry into the person’s ability to understand the contents of the document that the person is signing. The notary can make a quick assessment by asking the person if

he or she understands the document. Clearly, a notary should refuse to notarize the signature of a person who unquestionably has no ability to understand the document (unconscious, mentally disabled, etc.).

Q. How do I renew my notary appointment?

A. There is no automatic reappointment in Kansas. A notary public must apply for appointment and follow the same procedures required for a new appointment. Application should be made sufficiently prior to expiration to ensure uninterrupted authority, generally three months prior to the expiration of the current commission.

Q. Can I only notarize documents in my own county?

A. No, a Kansas notary public has authority throughout Kansas. The county in which the notarial act took place should be inserted in the appropriate blank above the notary's signature.

Q. Must the person sign the document in my presence?

A. If the document is an affidavit, verification or other document requiring an oath, the person *must* be properly sworn in and sign the document in your presence. If the document requires acknowledgment, it is sufficient for the person to appear before you and acknowledge execution of the document. If the document requires witnessing, you must personally see the person sign the document. Never notarize an unsigned document, and never notarize a document outside the presence of the person. Do not notarize a document in which the notarial certificate contains untrue statements. You cannot take a notarization over the phone. You cannot notarize a document just because someone else assures you that the signature is genuine. You cannot take an acknowledgment just because you recognize the person's signature.

Q. Can I advertise my notary services in a foreign language?

A. Yes, but a person who is not admitted to the practice of law in this state and who advertises notarial services in a language other than English must include a statement that is prominently displayed

in the same language on all advertisements, notices, letterhead or signs. The statement must say, “I am not authorized to practice law and have no authority to give advice on immigration law or other legal matters.”

Q. When can I use the term “notario publico?”

A. A notary who is not admitted to the practice of law in this state cannot use the term “notario publico” or any equivalent non-English term in any business card, advertisement, notice or sign unless it is accompanied by a statement that is prominently displayed in the same language that the notarial services are offered, stating: “I am not authorized to practice law and have no authority to give advice on immigration law or other legal matters.”

Q. Does Kansas law allow notarization of an electronic document?

A. Kansas law (K.S.A. 16-1611) does authorize the use of electronic notarization, and the procedures are set out in K.A.R. 7-43-1 *et seq.* In order to complete an electronic notarization, a commissioned Kansas notary must complete a training course, including a test, and obtain a Kansas-issued digital signature.

Q. What should I do when I have a question about performing a notarial act?

A. Contact the Secretary of State’s office for assistance or your legal counsel for advice.

Q. Where does a person report illegal, improper or questionable acts by a notary public?

A. Persons who suspect any wrongdoing or mistake by a notary public should report it to the Kansas Secretary of State, First Floor, Memorial Hall, 120 SW 10th Ave., Topeka, KS 66612-1594, (785) 296-2239, or by e-mail at notary@sos.ks.gov.

X. Test your Notary Knowledge

Test your notarial I.Q. with this pop quiz. Answers follow the quiz. More detailed explanations are found elsewhere in the handbook.

1. Your employer asks you to “notarize” a document that was signed by a customer while you were at lunch. You should:

- (a) Ask your employer to swear that the customer whose name appears on the document really signed it.
- (b) Call the customer to ask if he really did sign the document.
- (c) Explain that you cannot notarize a document when the customer did not personally appear before you.
- (d) “Notarize” the document only if you personally know the customer and recognize the signature.

2. Your wife, the sole owner of a used car lot, has asked you to “notarize” her signature transferring title of an automobile. You are not named individually as a party to the transaction. You may “notarize” the document.

True or False.

3. You have been asked to administer an oath for a person signing an affidavit. You must ask the person to:

- (a) Provide adequate identification (if you do not know the person).
- (b) Either raise his or her right hand or place it upon the Bible.
- (c) Either swear or affirm using the statutory language.
- (d) Do all of the above.

4. A seal press is an acceptable notary seal but its impression must be blackened so that it can be photocopied.

True or False.

5. A notary may not charge more than \$2 to administer an oath.

True or False.

6. To properly identify a person, it is sufficient to:

- (a) Examine a driver's license with signature.
- (b) Be casually acquainted with the person.
- (c) Have a person you know identify the person under oath.
- (d) Do any of the above.

7. State law requires a notary to maintain a log of all notarizations performed, showing the date performed, the parties appearing and the type of document.

True or False.

8. A Kansas notary may perform notarial duties anywhere in Kansas as long as the county in which the duty is performed is entered in the appropriate space.

True or False.

9. In order to properly complete the notarial certificate the notary must do which of the following:

- (a) Enter the county where the notarization took place.
- (b) Affix the seal and blacken the impression if a seal press is used.
- (c) Sign and write the date that the notary's appointment expires.
- (d) All of the above.

10. You are a Kansas notary and resident, but your place of employment is in Kansas City, Missouri. You may perform notarial acts in Missouri.

True or False.

11. You are a resident of Nebraska, but your place of employment is in Kansas. You may become a Kansas notary public.

True or False.

12. A notary public who is not admitted to the practice of law in this state and who advertises notarial services in a language other than English must include a disclaimer stating: "I am not

authorized to practice law and have no authority to give advice on immigration law or other legal matters.”

True or False.

13. It is possible to electronically notarize a document remotely (outside the presence of the signer) as long as you are able to watch the signing and check the signer’s identification through a Web camera.

True or False.

Answers: 1. c; 2. True; 3. d; 4. True; 5. False; 6. d; 7. False; 8. True; 9. d; 10. False; 11. True; 12. True; 13. False

XI. Glossary of Terms

Acknowledge – The act of admitting or recognizing the existence and authenticity of the contents of an instrument and that the instrument shall be binding and in full force and effect.

Acknowledgment – The act of admitting and recognizing the contents of a document, the person’s execution of the document, and that the instrument is binding.

Affirm – See Oath.

Affirmation – Spoken promise that the contents of the document are true, without requirement of swearing under oath to God. An affirmation is made by a person having conscientious or religious objections to oaths. An affirmation in Kansas begins with “You do solemnly, sincerely and truly declare and affirm” and concludes with “And this you do under the pains and penalties of perjury.”

Apostille – Certification of a notary required for paperwork going out of the United States to a country that has signed in Chapter 12 of the Hague Convention, created in 1961, that abolishes the requirement of legalization for foreign public documents. For a list of countries that have signed, go to www.hcch.net.

Authentications – Certification of a notary required for paperwork going out of the United States to a country that has not signed Chapter 12 of the Hague Convention.

Certified Copy – A document verified as an accurate reproduction of an original document.

Competence – Ability to understand.

Electronic Notarization or e-Notarization – An electronic signature and seal that is placed on a document using a Kansas digital signature.

Electronic Notary or e-Notary – A notary public who is authorized to electronically notarize documents.

Electronic Signature – 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 a record.

Execute – To sign one’s name. To perform, complete or accomplish.

Notarial Block or Certificate – The statement that appears at the end of a document that is completed and signed by the notary public. This statement indicates the venue, the type of notarization required (acknowledgment, verification or witnessing), the name of the signing party and the date of the notarization.

Notary Bond – The surety company or individuals agree to indemnify or reimburse anyone who suffers damage caused by the notary public’s improper performance of notarial acts up to the amount of the bond (\$7,500). The surety can demand reimbursement from the notary if a claim is properly paid. Furthermore, the notary is personally liable for the full amount of any judgment rendered against the notary.

Notary Public – A person appointed by the Kansas Secretary of State to serve the public as a disinterested witness who takes acknowledgments and verifications, witnesses signatures, administers oaths and affirmations, and certifies copies.

Oath – A sworn statement made before a notary or other authorized officer. In Kansas, an oath begins with “You do solemnly swear” and

concludes with “So help you God” and is made with the right hand uplifted or placed upon the Bible.

Sureties – A guarantee that if the notary public fails to properly perform a notarization the surety will indemnify a third party for any damages caused by the notary’s negligence or misconduct up to \$7,500. Commercial sureties have been licensed with the Kansas Insurance Department and actively participate in the surety bond field. A fee is usually charged to the applicant for guaranteeing a bond. (See also Notary Bond.)

Sworn – See Oath.

Venue – The location where the notarization was performed, as indicated at the top of the notarial certificate (state, county).

XII. Contact Information

For all questions or concerns about Kansas notaries public, contact:

Kansas Secretary of State
Attn: Notary Clerk
First Floor, Memorial Hall
120 SW 10th Ave.
Topeka, KS 66612-1594
Phone: (785) 296-2239
Fax: (785) 296-4570
Website: www.sos.ks.gov/notary
E-mail: notary@sos.ks.gov

Please
Do Not
Staple



KANSAS SECRETARY OF STATE
Notary Public
Change of Status

Kansas Office of the Secretary of State:

Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594

(785) 296-4564
notary@ks.gov
www.sos.ks.gov

Instructions: Complete the Name and Bond Number fields and proceed to section B.

A. Notary Information

Name (Print name under which your appointment is currently listed)

Bond number (Number listed on the appointment certificate)

B. Corrected Information

Instructions: Complete the fields that need to be changed. Fields left blank are presumed unchanged. Sign and date at the bottom of the form.

1. Stamp change
(If requesting a name change, complete fields 1 & 2.)

(Seal/Stamp)

2. Name change

3. Residential address
(P.O. box is not acceptable.)

Street Address		
City	State	Zip

4. Business address
(P.O. box is not acceptable.)

Street Address		
City	State	Zip

5. Daytime phone

6. Secondary phone

7. Miscellaneous

Check if you are canceling your bond. Check if you need a new certificate sent.

I declare under penalty of perjury pursuant to the laws of the state of Kansas that the foregoing is true and correct.

Month	Day	Year
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Please review to ensure completion.