

Delaware Notarial Authorized Duties

Terminology

Title 29, Part IV, Chapter 43, Subchapter 2, §4321 (1)-(3); (13)-(21);(24)

1. **“Acknowledgment”** shall mean a statement by a person that the person has executed an instrument for the purposes stated therein. If the instrument is executed in a representative capacity, an acknowledgment certifies that the person who signed the instrument did so with proper authority and executed the instrument as the act of the person or entity stated therein.
2. **“Affirmation”** shall mean a promise of truthfulness that is a solemn, spoken pledge on one’s own, personal honor without reference to a Supreme Being.
3. **“Copy Certification”** means a notarial act in which a notary:
 - Is presented with a document that is not a public record;
 - Copies or supervises the copying of the document using a photographic or electronic copying process;
 - Compares the document to the copy; AND
 - Determines that the copy is accurate and complete.
14. **“Notarial act”** shall mean any act that a notary public of this State is authorized to perform and includes:
 - Taking an acknowledgement;
 - Administering an oath or affirmation;
 - Taking a verification upon or affirmation;
 - Certifying or attesting a copy;
 - Noting a protest of a negotiable instrument.
15. **“Oath”** shall mean a promise of truthfulness that is a solemn, spoken pledge to a Supreme Being.
16. **“Personal Knowledge of Identity”** or **“Personally Knows”** means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.
- 17 **“Prima-facie evidence”** shall mean evidence that would, if uncontested, establish a fact or raise a presumption of a fact.
- 20 **“Representative capacity”** shall mean:
 - For and on behalf of a corporation, partnership, trust or other entity as an authorized officer, agent, partner or other representative;
 - As a public officer, personal representative, guardian or other representative in the capacity recited in the instrument;
 - As an attorney, in fact for a principal; OR
 - In any other capacity as an authorized representative of another.
- 21 **“Satisfactory Evidence of Identity”** means identification of an individual based on:
 - Examination of 1 or more of the following documents bearing a photographic image of the individual’s face and signature; A United States Passport, a certificate of United States Citizenship, a certificate of Naturalization, an unexpired foreign passport, an alien registration card with photograph, a state-issued driver’s license or a state-issued identification card or a United States military card; OR
 - The oath or affirmation of 1 credible witness unaffected by the document or transaction who is personally known to the notary and who personally knows the individual or of 2 credible witnesses unaffected by the document or transaction who each personally knows the individual and shows to the notary documentary identification as described in paragraph (21)a. of this section..
- 24 **“Verification upon oath or affirmation”** shall mean a statement by a person who asserts that the statement is true and makes the assertion upon oath or affirmation.

Notarial Acts

The notary statute allows the Delaware Notary to:

- Take an Acknowledgement;
- Administer an oath or affirmation;
- Take a verification upon oath or affirmation;
- Witness or attest a signature;
- Certify or attest a copy;
- Note a protest of a negotiable instrument.

Taking an Acknowledgement

The acknowledgement is the most common notarial act. To acknowledge means to “recognize as one’s own.” As acknowledgement enables a document to be publicly recorded (a deed, for example) or actually proves its execution. The signer is acknowledging that the signature on the document is his or hers, and that the document was signed willingly for its stated purpose. The document will need to be signed before the verbal ceremony takes place. The notary certifies in a notarial certificate that these actions were completed.

You usually see acknowledgements on most real estate transactions, deeds, contracts, powers of attorney, or any type of document where a person has to agree to some particular terms of the document.

If the document is executed in a representative capacity, an acknowledgement certifies that the person who signed the document did so in behalf of and executed it as the act of the person or entity states therein. The document requiring an acknowledgement does not have to be signed in the presence of the notary, but it must display the signer’s original, “wet-ink” signature.

Difference Between an Oath and Acknowledgement

The difference between an oath and an acknowledgement is extremely important. In an oath or affirmation, a person swears to or affirms the truthfulness of statements made. In an acknowledgement, a person is not swearing to the truth of statements, but is confirming that a document was willingly executed and signed by him/her and that the signer understands the nature and purpose of the act. To take an acknowledgement, the notary performs a verbal ceremony by asking the signer a question in substantially the following form:

“Do you acknowledge that this is your signature and that you understand this document and signed it willingly for the purposes stated herein?”

The signer’s response, “Yes,” **OR** “I DO” completes the verbal ceremony.

Acknowledgement Certificates

In executing an acknowledgement certificate, the notary certifies that:

- The signer personally appeared before the notary on the date and at the location states.
- The signer was positively identified by the notary.
- The signer acknowledged to the notary that the signature being acknowledged was freely made for the purpose stated in the document, and, if applicable, acknowledged also that the signer had authority to sign as a representative.
- The notary verbally administered an acknowledgement to the signer, and the signer responded in the affirmative.

The following individual acknowledgement certificate contains all the elements listed above:

Certificate of Acknowledgement

State of Delaware
County of _____

This instrument was acknowledged before me on _____
(mm/dd/yyyy)

by _____
(Printed name of document signer)

(SEAL)

Signature of Notary
Notary Public
My commission expires: _____

Identification:

- Personally known
 See attached Affidavit of Credible Witness
 Presented satisfactory evidence

Type and expiration date of identification document: _____

Certificate of Acknowledgement, Representative Capacity

State of _____
County of _____

This instrument was acknowledged before me on _____
(mm/dd/yyyy)

By _____
(Printed name of document signer)

As _____ for _____
(r
(Representative capacity) (Person named on document)

(Seal)

Signature of Notary
Notary Public
My commission Expires: _____

Identification:

- Personally known
 See attached Affidavit of Credible Witness
 Presented satisfactory evidence

Type and expiration date of identification document: _____

A common representative capacity is "attorney in fact" when the person in front of the notary is signing for the person names on the document using a power of attorney. The signature on the document would be "John Doe as attorney-in-fact for Mary Smith." Someone may also be signing as an officer of a company or a trustee.

Individual Acknowledgment Certificate

State of _____
SS.

County of _____

On this ____ day of _____, 20____, before me, _____, the undersigned Notary Public, personally appeared _____, personally known to me OR proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they freely executed it.

Witness my hand and seal.

Signature and seal of Notary Public OR

Witness my hand and official seal.

Signature and seal of Notary Public L. S.

My Commission expires: _____

Samples of Documents Notarized with an Acknowledgments:

- Deeds --- Grant, Trust, Quitclaim, Warranty
- Garnishment of Wages
- Living Will
- Parental Permission Forms
- Homestead Declaration
- Patents – Signatures of Corporate Officers
- Acknowledgment of Disbursement
- Prenuptial Agreements
- Letters
- Releases – Medical, Lien, etc.
- Bid Requests
- Powers of Attorney
- Bid Bonds
- Automobile Transfers
- Change Orders
- Leases
- Security Agreement
- Certificates of Insurance
- Medical Power of Attorney
- Transfer of Funeral Plot
- Deed of Easement
- Quarter Horse Registrations
- Mechanic’s Lien
- Notary Bonds
- Cosigner Responsible for Lease
- Contracts

Administering an Oath or Affirmation

An “oath” is a pledge with a legal purpose made to a Supreme Being. A person who takes an oath may be prosecuted for perjury in the event of falsehood. A notary administers or gives an oath to a person and the person takes the oath or swears to be information. When administering an oath, the notary must perform a “verbal ceremony”, that is, the notary makes a verbal statement that the oath-taker repeats verbatim, or asks a question to which the oath-taker makes an affirmative response.

An “affirmation” is a promise of truthfulness that is a solemn, spoken pledge on one’s personal honor without reference to a Supreme Being. The Affirmation carries the same legal weight as the oath, but omits the reference to God. Some signers may prefer this for religious or other reasons.

An oath must be given in person.

Notaries may administer any oath required by state law, including an Oath of Office or a Statement of Officer, to public officials. If preferred, the notary may ask the signer to raise his or her right hand in a pledging gesture. Such a ceremony impresses upon the signer the solemnity of the oath taken. The best way to administer an oath or affirmation (for the execution of a document) is for a notary to simply ask the oath-taker the question:

“Do you solemnly swear under the penalties of perjury that the statements that you are about to make Will be the truth, so help you God?”

For an affirmation, the notary would ask:

“Do you solemnly affirm under the penalties of perjury that the statements that you are about to make Will be the truth?”

The oath-taker must respond by saying “yes”, “I do” or “I will” if the oath is posed in the form of a question or must simply repeat the oath verbatim. If the signer is unable to speak, the signer may nod or use some other gesture to indicate agreement or write a response. This ceremony must take place. If no oath is given, or if there is no response, the oath has not been properly administered, possibly invalidating the transaction. Failure to administer an oath or affirmation when required constitutes grounds for revocation of the notary commission.

An affirmation is an act in which a person affirms the truthfulness of a statement or document the penalties of perjury, and is bound by his or her own conscience to tell the truth. There is no reference to a Supreme Being in an affirmation. The wording for administering an affirmation is similar to an oath, omitting any reference to a Supreme Being. To administer an affirmation (for the execution of a document), the notary simply asks the signer or affirmant:

.....“Do you affirm under the penalties of perjury that the information contained in this document is the truth”

Only the individual may take the oath or affirmation. A corporation, partnership, or trust may not take an oath or affirmation. The person signing on behalf of a corporation, partnership, or trust may take an oath or affirmation as an individual, swearing or affirming that he or she has both personal knowledge of the facts to be sworn to or affirmed and the authority to sign for the corporation, partnership, or trust.

An oath given to a person as an Oath of Office may be spoken by the notary and repeated verbatim by the office holder.

I (name of person taking oath) do hereby swear that I will uphold the office of.....”

Taking a Verification upon Oath or Affirmation

An oath of affirmation will appear on documents in which the signer has written information or made a statement such as an application or affidavit. The document requires notarization so the signer of the document can verify that the contents of the document are true.

The notary administers a verbal ceremony for an oath or affirmation, as follows:

"Do you solemnly swear under the penalties of perjury that the information contained in this Document or statement is the truth, so help you God?"

The spoken affirmation would be:

"Do you solemnly affirm under the penalties of perjury that the information contained in this Document or statement is the truth?"

In order to complete the verbal ceremony and for the notarization process to proceed beyond this point, the signer must verbally respond by saying "YES" **OR** "I DO."

For documents requiring an oath/affirmation, the document must be signed by the signer/oath-taker in the presence of the notary.

The following is an example of a jurat, the notarial certificate used for verification under oath or affirmation.

Jurat Certificate

State of Delaware
County of _____

Signed and sworn to (or affirmed) before me on this _____ day of
_____, _____, by _____.
(Month) (Year) (Printed name of document signer)

(SEAL)

(Signature of Notary Public)

Notary Public

My commission Expires: _____

Identification:

- Personally known
 See attached Affidavit of Credible Witness
 Presented satisfactory evidence

Type and expiration date of identification document: _____

Partial Listing of Affidavit Types:

Affidavit of Domestic Relation
Physician's Affidavit of Recovery
Affidavit of Witness
Return to Work Affidavit
Affidavit of Character
Affidavit of Forgery
Affidavit of Domicile

Affidavit of Purchase
Affidavit of Support
Affidavit of Aired Commercials
Affidavit of Seller
Affidavit of Medical Records Copied
Affidavit of Permission of Travel
Affidavit of DWI
Affidavit of Lien
Affidavit of Journeyman's Hours
Affidavit on Absentee Ballot
Affidavit of Stolen Share Drafts

Witness or Attest a Signature

A notary may be asked to witness a signature on a document for which neither an oath nor an acknowledgement is required. The document creator or recipient wants a positive identification of the person signing the document, however. The person signing this document in the presence of the notary must personally appear before the notary and sign the document in the presence of the notary. This notarial act is intended to lessen the risk of a forged signature and add the authority of a public officer who witnesses the signing of the document. In these two (2) ways the person's signature on a document is given credibility. In witnessing a signature the notary certifies:

1. The signer personally appeared at the time of the notarization.
2. The signer was positively identified.
3. The signer signed the document in the presence of the notary.

The following is a sample certificate for witnessing a signature.

Certificate for Signature Witnessing

State of Delaware
County of _____

Signed before me this ____ day of _____, 20____, by

(Name of signer)

Identification:

- Personally known
 See attached Affidavit of Credible Witness
 Presented satisfactory evidence

Type and expiration date of identification document:

(SEAL)

Signature of Notary
Notary Public
My commission Expires: _____

Certify or Attest a Copy

Notaries are often asked to make certified copies of documents for clients who are requested to provide certain information to individuals or public agencies. To certify means to authenticate or to attest as being true or as

represented. These official copies provide credibility and assurance to the receiving party that information has not been altered from the original document.

How to Certify a Copy

To make a certified copy of a document, the following criteria must be met:

- The document must be an original document. You cannot make a certified copy from a photocopy or from another certified copy.
- The document cannot be a vital record or a document that is recordable in the public records within the State of Delaware.
- To ensure that the document has not been altered, the notary must make the photocopy or supervise the making of the photocopy from the original. It is not enough to simply compare a photocopy to the original document.
- The notary must complete a notarial certificate for a certified copy on the photocopy or as an attachment.

Prohibited Recordable Documents

A notary must not make certified copies of recordable documents. Recordable documents include the following:

- Deeds, mortgages, and other instruments dealing with real estate.
- Vital records including birth certificates, death certificates, marriage records, and divorce records.
- Powers of Attorney.
- Probate Wills.
- Student records or transcripts from public schools, colleges, or universities.
- Military discharges.
- Some instruments relating to personal property, such as secured transactions under the Uniform Commercial Code.
- Pleadings and other documents related to legal proceedings before courts and administrative agencies.
- Any document marked "filed" or "recorded" and most documents retained by a government office.
- Photographs (Notaries are NOT authorized to certify the authenticity of photographs. When asked to perform this service, the best alternative is to administer an oath or complete a jurat for a person making an affidavit about the identity of the person or object in the Photograph. This takes the liability off the notary and puts it on the person making the sworn statement about the photograph).

This list is not an exhaustive list of all recordable documents. If in doubt as to whether a document is recordable, you should either contact the County Clerk's office or the government agency that issued the document, or simply refuse to make the certified copy.

Documents Eligible for Copy Certification by a Notary.

A notary is generally permitted to duplicate and certify many types of documents, assuming that the previously stated criteria are met:

- Documents involving business transactions, i.e. bank loan documents.
- School diplomas (but not official school records or transcripts).
- Personal letters.
- A Social Security card (the Social Security Administration will certify information regarding the Social Security number, a person's account status, and eligibility is a letter, and will issue a duplicate replacement card if the original card is lost; however, they will not certify a copy of a Social Security Card.)
- Insurance policies.
- Accounting statements.
- Contracts.
- Lease agreements.
- Invoices or bills of sale.
- Student permission forms.
- Consent to give medical treatment forms.

- Living wills.
- Consent to travel forms.

This list is not exhaustive. If there is ever a doubt as to whether a document is eligible for copy certification by a notary public and you are unable to make a determination with confidence, you should decline to perform the service.

Here is an example of a Certificate for a Certified Copy.

Certificate for Certified or Attested Copy

This certificate is attached to a ___ page document dealing with/titled _____ and
Dated _____*

State of Delaware
County of _____

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

(SEAL)

Signature of Notary Public
Notary Public
My commission expires: _____

*Use this phrase only when the certificate is being attached as a loose certificate to a copy of the document.

Note that signer identification information is not included on the certificate for a certified or attested copy, because identification of the signer is not necessary for the notary to certify or attest a copy.