Notary Public or “Near” Notary, Here’s What You Need To Know (well...some of it)

Cecilia Willis
Decatur County Clerk of Superior Court

Bainbridge, GA · September 21, 2016
It’s N-O-T-A-R-Y (pause) P-U-B-L-I-C

The Pledge of Allegiance

I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.
In the beginning...

Notary Fact

Notaries public first developed in the Roman Empire. The word notary comes from the Latin word nota. Nota was a system of shorthand Cicero’s clerk, Tullius Tiro, used to transcribe his speeches.

Information from the American Society of Notaries
A notary’s primary responsibility is...
To Prevent FRAUD
Notary Journal?

While Georgia law does not require a notary to keep a journal, which documents each notarial act in detail, it is **strongly** recommended that a journal be maintained.

- The journal serves as an archive of each notarial act
- Elements of the act, including name of signer, signer’s address, signer’s signature, signer’s telephone number, date and time of notarization, type of ID presented by signer, elements of the ID, date of document, type of document presented for notarization, and a comment section are essential to maintaining a journal.
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<th>Manos M. Javadi</th>
<th>Signer's Signature:</th>
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<tr>
<td>Signer's Complete Address:</td>
<td>800 Hanes Ave, Marietta GA</td>
<td>Signer's Business Phone:</td>
<td>(770) 528-7250</td>
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<td>Oath</td>
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<th>Joel Dickes Shell</th>
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<td>Signer's Complete Address:</td>
<td>1600 Lenox St</td>
<td>Signer's Business Phone:</td>
<td>(912) 576-3800</td>
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How much do you know about notary public procedures and law?
1. _____ A notary public is commissioned by the notary applicant’s state senator.
1. _____ A notary public is commissioned by the notary applicant’s state senator.

FALSE - A Georgia notary public is appointed and commissioned by the Clerk of Superior Court in the county where the notary resides.
2. _____ A Georgia notary public may perform official acts anywhere in the lower 48 states of the US.
2. _____ A Georgia notary public may perform official acts anywhere in the lower 48 states of the US.

**FALSE** - Georgia notaries may only perform notarial acts within the geographical boundaries of this state. In other words, they have statewide jurisdiction and may perform their official duties in any county in Georgia.
3. _____ A notary’s primary function is to explain legal documents, witness signatures and verify the validity of the document.
3. _____ A notary’s primary function is to explain legal documents, witness signatures and verify the validity of the document.

FALSE - While notaries do witness signatures, their primary function is to **prevent and deter fraud**. They do this by always requiring the personal appearance of the signer, identifying the signer, and performing the notarial act requested for the execution of the document. Unless the notary is an attorney licensed to practice law in Georgia, the notary may not explain the contents or the effects of a document or give any legal advice.
4. _____ When the document signer is not physically present, the notary is permitted to perform a notarial act if the notary verifies the signer’s identity via electronic/video technology, such as FaceTime or Skype.
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FALSE - A notary may never notarize when the signer is not physically present before the notary, face-to-face in the same room at the same time, even if the notary personally knows the signer and recognizes his/her signature. There are no exceptions!
5. _____ A notary may not certify a photocopy of a birth certificate or a deed.
5. _____ A notary may not certify a photocopy of a birth certificate or a deed.

**TRUE** - Georgia law prohibits a notary from making a certified copy of any public record or publicly recordable documents. Birth certificates and deeds are just two examples of documents in these categories.
6. _____ A Social Security card, library card and debit card are not acceptable forms of identification for a notarization.
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**TRUE** - Georgia law specifies that a notary must rely on personal knowledge or **satisfactory evidence** to identify a signer. A Social Security card, library card or debit card would not be reliable because they don’t contain a photo to assist in determining positive identification.
7. _____ When performing a notarial act, the notary should indicate in the notarial certificate the state and county of the notary’s residence (State of Georgia, County of ____).
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**FALSE** - The notation in the notarial certificate that indicates “State of Georgia, County of ____” is called the venue, which is the location where the notarization actually takes place, not the county in which the notary is commissioned.
8. ______ A person may act as the notary for his/her sister involving a power of attorney giving him/her (the notary) the authority to care for the sister’s minor child.
8. _____ A person may act as the notary for his/her sister involving a power of attorney giving him/her (the notary) the authority to care for the sister’s minor child.

**FALSE** - The notary would be a party to the power of attorney, therefore, is forbidden by Georgia law from performing the notarial act. [O.C.G.A. 45-17-8(c)(2)]
9.______ Georgia law allows notaries to charge any amount for a notarial act as long as it is agreed upon by all parties prior to the notarial act.
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**FALSE** - The law allows a maximum fee of $2 per notarial act. (O.C.G.A. 45-17-11)
10. _____ A notary may perform a notarial act for someone who is signing by mark when that person cannot make a “normal” signature.
10._____ A notary may perform a notarial act for someone who is signing by mark when that person cannot make a “normal” signature.

TRUE - A mark is considered a legal signature if the person making that mark designates the mark as his/her signature. Georgia law does not provide a specific procedure for notarizing the mark of a person, but the notary should exercise caution when performing this special notarization.
11.______ If the document signer is visually impaired, the notary should offer to read the document to the signer prior to notarization.
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**TRUE** - The notary, as an impartial officer, should offer to read the entire document to the signer who is not able to do so before notarization. This recommendation is designed to protect the person with a sight disability by ensuring that the signer knows exactly what he/she is signing. However, the non-attorney notary may not explain the contents or effects of the document to the signer.
12. _____ The law allows notaries to keep copies of the documents they notarize in order to protect themselves in the event a complaint of misconduct is filed against them.
12._____ The law allows notaries to keep copies of the documents they notarize in order to protect themselves in the event a complaint of misconduct is filed against them.

FALSE - Nothing in Georgia law authorizes notaries to keep copies of the documents they notarize, and doing so may be a violation of a person’s privacy. If the transaction is related to the notary’s employment, the employer may keep a copy of the transaction documents for the business file. If a notary wants personal protection, he/she should carefully document each notarial act in a permanently bound recordbook especially designed for this purpose.
13.______ A notary public may be held personally liable for any financial loss caused by the notary’s failure to properly perform his/her official duties.
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**TRUE** - A notary has unlimited personal liability for any loss caused by official misconduct. The notary could be sued, which may result in a court judgment against the notary for the amount of the loss.
Signature or short hand?
Give it some thought
Easy to read!

A. Lincoln
Multiple Signers

- As the notary, you are ONLY concerned with the signer(s) before you.
- If document has places for multiple signers and all are not present, that’s OK!
- The journal entry will be the proof of who or whom signed before you.
- You can only prevent fraud that’s in front of you. Altered documents after the fact are not your responsibility. Keep journal!
Multiple Signers

- Imprint seal in close proximity
- If multiple signers are present, notary must sign and imprint seal for each notarial act
Seal Over Signature Isn’t “More Official”

State of Georgia
County of Fannin

Signed and sworn to (or affirmed) before me on Aug. 20, 2014

by Rachel Rice

Printed name(s) of individual(s) making statement

who proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

☑ Personally Known
or

☐ Produced Identification

Type and # of ID (last 4 digits) ____________________________

ID Expiration Date ____________________________

BOO!

Stamp/Seal

© 2016 Georgia Superior Court Clerks’ Cooperative Authority
The Proper Way To Affix Seal

Acknowledgment in an Individual Capacity

State of Georgia
County of Dekalb
This record was acknowledged before me on August 29, 2014
by Rachel Rice
Printed name(s) of individual(s) signing document

who proved to me on the basis of satisfactory evidence to be the person(s)
who appeared before me.

☑ Personally Known
or
☐ Produced Identification

Type and # of ID (last 4 digits) __________________________
ID Expiration Date __________________________

Michael V. Smith
Signature of notary public
Michael V. Smith
(Name of notary, typed, stamped or printed)
Notary Public State of Georgia

My commission expires: Jan 31, 2017

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§45-17-2 Qualifications of notaries

(a) Any individual applying for appointment to be a notary public shall:

(1) Be at least 18 years old;

(2) Be a United States citizen or be a legal resident of the United States;

(3) Be a legal resident of the county from which such individual is appointed;

(4) Have, and provide at the time of the application, the applicant's operating telephone number; and

(5) Be able to read and write the English language.

(b) The qualification of paragraph (3) of subsection (a) of this Code section shall not apply to any nonresident individual applying for appointment as a notary public under the provisions of Code Section 45-17-7.
§45-17-7. Commissioning of nonresidents as notaries; powers and duties

(a) Any person who is a resident of a state bordering on the State of Georgia and who carries on a business or profession in the State of Georgia or who is regularly employed in the State of Georgia may be commissioned as a notary public by the clerk of the superior court of the county in which the person carries on said profession, business, or employment.

(b) Such person wishing to be commissioned as a notary public must meet all the requirements of Code Section 45-17-2, as it applies to this Code section.
§ 45-17-2.3. Grant or denial of commission or recommission; grounds; unauthorized practice of law

(a) After an applicant submits to the clerk of superior court of the county the application, endorsements, and declaration of applicant as required in Code Section 45-17-2.1, the clerk of superior court shall either grant or deny a commission or recommission as a notary public within ten days following the applicant's submission of the necessary documents.
§ 45-17-2.3. Grant or denial of commission or recommission; grounds; unauthorized practice of law

b) The clerk of superior court may in his or her discretion deny a commission or recommission to an applicant based on any of the following grounds:
   (1) The applicant's criminal history;
   (2) Revocation, suspension, or restriction of any notary commission or professional license issued to the applicant by this or any other state;
   (3) The commission in this or any state of any act enumerated in subsection (a) of Code Section 45-17-15, whether or not criminal penalties or commission suspension or revocation resulted; or
§ 45-17-2.3. Grant or denial of commission or recommission; grounds; unauthorized practice of law

(4) The applicant is found by the State Bar of Georgia, a court of this state, or a court of any other state to have engaged in the unauthorized practice of law.

(c) Any applicant who is denied a notarional commission or recommission by the clerk of superior court shall upon demand be allowed a hearing and adjudication before the superior court clerk with a right of de novo appeal to the superior court, such appeal to be determined by the court without the intervention of a jury.
§ 45-17-8 Powers and duties generally

(a) Notaries public shall have authority to:

(1) Witness or attest signature or execution of deeds and other written instruments;

(2) Take acknowledgments;

(3) Administer oaths and affirmations in all matters incidental to their duties as commercial officers and all other oaths and affirmations which are not by law required to be administered by a particular officer;

(4) Witness affidavits upon oath or affirmation;

(5) Take verifications upon oath or affirmation;
§ 45-17-8. (con’t.) Powers and duties generally

6) Make certified copies, provided that the document presented for copying is an original document and is neither a public record nor a publicly recorded document certified copies of which are available from an official source other than a notary and provided that the document was photocopied under supervision of the notary; and

7) Perform such other acts as they are authorized to perform by other laws of this state.
§ 45-17-8. (con’t.) Powers and duties generally

b) No notary shall be obligated to perform a notarial act if he feels such act is:
   (1) For a transaction which the notary knows or suspects is illegal, false, or deceptive;
   (2) For a person who is being coerced;
   (3) For a person whose demeanor causes compelling doubts about whether the person knows the consequences of the transaction requiring the notarial act; or
   (4) In situations which impugn and compromise the notary's impartiality, as specified in subsection (c) of this Code section.
§ 45-17-8. (con’t.) Powers and duties generally

(c) A notary shall be disqualified from performing a notarial act in the following situations which impugn and compromise the notary's impartiality:

(1) When the notary is a signer of the document which is to be notarized; or

(2) When the notary is a party to the document or transaction for which the notarial act is required.

(d) A notary public shall not execute a notarial certificate containing a statement known by the notary to be false nor perform any action with an intent to deceive or defraud.

(e) In performing any notarial act, a notary public shall confirm the identity of the document signer, oath taker, or affirmant based on personal knowledge or on satisfactory evidence.
§ 45-17-8. (con’t.) Powers and duties generally

(f) The signature of a notary public documenting a notarial act shall not be evidence to show that such notary public had knowledge of the contents of the document so signed, other than those specific contents which constitute the signature, execution, acknowledgment, oath, affirmation, affidavit, verification, or other act which the signature of that notary public documents, nor is a certification by a notary public that a document is a certified or true copy of an original document evidence to show that such notary public had knowledge of the contents of the document so certified.
§ 45-17-8.1. Signature and date of notarial act

(a) Except as otherwise provided in this Code section, in documenting a notarial act, a notary public shall sign on the notarial certification, by hand in ink, only and exactly the name indicated on the notary's commission and shall record on the notarial certification the exact date of the notarial act.

(b) The requirement of subsection (a) of this Code section for recording of the date of the notarial act shall not apply to an attestation of deeds or any other instruments pertaining to real property.
• Free online notary public training course available to everyone
• Optional exam $10
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NOTARY & APOSTILLES

Notaries  Apostilles

General Information
Information about and for Notaries.

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Notary Public Application Form
Apply to become a Notary in Georgia.

LEARN MORE

Georgia Notary Law
Notary Laws for the State of Georgia.

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Let’s Review

- The signer MUST ALWAYS be present
- Government issued ID with photo ONLY
- Georgia notaries may notarize in any of the 159 counties of Georgia (the physical boundaries)
- Notaries are commissioned by the Clerk of Superior Court of the county in which they reside
- Notary commissions are effective for four years
- Changes of name and changes of address must be communicated in writing to the commissioning Clerk of Superior Court, with a copy to the Clerks’ Authority, within 30 days
- Loss or theft of seal must be communicated in writing to the commissioning Clerk of Superior Court, with a copy to the Clerks’ Authority, within 10 days of discovery
- Recommended to keep a journal
- Four elements of the seal: name as commissioned, “State of Georgia, “Notary Public,” county name where commissioned
- Blue or black ink ONLY for notary’s signature and seal
- Contact https://www.gsccca.org/clerks
THANK YOU!

mike.Smith@gsccca.org  (404) 327-9753
rachel.rice@gsccca.org  (404) 327-7322
Help Desk (800) 304-5174

www.gsccca.org