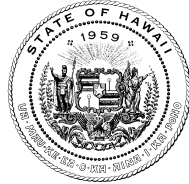


# NOTARY PUBLIC MANUAL



## STATE OF HAWAI'I

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NOT FOR RESALE

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## Introduction

A Notary Public's functions include:

- (1) administering oaths;
- (2) witnessing the signing of documents;
- (3) attesting to the identity of the signers of the document;
- (4) noting protests; and
- (5) taking acknowledgments of documents.

Although a notary public may be commissioned to perform services in connection with work for his/her employer, **the notary is nonetheless required to provide notarial service to the general public.**

A government notary whose fees and bond are waived, however, is limited by law to performing notarial services pertaining to the business of the government, except where the occasion is deemed by the head of the department of the governmental unit to be one of urgent necessity and convenience.

## **I. GENERAL INFORMATION**

### **Qualifications**

In Hawaii, to be eligible for a notary public commission, the applicant must be:

1. A United States citizen, or a national or permanent resident alien of the U.S. who diligently seeks citizenship upon becoming eligible to apply for U.S. citizenship;
2. A Hawaii resident; and
3. At least 18 years old.

### **Application**

Application for a notary public commission is made online at <https://notary.ehawaii.gov>. You will need to set up an eHawaii.gov account at <https://login.ehawaii.gov> prior to submitting your application.

After approval of an applicant by the Attorney General, the applicant is required to take a written closed-book examination covering the statutory laws and administrative rules that apply to notaries public, as well as practical aspects of a notary's practice, and a notary's duties and responsibilities. The passing score is 80 percent.

### **Appointment and Tenure**

The Attorney General may, in the Attorney General's discretion, commission such number of notaries public for the State as the Attorney General deems necessary for the public good and convenience. The term of commission of a notary public shall be four years from the date of the notary's commission, unless sooner removed by the Attorney General for cause after due hearing; provided that after due hearing the commission of a notary public may be revoked or otherwise disciplined by the Attorney General in any case where any change occurs in the notary's office, occupation, residence, or employment which in the Attorney General's judgment renders the holding of such commission by the notary no longer necessary for the public good and convenience. Each notary shall, upon any change in the notary's office, occupation, residence, or employment, report the same in writing to the Attorney General within thirty days of the change.

Each notary public shall be responsible for renewing the notary public's commission on a timely basis and satisfying the renewal requirements provided by law. The failure to renew a commission in a timely manner may cause the commission to be forfeited, if the Attorney General finds that the failure was done knowingly. The commission of a notary public is forfeited if the notary public knowingly fails to submit a completed renewal application, pay the renewal fee, or complete the processing and filing of a commission for renewal by the date of expiration of the notary public's commission. A failure to renew shall be deemed knowingly if notice of renewal is sent to the last address on file for the notary public and the notary public fails to complete all these requirements. Any notary seeking to restore the notary's forfeited commission more than one year from the date of expiration of the commission shall reapply as a new applicant for a notary public commission.

### **Rules**

The Attorney General, subject to chapter 91, Hawaii Revised Statutes (HRS), may prescribe such rules as the Attorney General deems advisable concerning the administration of chapter 456, HRS, the appointment and duties of notaries public, and the duties of other officers thereunder. The rules shall have the force and effect of law. Chapter 5-11, Hawaii Administrative Rules (HAR), the rules governing the practices and procedures of notaries commissioned in Hawaii, was adopted on May 5, 2008.

### **Notarial Seal**

Each notary is required to obtain, at the expense of the notary or the notary's company, and shall constantly keep a rubber stamp seal which shall be circular, not over two inches in diameter, with a serrated or milled edge border and clearly show,

stamped, upon a document, **the notary's name and commission number**, and the words **"notary public"** and **"State of Hawaii"**. The notary public shall authenticate all the notary's official acts, attestations, certificates, and instruments therewith, and shall always add to an official signature the typed or printed name of the notary and a statement showing the date that the notary's commission expires. Upon resignation, death, expiration of the notary public shall immediately deliver the notary's seal to the Attorney General for defacement or destruction. If any notary fails to deliver the seal within ninety days of the date of the notary's resignation, expiration of commission without renewal or revocation or suspension of commission, or if the notary's personal representative fails to comply within ninety days of the notary's death, then the notary public or the notary's personal representative shall forfeit to the State not more than \$200, in the discretion of the court, to be recovered in an action to be brought by the Attorney General on behalf of the State.

### **Official Signature**

A notary must sign the notary's official signature in the same manner as it appears on the notary's seal. For example, if the notary's name is "John Doe" on the notary's seal, he signs in the same form, i.e., "John Doe" and not "J. Doe". A notary must always add to the notary's official signature the date of expiration of the notary's commission as a notary public and a typed or legibly printed name of the notary below the notary's signature.

### **Filing Copy of Commission; Authentication of Acts**

Every notary, after being commissioned, must forthwith file a photocopy of the notary's commission, an impression of the notary's seal, and a specimen of the notary's official signature with the clerk of the circuit court of the circuit in which the notary resides. Each notary may also file these same documents with the clerk of any other circuit court. Thereafter, any clerk, when requested, shall certify to the official character and acts of any such notary whose commission, impression of seal, and specimen of official signature are on file with the clerk's office (a process called authentication). (Authentication is usually required when a document notarized by a local notary public is sent to another state or country. Such state or country may require evidence that the notary who notarized the document is a duly commissioned officer of the State of Hawaii.) Authentication is also done by the Office of the Lieutenant Governor.

### **Official Bond**

Each notary public forthwith and before entering upon the duties of the notary public shall execute, at the expense of the notary or the notary's company, an official surety bond which shall be in the sum of \$1,000. Each bond shall be approved by a judge of the circuit court of the circuit in which the notary resides.

The obligee of each bond shall be the State and the condition contained therein shall be that the notary public will well, truly, and faithfully perform all the duties of the notary public which are then or may thereafter be required, prescribed, or defined by law or by any rule made under the express or implied authority of any statute, and all duties and acts undertaken, assumed, or performed by the notary public by virtue or color of the notary's office. The surety on any such bond shall be a surety company authorized to do business in the State. After approval, the bond shall be deposited and kept on file in the office of the clerk of the circuit court of the circuit in which the notary public resides. The clerk shall keep a book to be called the "bond record", in which the clerk shall record such data in respect to each of the bonds deposited and filed in the clerk's office as the Attorney General may direct.

### **Liabilities; Limitations on; Official Bond**

In the performance of a notarial act, a notary's liability shall be limited to a failure by the notary to perform properly the actions required for the jurat, acknowledgment, or other notarial act.

For the official misconduct or neglect of a notary public or breach of any of the conditions of the notary's official bond, the notary and the surety on the notary's official bond shall be liable to the party

injured thereby for all the damages sustained. The party shall have a right of action in the party's own name upon the bond and may prosecute the action to final judgment and execution.

### **Notarial Record Book; Specifications; Copies as Evidence**

Every notary public shall record at length in a book of records all acts, protests, depositions, and other things, by the notary noted or done in the notary's official capacity. For each official act, the notary shall enter in the book:

1. The type, date, and time of day of the notarial act;
2. The title or type and date of the document or proceeding;
3. The signature, printed name, and address of each person whose signature is notarized and of each witness, other parties to the instrument;
4. The identity of the person is based on personal knowledge, a statement to that effect;
5. If the identity of the person is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any including the identification number and date of expiration of any identification credentials; and
6. The fee, if any, charged by the notary public.

All copies or certificates granted by the notary shall be under the notary's hand and notarial seal, and shall be received as evidence of such transactions.

The record book shall be bound with a soft cover and shall not exceed eleven inches in height and sixteen and one-half inches in width when fully opened. The pages of the record book shall be consecutively numbered. The notary public shall always provide and print legibly on the information page of each record book the notary public's name, business address, commission number, and commission expiration date, the book number, and the beginning and ending dates of the notarial acts recorded in that book. The notary public shall always print legibly the notary public's name on the top left corner and the notary public's commission number on the top right corner of each set of pages of transactions in each record book.

### **Disposition of Notarial Record Books and Penalties**

The records of each notary public shall be maintained by the notary for 10 years upon the resignation, death, expiration of each term of office, or revocation of commission subject to audit or inspection by AG. If any notary fails to comply within ninety days of the date of the resignation, expiration of any term of office, or if the notary's personal representative fails to comply within ninety days of the notary's death, then the notary or the notary's personal representative shall forfeit to the State not less than \$50 nor more than \$500, in the discretion of the court, in an action brought by the Attorney General on behalf of the State.

### **Notaries in Government Service**

Except as otherwise provided for by law, the head of every department (which, as used in HRS Chapter 456, includes any department, board, commission, bureau, or establishment of the United States, or of the State, or any political subdivision thereof) may designate one or more subordinates to be a notary public who, upon duly qualifying and receiving a commission as a notary public in government service, shall perform, without charge, the services of a notary public in all matters of business pertaining to the State, any political subdivision thereof, or the United States.

Any provision of this chapter to the contrary notwithstanding, a subordinate so designated and qualified and commissioned as a **notary public in government service shall:**

1. Be authorized to perform the duties of a notary public in one or more of the judicial circuits of the State as the Attorney General shall designate;
2. Not be required to:
  - A. Pay any fee to the clerk of any circuit court for filing a copy of the notary's commission;
  - B. Pay any fee to the Attorney General for the issuance of the notary's commission or the renewal thereof; or
  - C. Furnish and file an official bond unless that bond is required by the head of the department in which the notary is a subordinate, in which event, the expense of furnishing any such bond shall be borne by the department concerned; and
3. Not demand or receive any fee for the notary's service as a notary public; provided that where the occasion, in the judgment of the head of the department, is deemed one of urgent necessity and convenience, the notary may, but shall not be compelled to, administer oaths or take acknowledgments in nongovernmental matters, for which services the prescribed fees shall be demanded and received as governmental realizations and deposited into the notaries public special fund established by HRS § 456-9.5, except that if that fund is terminated, the fees shall be deposited into the general fund of the State; provided further that with the prior written approval of the Attorney General, the notary public, upon paying the fees prescribed by law and upon executing, depositing, and filing at the notary's own expense, the required official bond, may demand or receive the fees prescribed by law for services rendered by the notary in matters not pertaining to such government business.

## **II. DUTIES AND LIABILITIES**

### **Why Documents Are Notarized**

A document is notarized in order to protect persons signing an important document. It assures the parties to an agreement that this particular document and no other is the authentic document which is intended to be given full force and effect. Because of the recent improvements in photocopying machines, it is important that certain documents be notarized and notarized properly--otherwise any imposter could forge a signature and substitute an authentic document with an illegally altered and fraudulent document. In addition, the recent adoption of HAR Chapter 5-11 helps prevent the fraudulent use of notarized documents and seals. Specifically, HAR § 5-11-8 requires a notary to evidence every acknowledgment or jurat with a certificate.

### **Duties**

"A notary must perform the notary's official duties with integrity, diligence, and skill. The notary's duty is not confined to the one to whom the notary directly renders service, but it extends to all persons who may be affected by the notary's act." 66 C.J.S. Notaries § 17. The powers and duties vested in the notary are personal to the notary and should never be delegated. In other words, a notary should not allow a clerk or deputy to perform a notarial act for the notary.

Under Hawaii law, the duties of a notary public are generally confined to performing the following notarial acts:

1. Taking an acknowledgment -- "An acknowledgment is a public declaration or formal statement of the person executing (signing) an instrument made to the official authorized to take the acknowledgment, that the execution of such instrument was his or her free act and deed. The written evidence of an acknowledgment is the certificate of the officer who takes the acknowledgment, which states in substance



that the person named in the acknowledgment was known to and appeared before the officer and acknowledged the instrument to be the person's act and deed." 1 Am.Jur. Legal Forms 2d Acknowledgments § 7:1.

2. Administering an oath, affirmation, or affidavit -- An oath is "a solemn pledge or promise made by a person (often called the affiant) with an appeal to God, or a Supreme Being, to attest to the truth of the person's words." Rotham, Notary Public Practices & Glossary (1978), at p. 24. An affirmation is "a solemn statement or declaration made as a substitute for a sworn statement by a person whose conscience will not permit the person to swear at all." 18C Am.Jur. Pleadings and Practice Forms, Oath and Affirmation § 1. An affidavit is "a written or printed statement of facts, made voluntarily, and under oath or affirmation of the party making it, taken before an officer having authority to administer such oath." Black's Law Dictionary (Rev. 6<sup>th</sup> Ed.), at p. 58.

3. Taking a deposition -- "The term 'deposition' is sometimes used in a broad sense to describe any written statement verified by oath; but in its more technical and appropriate sense, the meaning of the word is limited to the written testimony of a witness given in the course of a judicial proceeding, either at law or in equity, in advance of the trial or hearing upon oral examination or in response to written interrogatories and where an opportunity is given for cross-examination." 23 Am.Jur.2d Depositions and Discovery § 108.

4. Noting a protest -- A protest is a "formal declaration made by a person in interest or concerned in some act about to be done, or already performed, whereby the person expresses the person's dissent or disapproval, or affirms the act against the person's will. The object of such a declaration is to preserve some right which would be lost if the person's implied assent could be made out or to exonerate the person from some responsibility which would attach to the person unless the person expressly negated the person's assent." Black's Law Dictionary (Rev. 6<sup>th</sup> Ed.), at p. 1223.

In noting a protest, a notary writes down how and when one performed certain acts the notary was called upon to perform. For example, in noting a protest of negotiable paper, a notary may declare in writing under the notary's seal, that at the request of the holder of a bill or note, the notary presented said bill or note to a third party for payment, but said payment was refused for certain reasons, whereupon the notary notified certain parties of the refusal.

### **Obligations and Limitations**

As a general rule, a notary public cannot certify to, or act in, a matter in which the notary has a personal interest. 66 C.J.S. Notaries § 14. A notary should never, under any circumstances, notarize the notary's own signature.

"The most important obligation a notary has to the public the notary serves is to judge what acts constitute the practice of law and what acts constitute the practice of a notary public. If the notary, who is not an attorney, is asked to perform a notarial act that requires the preparation of, or the giving of advice in regard to the preparation of, a legal document or form, the notary should always obtain the advice of an attorney unless the notary has had special education and training." Rotham, supra, at p.45.

As a general rule, "the notarization of a document that has been written in a foreign language should only be performed by a notary who has a thorough understanding of the foreign language in which the document and/or notarial certificate are written." Rotham, supra, at p. 47. Similarly, a notary should not notarize a document written in English if the parties to the document who appear before the notary do not appear to speak, read, or understand English. In the latter instance, the notary should refer the parties to another notary who speaks the foreign language of the parties, or to the foreign consulate, or to an attorney. The notary may also contact the Notary Public Program for a listing of bilingual notaries.

"The notary should avoid being placed in the position of having to decide whether a person is sufficiently competent to fully understand the agreement the person is signing or the oath or affidavit the person is taking. The notary should either seek counsel from the notary's own attorney or advise the party who appears to be incompetent to go to an attorney. If a person is declared to have been incompetent at the time the agreement was signed and notarized, the agreement could be declared null and void." Rotham, supra, at p. 48.

It is of utmost importance that the individual who is to have a document notarized personally appear before the notary public. A notarization over the telephone is absolutely forbidden. Notarization for remotely located individuals may be performed only by commissioned remote online notaries public.

A notary who is not a licensed attorney may not engage in the practice of law. If a notary attempts to assist someone in the preparation of legal papers such as contracts, deeds, powers of attorney, wills, or bills of sales, such acts may constitute the unauthorized practice of law.

One who has a beneficial interest in a document, no matter how small or nominal the interest, cannot act as a notary public relative to that document. Therefore, one partner cannot as a notary public take the oath of a co-partner in a matter in which the partnership has an interest. However, a notary who is an officer, employee, shareholder, director, or agent of a corporation, trust company, bank, or building and loan association, may take the acknowledgment of any party to any written instrument executed to or by the corporation, trust company, bank or association, or administer an oath to any officer, employee, shareholder, director, or agent of the corporation, trust company, bank or association, or protest nonacceptance or nonpayment of bills of exchange, or negotiable instruments which may be owned or held for collection by the corporation, trust company, bank or association; provided, that it is unlawful for any notary to take the acknowledgment of any party to an instrument, or to protest any negotiable instrument, where the notary is individually a party to the instrument.

Mere relationship to a party does not disqualify a notary. Thus, a wife, who is a notary public, may notarize her husband's documents, provided the wife does not derive a beneficial interest therefrom.

A notary should never notarize a document unless the notary is absolutely satisfied after reading through the notarial certificate, that whatever the notary is certifying to is true and correct. For example, if the notarial certificate indicates that a corporate seal is affixed to the instrument being notarized, the notary should check to be sure the seal is attached.

### **Persons Who Are Unable To Sign**

If a person appearing before a notary physically cannot sign the person's own name or make a mark on a document presented for notarization, a notary may sign the name of the person, provided that the notary is satisfied that the person has voluntarily given consent for the notary to sign on the person's behalf, if the notary writes, in the presence of the person: "Signature affixed by notary pursuant to section 456-19, Hawaii Revised Statutes." beneath the signature, and if a doctor's written certificate is provided to the notary certifying that the person is unable to physically sign or make a mark because of the disability, and that the person is capable of communicating the person's intentions.

If a person is able to make a mark on a document, the notarization forms should reflect that the person is signing by a mark. In such instances, an attorney may require the presence of at least two impartial witnesses to witness the signing by mark, and the notarial certificate will be drafted to reflect their presence. Thereafter, the person places the person's mark on the document and the notary indicates that it is the mark of the person in question. Example: X (mark of JohnDoe).

### **Civil and Criminal Liability**

A notary who willfully and knowingly breaches the notary's official duty may be liable to one injured as a result. A notary may be also liable for a negligent performance of duty resulting in an injury.

In the event of a breach of notarial duties, the notary may be also subject to criminal liability. For example, a notary could be found guilty of the following:

1. Extortion—the wresting of anything of value from another by duress, force, or by any undue exercise of power.
2. Forgery—the fraudulent making or altering of a writing, with the intent to deceive another and prejudice the person in some right.

3. Perjury—making, in an official proceeding, under an oath required or authorized by law, a false statement which the person does not believe to be true.
4. Subornation—the willful and corrupt procuring of another to commit perjury.

In addition, pursuant to Act 175, 2008 Haw. Sess. Laws, a notary commits the offense of failure to verify identity and signature if the notary knowingly notarizes a document and: 1) if a witness to the signing of the instrument, fails to verify the identity of the signer by personally knowing the signer or comparing the personal appearance of the signer with satisfactory proof of the signer's identity; or 2) if not a witness to the signing of the instrument, (a) fails to verify the identity of the signer by personally knowing the signer or by comparing the personal appearance of the signer with satisfactory proof of the signer's identity, or (b) fails to verify the signature of the signer by recognizing the signature of the signer by personal familiarity with the signature, or by comparing the signature with satisfactory proof of the signer's signature. "Proof of the signer's signature and identity" means proof evidenced by production of a current identification card or document issued by the United States, this State, any other state, or a national government that contains the bearer's photograph and signature.

A notary commits the offense of failure to authenticate with a certification statement if the notary knowingly notarizes a document and fails to include any of the following in the notary certification:

1. Date of notarization and signature of the notary public;
2. The printed name and stamp or seal of the notary public;
3. Identification of the jurisdiction in which the notarial act is performed;

A person commits the offense of misrepresenting a notarized document in the first degree if the person submits or invites reliance on a document that the person knows has been altered after the document had been notarized by a notary public in this or any other jurisdiction, and:

1. The offense was committed with intent to mislead a public servant; or
2. The offense was committed for purpose of commercial or private financial gain.

A person commits the offense of misrepresenting a notarized document in the second degree if, with intent to mislead another, the person submits or invites reliance on a document that the person knows has been altered after the document had been notarized by a notary public in this or any other jurisdiction.

### III. POWERS AND FUNCTIONS

#### Jurisdiction

A notary public commissioned in the State of Hawaii can only perform the notary's duties in the State of Hawaii and not in another state or country.

Because a notarial certificate usually requires a notary to indicate thereon the venue or location of the notarial act, a notary should be aware that the State is divided into four judicial circuits (HRS § 603-1), for venue purposes, as follows:

1. The first judicial circuit is the island of Oahu and all other islands belonging to the State not hereinafter mentioned, and the district of Kalawao on the island of Molokai [Designated venue "City and County of Honolulu"];
2. The second judicial circuit includes the islands of Maui, Molokai (except the Kalawao district), Lanai, Kahoolawe, and Molokini [Designated venue "County of Maui"];
3. The third judicial circuit is the island of Hawaii [Designated venue "County of Hawaii"]; and
4. The fifth judicial circuit includes the islands of Kauai and Niihau [Designated venue "County of Kauai"].

#### Date of Notarial Act

The notary must indicate in the notarial journal the date of the notary's notarial act. This is a very important date and the notary should always be certain that the notary is inserting the correct date. In Hawaii, it is permissible to perform notarial services on a Sunday or a holiday. Thus, if the notary performs official services on Independence Day, which is a national holiday, the notary indicates on the document as the date of the notary's act "July 4, 20 ."

#### Changes on Document

Before notarizing any document, the notary public should inspect the document and ascertain whether there are interlineations, erasures, or other changes. If there are changes, the notary should call them to the attention of the person who is signing the document. If the changes are approved, the notary public places the notary's initials in the margin of the document opposite each interlineation, erasure, or change. (For the protection of the notary, it is also advisable to have the person who is signing the document initial each interlineation, erasure, or change.)

It is our understanding that no document containing interlineations, erasures, or other changes will be recorded by the registrar of the State Bureau of Conveyances unless they are initialed by the notary. It is also our understanding that no document should be rejected for recording solely based on errors or inconsistencies in the certification statement required by HAR § 5-11-8.

#### Administering an Oath or Affidavit

Every notary may administer oaths in all cases in which oaths are by law authorized or required to be taken or administered, or in which the administering of an oath may be proper. (HRS § 456-13)

An **oath** is a solemn pledge made by a person (often referred to as the "affiant") with an appeal to God or a Supreme Being to attest to the truth of the person's statement. When an affiant's conscience will not permit the affiant to use the term "*swear*", an affirmation is permissible. Instead, the notary should substitute the term "*affirm*" for the term "*swear*".

The following is an example of an oath or affirmation:

“You do solemnly swear or affirm that you will support and defend the Constitution of the United States and the Constitution of the State of Hawaii, and that you will faithfully discharge your duties to the best of your ability.”

The person to whom the oath has been administered answers “I do.”

An **affidavit** is a written or printed statement of facts, made voluntarily, and under oath or affirmation of the party making it, taken before an officer who has authority to administer an oath. In other words, it is an oath that has been put in writing and signed by the affiant. The following is an example of an oath that can be administered with an affidavit:

“You do solemnly swear or affirm that the statements made in this affidavit are the truth, the whole truth, and nothing but the truth.”

The affiant answers “I do.” The notary then adds the notary’s “jurat” which states that the person appeared before the notary and signed the affidavit. The notary then signs the jurat, prints, or stamps the notary’s commission expiration date, and impresses the notary’s official seal.

The essential parts of an affidavit are:

1. The venue. The venue is the place where the notary is performing the notarial act. In Hawaii, the following is an example of the venue portion.

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

The letters “SS.” are an abbreviation for the Latin word “scilicet”, which means “namely”, or “more particularly described as”.

2. The body of the affidavit. This is the sworn statement of the affiant. It is usually preceded by an introductory statement. Example: “John Doe, being first duly sworn on oath, deposes and says:”.
3. The signature of the affiant.
4. The jurat. This is the portion of the affidavit commonly referred to as the “subscribed and sworn to” clause. It is the notary’s statement that the affiant appeared before the notary on a certain day, took the oath, and signed the statement; in other words, that the notary actually witnessed the affiant’s signature.

The following is the customary form for a jurat:

“Subscribed and sworn to before me this

\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.”

5. The signature, seal, and commission expiration date of the notary.

All of the above must be stated for a valid notarization.

The following is an example of an affidavit:

AFFIDAVIT OF KIMO SMITH

STATE OF HAWAII )
) SS.
CITY AND COUNTY OF HONOLULU )

KIMO SMITH, being first duly sworn on oath, deposes and says:

- 1. That he is the affiant herein;
2. That he is a resident of the City and County of Honolulu, State of Hawaii;
3. That he has read the affidavit and knows the contents thereof; and
4. That the said affidavit is true to the best of the affiant’s knowledge and belief.

Further affiant sayeth not.

(Signature of Kimo Smith)

Subscribed and sworn to before me this

day of , 20.

(Signature of Notary Public)
(Print name of Notary Public) (SEAL)
My commission expires: (expiration date)

Taking an Acknowledgment

An acknowledgment is a formal declaration before an authorized official by a person who has executed a formal or legal written document that the execution of the document was the person’s free act and deed. The fundamental purpose of the acknowledgment is to insure the authenticity and voluntariness of the signature. Before certifying an acknowledgment, a notary must either have personal knowledge of the individual who makes it, or be satisfied of the individual’s identity by thorough precaution (e.g., checking identification cards). An acknowledgment usually states in substance that the person named therein was known to and appeared before the notary and acknowledged the instrument to be the person’s free act and deed.

The general form of an acknowledgement includes the following parts:

- 1. The venue.
2. The date of the notarial act, which is the date the notary signs the acknowledgment.
3. The body of the acknowledgement, which includes:
• a statement relative to the presence of the signer. Example: “... personally appeared before me” (If a person whose signature is notarized did not actually appear before the notary, the notary could be found guilty of perjury for signing a false statement.).
• the identity of the signer or signers. There is usually a blank space provided for the notary to fill in the name of the signer. The notary should insert the name carefully, making sure that the name on the document or instrument agrees exactly with the name inserted in the acknowledgment. If the signer’s middle name is spelled out in the instrument, the notary should spell it out in the acknowledgment and make sure that the party signs the person’s full name exactly as it appears on the document.

- identification of the signer. Example: “... to me known to be the person described in and who executed the foregoing instrument...” A notary must thus either have personal knowledge of the signer, personal familiarity with the signature of the signer, or be satisfied of the person’s identity by comparing the signature of the signer with the signature and photograph of a current ID card or document issued by the United States, this State, any other state, or a national government.
- a statement of voluntary acknowledgment. Example: “... and acknowledged that he executed the same as his free act and deed.” The notary should always ask the signer to admit, recognize, or acknowledge that the person is aware of the terms and existence of the instrument the person has signed, and that the person signed the same freely and willingly.

4. Testimonium Clause. Example: “In witness whereof, I have hereunto set my hand and official seal.” The notary then signs the notary’s official signature, impresses the notary’s seal, and fills in the notary’s commission expiration date.

The following is an example of an acknowledgment for an individual:

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF MAUI                    )

On this        day of \_\_\_\_\_, 20    , before me personally appeared John Doe, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Witness my hand and seal.

(SEAL)                                    \_\_\_\_\_  
  (Print name of Notary Public)  
My commission expires:    (exp. date)

The following is an example of a corporate acknowledgment:

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF HAWAII                    )

On this        day of \_\_\_\_\_, 20    , before me personally appeared John Doe and James Smith, to me personally known, who being by me duly sworn, did say that they are the President and Secretary, respectively, of XYZ Corporation, and that the seal affixed to the instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation by authority of its board of directors, and John Doe and James Smith acknowledged the instrument to be the free act and deed of the corporation.

(SEAL)                                    \_\_\_\_\_  
  (Print name of Notary Public)  
My commission expires:    (exp. date)

If the corporation has no corporate seal, the notary should line out and initial “the seal affixed to the instrument is the corporate seal of the corporation” and add “and that the corporation has no corporate seal.”

The following is an example of an acknowledgement of an individual acting by power of attorney:

STATE OF HAWAII )  
 ) SS.  
COUNTY OF KAUAI )

On this day of \_\_\_\_\_, 20 , before me personally appeared Jane Smith, to me known to be the person who executed the foregoing instrument on behalf of Greg Thompson and acknowledged that she executed the same as the free act and deed of said Greg Thompson.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

(SEAL) \_\_\_\_\_  
(Signature of Notary Public)  
Print name of Notary Public  
My commission expires: (exp. date)

An acknowledgment of an individual acting by power of attorney should never be notarized unless the notary is completely satisfied that the attorney-in-fact does indeed have the authority to sign the instrument for the individual executing the instrument, and that the power of the attorney is in full force and effect.

**Notary Certificate**

Pursuant to HAR § 5-11-8, “every acknowledgment or jurat shall be evidenced by a certificate signed and dated by a notary public”. The certificate shall include:

- 1. The printed name of the notary;
- 2. The official stamp or seal of the notary;
- 3. The signature of the notary;
- 4. The identification of the jurisdiction in which the notarial act is performed;
- 5. The date of the notarization..

The following is an example of a certificate that complies with HAR § 5-11-8.

Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_  
  
\_\_\_\_\_  
Notary Signature Date (Stamp or Seal)  
\_\_\_\_\_  
NOTARY CERTIFICATION

If filing with the Bureau of Conveyances, use the following certificate to comply with HRS §§ 502-41 et. seq.:

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_  
Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_  
Doc. Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Notary Signature Date (Stamp or Seal)



As an alternative, the requisite notary certification information can be included within the jurat or acknowledgment itself (for example, one form of a particular type of notarization could be: "This document, dated \_\_\_\_\_, was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, (year), in the \_\_\_\_\_ Circuit of the State of Hawaii, by John H. Doe.")

### Fees Notaries May Charge

HRS § 456-17 provides that notaries (and, in limited circumstances set forth in HRS § 456-18(3), notaries in government services) are entitled to receive the following fees for notarial services:

- For noting the protest of mercantile paper..... \$5.00  
 (Noting of a "protest" in this case is a formal written statement made by the notary public under the notary's seal of office, that at the request of a holder of a mercantile paper [negotiable paper, such as bills, notes, checks, etc.], the holder presented said mercantile paper to a third party for payment on a certain date, but that such payment was refused for certain reasons, whereupon the notary notified certain parties of the refusal. Protests of mercantile paper are usually done by banks and other financial institutions.)
- For each notice and certified copy of protest..... \$5.00  
 (Besides protests of mercantile paper, there is a protest connected with maritime law. A maritime protest is a written statement made by the master of a vessel, attested by a notary, to the effect that damages suffered by the ship in the ship's voyage were caused by storms or other perils of the sea without any negligence or misconduct on the master's part.)
- For noting any other protest..... \$5.00
- For every notice thereof and certified copy of said protest..... \$5.00
- For every deposition or official certificate or copy thereof..... \$5.00  
 (A "deposition" is the testimony of a witness taken not in open court and reduced to writing and duly authenticated; it is usually intended to be used at trial or in preparation for trial.)
- For administration of an oath, including the certificate of such oath (for original plus four copies)..... \$5.00
- For affixing the certificate of an oath to every duplicate original instrument beyond four..... \$2.50
- For taking any acknowledgment (original plus one duplicate original)..... \$5.00  
 for each party signing
- For affixing the certificate of an acknowledgment to every duplicate original beyond the first copy..... \$2.50  
 for each person making the acknowledgment
- For administration of an oath of loyalty.....**No charge**  
 (An "oath of loyalty" in most instances is taken by one who is employed by or serves in the State or county governments.)

**The charges for official services must be limited to the prescribed fees. An overcharge is deemed to be a violation of law.** The notary may make further charges for unofficial services, but the charging of a round sum for notarial and other services together is not permissible. A notary may charge less than the statutory fees for the notary's acts.

A notary who charges for the notary’s official services must secure a State gross income tax license. Fees collected by the notary are subject to the State general excise tax.

**Fees Charged To Notaries**

The Attorney General shall charge and collect the following fees for:

Application for commission notary public commission.....	\$20.00
Application for renewal of notary commission.....	\$20.00
Application for restoration of forfeited commission.....	\$10.00
Application for reinstatement of suspended commission.....	\$10.00
Issuance of notary public commission.....	\$100.00
Renewal of notary public commission.....	\$100.00
Restoration of forfeited commission.....	\$80.00
Each examination.....	\$10.00
Application for new Remote Online Notary Commission.....	\$20.00
New Remote Online Notary Commission .....	\$100.00
Remote Online Notary Renewal application and commission .....	\$120.00
Application and restoration of forfeited Remote Online Notary	\$90.00
Commission name change.....	\$10.00
Change in name, employer, residential or business address, Telephone number, or judicial circuit.....	\$10.00
Replacement of notary public commission certificate.....	\$10.00
Certified copy of record of each notarial transaction from a notary public’s record book in the disposition of the Attorney General, <u>per notarial transaction</u> .....	\$5.00
Copying, per printed page.....	\$0.25

Checks should be made out to “**State Director of Finance**”.

The fees collected by the Attorney General shall be deposited into the notaries public special fund established by HRS § 456-9.5, except that if that fund is terminated, the fees shall thereafter be deposited with the director of finance to the credit of the general fund.

The court fees for filing a copy of a commission and for each certificate of authentication shall be specified by the Supreme Court.

## **Notaries Public Special Fund**

There is established in the state treasury the notaries public special fund into which shall be deposited:

1. All fees, charges, or other payments received pursuant to HRS § 456-9;
2. Penalties and fines for violations of HRS §§ 456-3, 456-7, or 456-16;
3. Appropriations made for deposit into the notaries public special fund; and
4. Interest earned on money in the notaries public special fund.

The notaries public special fund shall be administered by the Department of the Attorney General. Notwithstanding any law to the contrary, moneys in the notaries public special fund shall be used for personnel costs, the acquisition of equipment, and operating and administrative costs deemed necessary by the Department of the Attorney General to administer HRS Chapter 456. The moneys in the fund may also be used to train personnel as the Attorney General deems necessary, and for any other activity related to notaries public.

#### IV. REMOTE ONLINE NOTARIES PUBLIC

A remote online notary public (RON) located in this State may perform a notarial act for a remotely located individual using communication technology if:

The remote online notary public can identify the remotely located individual through:

1. Personal knowledge
2. Credible witness
3. Satisfactory evidence using at least two different types of identity proofing.

HRS §456-23; HAR §§5-11-69 and 5-11-70

A RON must be able to confirm that a document before the RON is the same document in which the remotely located individual made a statement or one which the remotely located individual executed a signature. HRS §456-23

The RON or a person acting on behalf of the RON creates an audiovisual recording of the performance of the notarial act which must be retained by the RON or caused to be retained by a repository for a period of no less than 10 years. HRS §456-23.

Only a notary public with an active commission may apply for a remote online notary public commission. HAR §5-11-62.

##### **Term of commission as remote online notary public**

A remote online notary public's commission to perform notarial acts for remotely located individuals shall expire on the same date as the notary public's commission. HAR §5-11-66

##### **Application for a remote online notary public commission.**

(a) Only a notary public with an active commission may apply for a remote online notary public commission.

(b) Each applicant for a remote online notary public commission shall complete and file with the attorney general an application for commission of remote online notary public. In addition to the information required under HAR § 5-11-21(b), a completed application shall include:

- (1) A non-refundable application fee;
- (2) The applicant's email address;
- (3) The applicant's notary public commission number;
- (4) A description of the communication technologies and devices that the applicant intends to use to perform remote online notarization;
- (5) The name, address, and website address of any vendors or other persons that will directly supply to the notary public the technologies and devices that the notary public intends to use;
- (6) A description of the data storage methods to maintain a secure backup of electronic journals and audiovisual recordings;
- (7) A statement certifying that the applicant has obtained a digital certificate from a qualified certificate authority or a trusted service provider to be used by the applicant in performing remote online notarizations; and
- (8) A statement of compliance that the technologies named in the application are fully compliant with chapter 456, HRS, and this chapter.

HAR §5-11-62

## Identity Proofing

(a) If a remote online notary public does not have satisfactory evidence of the identity of a remotely located individual, the remote online notary public shall reasonably verify the remotely located individual's identity through two different types of identity proofing

(b) The analysis of the identity credential and the knowledge-based authentication shall conform to the following requirements:

(1) Credential analysis. The analysis of an identity credential shall use public or private data sources to confirm the validity of the identity credential presented by a remotely located individual and shall, at a minimum:

(A) Use automated software processes to aid the remote online notary public in verifying the identity of each remotely located individual;

(B) Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;

(C) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and

(D) Enable the remote online notary public visually to compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the remote online notary public in real time through communication technology; and

(2) Knowledge-based authentication. A knowledge-based authentication is successful if it meets the following requirements:

(A) The remotely located individual shall answer a quiz consisting of a minimum of five (5) questions related to the remotely located individual's personal history or identity formulated from public or private data sources;

(B) Each question shall have a minimum of five (5) possible answer choices;

(C) At least eighty per cent (80%) of the questions shall be answered correctly;

(D) Enable the remote online notary public visually to compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the remote online notary public in real time through communication technology; and

(2) Knowledge-based authentication. A knowledge-based authentication is successful if it meets the following requirements:

(A) The remotely located individual shall answer a quiz consisting of a minimum of five (5) questions related to the remotely located individual's personal history or identity formulated from public or private data sources;

(B) Each question shall have a minimum of five (5) possible answer choices;

(C) At least eighty per cent (80%) of the questions shall be answered correctly;

(D) All questions shall be answered within two (2) minutes;

(E) If the remotely located individual fails the first attempt, the remotely located individual may retake the quiz one time within twenty-four (24) hours;

(F) During a retake of the quiz, a minimum of forty per cent (40%) of the prior questions shall be replaced;

(G) If the remotely located individual fails the second attempt, the remotely located individual is not allowed to retry with the same remote online notary public within twenty-four (24) hours of the second failed attempt; and

(H) The remote online notary public shall not be able to see or record the questions or answers.

HAR §5-11-69

## Standards for Communication Technology

(a) A remote online notary public may not perform a notarial act for a remotely located individual unless the technology identified by the remote online notary public satisfies all of the following:

- (1) Provides continuous synchronous audiovisual feeds;
- (2) Provides sufficient video resolution and audio clarity to enable the remote online notary public and remotely located individual to see and speak with each other simultaneously through live, real-time transmission;
- (3) Provides sufficient captured-image resolution for identity proofing;
- (4) Provides a means of authentication that reasonably ensures only authorized parties have access to the audiovisual record of the performed notarial act;
- (5) Provides for the recording of the remote online notarial act in compliance with this chapter in sufficient quality to ensure the verification of the remote online notarial act;
- (6) Ensures that any change to or tampering with an electronic record is evident after the electronic notary signature and notary seal have been affixed and the remote online notarial act has been completed is evident;
- (7) Provides confirmation that the electronic record presented is the same electronic record notarized;
- (8) Provides the notary public with a means of electronically affixing the notary public's notary seal, signature, and notarial certificate to the notarized document based on an electronic technology standard that utilizes public key infrastructure (PKI) technology from a PKI service provider that is X.509 compliant;
- (9) Provides an electronic-format notary journal that complies with the provisions of chapter 456, HRS, and this chapter to document the remote online notarial acts;
- (10) Provides that if a remotely located individual shall exit the workflow or if the workflow is interrupted for any reason, the remotely located individual shall restart the identity verification process from the beginning; and
- (11) Provides security measures the attorney general deems reasonable to prevent unauthorized access to:
  - (A) The live transmission of the audiovisual communication;
  - (B) A recording of the audiovisual communication;
  - (C) The verification methods and credentials used in the identity proofing procedure;
  - (D) The electronic records presented for online notarization; and
  - (E) Any personally identifiable information used in the identity proofing.

(b) The online notary public shall immediately cease performing remote online notarial acts and notify the attorney general if:

- (1) The technology no longer permits the remote online notary public to meet the requirements of chapter 456, HRS;
- (2) The vendor ceases to provide the technology, which met the requirements of this section;
- (3) The vendor has failed to protect from unauthorized access any information it is required to protect under chapter 456, HRS or any other laws in Hawaii; or
- (4) Any other grounds that may materially affect the ability of notaries public to meet the requirements of Hawaii law.

HAR §5-11-71

**Electronic Signature and Electronic Notary Seal;  
Electronic Stamping Device; Electronic Notarial Certificate**

(a) In addition to the rubber stamp notary seal, a remote online notary public shall obtain and keep one or more electronic stamping devices. An electronic stamping device shall consist of a digital certificate complying with the X.509 standard. A remote online notary public shall attach or logically associate the remote online notary public's electronic signature and electronic notary seal to an electronic document that is the subject of a notarial act for a remotely located individual by use of a digital certificate. A remote online notary public may not perform a notarial act for a remotely located individual if the digital certificate:

- (1) Has expired;
- (2) Does not comply with HAR § 5-11-71;
- (3) Is invalid; or
- (4) Is incapable of authentication at the time the notarial act is performed.

(b) Prior to the application of a digital certificate on an electronic document, the remote online notary public shall apply their electronic signature, notarial certificate, and electronic notary seal, that, when logically associated with an electronic document, shall contain the name of the notary public, the commission number of the notary public, and the words "notary public" and "State of Hawaii".

(c) The remote online notary public shall use technology from a third-party provider of the communication technology for an electronic stamping device, electronic signature, electronic notary seal, and electronic notarial certificate.

(d) The electronic notarial certificate shall comply with HRS §§ 456-21 and 456-23, the form of certificate provided in HRS § 502-41, if applicable, or the form of certificate provided by other applicable law, and this chapter, and shall indicate that the notarial act was performed using communication technology.

(e) A remote online notary public shall safeguard and maintain sole control of the remote online notary public's electronic notary seal and electronic stamping device by means of use of a password or other secure method of authentication.

(f) Upon resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, the remote online notary public shall destroy or disable the remote online notary public's electronic stamping device, including but not limited to, any coding, disk, digital certificate, card, software, or password, that enables the notary public to attach the electronic notary seal to an electronic record. The remote online notary public shall submit a declaration to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal in which the remote online notary public declares that the electronic stamping device was disabled and indicates the date and manner in which the electronic stamping device was disabled.

HAR §5-11-72

**Retention and Repositories of Electronic Journal and Audiovisual Recording**

(a) In addition to the tangible journal required of all notaries public, a remote online notary public shall retain an electronic journal and any audiovisual recording in a computer or other electronic storage device that protects the journal and recording against unauthorized access by password or cryptographic process. The electronic journal and audiovisual recording shall be maintained and retained in an industry-standard audiovisual file format that can be viewed by the attorney general without the need for additional software.

(b) A remote online notary public shall take reasonable steps to ensure that a backup of the electronic journal and audiovisual recording exists and is secure from unauthorized use.

(c) On the death or adjudication of incompetency of a current or former remote online notary public, the remote online notary public's personal representative or guardian, or any other person knowingly in possession of an electronic journal or audiovisual recording shall comply with the retention requirements and transmit the journal and recording to:

- (1) One or more repositories under subsection (d); or
- (2) The attorney general in an industry-standard data storage device that is readable without the need for additional software or password or cryptographic process.

(d) A remote online notary public, a guardian or personal representative of a remote online notary public, or any other person knowingly in possession of an electronic journal or audiovisual recording may, by written contract, engage a third person to act as a repository to provide the storage required by this chapter. A third person under a contract pursuant to this subsection shall be deemed a repository. The contract shall:

(1) Enable the notary public, the guardian or personal representative, or the person in possession to comply with the retention requirements, even if the contract is terminated; or

(2) Provide that the information will be transferred to the attorney general in an industry-standard data storage device that is readable without the need for additional software or password or cryptographic process upon the attorney general's request or if the contract is terminated.

(e) At any time, the electronic journal and audiovisual recording shall be subject to reasonable periodic, special, or other audits or inspections by the department.

(f) The remote online notary public shall retain the remote online notary public's electronic journal and audiovisual recording for ten years after the performance of the last notarial act chronicled in the journal. The notary public shall provide to the attorney general the location of the electronic journal upon resignation from, or revocation or abandonment or suspension of, a commission, or the expiration of a commission without renewal.

HAR §5-11-73

### **For a Remotely Located Individual Located Outside the United States**

(A) The document to be notarized:

- (i) Is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States;
- (ii) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; or
- (iii) Involves a transaction with a bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, including a bank so insured and that is located in the Federated States of Micronesia, Republic of the Marshall Islands, or Republic of Palau; and

(B) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

HRS §456-23

### **DISCLAIMER**

The information contained in this manual is intended to provide general information and is not a substitute for obtaining legal advice or other competent professional assistance to address specific situations. Since this manual does not contain subsequent changes to the law, it should only be used as a general source of information and is not intended to be a substitute for a careful reading of the statutes and rules pertaining to notaries. Readers are advised to check the current laws to determine if any changes have occurred since publication.