

## Common Notarial Acts

The most common notarial acts that are permitted in all states are:

- Acknowledgment
- Oaths and affirmations
- Jurats (also known as verifications upon oath or affirmations)

Depending on state law, you may or may not be permitted to perform some of the following acts:

The following notarial acts are for information only.

- Copy Certification
- Proof of execution by subscribing witness
- Signature witnessing
- Deposition
- Protest
- Marriage ceremony
- Witness opening of safe deposit box

### Acknowledgments

Purpose: An acknowledgment is perhaps the most widely performed notarial act. The acknowledgment may be needed with a variety of important documents such as deeds, powers of attorney and loan agreements. The main purposes of an acknowledgment are positive identification of the document signer and verification that the signer freely signed the document.

As long as the signer acknowledges freely signing the document, the Notary does not have to witness the actual signing.

An acknowledgment requires you to certify three facts:

1. **Personal Appearance:** The signer personally appeared before you at the time of the act.
2. **Positive Identification:** You positively identified the signer as the person he or she claims.
3. **Acknowledgment of Signature:** The signer must 'acknowledge' to you the he or she freely signed the document. The signer may without duress sign the document in front of you, which proves this fact. However, if the document has already been signed, the signer must declare to you to have freely made the signature.

### Oaths and Affirmations

Purpose: An oath is a solemn, spoken pledge to a Supreme Being while an affirmation is a solemn, spoken pledge on one's own personal honor. Simply put, oaths and affirmations are spoken promises of truthfulness or loyalty and both achieve the same legal result.

Oaths and affirmations may be administered as part of a notarial act (such as with a jurat). They may be administered in conjunction with notarizing a document (such as when swearing in a credible identifying witness) or they may stand on their own as a notarial act. An oath of office, for example, is a full-fledged notarial act in its own right when administered by a notary even when there is no document or certificate. Most often, Notaries will administer oaths and affirmations as part of the execution of a jurat or when swearing in a credible identifying or subscribing witness.

Wording for Oaths and Affirmations. State laws and regulations do not always prescribe exact wording for a particular oath or affirmation. And the oath- or affirmation-taker may or may not furnish

the Notary with the necessary wording. If there is no wording provided in a given instance, the following examples may be acceptable.

**OATH:** Do you solemnly swear that the statements in this document are true, so help you God?

**AFFIRMATION:** Do you solemnly affirm that the statements in this document are true?

Credible identifying witness oath or affirmation:

**OATH:** Do you solemnly swear that you know the signer truly holds the identity he (or she) claims, so help you God?

**AFFIRMATION:** Do you solemnly affirm that you know the signer truly holds the identity he (or she) claims?

**Response Required.** The oath or affirmation wording must be spoken aloud and the person taking the oath or affirmation must either repeat the wording spoken by the Notary or answer affirmatively with, "I DO," "YES," or the like. A nod or grunt is not a clear and sufficient response. If a person is mute and unable to speak, the Notary may rely on written notes to communicate.

**Ceremony and Gestures.** To impress upon the oath- or affirmation-taker the importance of truthfulness, the Notary should lend a sense of ceremony and formality to the oath or affirmation. Some states recommend that the person swearing or affirming raise his or her right hand during the ceremony.

**Certificate.** When the oath of affirmation is not associated with another act (such as with a jurat or swearing in a credible identifying witness), there may be no document or notarial certificate involved. Oaths and affirmations may qualify as notarial acts even without a document or certificate.

### **Jurats or Verifications upon Oath or Affirmation**

**Purpose.** Like the acknowledgment, the jurat, or verification upon the oath or affirmation, is one of the most common notarial acts. A jurat requires an individual to sign a document in the presence of the Notary and take an oath or affirmation attesting to the truthfulness of the contents of the document.

Jurats are customarily executed on documents such as affidavits and depositions, which may be submitted as evidence in trials and other official proceedings.

A jurat or verification requires that you certify four facts:

1. **Personal appearance:** The signer appeared in person before you.
2. **Witnessing of signature:** You must watch the signer sign. If the document has already been signed, instruct the signer to sign again.
3. **Administer** the oath or affirmation.
4. **Positive Identification:** You positively identified the signer as the person he or she claims to be.

You must administer the oath or affirmation and the signer thereby declares the statements in the document are truthful and accurate. You do not need to verify personally that the document statements are truthful, but you must have the signer declare it.

### **Copy Certifications**

Purpose. The purpose of this notarial act is to create a copy and certify that it is true and correct reproduction of the original document. State law may prohibit copy certifications by a Notary of some or all documents in some states.

Not for Vital Records. Delaware permits copy certification, you may NOT certify copies of original vital records such as a birth or death certificates or a publicly recordable document such as a deed. Copies of these documents may lawfully be certified only by officials in the relevant public record office.

Alternative. States that do not authorize Notaries to certify copies, Notaries may notarize a signed, written declaration made by the owner or holder of a document that a copy is a true copy of the original. This process is commonly called “copy certification by document custodian” and may serve as an acceptable alternative to a Notary-certified copy. The receiving party determines if this alternative is acceptable. The requesting person, not the Notary, should provide the declaration and specify the notarial act to be performed if a notarial certificate is not already provided on the declaration. Notaries should be careful not to guide the process or to make any recommendations or claims concerning the legality or sufficiency of this alternative.

### **Proofs of Execution of Subscribing Witness**

Definition. A proof of execution is a notarial act that is performed when the document signer is unable to personally appear before the notary. A “proof” is then often acceptable under law in place of an acknowledgment – but not in every case.

Procedure. Proofs of execution are used when the principal signer is out of town or otherwise unavailable to appear before a Notary. The steps for performing a proof are:

- The signer (principal) directs a disinterested person (the subscribing witness) to witness his or her signing of a document (or the signer may acknowledge to the subscribing witness that he or she signed the document in their absence).
- The principal directs a subscribing witness to sign the document and then take the document to a Notary in order to “prove” the authenticity of the principal’s signature and the fact that it was made willingly.
- The Notary administers an oath or affirmation to the subscribing witness, who must swear or affirm that the principal’s signature is genuine and willing and that he or she (the subscribing witness) was requested to sign the document as a witness and take it to a Notary.

Because of the high potential for fraud, proofs of execution are prohibited in many states and restricted in others. For instance, only Notaries who are also members of the bar association may perform a proof in Pennsylvania. (NOTE: This notarial function/duty CANNOT be done by a notary public).

### **Signature Witnessing**

Definition. The simplest of all of acts, some states allow a Notary merely to certify that that a signer was identified and signed the documents in his or her presence.

### **Depositions**

Definition. A deposition is a signed and sworn transcript of a person’s oral statements for use in a lawsuit or trial. Many states technically authorize Notaries to take depositions, but because creating a written transcript from spoken testimony requires special skills, this is usually left to a trained stenographer or court reporter who is also a Notary or has oath-administering authority.

Notaries without specialized training should NOT attempt to take depositions – though any Notary may swear in a deponent prior in giving testimony or execute a jurat on an already created deposition.

### **Protests**

Definition. A protest is a written statement by a Notary or other authorized officer indicating that payment for a negotiable instrument has not been received. Special knowledge of financial and legal terms and procedures is required to perform this notarial act.

Notaries should execute a protest ONLY if they have proper training or if they do so under supervision of an experienced bank officer or attorney – a requirement that California has placed in their statutes.

### **Marriages**

In Florida, Maine, Nevada and South Carolina, Notaries have the authority to perform marriages. In all other states, the Notary Public may NOT “solemnize nuptials” unless the Notary is also a member of the clergy.

### **Witnessing Safe Deposit Box Opening**

Purpose. In many states law permits financial institutions such as banks to open a safe deposit box if the rental fees are overdue, attempts have been made to notify the renter and no response has been received.

Procedure. If the rental fee on a safe deposit box has not been paid and the financial institution has given proper notice to the lessee, an employee of the financial institution may open the safe deposit box in the presence of a Notary Public. The Notary will usually witness the opening of the box, inventory the contents and complete a certificate certifying such. The certificate is then mailed to the lessee’s last known address. If the Notary keeps a journal of notarial acts, it is recommended that the Notary obtain signatures of the officer of the financial institution and any other witnesses involved in the act. Laws pertaining to the opening of a safe deposit box vary by state and by each individual bank.

### **Authorized Notarial Acts in Delaware include:**

- Acknowledgments
- Oaths and affirmations
- Verifications upon oath or affirmation
- Witness / Attest signatures
- Certify / Attest copies
- Protests

### **Maximum Fees**

- \$5 per “paper notarial act”
- \$25 per “electronic notary act”