THE
NOTARY'S MANUAL
(NINTH EDITION)

BASED UPON

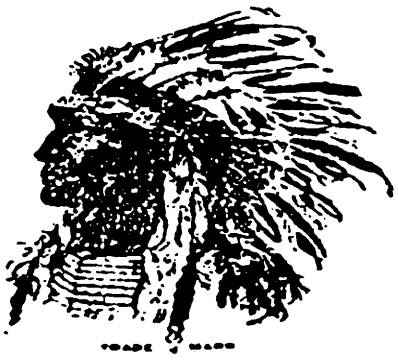
THE SECTIONS OF THE CALIFORNIA CODES RELATING TO NOTARIES PUBLIC

WITH EXTRACTS FROM AND NOTES ON STATE SUPREME COURT DECISIONS

ALSO CONTAINS

LEGAL FORMS FOR THE VARIOUS NOTARY'S CERTIFICATES AND PROTEST

PREPARED BY
A MEMBER OF THE SAN FRANCISCO BAR



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14-12-10. [Protesting bills and notes; notice.]

Each notary public when any bill of exchange, promissory note or other written instrument shall be by such notary protested for nonacceptance or nonpayment shall give notice in writing thereof to the maker and to each and every endorser of such bill of exchange, and to the maker of each security, or the endorsers of any promissory note or other written instrument, immediately after such protest shall have been made.

History: Laws 1909, ch. 55, § 8; Code 1915, § 3935; C.S. 1929, § 94-112; 1941 Comp., § 11-109; 1953 Comp., § 35-1-9.

Cross references. - For civil and criminal liability for false certificate as to protest, see 56-5-4 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 11 Am. Jur. 2d Bills and Notes § 797

14-12-20. [Notary affiliated with bank or corporation; power restricted.]

It shall be lawful for any notary public who is a stockholder, director, officer or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee or agent of such corporation or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer or employee, where such notary is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument.

14-12-1. Notaries; powers and duties.

The office of "notary public" is established. At any place within the state, a notary public may:

A. administer oaths;

B. take and certify acknowledgments of instruments in writing;

C. take and certify depositions;

D. make declarations and protests; and

E. perform other duties as provided by law.

History: 1953 Comp., § 35-1-1, enacted by Laws 1969, ch. 168, § 1.

14-12-11. [Service of notice of protest.]

Each notary public may serve notice personally upon each person protested against by delivering to such person a notice in writing, or he may make such service by placing such notice in a sealed envelope with sufficient postage thereon addressed to the person to be charged, at his last place of residence, according to the best information that the person giving the notice may obtain, and by depositing such envelope containing such notice in the United States mail or post office.

History: Laws 1909, ch. 55, § 9; Code 1915, § 3936; C.S. 1929, § 94-113; 1941 Comp., § 11-110; 1953 Comp., § 35-1-10.

14-12-12. [Recording protest notices; use as evidence.]

Each notary public shall keep record of all protest notices and of the time and manner in which the same were served and of the names of all persons to whom the same were directed. Also the description and the amount of the instrument protested, which record, or a copy thereof certified by the notary public under seal, shall at all times be competent evidence to prove such notice in any court of this state.

History: Laws 1909, ch. 55, § 10; Code 1915, § 3937; C.S. 1929, § 94-114; 1941 Comp., § 11-111; 1953 Comp., § 35-1-11.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 11 Am. Jur. 2d Bills and Notes § 798; 12 Am. Jur. 2d Bills and Notes § 1237.

PREFACE

This volume, as the name indicates, has been prepared especially for the use of notaries public. It is based upon the Codes of California and the decisions of the Supreme Court of this and other states so far as they relate to the law authorizing and governing the acts of these officers, and references to all sections and decisions are given. The chapters on deeds, mortgages and homesteads have been inserted for the purpose of giving general information on these subjects, and because the notary is frequently expected to draw as well as take the acknowledgment of these instruments. The contents of this volume on the subject of Bills and Notes is based upon the "Negotiable Instruments Law" adopted in California in 1917 and the amendments thereto. A thorough understanding of this important subject is, of course, necessary to the intelligent protesting of negotiable paper. Practical forms of certificates, notices, protests, etc., are appended.

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TABLE OF CONTENTS.

CHAPTER I.

	SEC.	PAGE
Notaries Public	1–14	9–17
Appointment	1	9
Eligibility	2	10
Qualification	3–4	10–1
Duties	5	11–2
Compensation	6	13
Jurisdiction	7	14–5
Term of Office	8	15–6
Records	9–11	16–7
Seal	12	17
Liability	13–4	17

CHAPTER II.

Acknowledgment and Proof of Instruments	15–45	18–46
Nature of acknowledgment	15	18
Nature of proof	16	19
Purpose of acknowledgment or proof	17	20
Private writings may be acknowledged	18	20
Authority to take	19	21
Mode of taking	20–25	22–33
Acknowledgment by married women	26	33
Certificate of acknowledgment	27–34	33–40
Proof of execution when not acknowledged	35–40	41–44
Certificate of Proof	41	44
Defective certificates	42–45	45–6

CHAPTER III.

Recording of Instruments	46–58	47–55
Acknowledgment necessary	46	47
What may be recorded without acknowledgment	47–9	48–49

	SEC.	PAGE
Mode of Recording	50–52	50
Purpose and effect of recording	53–55	51–2
Effect of failure to record	56	52
Unrecorded instrument when valid	57	53
Instruments to be acknowledged and recorded	58	54

CHAPTER IV.

Deeds	59–84	56–72
Definitions	59	56
Of Separate and Community Property	60	58
Must be in writing	61	60
Form and contents of	62–6	60–3
Execution	67–70	63–4
Power of attorney	71–4	64–5
Delivery	75–8	66–8
Interpretation of	79	68
Effect of	80–3	69–72
Instrument made with intent to defraud	84	72

CHAPTER V.

Mortgages	85–111	73–89
Nature of mortgages in general	85	73
Possession of the property	86	74
Transfer when a mortgage	87	75
Deeds of trust	88	76
Foreclosure	89	77
Power of attorney to execute	90	77
Assignment of debt	91	78
Record of assignment of mortgage	92	78
How discharged of record	93	79
Satisfaction of	94	80
Of real property	95–8	81–3
Of personal property	99–111	83–89

CHAPTER VI.

Homesteads	112–127	90–99
Meaning of	112	90
Head of family	113	91

	SEC.	PAGE
Selection of	114–118	91–93
Declaration of	119–121	93–5
Exempt from execution	122	95
Subject to execution	123	96
How conveyed or encumbered	124	96
Abandonment of	125	97
Proceedings on execution against homestead	126	97–8
Of insane persons	127	99

CHAPTER VII.

Affidavits	128–135	100–105
Nature of	128	100
Use of	129	100–1
Authority of notary to take	130	102
Requisites of	131–134	102–4
Mode of taking	135	104–5

CHAPTER VIII.

Depositions	136–154	106–123
Definition and nature of	136	106
When may be taken in this state	137	107
Manner of taking	138–9	108–10
Certificate to	140	110
Subpœna	141–8	111–8
Witnesses	149–151	119–21
Oaths and affirmations	152–4	121–3

CHAPTER IX.

Bills and Notes	155–253	124–186
Duty of notary in respects to	155	124
Negotiable instruments	157	126
Bills of Exchange	158–164	127–130
Promissory notes	165–168	131–132
Checks	169–170	132–3
Negotiability	171–172	133–137
Form and validity	173–179	137–143
Negotiation	180	143

	SEC.	PAGE
Indorsement	181–191	143–149
Liability of indorsers	192–195	149–151
Holder in due course	196–198	151–154
Presentment and demand for payment	199–206	154–159
Notice of dishonor	207–218	159–166
Discharge of negotiable instruments	219–224	166–170
Presentment of bills of exchange for acceptance	225–227	170–174
Acceptance of bills of exchange	228–230	174–176
Protest	231–239	177–179
Acceptance for honor	240–246	180–182
Payment for honor	247–248	182–183
Bills in a set	249	184
General definitions and meaning of words	250–253	185–186

APPENDIX.

Certificates of acknowledgment, Forms Nos. 1–7	187–190
Certificates of proof, Forms Nos. 8–11	191–195
Certificate to deposition, Form No. 12	196
Notice of protest, Form No. 13	196
Protest, Forms Nos. 14–18	197–202

The Notary's Manual

NINTH EDITION

CHAPTER I.

NOTARIES PUBLIC.

§1 Appointment.
2 Eligibility.
3-4 Qualification.
5 Duties.
6 Compensation.
7 Jurisdiction.
8 Term of office.
9-11 Records.
12 Seal
13-14 Liability

Appointment.

SECTION 1. Notaries Public are public officers appointed by the governor, usually upon petition addressed to him setting forth the qualifications of the applicant and signed by citizens and residents requesting the appointment. There is no restriction upon the number that may be appointed for the several counties of the state—the governor having authority to appoint such number "as he shall deem necessary for the public convenience"—except that the number to be appointed in counties of the second class is limited to one hundred and fifty-five.

(1) Political Code, §791

Eligibility.

SECTION 2. The only qualifications required by statute are the following: The person must, at the time of appointment, be a citizen of the United States and of this state, twenty-one years of age, and must have resided in the county for which the appointment is made for six months prior thereto. Women having these qualifications may be appointed.[2]

Qualification.

SECTION 3. *Official Bond and Oath.* When the commission is granted the appointee is required to execute an official bond in the sum of five thousand dollars which bond must be approved by a judge of the superior court of the county in which such notary is commissioned to act, and after approval the bond must be recorded in the office of the county recorder and then filed and kept in the office of the county clerk. He must also take, subscribe and file his oath of office in the office of the county clerk. The time within which he must file his official bond and take, subscribe and file his oath of office in the office of the county clerk, is twenty days from the date of his commission.[3]

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(2) Political Code, §792
(3) Political Code, §§799, 800

SECTION 4. *Certificate of Facts.* He is also required to transmit a certificate of the facts of his appointment under the hand and seal of the county clerk, together with a copy of his official oath signed by him with his own proper signature, to the office of the secretary of state, which certificate must be filed in the office of the secretary of state within thirty days from the date of his commission.[4] He is then duly qualified to perform the duties of his office.

Duties.

SECTION 5. It is the duty of notaries public,—

1. — When requested, to demand acceptance and payment of foreign, domestic and inland bills of exchange, or promissory notes, and protest the same for non-acceptance and non-payment, and to exercise such other powers and duties as by the law of nations and according to commercial usages, or by the laws of any other state, government, or country, may be performed by notaries. (See Bills and Notes, Secs. 155-253, *post.*)

2. To take the acknowledgment or proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing exe-

(4) Political Code, §800

cuted by any person, and to give a certificate of such proof or acknowledgment, indorsed on or attached to the instrument. (See Acknowledgment and Proof of Instruments, Secs. 15-45, *post.*)

3. To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board in this state. (See Affidavits, Secs. 128-135, *post;* Depositions, Secs. 136-154, *post.*)

4. To keep a record of all official acts done by them.

5. To keep a record of the parties to, date, and character of every instrument acknowledged or proved before them. (See Records, Secs. 9-12, *post.*)

6. When requested, and upon payment of their fees therefor, to make and give a certified copy of any record in their office.

7. To provide and keep official seals, upon which must be engraved the arms of this state, the words "notary public," and the name of the county for which they are commissioned.

8. To authenticate with their official seals all official acts.[5] (See Seal, Sec. 12, *post*).

(5) Political Code, §794

Compensation.

SECTION 6. The fees of notaries are fixed by law and are as follows:

For drawing and copying every protest for the non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, draft, or check, two dollars.

For drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft, or check, one dollar.

For recording every protest, one dollar.

For drawing an affidavit, deposition, or other paper for which provision is not herein made, for each folio, thirty cents.

For taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first two signatures, one dollar each, and for each additional signature, fifty cents.

For administering an oath or affirmation, fifty cents.

For every certificate, to include writing the same, and the seal, one dollar.[6]

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(6) Political Code, §798

Jurisdiction.

SECTION 7. A notary can only transact official business in the county for which he was appointed and in which he resides. His authority is confined to the county for which he was appointed and commissioned.

In the case of Fairbanks, Morse & Co. v. Getchell, 13 Cal. App. 458, a notary public in and for the County of Kern had taken the oath of an affiant in Los Angeles to an affidavit for attachment over the telephone. The evidence showed that the affiant had related the facts contained in the affidavit to the notary and stated they were true, and that the notary was familiar with his voice and recognized it over the telephone. The act of administering the oath was declared to be a nullity, and the purported affidavit upon which the attachment was issued, was declared to be void and of no effect. It was contended in that case that an oath administered by communication had between notary and affiant over the telephone, was for that reason alone void and of no effect. This point, however, was not determined, the court saying:

"Such contention finds direct support in the case of Sullivan v. First Nat. Bank, 37 Tex. Civ. App. 228 (83 S. W. 421). According to our view, however, it is unnecessary to determine this point. Assuming, but not deciding, that an oath may

be administered and the obligations thereof assumed by communication had over the telephone, the validity of such act must be held to apply to those cases only where both notary and affiant are within the territorial limits for which the notary has been appointed and commissioned."

Term of Office.

SECTION 8. The term of office is four years from and after the date of the commission.[7]

People v. Edleman, 152 Cal. 317, is an important case relating to the term of office of notaries public. In the city and county of San Francisco where the number is limited, the question arose as to whether, upon the death of a notary, the new appointee was appointed for the balance of the unexpired term, or for the full term of four years. It was there held that the office comes into full being only when and as the governor names specific men for the places; that as to his term and office, no notary is the legal successor of another, and each is appointed for the specified term; and that since, under the law, the term of a notary is made a full term of four years from the date of his commission, and as the death of a notary does not create a vacancy, each notary when appointed is appointed, not for an unexpired

(7) Political Code, §793

term, but for the full term of four years.

Resignations must be in writing and made to the governor,[8] and in case the office becomes vacant before the expiration of the term, the notary's records must be delivered to the county clerk of his county as set forth in the following section.

Records.

SECTION 9. *On Death or Resignation.* Exact and particular records are required to be kept of all official acts (see Duties, Sec. 5, subs. 4-5, *supra*), and if any notary die, resign, is disqualified, removed from office, or removes from the county for which he is appointed, his records and all his public papers must, within thirty days, be delivered to the clerk of the county, who must deliver them to the notary's successor when qualified.[9] (See Term of Office, Sec. 8, *supra*.)

SECTION 10. *Of Predecessor.* It is further provided that every notary having in his possession the records and papers of his predecessor in office, may grant certificates or give certified copies of such records and papers in like manner and with the same effect as such predecessor could have done.[10]

SECTION 11. *Open to Public Inspection.* The records in the office of a notary are public records,

(8) Political Code, §995
(9) Political Code, §796
(10) Political Code, §797

and are at all times during office hours open to the inspection of any citizen of this state.[11]

Seal.

SECTION 12. Seal of officer taking acknowledgment must be annexed, and his certificate cannot be used in evidence unless so authenticated.

In the absence of a statute requiring it, the name of the notary need not appear on his seal; but in view of the illegibility of signatures in general, it is quite important that the seal show the official name of the notary.

Liability.

SECTION 13. *On Bond.* For the official misconduct, or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all damages sustained.[12] (See Liability on bond for failure to comply with statute, Secs. 21-25, *post.*)

SECTION 14. *Criminal responsibility.* He is also criminally responsible under Section 167 of the Penal Code, which provides that every public officer authorized by law to make or give any certificate or other writing who makes and delivers as true any such certificate or writing containing statements which he knows to be false, is guilty of a misdemeanor.

(11) Political Code, §1032
(12) Political Code, §801

CHAPTER II.

ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS.

§15 Nature of acknowledgment.
16 Nature of proof.
17 Purpose of acknowledgment or proof.
18 Private writings may be acknowledged or proved.
19 Authority to take.
20-25 Mode of taking acknowledgment.
26 Acknowledgment by married women.
27-34 Certificate of acknowledgment.
35-40 Proof of execution when not acknowledged.
41 Certificate of proof.
42-45 Defective certificates.

Nature of Acknowledgment.

SECTION 15. The acknowledgment of an instrument is the declaration or admission made by the party executing it to an officer having authority to take acknowledgments, that the instrument was executed by him and the same is his act and deed. It is then the duty of the officer to indorse on or attach to the instrument his certificate of acknowledgment. (See Certificate of Acknowledgment, Secs. 27-34, *post.*) The acknowledgment adds nothing to the validity or effect of the instrument as between the parties. It "is only the mode provided by law for authenticating the act of the parties so as to entitle the

instrument to record and make it notice to subsequent purchasers, and to entitle it to be read in evidence without other proofs. If purchasers neglect to have their deeds properly authenticated and recorded, they will be liable to have their title divested by subsequent conveyances to innocent parties, and to the further inconvenience of being compelled to prove their execution when called upon to put them in evidence."[1]

Nature of Proof.

SECTION 16. It is usual to acknowledge instruments at the time of executing them, but under certain sections of our Civil Code the execution of conveyances, when not acknowledged, may be proved by the subscribing witnesses, and when the subscribing witnesses are dead or cannot be had, the end may be accomplished by proving the handwriting of the party and of the subscribing witnesses by other witnesses (see Proof of execution when not acknowledged, Secs. 35-40, *post*), and upon such proof the officer may make his certificate thereof and the instrument thereafter becomes entitled to record and to be read in evidence without further proof. It has been held that this may be done years after

(1) Landers v. Bolton, 26 Cal., 405

the actual making of the deed and even after the parties and witnesses to it are dead;[2] the law, however, protects innocent parties who have acquired rights in the meantime without notice.

Purpose of Acknowledgment or Proof.

SECTION 17. The purpose of acknowledgment is twofold: to enable the instrument to be recorded (see Acknowledgment necessary, Sec. 46, *post;* also see Purpose and Effect of Recording, Secs. 53-55, *post*), and to entitle it to be used as evidence without further proof. It is a rule of evidence that every instrument conveying or affecting real property, acknowledged or proved, and certified, as provided by law, may, together with the certificate of acknowledgment or proof, be read in evidence in an action or proceeding, without further proof.[3] (See Record of Instrument may be used in evidence, Sec. 55, *post.*)

Private Writings May Be Acknowledged or Proved.

SECTION 18. Every private writing, except last wills and testaments, may be acknowledged or proved and certified in the manner provided for the acknowledgment or proof of conveyances

(2) Landers v. Bolton, 26 Cal., 406
(3) Code of Civil Procedure, §1951

of real property, and the certificate of such acknowledgment or proof is *prima facie* evidence of the execution of the writing in the same manner as if it were a conveyance of real property.[4]

Authority to Take.—Disqualification.

SECTION 19. Acknowledgment or proof of an instrument may be made in this state, within the city, county, city and county, township or district for which the officer was elected or appointed, before either of several officers, one of which is a notary public.[5] (See Jurisdiction, Sec. 7, *supra*.) A notary is, however, disqualified from taking an acknowledgment where he himself is the grantee or mortgagee in the instrument acknowledged. In such case the acknowledgment has been held to be void and of no effect.[6] It is the general law that a party beneficially interested in an instrument is incapable of taking and certifying an acknowledgment of it. He is not, however, disqualified by reason merely of being the agent of a party to the instrument, if not pecuniarily interested in the transaction.[7] Whether a notary who is a stockholder of a

(4) Code of Civil Procedure, §1948
(5) Civil Code, §1181
(6) Lee v. Murphy, 119 Cal., 370; Murray v. Tulare, etc., 120 Cal., 311
(7) Bank of Woodland v. Oberhaus, 125 Cal., 320; Chapman v. Hicks, 41 Cal. App. 164.

corporation, has such an interest as to avoid an acknowledgment of the corporation taken before him, is not altogether clear, but such an acknowledgment seems to have been upheld in this state on the ground that the notary exercises merely ministerial, and not judicial powers. An instance of the exercise of quasi-judicial functions on the part of the notary, is where the law requires a privy examination of a married woman apart from her husband, but such law has not existed in this state since 1891.[8] In the same case, the acknowledgment of a deed to a bank taken by a notary who was assistant cashier of the bank, was declared valid.

Mode of Taking Acknowledgments.

SECTION 20. *Identity of party must be ascertained.* The notary is required to know that the person who appears before him and makes the acknowledgment is the person described in and who executed the instrument, and if he does not know it he must require satisfactory evidence of that fact. Section 1185 of the Civil Code reads as follows:

> "The acknowledgment of an instrument must not be taken, unless the officer taking it knows or has satisfac-

(8) First National Bank v. Merrill, 167 Cal., 396

> tory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation, or other person who executed it on its behalf."

The importance of a strict compliance with the course prescribed by this section in the taking of acknowledgments has been declared by the supreme court in the case of Joost v. Craig, 131 Cal. 504, and by the appellate court in the case of Homan v. Wayer, 9 Cal. App. 123, and because of the emphasis with which this matter is treated in these cases, they are quoted from somewhat at length in the following section.

SECTION 21. *Liability on bond for failure to comply with statute.* In the case of Joost v. Craig, 131 Cal., 504, a deed was apparently executed and acknowledged properly, and the certificate of the notary stated that the person who acknowledged the execution of the instrument personally appeared before him and was known to him to be the person described in and who

executed the said instrument. The deed turned out to be a forgery. The plaintiff in the case accepted the deed and paid his money, relying solely on the certificate of the notary. In its opinion the supreme court uses the following language:

"He (the grantee) had a right to rely upon the certificate of the notary and to presume without question that such officer had done his duty. * * * The whole theory that the record of such instruments gives constructive notice of the contents of recorded instruments is founded upon the proposition that upon proper investigation the genuineness of such instruments has been determined. The certificate is also received as evidence in a trial in a court of law that the deed is genuine. If the deed is not genuine but is forged, the notary and his sureties ought to be held for all damages unless they have taken the precautions expressly required by the statute. The legislature has taken great care, though considering the importance of the matter, not too great, to make this certificate reliable. * * * The notary is expressly forbidden to take the acknowledgment unless he knows that the person making the acknowledgment is the person described in the

instrument. * * * If he did not know this it should have been proven by the oath of a credible witness, whose name must be stated. (C. C., Sec. 1189.) It is not enough that the person be introduced to the notary by a responsible person. If that were enough there would be no purpose in requiring the oath, for such person could always furnish the introduction. This point has been often decided though sufficiently obvious from the statute. To take an acknowledgment upon such introduction without the oath is negligence sufficient to render the notary liable in case the certificate turns out to be untrue. * * * The same matter was discussed in State v. Meyer, 2 Mo. App., 413. The court makes some suggestions as to what degree of acquaintance will authorize the notary to certify that he has personal knowledge, and also upon the proposition that an introduction, even by a responsible person, could not be relied upon, and says: 'It is obvious that when an officer taking an acknowledgement and making a certificate assumes any such fact, he does it at his own risk. The law warns him when he has not "personal knowledge" of his own to resort to certain observances which the law supposes to be sufficient in practice to prevent imposition. * * * But such a cer-

tificate is infinitely less liable to deceive or mislead than a declaration that the party making the acknowledgment is well known to the officer making the certificate. It puts all persons upon inquiry and furnishes a clue for conducting it; and it complies with the law.' This makes the certificate upon personal knowledge a guaranty of the genuineness of the instrument, and the court adds: 'It is perfectly idle for him to protest that he did not know or suspect that his certificate was false. That may be taken for granted, but is nothing to the purpose. His business was to know that it was true.'

"A notary may take all due precautions and fully comply with the statute and still be deceived. In such case he would not be held liable, but if he has not fully complied with the statute, the rule announced above is not a whit too stringent.

"It may here be remarked that the witness by whose oath the execution of an instrument is proven when the person executing the instrument was not previously known to the officer, must himself be known to the notary. This is implied by the requirement that the officer shall certify that such person is a credible witness. When these necessary facts do not exist, the notary is expressly forbidden from taking the acknowledg-

ment at all. When the notary does not obey this statute he should expect to be held liable. And I wish to repeat, these requirements are of great importance to the business world and not at all too exacting."

This case further sets at rest the fact that notaries in taking acknowledgments act ministerially and not judicially. It appears that for judicial acts officers are not liable for either negligence or ignorance, but only for corrupt and intentional misconduct in the discharge of their official duties; while, on the other hand, ministerial officers are liable in damages.

In the case of Homan v. Wayer, 9 Cal. App. 123, the grantor named in the deed was Mary E. Griswold, but the person who acknowledged the deed was not Mary E. Griswold but one who impersonated her in the execution and acknowledgment of the deed. To this deed the notary attached his certificate in the usual form wherein he certified "before me * * * personally appeared Mrs. Mary E. Griswold, a widow, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same." It was not contended by the notary that he knew the woman whom he certified to be Mary E. Griswold. His knowledge

of her identity was gained by an introduction from a man whom he did not know, a re-assuring remark or two from this man, and an "oath" administered to the woman herself at the time of taking her acknowledgment. The court said:

"If we were permitted to consider the so-called 'oath' of the woman as proof or evidence upon which the notary could base his certificate, it did not establish the things which he is required to know and certify. The essential fact to be known by, or proven to, the notary is that the person making the acknowledgment is the person described in and who executed the instrument. The woman who executed the deed was asked if her name was Mary E. Griswold and if she was the sole owner of the property. Her name might have been Mary E. Griswold, and she not the person described in the deed. The notary is not required to certify to the ownership of the property * * * and this only indirectly bore upon the matter to be certified. The purpose of the certificate is to establish the identity of the grantor and the genuineness of the signature to the deed. * * *

"A certificate of personal knowledge is not justified by swearing the person who executed the instrument or any other person. The

statute draws a distinction between those 'known' and those 'proven to be' the individual described in the instrument. In the former case no taking of testimony and no 'satisfactory evidence' is required; it is sufficient that the officer knows. If the officer does not 'know,' then the law makes it his duty to inform himself by satisfactory evidence on the oath or affirmation of a credible witness. In this event he is called upon to certify by whose oath it was proven to him that the person whose acknowledgment was taken is the person described in the instrument. * * *

"This is not a case where a mistake was made through inadvertence, or one in which due precaution was taken, the statute fully complied with, and still the notary was deceived. It is not within the exception stated in the Joost-Craig case, but comes clearly within the rule of law declared in the case of State v. Meyer, 2 Mo. App. 413, therein cited. * * * "

The evidence in this case showed that the plaintiff relied upon the false certificate of the notary. The various defenses made on behalf of the defendant, namely: That there was a conspiracy to defraud the owner, that the neglect of the notary was not the proximate cause of the

injury, and that there was no privity of contract between the notary and the person injured, were of no avail, and it was held that the loss sustained was the result of official misconduct or neglect for which the notary and his sureties were liable.

The case of Kleinpeter v. Castro, 11 Cal. App. 83, is another case where a notary made a false certificate of acknowledgment of a forged deed and was held liable on his official bond for all damages sustained.

Again, an important case for notaries to read is that of Anderson v. Aronsohn, 181 Cal. 294. In this case the particular question discussed is, what degree of acquaintance will authorize the notary to certify that he has personal knowledge. It was held that personal knowledge involves something more than the casual meetings which followed the notary's original introduction to the parties in this transaction. That there was nothing to arouse suspicion was no excuse. The notary should have required the oath of a credible witness.

SECTION 22. *Introduction by third party not sufficient.* In addition to what has been said with respect to mere introduction by third party in the preceding section, see also Hatton v. Holmes, 97 Cal., 212, wherein the supreme court

says that a notary has no right, in disregard of the plain provision of the statute, to certify that he knows a person whom he does not know on the mere introduction of some third party, and if he does so, and loss results therefrom, he renders himself and his sureties liable to make good the loss. This case further holds, however, that this liability does not extend to a case where the negligence of the losing party is the proximate cause of the loss.

SECTION 23. *Negligence of injured party excuses notary.* Should the injured party have taken the impostor before and introduced him to the notary and requested the notary to certify to the acknowledgment and execution of the deed by the impostor, in such case, while the officer would not have been justified, he would have been guilty of contributory negligence only.[9] For cases in which the negligence of the notary was not the direct or proximate cause of the loss and he was therefore held not liable, see Bank of Savings v. Murfey, 68 Cal., 455; Overacre v. Blake, 82 Cal., 77.

SECTION 24. *Notary's negligence must be proximate cause of injury.* In Brown v. Rives, 42 Cal. App. page 482, we have the case of a party who forged the names of the owners of a piece

(9) Joost v. Craig. 131 Cal., 510

of property, and also the notarial certificate of their acknowledgments, to a deed whereby the property was conveyed to a fictitious grantee, and then assumed the name of such fictitious grantee for the purpose of deeding the property to an innocent purchaser. He was introduced in good faith to the notary who took his acknowledgment to the last named deed. In that decision the case of Joost v. Craig, *supra*, is distinguished, and the notary was not held liable for the injury to the real owners, for the reason that the deed to which he affixed his certificate was genuine, and his certificate was true. (See Mode of taking affidavits, Sec. 135 *post.*)

And where the notary's negligence was not the only cause of the injury he has not been held liable. Such is the case of Ross v. New Amsterdam Casualty Co. reported in 56 Cal. App. at page 254. In that case, while the notary negligently attached his certificate, in regular form, to a bill of sale by "John Reed" of an automobile, and it developed later that John Reed was a fictitious person, yet the notary was not held liable, for the reason that the notary does not certify to the ownership of the property but only to the identity of the grantor and the genuineness of his signature; and as the bill of sale was valueless for the reason that the title was in some one

other than John Reed, it could not be made the basis of a recovery against the notary and his surety. (Citing Heidt v. Minor, 89 Cal. 115, and McAllister v. Clement, 75 Cal. 182.)

SECTION 25. *Witness swearing falsely may be prosecuted.* We have another case (*In re* Carpenter, 64 Cal., 271) where a person appeared before the notary for the purpose of acknowledging a deed, and the notary being unacquainted with him, administered an oath to him as a witness in his own behalf for the purpose of ascertaining if he was the person who signed the deed he wished to acknowledge. Upon that evidence the notary took the acknowledgment, certified to it and returned the deed with his certificate annexed to the person making it. The court held that such party was a competent witness in his own behalf in the proceedings before the notary and when he testified falsely on the oath administered to him by the notary, he subjected himself to prosecution for perjury.

Acknowledgment by Married Women.

SECTION 26. A conveyance by a married woman has the same effect as if she were unmarried and may be acknowledged in the same manner.[10] This is now the law. Formerly (prior to 1891) it was necessary that a married woman

(10) Civil Code, §1187

should be examined and made acquainted with the contents of the instrument apart from her husband, and consequently a separate form of certificate was necessary in case of acknowledgment by a married woman. That law being repealed, the general form of certificate is now used.

Certificate of Acknowledgment.

SECTION 27. *Notary must attach.* A notary taking the acknowledgment of an instrument must indorse thereon or attach thereto his certificate of acknowledgment.[11] The form of the certificate is prescribed by law and a substantial compliance therewith is required. It is, of course, well to follow the form prescribed with exactness. However, where a certificate of acknowledgment was objected to because the officer certified that the grantor "acknowledged *to me*" the execution of the instrument (the words "to me" not being a part of the statutory form), the variation was declared immaterial. Again, where a foreign notary certified that the grantor "appeared before me, being personally known to me to be the same person described in and who executed the foregoing instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed for

(11) Civil Code, §1188

the uses and purposes therein mentioned," this was held to be a substantial compliance with the requirements of our statute.[12]

SECTION 28. *General form of.* The general form of certificate of acknowledgment is as follows:

"State of ———, County of ———, ss.

"On this ——— day of ———, in the year ———, before me (here insert name and quality of the officer), personally appeared ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the within instrument, and acknowledged that he (she or they) executed the same."[13]

[Appendix Forms Nos. 1, 2 and 3.]

SECTION 29. *Form of, when acknowledgment is by corporation.*

"State of ———, County of ———, ss.

"On this ——— day of ———, in the year ———, before me (here insert the name and quality of the officer), personally appeared ———, known to me (or proved to me on the oath of ———) to be the president (or the secretary) of the corporation that executed the within instrument (where, however, the instrument is executed in behalf of the corporation by some

(12) Holland v. Hotchkiss, 162 Cal., 376-7
(13) Civil Code, 1189

one other than the president or secretary) insert known to me (or proved to me on the oath of ———) to be the person who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same."[14]

[Appendix Forms Nos. 4, 5 and 6.]

Prior to the amendment of 1905 a conveyance by a corporation could only be acknowledged by its president or secretary.

SECTION 30. *Form of, when acknowledgment is by attorney in fact.*

"State of ———, County of ———, ss.

"On this ——— day of ———, in the year ———, before me (here insert the name and quality of the officer), personally appeared ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the within instrument as the attorney in fact of ———, and acknowledged to me that he subscribed the name of ——— thereto as principal, and his own name as attorney in fact."[15]

[Appendix Form No. 7.]

SECTION 31. *When acknowledgment is taken outside of state.* It is expressly provided that

(14) Civil Code, §1190
(15) Civil Code, §1192

any acknowledgment taken without this state in accordance with the laws of the place where the acknowledgment is made, shall be sufficient in this state; *and further*, that the certificate of the clerk of a court of record of the county or district where such acknowledgment is taken, that the officer certifying to the same is authorized by law so to do, and that the signature of the said officer to such certificate is his true and genuine signature, and that such acknowledgment is taken in accordance with the laws of the place where the same is made, shall be *prima facie* evidence of the facts stated in the certificate of said clerk.[16]

The provision of the foregoing section in regard to certificates of the clerk, is only applicable to cases where the certificate of the foreign notary does not show an acknowledgment which would be good under our own statutes.[17]

When an acknowledgment is taken in this state for the purpose of being used outside of the state, such certificate of the clerk should generally be attached.

SECTION 32. *Venue—Name and quality of officer.* "State of ———, County of ———, ss." at the head of the certificate is a part of the

(16) Civil Code, §1189
(17) Holland v. Hotchkiss, 162 Cal., 377

certificate as prescribed by law. The purpose of the venue is to show that the official act was done within the territorial jurisdiction of the officer. In the case of Emeric v. Alvarado, 90 Cal., 463, a certificate is commented on in which the venue was missing and the name and quality of the officer in the body of the certificate was left blank, and it was held that the certificate was fatally defective because it did not appear therefrom in what county or state the acknowledgment was taken. In this connection the court said: "Defects in certificates of acknowledgment should be usually overlooked as much as possible, but in this case the defect is so radical that, so far as we can see, to condone it would not be in the interest of justice." In the same case (*Id.*, p. 478) another certificate is commented on which showed the venue in the City and County of San Francisco and the official seal of the notary attached showed that he was not a notary public in and for the City and County of San Francisco, but for the county of Contra Costa. The court found that the material statements in the certificate were not true and it was insufficient on its face.

SECTION 33. *Signature—Name of office and seal—Variance.* It is further required that officers taking and certifying acknowledgments

or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices, and also their seals of office.[18] Where certificate of notary is on separate slip which is attached to instrument, his seal should be impressed through both instrument and certificate.

The proper official name of a notary is "Notary Public in and for" the county for which he was appointed. In Duckworth v. Watsonville etc. Co. 150 Cal. 521, the certificate of acknowledgment to a deed recited the name and official character of the notary as a notary public in and for the county named, in the usual form, but was signed by him merely with the words "Notary Public" after his signature, and it was objected that this was not a sufficient statement of the name of his office. The court held, however, in view of the statement made in the body of the certificate, that the name of the office was sufficiently stated after the signature.

There must be no variance between the name and description of the party as it appears in the instrument, and the name and description appearing in the certificate.

SECTION 34. *When not conclusive.* A certificate of acknowledgment is *prima facie* evi-

(18) Civil Code, §1193

dence of the fact of acknowledgment; that is, evidence which suffices for proof until contradicted and overcome by other evidence. It is therefore not conclusive and may be impeached by parol evidence that the person named therein never in fact appeared before the notary certifying to the acknowledgment. If such is the case the act of the officer is wholly void and the certificate is nothing but a fabrication. So held in Le Mesnager v. Hamilton, 101 Cal., 532. In this case the certificate of the notary showed upon its face that the instrument was duly acknowledged by one of the parties to it who was a married woman, when, in fact, she had never appeared before the notary for the purpose of acknowledging it. A distinction is made between a case of this kind where the officer is entirely without authority and his certificate is void *in toto*, and one where the party actually appeared before the notary and made some kind of acknowledgment, and an attempt is made to attack the certificate because of some defect in the manner of acknowledgment. Such a case would come within the rule which makes the certificate of acknowledgment conclusive in favor of an innocent purchaser in good faith and who has relied on the truth of the certificate.[19]

(19) De Arnaz v. Scandon, 59 Cal., 486

Proof of Execution When Not Acknowledged

SECTION 35. *How made.* Proof of the execution of an instrument when not acknowledged may be made, either (1) by the party executing it, or either of them; (2) by a subscribing witness; or (3) by other witnesses, who, under certain conditions are permitted to testify to the handwriting of the party or subscribing witness.[20] (See Handwriting, when may be proved, Secs. 38-39, *post.*)

SECTION 36. *Subscribing witness defined.* A subscribing witness is one who sees a writing executed or hears it acknowledged, and at the request of the party thereupon signs his name as a witness.[21]

SECTION 37. *By Subscribing Witness, requisites of.* If proof of the execution of an instrument is made by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness.[22] And the subscribing witness must prove that the person whose name is subscribed to the instrument as a party, is the person described in it, and that such person executed it.

(20) Civil Code, §1195
(21) Code of Civil Procedure, §1935
(22) Civil Code, §1196

and that the witness subscribed his name thereto as a witness.[23]

[Appendix Form No. 8.]

SECTION 38. *By Handwriting, when may be made.* The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead; or

2. When the parties and all the subscribing witnesses are non-residents of the state; or

3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence; or

4. When the subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or

5. In case of the continued failure or refusal of the witness to testify for the space of one hour after his appearance.[24] (See Mode of recording when execution has been established by proof of handwriting, Sec. 52, *post.*)

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(23) Civil Code, §1197
(24) Civil Code, §1198

In Follmer v. Rohrer, 158 Cal. 759, the point was made that the deed in question, being neither acknowledged nor witnessed, was not an instrument "entitled to be proved for record" and that the plaintiffs had not, therefore, shown their right under section 1203 of the Civil Code (see Section 40, *post*) to a "judgment proving such instrument." The court there held that under the foregoing section providing that "the execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, *if there is one,* in the following cases: 1. When the parties and all the subscribing witnesses are dead;* * *" the subscription of a witness is not necessary to the validity of a deed, and the language of the section last quoted carries the clear implication that where there is no such witness, proof of the handwriting of the party executing is sufficient.

SECTION 39. *What must be proved by evidence of handwriting.* The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and

2. That the witness testifying knew the person whose name purports to be subscribed to the

instrument as a party, and is well acquainted with his signature, and that it is genuine; and

3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and

4. The place of residence of the witness.[25]

Appendix Forms Nos. 9, 10 and 11.]

SECTION 40. *Powers of officer taking proof.* Officers authorized to take the proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations.
2. To employ and swear interpreters.
3. To issue subpœna.
4. To punish for contempt.[26]

Certificate of Proof.

SECTION 41. An officer taking proof of the execution of any instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.[27]

(25) Civil Code, §1199
(26) Civil Code, §1201
(27) Civil Code, §1200

Defective Certificates.

SECTION 42. *Notary may not correct.* It is the duty of the notary to take the acknowledgment and certify it as a part of the same transaction. After taking the acknowledgment and making and delivering the return, he is discharged from all further authority over the subject.[28] Therefore, if he has made a false or defective certificate and the instrument has been recorded or offered in evidence, he cannot alter or amend it.

SECTION 43. *Action to amend.* But what he cannot do can be done under the provisions of Sections 1202 and 1203 of the Civil Code, which provide that when the acknowledgment or proof of the execution of an instrument is properly made but defectively certified, any party interested may have an action in the superior court to obtain a judgment correcting the certificate;[29] and any person interested under an instrument entitled to be proved for record, may institute an action in the superior court against the proper parties to obtain a judgment proving such instrument.[30] A deed, although it is neither acknowledged nor witnessed, is an instrument entitled to be proved for record.[31]

(28) Bours v. Zachariah, 11 Cal., 281; Wedel v. Herman, 59 Cal., 507.
(29) Civil Code, §1202
(30) Civil Code, §1203
(31) Follmer v. Rohrer, 158 Cal. 755.

SECTION 44. *Judgment attached to instrument may be recorded.* A certified copy of such a judgment showing the proof of the instrument and attached thereto, entitles such instrument to record with like effect as if acknowledged.[32]

SECTION 45. *Defectively acknowledged instruments validated.* It has been the custom of the legislature, however, from time to time, to validate all previously recorded instruments, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate. This is done by amendment to Section 1207 of the Civil Code.

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(32) Civil Code, §1204

CHAPTER III.

RECORDING OF INSTRUMENTS.

§46 Acknowledgment necessary.
47-49 What may be recorded without acknowledgment.
50-52 Mode of recording.
53-55 Purpose and effect of recording.
56 Effect of failure to record.
57 Unrecorded instrument, when valid.
58 Instruments to be acknowledged and recorded.

Acknowledgment Necessary.

SECTION 46. Any instrument affecting the title to or possession of real property may be recorded—unless it belongs to one of the classes expressly excepted from the rule (see What may be recorded without acknowledgment, Secs. 47-49, *post*)—when and only when its execution has been acknowledged by the person executing it, or, if executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or proved by a subscribing witness, or the execution established by proof of the handwriting, and the acknowledgment or proof certified as prescribed by law and as set forth in the foregoing chapter.[1] The stat-

(1) Civil Code, §§1158, 1161

ute is mandatory and these steps must be taken before an instrument can be recorded.

It is provided, however, that whenever a grant of real property is made to a political corporation or governmental agency, for public purposes, that it shall not be accepted for recordation without the consent of the grantee evidenced by its resolution of acceptance attached to such deed or grant.

What May Be Recorded Without Acknowledgment.

SECTION 47. *Judgments.* Judgments affecting the title to or possession of real property authenticated by the certificate of the clerk of the court in which such judgments were rendered (and notices of location of mining claims) may be recorded without acknowledgment or further proof.[2] Also, as we have seen, a judgment obtained in an action brought for the purpose of correcting a defective certificate of acknowledgment, when attached to the instrument, entitles the same to record. (See Judgment attached to instrument may be recorded, Sec. 44, *supra.*)

SECTION 48. *Letters patent.* Letters patent from the United States or from the state of California, executed and authenticated pursuant to existing law, may be recorded without ac-

(2) Civil Code, §1159

knowledgment or further proof.[3] This refers only to the recording of letters patent affecting real property; letters patent for an invention are, of course, not entitled to record.

SECTION 49. *Certificates of residence.* Any person, firm, or corporation, may record in the office of the county recorder of any county in the state of California a certificate setting forth the name of said person, firm, or corporation, and the place of residence of said person, firm, or corporation, and the place where service of summons may be made upon said person, firm, or corporation. The said certificate must be verified by the oath of the person, or of a member of the firm, or officer of the corporation making the same, and may be recorded without acknowledgment. Such person, firm, or corporation may upon a change of place of residence file affidavit as herein provided and such last affidavit filed shall be the place designated as the place where service of summons may be made as herein provided. The fee of the recorder for recording said certificate shall be fifty cents; and the recorder shall keep in his office an index entitled "Index to Certificates of Residence," in which must be entered the name of the person, firm, or corporation in whose behalf said certificate was filed.[4]

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(3) Civil Code, §1160
(4) Civil Code, §1163

Mode of Recording.

SECTION 50. *Instrument must be recorded where.* The instrument must be recorded in the office of the county recorder of the county in which the real property affected is situated.[5] The different classes of instruments have been generally recorded in different sets of books, but the recorder now has discretion under section 4131 of the Political Code to record all instruments in one general series of books called "Official Records".

SECTION 51. *When deemed recorded.* The instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited with the proper officer for record.[6] The time of recording is endorsed on the instrument when deposited, and is important, as it gives constructive notice from the moment it is filed with the recorder. (See Constructive notice, Sec. 53, *post.*)

SECTION 52. *When execution is established by proof of handwriting.* When the execution of an instrument is established by proof of handwriting (see Proof by handwriting when may be made, Secs. 38, 39), the instrument, though prop-

(5) Civil Code, §§1169, 1171
(6) Civil Code, §1170

erly proved and certified according to law, may only be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection.[7]

Purpose and Effect of Recording.

SECTION 53. *Constructive notice.* Every conveyance of real property, acknowledged or proved, and certified and recorded, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees;[8] and such notice is conclusive, except that it has been held that this language only contemplates conveyances by persons having title, and does not apply to a deed by a stranger.[9] Until so filed for record the instrument is void as against subsequent *bona fide* purchasers or mortgagees without notice. (See Effect of failure to record, Sec. 56, *post*, and Unrecorded instrument, when valid, Sec. 57, *post*.)

SECTION 54. *Certified copy may be recorded in another county.* A certified copy of any such recorded conveyance, or a certified copy of the record of such instrument, may be recorded in any other county, and when so recorded the record thereof shall have the same force and effect as

(7) Civil Code, §1162
(8) Civil Code, §1213
(9) Bothin v. Cal. Title Ins. Co. 153 Cal. 724

though it was of the original conveyance, and where such original conveyance has been recorded in any county wherein the property therein mentioned is not situated, a certified copy of such recorded conveyance may be recorded in the county where such property is situated with the same force and effect as if the original conveyance had been recorded in such county.[10]

SECTION 55. *Record of instrument may be used in evidence.* It is further provided that the original record of such conveyance or instrument, acknowledged or proved and certified as provided by law, or a certified copy of the record of such conveyance or instrument thus acknowledged or proved, may be read in evidence on a trial in court with like effect as the original instrument, without further proof.[11]

Effect of Failure to Record.

SECTION 56. Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded, and as against any judgment affecting

(10) Civil Code, §§1213, 1218.
(11) Code of Civil Procedure, §1951

the title, unless such conveyance shall have been duly recorded prior to the record of notice of action, and the term "conveyance" as used here, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged or encumbered.[11]

Consequently, a deed of land executed prior to a mortgage of the same land to another party, but recorded after the mortgage, is subject and subsequent to the mortgage if the mortgagee took in good faith, for value, and without actual notice of the deed;[12] and a subsequent mortgage first recorded, takes precedence over a prior unrecorded mortgage, if taken in good faith and for a valuable consideration, without notice.[13]

Unrecorded Instrument, When Valid.

SECTION 57. An unrecorded instrument is valid, as between the parties thereto and those who have notice thereof.[14] Therefore, a purchaser with notice of another's claim cannot take advantage of the fact that the conveyance under which the other claims was not recorded.[15] The rule as to what constitutes notice is, that notice of

(11) Civil Code, §§1214, 1215; Warnock v. Harlow, 96 Cal., 306
(12) Emeric v. Alvarado, 90 Cal., 444
(13) Odd Fellows' Sav. Bk. v. Bouton, 46 Cal., 605
(14) Civil Code, §1217
(15) Robinson v. Muir, 151 Cal. 122

facts sufficient to put one upon inquiry is notice of all the facts to which inquiry would lead. Hence, possession is notice to all the world of the holder's rights, and it has been held that one who purchases land in the possession of a third person, has no right to rely on the record title alone in making the purchase, but is bound to look beyond the record title for the purpose of ascertaining what rights, if any, the party in possession has in the premises.[16] In another case, where a person about to make a loan and take a mortgage upon land as security employed an agent to make the negotiation, a declaration made by a tenant in possession to the agent that another person had an interest in the land, was sufficient to put the mortgagee on inquiry, and if he failed to make such inquiry, the mortgage was subject to the rights of such other person in the land even though the paper title appeared to be in the mortgagor.[17]

Instruments to be Acknowledged and Recorded.

SECTION 58. As one of the duties of notaries (see Duties, Sec. 5, sub. 2, *supra*) is, "to take the acknowledgment or proof of powers of attorney, mortgages, deeds, grants, transfers, and

(16) Security, etc. Co. v. Willamette, etc. Co., 99 Cal., 636; Pollard v. Rebman, 162 Cal., 633; Shurtleff v. Kehrer, 163 Cal., 24
(17) Bauer v. Pierson, 46 Cal., 293

other instruments of writing, executed by any person, and to give a certificate of such proof or acknowledgment indorsed on or attached to the instrument," and as such officers are frequently called upon to draw these instruments, as well as constantly required to handle them, the next three chapters on deeds, mortgages, and homesteads will set forth the general law governing such instruments.

CHAPTER IV.

DEEDS.

§59 Definitions.
60 Separate and community property.
61 Must be in writing.
62-66 Form and contents of.
67-70 Execution.
71-74 Power of attorney.
75-78 Delivery.
79 Interpretation of.
80-83 Effect of.
84 Instrument made with intent to defraud, when void.

Definitions.

SECTION 59. A deed is a written instrument executed and delivered, by which the title and possession of real property is transferred from one person to another. It is described in the Civil Code as a "grant of an estate in real property." A "grant, bargain and sale" deed is, as the name implies, a grant by way of bargain and sale. This form of deed imports a transfer and delivery of property by one person to another for a consideration agreed upon between them as the value of the property, and the words "grant, bargain and sell" imply a general warranty that the grantor has done no act by which the estate conveyed by him can be defeated. (See Implied covenants, Sec. 83, *post.*)

A "gift" deed is a voluntary transfer of property without any consideration or compensation. The consideration recited in the established form of gift deed is, "love and affection which the party of the first part has and bears unto the party of the second part, as also for the better maintenance, support, protection and livelihood of the party of the second part." The effect of a gift deed to a husband or wife is to make the property conveyed the separate property of the grantee. (See Separate and community property, Sec. 60, *post*).

A life estate may be reserved by the grantors by including in the habendum clause of the deed a proviso that they reserve the right to the use and occupation of the property so long as they, or either of them, shall live. An estate may also be granted for life, but whenever the death of a person terminates a life estate, a legal proceeding is necessary to establish such death and the termination of the life estate.

By a "joint-tenancy" deed property may be transferred to two persons, or the survivor of them, and to the heirs or assigns of the survivor. Under such a deed upon the death of either joint-tenant the property goes to the survivor, but in that case also a proceeding is necessary to establish the death of the joint-

tenant and the termination of the joint-tenancy. A joint-tenancy deed should not be drawn without careful thought, as it can be readily seen that such a deed may work out unfairly as to the heirs of the joint-tenant who shall die first.

A "quit-claim" deed only purports to pass whatever title, or apparent title, the grantor has in the property conveyed. It conveys whatever title the grantor has, but does not convey after-acquired title. (See Effect of, Sec. 80 *post*).

A "correction" deed may be made for the purpose of correcting mistakes in a prior conveyance. Such a deed must distinctly show and define the mistake that it is intended to correct; but a void deed cannot be confirmed by the giving of a subsequent deed by way of correction. (See Description of property, Sec. 66, *post*).

A conveyance may be to a person or persons in trust, for the purpose of securing the performance of certain specified acts, and the instrument is then called a "deed of trust." (See Deeds of trust, Sec. 88 *post*).

SECTION 60. *Of Separate and community property.* All property owned before marriage and that acquired afterwards by gift, bequest, devise or descent, is separate property, and all other property acquired after marriage is community property.[1]

(1) Civil Code, §§162-164

Consequently, when a husband makes a deed of gift to his wife, whether of his own separate property or of community property, the property granted thereupon becomes the separate property of the wife, and *vice versa*. Gift deeds have frequently been passed between husband and wife for the purpose of avoiding probate proceedings without considering their effect upon the nature of the property.

Whenever property is conveyed to a married woman the presumption is that the title is thereby vested in her as her separate property, but a conveyance to the husband alone is presumptively to the community.[2] A conveyance to both husband and wife presumptively vests an undivided one-half interest in the wife as her separate property.[3]

It has also been held that under a grant, bargain and sale deed by a husband to his wife of his separate property for an expressed consideration of ten dollars, where no consideration was in fact paid, the property became the wife's separate property.[4] Hence, in a grant, bargain and sale deed from husband and wife, a valuable consideration should be shown unless it is intended to be a gift vesting title in the wife as her separate property.

(2) Civil Code, §164.
(3) Gilmour v. North Pasadena Land Co., 178 Cal., 6.
(4) Estate of Klumpke, 167 Cal., 415.

Must Be in Writing.

SECTION 61. An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.[5]

Under the statute of frauds, any agreement that by its terms is not to be performed within a year from the making thereof, is invalid unless put in writing,[6] and the supreme court has held that if the time from the making of the agreement to the end of its performance exceeds a year ever so little, this statute applies, and consequently an oral lease for one year to commence *in futuro* is void.[7] An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission must also be in writing.[8]

Form and Contents of.

SECTION 62. *Code form.* The code form of a grant of real property is as follows:

"I, A B, grant to C D all that real property situated in (insert name of county) county, state

(5) Civil Code, §1091
(6) Civil Code, §1624, Sub. 1
(7) Wickson v. Monarch Cycle Mfg. Co., 123 Cal., 153
(8) Civil Code, §1624, Sub. 6

of California, bounded (or described) as follows: (here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name, as, for instance, 'The Norris Ranch').

"Witness my hand, this (insert day) day of (insert month), 19—. A B.",

It is customary in drawing deeds to use the printed forms which are in common use, and which are generally safe. It is then only necessary to fill in the date, parties, consideration and description of property.

SECTION 63. *Parties.* The parties to the instrument should be named and described. A deed which does not contain the name of the grantee would be void as a conveyance. If the grantee is misnamed the grantor cannot by a subsequent deed correct an error in the grantee's name.[10] Furthermore, a deed is void unless the grantee named is a person, either natural or artificial, capable of taking the property conveyed;[11] hence, a deed to the estate of a deceased person is a nullity, as the estate cannot be recognized as a party to a contract.[12] Neither should

(9) Civil Code, §1092
(10) Walters v. Mitchell, 6 Cal. App. 410
(11) Rixford v. Zeigler, 150 Cal., 435
(12) Simmons v. Spratt, 1 So. (Fla.), 860; McInerney v. Beck, 39 Pac. (Wash.), 130

there be any variance between the name of the grantor as it appears in the body of the deed and the signature. In case the grantor has, since acquiring the property, changed his or her name from any cause, the conveyance should set forth the name in which the title to the property stands as well as his or her present name.[13]

SECTION 64. *Consideration.* A consideration need not be expressed in a deed. It is usual to recite a consideration, however, even though it be a nominal one. In this state a written instrument is presumptive evidence of a consideration. Either party may show what the real consideration was.

SECTION 65. *Words of inheritance.* Words of inheritance or succession are not requisite to transfer a fee in real property,[14] but they, too, are usually inserted.

SECTION 66. *Description of property.* Great care should be taken to have the description of property minute and accurate. An error in the description is sure to cause future annoyance and trouble. Should an error inadvertently be made in the description it can be corrected by a subsequent deed between the same parties. In such subsequent deed a statement, showing the purpose of the deed, should be inserted after

(13) Civil Code, §1096
(14) Civil Code, §1072

the habendum clause; as, for instance, "This deed is made for the purpose of correcting an error in the description of property contained in that certain deed (describing it), and to make such description more definite and certain." As before stated, however, a correction deed cannot be used to correct an error in the grantee's name. (See Parties, Sec. 63, *ante*.)

Execution.

SECTION 67. *In general.* —The deed should be subscribed by the grantor, and when subscribed should be acknowledged as provided in the chapter on "Acknowledgment and Proof of Instruments."

SECTION 68. *By person who cannot write.* The word "signature" or "subscription" includes mark, and when a person cannot write, he may make his mark and his name may be written near it by a person who writes his own name as a witness. It is provided, however, that when a signature is by mark, it must, in order that the same may be acknowledged or may serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witnesses thereto.[15] This applies to all written instruments, and notaries are frequently called upon to sign for and take the ac-

(15) Code of Civil Procedure, §17

knowledgment of persons who cannot write. It is usual in such cases to make the statement that "————, being unable to write his name, has made his mark, and I, at his request and in his presence, have written his name for him near his mark, and now sign my own name as a witness," and have the same attested by two other witnesses.

SECTION 69. *By attorney in fact.* When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.[16] (See Power of attorney, Secs. 71-74, *post.*)

SECTION 70. *By married women.* A grant or conveyance of real property made by a married woman may be made, executed, and acknowledged in the same manner and has the same effect as if she were unmarried.[17]

Power of Attorney.

SECTION 71. *Defined.* "Power of attorney" indicates that a power or authority is conferred. It is an instrument by which the authority of one person to act in the place and stead of another is set forth. It must be in writing, subscribed, acknowledged or proved, certified and recorded. A

(16) Civil Code, §1095
(17) Civil Code, §1093

general power of attorney confers power to act generally; a special power of attorney confers power to perform some particular act.

SECTION 72. *By married women.* A married woman may make, execute, and revoke powers of attorney for the sale, conveyance, or encumbrance of her real or personal estate, which shall have the same effect as if she were unmarried, and may be acknowledged in the same manner as a grant of real property.[18]

SECTION 73. *Revocation of.* No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved and certified, and recorded in the same office in which the instrument containing the power was recorded.[19]

SECTION 74. *Termination of.* Under the law of agency, a power of attorney, unless coupled with an interest in the subject of the agency, is terminated as to every person having notice thereof, by:

1. Its revocation by the principal;
2. His death; or,
3. His incapacity to contract.[22]

(18) Civil Code, §1094
(19) Civil Code, §1216
(22) Civil Code, §2356

Delivery of Deed.

SECTION 75. *Necessity of.* A grant takes effect so as to vest the interest intended to be transferred, only upon its delivery by the grantor.[20] Delivery is essential to give the conveyance legal effect, and a valid delivery is only made when the conduct and acts of the grantor manifest a present intent to dispose of the title conveyed. A delivery merely for the purpose of safe keeping or custody is not such a delivery.[21] Further, a deed cannot be delivered conditionally. Delivery to the grantee, or to his agent as such, is necessarily absolute, and the instrument takes effect thereupon.[23] This applies to a grant of personal property as well as of real property. A grant duly executed is presumed to have been delivered at its date.[24] It is well settled that delivery is not complete until the grantor has so dealt with the instrument that he has lost all control over it. Therefore, if a person should make a deed and duly acknowledge it before a notary public, but keep it in his possession and die without having delivered it, the deed is of no effect. (See Redelivery, Sec. 78, *post.*)

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(20) Civil Code, §1054
(21) Follmer v. Rohrer, 158 Cal., 755
(23) Civil Code, §1056
(24) Civil Code, §1055

A notary, therefore, is not justified in signing a deed as a witness to the delivery, unless he has seen it delivered, with intent to deliver.

SECTION 76. *In Escrow.* The law provides for the delivery of a deed in escrow, thus: A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to condition, it is called an escrow.[25] On the performance of the condition it becomes incumbent on the depositary to make delivery. The grantor must have intended to part with the possession for all time, and cannot revoke it after delivery in escrow.[26]

SECTION 77. *Constructive delivery.* Though a deed be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed.[27]

(25) Civil Code, §1057
(26) McDonald v. Huff, 77 Cal., 279; Whitney v. Sherman, 178 Cal., 435
(27) Civil Code, §1059

SECTION 78. *Redelivery.* Redelivering a grant of real property to the grantor, or canceling it, does not operate to retransfer the title.[28] It can only be retransferred by an instrument as formal as the one transferring it.

Interpretation of.

SECTION 79. In the construction of a deed the understanding and intention of the parties should be ascertained, and for this purpose the whole of the instrument should be considered.[29] A clear and distinct provision in a grant is not controlled by other words less clear and distinct. If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

It is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

If several parts are absolutely irreconcilable, the former part prevails.

Where a future interest is limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean

(28) Civil Code, §1058
(29) Stockton v. Weber, 98 Cal., 433

successors, or issue living at the death of the person named as ancestor.[30]

Effect of.

SECTION 80. *What passes.* A fee-simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended. Where a person purports by proper instrument to convey real property in fee simple, without expressly restricting the conveyance to any particular interest therein, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors.[31] Even if the grantor had no title whatever to land at the time he executed a grant, bargain, and sale deed of it purporting to convey the fee, any title he afterwards acquired would pass to his grantee under such deed.[32] This is not true of a quit-claim deed. As a rule, a quit-claim deed does not carry after-acquired title. A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully

(30) Civil Code, §§1067–1071; Pavkovich v. S. P. R. R. Co. 150 Cal. 45
(31) Civil Code, §§1105, 1106
(32) Cecil v. Gray, 170 Cal., 137

transfer.[33] A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.[34] A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof, unless a different intent appears from the grant.[35] Where a grant is made upon condition subsequent, and is subsequently defeated by the non-performance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors, by grant duly acknowledged for record. An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition.[36]

SECTION 81. *As to tenants.* Grants of rents or of reversions or of remainders are good and

(33) Civil Code, §1108
(34) Civil Code, §§1104, 1084
(35) Civil Code, §1112; Warden v. Realty Co. 178 Cal., 440.
(36) Civil Code, §§1109, 1110

effectual without attornments of the tenants; but no tenant who, before notice of the grant, shall have paid rent to the grantor must suffer any damage thereby.[37]

SECTION 82. *How far conclusive.* Every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded.[38] (See Effect of failure to record, Sec. 56, *supra.*)

SECTION 83. *Implied covenants.* From the use of the word "grant" in any conveyance by which an estate of inheritance or fee-simple is to be passed, the following covenants, and none other, on the part of the grantor, for himself and his heirs, to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That, previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee.

(37) Civil Code, §1111
(38) Civil Code, §1107

2. That such estate is at the time of the execution of such conveyance free from encumbrances done, made, or suffered by the grantor, or any person claiming under him.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.[39]

Instrument Made with Intent to Defraud, When Void.

SECTION 84. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or encumbrancers thereon, is void as against every purchaser or encumbrancer, for value, of the same property, or the rents or profits thereof. But no instrument is to be avoided hereunder in favor of a subsequent purchaser or encumbrancer having notice thereof at the time his purchase was made, or his lien acquired, unless the person in whose favor the instrument was made was privy to the fraud intended.[40]

(39) Civil Code, §1113
(40) Civil Code, §§1227, 1228

CHAPTER V.

MORTGAGES.

§85 Nature of mortgages in general.
86 Possession of the property.
87 Transfer when a mortgage.
88 Deeds of trust.
89 Foreclosure.
90 Power of attorney to execute.
91 Assignment of debt.
92 Record of assignment of mortgage.
93 How discharged of record.
94 Satisfaction of mortgages.
95 What real property may be mortgaged.
96 Form of mortgages of real property.
97 When grant of real property is recorded as mortgage.
98 Record of mortgages of real property.
99 What personal property may be mortgaged.
100 Form of personal property mortgages.
101 Further requisites of personal property mortgages.
102-107 Record of personal property mortgages.
108-109 Removal of personal property mortgaged.
110 Attachment of personal property mortgaged.
111 Mortgage on crops.

Nature of Mortgages in General.

SECTION 85. Mortgage as defined by the Civil Code, is a contract by which specific property is hypothecated for the performance of an act without the necessity of a change of possession. It conveys no title, but gives only the security of a lien upon property. It may be created upon property held adversely to the mortgagor. It can be created, renewed or extended only by

writing executed with the formalities required in the case of a grant of real property. The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.[1] It is a lien on everything that would pass by a grant of the property.[2] It does not bind the mortgagor personally to perform the act for the performance of which it is security, unless there is an express covenant to that effect. Title acquired by the mortgagor subsequent to the execution of the mortgage enures to the mortgagee as security for the debt in like manner as if acquired before the execution. The person whose interest in the property is subject to the lien of a mortgage may not do any act to impair the mortgagee's security.[3]

Possession of the Property.[1]

SECTION 86. A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage; but after the execution of the mortgage the mortgagor may agree to such change of possession without a new consideration.[4]

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(1) Civil Code, §§2920–2923
(2) Civil Code, §2926
(3) Civil Code, §§2928–2930
(4) Civil Code, §2927

The instrument is required to be recorded, in order to give notice to subsequent purchasers or mortgagees, and the recording of the instrument is substituted in place of the change of possession. A change of possession of personal property mortgaged, would change it into a pledge.

Transfer When a Mortgage.

SECTION 87. Every transfer of an interest in property, other than in trust, made only as security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge.[5]

Consequently, a deed absolute on its face, if made as security for the payment of a debt, is in reality a mortgage, and the fact that a transfer was made subject to defeasance on a condition may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or encumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.[6] (See When grant of real property is recorded as mortgage. Sec. 97, *post.*)

(5) Civil Code, §2924
(6) Civil Code, §2925

Deeds of Trust.

SECTION 88. *Notice of default and election to sell.* In 1917 section 2924 of the Civil Code of this state relative to sales of property under deeds of trust was amended so as to require notice of the breach of obligation and of election to sell, to be recorded at least three months prior to the sale, and the exact language of that section as now amended is as follows:

"Where, by a mortgage created after July 27, 1917, of any estate in real property, other than an estate at will or for years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which such mortgage or transfer is a security, such power shall not be exercised (except where such mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the commissioner of corporations, or is made by a public utility subject to the provisions of the public utilities act), until (a) the trustee, mortgagee or beneficiary shall first record, in the office of the recorder of the

county wherein the mortgaged or trust property or some part thereof is situated, a notice of such breach and of his election to sell or cause to be sold such property to satisfy the obligation; (b) not less than three months shall thereafter elapse; and (c) the mortgagee, trustee or other person authorized to make the sale shall give notice of the time and place thereof in the manner and for a time not less than that required by law for sales of real property upon execution."

Foreclosure.

SECTION 89. A mortgage is usually given as security for a debt, and the debt is evidenced by a promissory note, copy of which is usually inserted in the mortgage. If the debt is not paid in accordance with the terms of the note, the mortgagee may foreclose the mortgage in the manner prescribed by law. A power of sale may be conferred by the mortgagor upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is security.[7]

Power of Attorney to Execute.

SECTION 90. A power of attorney to execute a mortgage must be in writing, subscribed, ac-

(7) Civil Code, §§2931, 2932

knowledged or proved, certified and recorded, in like manner as powers of attorney for grants of real property.[8]

Assignment of Debt.

SECTION 91. The assignment of a debt secured by a mortgage, carries with it the security.[9]

Record of Assignment of Mortgage.

SECTION 92. An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument, designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding such note, bond, or other instrument.[10]

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(8) Civil Code, §2933
(9) Civil Code, §2936
(10) Civil Code, §§2934, 2935

How Discharged of Record.

SECTION 93. A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder, who must certify the acknowledgment in form substantially as follows: "Signed and acknowledged before me, this ——— day of ———, in the year ———.
A. B., Recorder."

A recorded mortgage, if not discharged as above provided, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as prescribed by the chapter on recording transfers, stating that the mortgage has been paid, satisfied, or discharged.

Foreign executors, administrators and guardians may satisfy mortgages upon the records of any county in this state, upon producing and recording in the office of the county recorder of the county in which such mortgage is recorded, a duly certified and authenticated copy of their letters testamentary or of administration, or of

guardianship, and which certificate or authentication shall also recite that said letters have not been revoked.

A certificate of the discharge of a mortgage, and the proof or acknowledgment thereof, must be recorded at length, and a reference made in the record to the book and page where the mortgage is recorded, and in the minute of the discharge made upon the record of the mortgage to the book and page where the discharge is recorded.[11] (See Satisfaction of mortgages, Sec. 94, *post.*)

Satisfaction of Mortgages.

SECTION 94. When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on demand of the mortgagor, execute, acknowledge, and deliver to him a certificate of the discharge thereof, so as to entitle it to be recorded, or he must enter satisfaction, or cause satisfaction of such mortgage to be entered of record, and any mortgagee, or assignee of such mortgagee, who refuses to execute, acknowledge, and deliver to the mortgagor the certificate of discharge, or to enter satisfaction, or cause satisfaction of the mortgage to be entered, as pro-

(11) Civil Code, §§2938–2940

vided in this chapter, is liable to the mortgagor, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of one hundred dollars.[12]

What Real Property May Be Mortgaged.

SECTION 95. Any interest in real property which is capable of being transferred may be mortgaged.[13]

Form of Mortgage of Real Property.

SECTION 96. The code form of mortgage of real property is as follows:

"This mortgage, made the —— day of ——, in the year ——, by A B, of ——, mortgagor, to C D, of ——, mortgagee, witnesseth,—

"That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of —— dollars, on (or before) the —— day of ——, in the year ——, with interest thereon (or as security for the payment of an obligation, describing it, etc.)

"A B."[14]

When Grant of Real Property is Recorded as Mortgage.

SECTION 97. When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of

(12) Civil Code, §2941
(13) Civil Code, §2947
(14) Civil Code, §2948

certain conditions, such grant is not defeated or affected as against any person other than the grantee, or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the county recorder of the county where the property is situated.[15]

Record of Mortgages of Real Property.

SECTION 98. Mortgages of real property may be acknowledged or proved, certified, and recorded, in like manner and with like effect as grants thereof.[16]

What Personal Property May Be Mortgaged.

SECTION 99. Mortgages may be made upon all growing crops, including grapes and fruit, and upon any and all kinds of personal property, except the following:

1. Personal property not capable of manual delivery;

2. Articles of wearing apparel and personal adornment;

3. The stock in trade of a merchant.[17]

Mortgages upon personal property other than that permitted by law to be mortgaged, and mortgages not made in conformity with law, are

(15) Civil Code, §2950
(16) Civil Code, §2952
(17) Civil Code, §2955

nevertheless valid between the parties, their heirs, legatees and personal representatives, and persons who, before parting with value, have actual notice thereof.[18]

Form of Personal Property Mortgages.

SECTION 100. The form prescribed by the Code is as follows:

"This mortgage, made the —— day of ——, in the year ——, by A B, of ——, by occupation a ——, mortgagor, to C D, of ——, by occupation a ——, mortgagee, witnesseth,—

"That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of —— dollars on (or before) the —— day of ——, in the year ——, with interest thereon (or, as security for the payment of a note or obligation, describing it, etc.)

"A B."[19]

Further Requisites of Personal Property Mortgages.

SECTION 101. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and encumbrancers of the property in good faith and for value, unless,—

1. It is accompanied by the affidavit of all the parties thereto that it is made in good faith,

(18) Civil Code, §2973; Bank of Ukiah v. Gibson, 109 Cal., 199
(19) Civil Code, §2956

and without any design to hinder, delay, or defraud creditors;

2. It is acknowledged or proved, certified, and recorded, in like manner as grants of real property.[20]

Record of Personal Property Mortgages.

SECTION 102. *When and where.* A mortgage of personal property must be recorded in the office of the county recorder of the county in which the mortgagor resides, if the mortgagor be a resident of this state, and it shall also be recorded in the county in which the property mortgaged is situated, or, save in the case of livestock, vehicles (other than motor vehicles) and other migratory chattels, to which it may be removed. Except as it is otherwise in this article provided, mortgages of personal property may be acknowledged or proved, certified, and recorded in like manner and with like effect as grants of real property; but they must be recorded in books kept for personal mortgages exclusively.

SECTION 103. *Of ships.* A mortgage of any vessel or part of any vessel under the flag of the United States is void as against any person (other than the mortgagor, his heirs and devisees, and persons having actual notice thereof), unless the mortgage is recorded in the office of the collector of customs where such vessel is registered or enrolled.

(20) Civil Code, §2957

SECTION 104. *Of Property in transit.* For the purposes of this article, property in transit from the possession of the mortgagee to the county of the residence of the mortgagor, or to a location for use, is, during a reasonable time for such transportation, to be taken as situated in the county in which the mortgagor resides, or where it is intended to be used.

SECTION 105. *Of Property of a common carrier.* For a like purpose, personal property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located.

SECTION 106. *Of Property in different places.* A single mortgage of personal property, embracing several things of such character, or so situated that by the provisions of this article separate mortgages upon them would be required to be recorded in different places, is only valid in respect to the things as to which it is duly recorded.

SECTION 107. *Certified copies may be recorded.* A certified copy of a mortgage of personal property once recorded may be recorded in any other county, and when so recorded, the record thereof has the same force and effect as though it was of the original mortgage.[21]

(21) Civil Code, §§2958-2964

Removal of Property Mortgaged.

SECTION 108. *Exempt from mortgage, when.* When personal property mortgaged is thereafter removed from the county in which it is situated, the lien of the mortgage shall not be affected thereby for thirty days after such removal; but, after the expiration of such thirty days, the property mortgaged, save in the case livestock, vehicles (other than motor vehicles) and other migratory chattels, is exempted from the operation of the mortgage, except as between the parties thereto, until either:

1. The mortgagee causes the mortgage to be recorded in the county to which the property has been removed; or

2. The mortgagee takes possession of the property, as prescribed in the next section.

If a mortgage of livestock, vehicles (other than motor vehicles) or other migratory chattels has been recorded as provided in Section 2959 of the Civil Code, and within thirty days thereafter a certificate of such record has been filed by the county recorder with the secretary of state as required by Sections 408 and 4130 of the Political Code, the property mortgaged may be removed into any county in the state without in any way affecting the lien of the mortgage.[22]

(22) Civil Code, §2965

Failure of the mortgagee to record the mortgage in the county to which the property has been removed within thirty days after such removal *ipso facto* exempts the property for all time and wherever afterwards situated from the operation of the mortgage in so far as it concerns creditors of the mortgagor, unless the mortgagee within that time takes possession of the property.[23] But one who purchases such mortgaged property in the county to which it is removed within the period of thirty days after the removal, without actual notice of the mortgage, is guilty of conversion, for which conversion the mortgagee acquires a cause of action when it is committed and does not lose by failing subsequently to record the mortgage.[24]

SECTION 109. *May be taken as a pledge, when.* If the mortgagor voluntarily removes or permits the removal of the mortgaged property, save in the case of livestock, vehicles (other than motor vehicles) and other migratory chattels, from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose of the property as a pledge for the payment of the debt, though the debt is not due.[25]

(23) Hopper v. Keys, 152 Cal. 488
(24) Hammels v. Sentous, 151 Cal. 520
(25) Civil Code, §2966

Attachment of Personal Property Mortgaged.

SECTION 110. Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of the mortgagor, but before the property is so taken the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county clerk or treasurer, payable to the order of the mortgagee. When the property thus taken is sold under process, the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and

2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.[26]

When, however, the attachment or execution creditor presents a verified statement that the mortgage is void or invalid and delivers to the officer an indemnity bond as required by Section 2969 of the Civil Code, then the officer shall take the property, and in case of execution sell it as provided by law, and in such case the officer selling the property must first apply the

(26) Civil Code, §§2968 2969, 2970.

proceeds of sale to the satisfaction of the amount specified in the process including interest and costs.[26]

Mortgage on Crops.

SECTION 111. The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of mortgagor.[27]

(26) Civil Code, §§2968, 2969, 2970.
(27) Civil Code, §2972.

CHAPTER VI.

HOMESTEADS.

§112 Meaning of.
113 Head of a family, who is.
114-118 Selection of.
119-121 Declaration of homestead.
122 Exempt from execution.
123 Subject to execution when.
124 How conveyed or encumbered.
125 Abandonment of.
126 Proceedings on execution against homestead
127 Of insane persons.

Meaning of.

SECTION 112. Homestead means "home place." It is something distinct from the legal title, and consists of the dwelling house in which the claimant resides and the land on which the same is situated, set apart as provided by law, for the purpose of providing a home for the family and protecting it against the improvidence or misfortune of the head or other member of the family.[1] The homestead limits and qualifies the right of the owner of the title for the benefit and protection of both spouses while living, and to insure future protection to the survivor. (See, Effect of filing for record, Sec. 121, *post.*)

(1) Civil Code, §1237

Head of a Family, Who Is.

SECTION 113. The phrase "head of a family," as used in the law of homesteads, includes within its meaning,—

1. The husband, when the claimant is a married person;

2. Every person who has residing on the premises, with him or her, and under his or her care and maintenance, either,—

(a). His or her minor child, or minor grandchild, or the minor child of his or her deceased wife or husband;

(b). A minor brother or sister, or the minor child of a deceased brother or sister;

(c). A father, mother, grandfather, or grandmother;

(d). The father, mother, grandfather, or grandmother of a deceased husband or wife;

(e). An unmarried sister, or any other of the relatives mentioned in this section, who have attained the age of majority, and are unable to take care of or support themselves.[2]

Selection of.

SECTION 114. *From what it may be selected.* If the claimant be married, the homestead may

(2) Civil Code, §1261

be selected from the community property, or the separate property of the husband, or with the consent of the wife, from her separate property. When the claimant is not married, but is the head of a family, within the meaning of the above section, the homestead may be selected from any of his or her property.[3]

SECTION 115. *From what it may not be selected.* The homestead cannot be selected from the separate property of the wife without her consent, shown by her making, or joining in making, the declaration of homestead.[4]

SECTION 116. *Limitation as to value.* A homestead may be selected and claimed,—

1. Of not exceeding five thousand dollars in value, by any head of a family;

2. Of not exceeding one thousand dollars in value, by any other person.[5]

SECTION 117. *How made by head of a family.* In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife, must execute

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(3) Civil Code, §1238
(4) Civil Code, §1239
(5) Civil Code, §1260

and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record.[6] (See Head of a family, who is, Sec. 113, *supra.*)

SECTION 118. *How made by other than head of a family.* Any person other than the head of a family, in the selection of a homestead, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead. In case the homestead is selected by any other than the head of a family, the property must not exceed in value the sum of one thousand dollars.[7] (See Limitation as to value, Sec. 116, *supra.*)

Declaration of Homestead.

SECTION 119. *Contents of.* The declaration of homestead, if made by the head of a family, must contain,—

1. A statement, showing that the person making it is the head of a family, and, if the claimant is married, the name of the spouse; or, when the declaration is made by the wife, showing that her husband has not made such declaration, and that

(6) Civil Code, §1262
(7) Civil Code, §1266

she therefore makes the declaration for their joint benefit;

2. A statement that the person making it is residing on the premises, and claims them as a homestead;

3. A description of the premises;

4. An estimate of their actual cash value.[8]

If made by a person other than the head of a family it must contain everything required by subdivisions second, third and fourth above stated.[9]

SECTION 120. *Recording of.* The declaration must be recorded in the office of the recorder of the county in which the land is situated.[10]

SECTION 121. *Effect of filing for record.* From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property, or from the separate property of the spouse making the selection or joining therein, the land so selected on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the law governing homesteads; in other cases, upon

(8) Civil Code, §1263
(9) Civil Code, §1267
(10) Civil Code, §1264

the death of the person whose property was selected as a homestead, it shall go to the heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but in no case shall it or the products, rents, issues or profits thereof, be held liable for the debts of the owner except as provided by law; and should the homestead be sold by the owner, the proceeds arising from such sale to the extent of the value allowed for a homestead exemption as provided in this title shall be exempt to the owner of the homestead for a period of six months next following such sale.[11]

Whatever be the character of the title or interest in the land held at the time of the filing of the declaration, the claim will attach to such title or interest, and whatever may inure to or grow out of that title will be impressed with the lien, equally with the original title.[12]

Exempt from Execution.

SECTION 122. The homestead is protected against the claims of creditors while it is occupied as a home, and is exempt from execution and forced sale except as set forth in the next section.

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(11) Civil Code, §1265
(12) Alexander v. Jackson, 92 Cal., 519

Subject to Execution When.

SECTION 123. The homestead is subject to execution or forced sale in satisfaction of judgments obtained,—

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises;

2. On debts secured by mechanics, contractors, sub-contractors, artisans, architects, builders, laborers of every class, materialmen's or vendors' liens upon the premises;

3. On debts secured by mortgages on the premises, executed and acknowledged by the husband and wife, or by an unmarried claimant;

4. On debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record.[13] (See Proceedings when value of homestead exceeds exemption, Sec. 126, *post.*)

How Conveyed or Encumbered.

SECTION 124. The homestead of a married person cannot be conveyed or encumbered, unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife.[14]

(13) Civil Code, §1241
(14) Civil Code, §1242

Abandonment of.

SECTION 125. A homestead can be abandoned only by a declaration of abandonment, or a grant thereof executed and acknowledged,—

1. By the husband and wife, if the claimant is married;

2. By the claimant, if unmarried.

A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.[15]

Proceedings on Execution Against Homestead.

SECTION 126. In all cases in which the homestead is exempt from execution and forced sale (see Exempt from execution, Sec. 122, and Subject to execution, Sec. 123, *supra*), if the value of the property exceeds the homestead exemption, then the property is subject to execution for the enforcement of a judgment to the extent of such excess. In such cases, upon proper application by a judgment creditor to the superior court for the appointment of appraisers, the homestead may be appraised, and if the appraised value exceeds the homestead exemption the appraisers must determine whether the property can be divided; if it can be, then the court must direct the appraisers

(15) Civil Code, §§1243, 1244

to set off so much including the residence as will amount in value to the homestead exemption; if it cannot be divided, then the property must be sold, and the proceeds of sale to the amount of the exemption must be paid to the claimant, and the balance applied to the satisfaction of the execution.

The application for appointment of appraisers above referred to may be made by a judgment creditor at any time within sixty days after levy of execution, but if not so made within sixty days the lien of the execution shall cease at the expiration of said period and no execution based upon the same judgment shall thereafter be levied upon the homestead.

Further, within ninety days from the date of filing the petition for such appointment, a copy thereof, with notice of the time and place of hearing must be served upon the claimant or his attorneys at least two days before the hearing, and if such notice shall not be served, the lien of the execution shall cease at the expiration of said period of ninety days, and no execution based upon the same judgment shall thereafter be levied upon the homestead.[16]

(16) Civil Code, §§1245–1259

Of Insane Persons.

SECTION 127. In case either husband or wife becomes hopelessly insane, the husband or wife not insane may apply to the superior court of the county in which the property is situated for leave to sell or mortgage the homestead to raise money to satisfy a lien thereon, or to provide for the support and care of the sane or insane spouse or their minor children, or whenever it appears it is for the advantage, benefit and best interests of the spouses, the estate, or their dependents; and after proceedings regularly had, if it appears to the court that such husband or wife is hopelessly insane the court will make an order permitting the sale or encumbrance of such homestead by the husband or wife not insane.[17]

(17) Civil Code, §§1269a–1269c

CHAPTER VII.

AFFIDAVITS.

§128 Nature of.
129 Use of.
130 Authority to take.
131-134 Requisites of.
135 Mode of taking.

Nature of.

SECTION 128. An affidavit is an oath reduced to writing, sworn to before some officer authorized to administer oaths. To make an affidavit as to any fact is to declare it under oath in writing. There is, therefore, no such thing as an unwritten affidavit. It is defined by the code to be "a written declaration under oath, made without notice to the adverse party."[1] It differs from a deposition in that the latter is evidence given by a witness under interrogatories, oral or written, upon notice to the adverse party in order that he may be represented, whereas an affidavit is a mere voluntary act and may be *ex parte*.

Use of.

SECTION 129. By affidavit, is one of the modes prescribed by law for taking the testimony of witnesses. Another mode is by deposition (see De-

(1) Code of Civil Procedure, §2003

positions, Secs. 136-154, *post*), and the third mode is by oral examination, by which is meant an examination in the presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness.[2] The rule is that the best evidence must be produced which the nature of the transaction will permit of, and, of course, affidavits are not in the nature of the best evidence by which to prove issuable facts. The testimony of witnesses in open court, where the adverse party may have an opportunity to cross-examine, is the best method. The use of affidavits is generally confined to matters of procedure, matters collateral, ancillary or incidental to an action or proceeding. An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, or upon a motion, and in any other case expressly permitted by some other provision of the code, such as, to prove the publication of a document or notice required by law to be published in a newspaper.[3]

(2) Code of Civil Procedure, §§2002, 2004, 2005.
(3) Code of Civil Procedure, §§2009, 2010

Authority to Take.

SECTION 130. An affidavit to be used before any court, judge or officer of this state, may be taken before any officer authorized to administer oaths.[4] An attorney, if a notary, may administer an oath to and take the affidavit of his client. It has been held that there is nothing in the law to prohibit him from doing so.[5] It is essential that the oath be taken before an officer having authority to administer it in the particular case, in order to constitute the offense of perjury. However false an oath may be, one cannot be convicted of perjury except the officer who administers the oath have legal authority to administer it.[6] (See Jurisdiction, Sec. 7, *supra.*)

Requisites of.

SECTION 131. *In general.* The essential requirements, apart from the title, venue and jurat, are: (1) That an oath shall be administered by an officer authorized by law to administer it (see Oaths and affirmations, Secs. 152-154, *post*); (2) that what the affiant states under such oath shall be in writing; and (3) that the written statement so sworn to shall be subscribed by the party making it. It should be free from interlin-

(4) Code of Civil Procedure, §2012
(5) Reavis v. Cowell, 56 Cal., 588
(6) People v. Cohen, 118 Cal. 74

eations and erasures, but if there are any it is well that they be noted by the notary on the margin of the paper to indicate that they were made at the time of swearing and not inserted after.

SECTION 132. *Title.* If the affidavit is to be used in an action or proceeding, it should show the title of court and cause in which it is to be used. It is provided, however, that an affidavit without the title of the action or proceeding in which it is made, or with a defective title, is as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.[6]

SECTION 133. *Venue.* The venue in an affidavit, as in a certificate of acknowledgment, is *prima facie* evidence of the place where it is taken, and the place where it is taken, should, of course, be within the territorial jurisdiction of the officer administering the oath, as will appear from his official seal attached to the instrument. Nevertheless it has been held that the omission of the venue is not fatal to an affidavit, where the oath was administered by an officer authorized to administer the same, and the legal presumption that he acted within his jurisdiction is aided by the title of court and cause of

(6) Code of Civil Procedure, §1046

the legal proceedings.[7] (See Venue to certificate of acknowledgment, Sec. 32, *supra.*)

SECTION 134. *Jurat.* This is the certificate of the officer, ordinarily added at the foot of the affidavit, stating that the same was "subscribed and sworn to before" him on a certain day, and followed by his signature and official designation. The signature of the officer should be authenticated by his official seal.

Mode of Taking.

SECTION 135. The question whether the personal presence of the affiant before the notary is necessary to the administration of an oath, arose in the case of Fairbanks, Morse & Co. v. Getchell, 13 Cal. App. 458, in which case the oath to an affidavit for attachment was administered by communication had between the notary and the affiant over the telephone. It was contended that the act was void and of no effect for that reason. That question was not decided by our own appellate court for the reason that its decision was not necessary to a determination of that case; but it was remarked that the contention against the validity of such an oath finds direct support in the case of Sullivan v. First Nat. Bank, 37 Tex. Civ. App. 228, (83 S. W. 421). In this last case the Texas Appellate court

(7) Reavis v. Cowell, 56 Cal., 588

say: "Not only is the personal presence of the affiant required to the end that by appropriate form and ceremony his conscience may be bound, but it is required also to the end that the officer may see and know that the man who signs also swears."

In Riverside Portland Cement Co. v. Maryland Casualty Co. 46 Cal. App. 87, we have a case where two women signed a blank form of printed bond and the affidavit attached to such bond, before a notary. Later the bond was filled in with a large amount which neither of them were worth, and the bond having been given for the protection of materialmen in connection with supplies furnished under a building contract, which were not paid for, it was sought to hold the surety on the notary's bond because of the false statement of the notary that these women had subscribed and sworn before him that they were worth the sum mentioned in the undertaking. While the lower court gave judgment against the notary's surety, it was reversed by the appellate court upon the ground that the materialmen had not relied, in giving credit, upon the certificate of the notary that the affidavit had been subscribed and sworn to before him, and therefore such false certificate was not the proximate cause of the loss.

CHAPTER VIII.

DEPOSITIONS.

§136 Definition and nature of.
137 When may be taken in this state.
138-139 Manner of taking.
140 Certificate to.
141-148 Subpœna.
149-151 Witnesses.
152-154 Oaths and affirmations.

Definition and Nature of.

SECTION 136. As defined by the code, a deposition is a written declaration under oath made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine.[1] In all cases where a written declaration under oath is used, other than where an affidavit is allowed by law, it must be by deposition.[2] As said before (Sec. 129, *supra*), the testimony of witnesses given in open court on the trial of an action, where the adverse party may have an opportunity to cross-examine, is the most satisfactory method of proving facts in controversy. There are certain cases, however, when the testimony of witnesses *must* be taken by deposition, if taken

(1) Code of Civil Procedure, §2004
(2) Code of Civil Procedure, §2019

at all, as when they reside without the jurisdiction of the court and cannot be compelled to attend the trial, and also other cases when the deposition is permitted to be taken if desired, all as set forth in the following section.

When May Be Taken in This State.

SECTION 137. The testimony of a witness in this state may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding after a question of fact has arisen therein, in the following cases:

1. When the witness is a party to the action or proceeding or an officer or member of a corporation which is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended;

2. When the witness resides out of the county in which his testimony is to be used, or resides in the county but more than fifty miles distant from the place of trial or hearing by the nearest usual traveled route;

3. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required;

4. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend,

5. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required;

6. When the witness is the only one who can establish facts or a fact material to the issue; *provided*, that the deposition of such witness shall not be used if his presence can be procured at the time of the trial of the cause.[3]

Manner of Taking.

SECTION 138. *In this state.* Either party to an action may take the deposition of a witness in either of the cases shown in the preceding section, upon giving the notice, accompanied by the affidavit, or taking such other steps as are required by law.[4] Depositions must be taken in the form of question and answer. The words of the witness must be written down, in the presence of the witness, by the officer taking the deposition, or by some disinterested person appointed by him. It may be taken down in shorthand, in which case it must be transcribed into longhand by the person who took it down. When completed, it must be carefully read to or by the witness and corrected by him in any par-

(3) Code of Civil Procedure, §2021
(4) Code of Civil Procedure, §2031

ticular, if desired, by writing or causing his corrections to be written in the body or margin of or at the bottom of the deposition, and must then be subscribed by the witness. The officer before whom the deposition is taken must write his initials near said corrections. If the parties agree in writing to any other mode, the mode so agreed upon must be followed.[5]

Either party to the action may attend the examination, and put such questions, direct and cross, as may be proper. The deposition, when completed, must be carefully read to the witness and corrected by him in any particular, if desired, and must then be subscribed by him.[6] This makes the reading, correcting and signing the necessary and material things to be done. The object of requiring the witness to sign the deposition is to make him responsible for its phraseology, for by signing he adopts the language as his own.[7] The deposition must then be certified by the officer taking it, enclosed in an envelope or wrapper, sealed and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the officer to

(5) Code of Civil Procedure, §2006
(6) Code of Civil Procedure, §2032
(7) Kyle v. Craig, 125 Cal., 115, 116

the clerk or such person, or transmitted through the mail, or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice.[8]

SECTION 139. *To be used out of the state.* The deposition of a witness taken in this state to be used in a matter or proceeding pending in the court of another state, must be taken in accordance with the law of the state governing the matter or proceeding in which the same is to be used, and instructions should accompany the commission.

Whenever any mandate, writ, or commission is issued out of any court of record in any other state, territory, district, or foreign jurisdiction, or whenever, upon notice or agreement it is required to take the testimony of a witness or witnesses in this state, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.[9]

Certificate to.

SECTION 140. The notary must attach his certificate to the deposition, which certificate must be

(8) Code of Civil Procedure, §2032
(9) Code of Civil Procedure, §2036a.

in proper form and show all the acts done by him in relation to the taking of the deposition.
[Appendix Form No. 12.]

Subpœna.

SECTION 141. *Subpoena defined.* The process by which the attendance of a witness is required is a subpœna. It is a writ or order directed to a person and requiring his attendance at a particular time and place to testify as a witness. It may also require him to bring with him any books, documents, or other things under his control, which he is bound by law to produce in evidence.[10]

SECTION 142. *How issued.* A subpœna is issued as follows:

1. To require attendance before a court, or at the trial of an issue therein, or upon the taking of a deposition in an action or proceeding pending therein, it is issued by the clerk of the court in which the action or proceeding is pending, under the seal of the court, or if there is no clerk or seal then by a judge or justice of such court;

2. To require attendance before a commissioner appointed to take testimony by a court of a foreign country, or of the United States, or of

(10) Code of Civil Procedure, §1985

any other state in the United States, or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by the clerk of the superior court of the county in which the witness is to be examined, under the seal of such court;

3. To require attendance out of court, in cases not provided for in subdivision one, before a judge, justice or other officer authorized to administer oaths, or take testimony in any matter under the laws of this state, it is issued by the judge, justice or other officer before whom the attendance is required.

If the subpœna is issued to require attendance before a court, or at the trial of an issue therein, it is issued by the clerk, as of course, upon the application of the party desiring it. If it is issued to require attendance before a commissioner or other officer upon the taking of a deposition, it must be issued by the clerk of the superior court of the county wherein the attendance is required upon the order of such court or of a judge thereof, which order may be made *ex parte*.[11]

From the case of Scott v. Shields, 8 Cal. App. 12, it appears that there is some conflict in the foregoing provisions relating to the issuance of a

(11) Code of Civil Procedure, §1986

subpœna. That was a case pending in Placer County in which it was sought to take the deposition of a witness residing in Sacramento County, and under the authority of the last paragraph the superior court of Sacramento County made an order directing the clerk of his court to issue the subpœna. It was contended that the subpœna requiring the attendance of the witness, under such circumstances, should have been issued by the notary before whom the witness was to appear under subdivision 3 of this section. The appellate court upheld the issuance of the subpœna by the clerk of the superior court of Sacramento County, saying that if the provisions conflict, the latter provision of this section would prevail over the former under the well-settled rule of construction.

Prior to 1907 a notary public had power to issue a subpœna requiring attendance before him upon the taking of a deposition in an action or proceeding pending in court. But while a notary had power to issue such a subpœna that procedure was for a long time ineffectual to bring a witness before the notary for the reason that the supreme court decided in the case of Lezinsky v. Superior Court, 72 Cal. 510, that in case the witness refused to obey the subpœna of the notary public before whom his deposition was to have been taken, the court in which the action

was pending had no power to punish him for contempt—such refusal being contempt of the officer issuing the subpœna and not contempt of court. It therefore became customary to have subpœnas requiring the attendance of witnesses before notaries issued by the clerk of the court in which the action was pending, under the seal of the court, in order that disobedience of the subpœna might be reported back to the court and punished as contempt by the court. Later, the decision in the case of Lezinsky v. Superior Court was overruled by the case of Burns v. Superior Court, 140 Cal. 1, on the ground that the conduct of the witness in refusing to attend at the time and place fixed for the taking of the deposition was an interference with the proceedings of the court, and could therefore be punished as contempt of court. However, by the act of the legislature of 1907 amending section 1986 of the Code of Civil Procedure, the procedure is now settled, and a subpœna requiring attendance before a notary public upon the taking of a deposition must be issued by the clerk of the superior court of the county wherein the attendance is required, upon the order of such court or of a judge thereof. Under subdivision 3 of that section (see subdivision 3 of this section) a notary may still issue a subpœna in certain cases. Punishment for

disobedience to such a subpœna is also provided for. (See Disobedience to subpœna, how punished, Sec. 145, *post.*)

SECTION 143. *How served.* The service of a subpœna is made by showing the original and delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. Such service may be made by any person. If a witness is concealed in a building or vessel, so as to prevent the service of a subpœna upon him, any court or judge, or any officer issuing a subpœna, may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the sheriff of the county serve the subpœna; and the sheriff must serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.[12]

SECTION 144. *When witness not compelled to obey.* A witness is not obliged to attend as a

(12) Code of Civil Procedure, §§1987, 1988

witness before any court, judge, justice, or any other officer, out of the county in which he resides, unless the distance be less than fifty miles from his place of residence to the place of trial.[13]

SECTION 145. *Disobedience to subpœna, how punished.* Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court issuing the subpœna. When the subpœna, in any such case, requires the attendance of the witness before an officer or commissioner out of court, it is the duty of such officer or commissioner to report any such disobedience or refusal to the court issuing the subpœna; and the witness must not be punished for any refusal to answer a question or to subscribe an affidavit or deposition, unless, after a hearing upon notice, the court orders him to so answer or subscribe, and then only for disobedience to such order. Any judge, justice, or other officer mentioned in subdivision three of section 1986 (see subdivision 3 of section 142, *supra*), may report any such disobedience or refusal to the superior court of the county in which such attendance was required, and such court thereupon has power, upon notice, to order

(13) Code of Civil Procedure, §1989

the witness to perform the omitted act, and any refusal or neglect to comply with such order may be punished as a contempt of such court.[14]

SECTION 146. *Punishment in case of disobedience.* In addition to punishment for contempt, a witness disobeying a subpœna forfeits to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.[15]

SECTION 147. *Attendance, how enforced.* In case of failure of a witness to attend, the court or officer issuing the subpœna, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required. Every such warrant of commitment, issued by a court or officer, must specify therein, particularly, the cause of the commitment, and if it be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest or commit a witness, pursuant hereto, must be directed to the sheriff of the county where the witness may be,

(14) Code of Civil Procedure, §1991
(15) Code of Civil Procedure, §1992

and must be executed by him in the same manner as process issued by the superior court.[16]

SECTION 148. *If witness is a prisoner, how may be brought.* If the witness be a prisoner, confined in a jail or prison within this state, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined, may be made as follows:

1. By the court itself in which the action or special proceeding is pending, unless it be a justice's court.

2. By a justice of the supreme court, or a judge of the superior court of the county where the action or proceeding is pending, if pending before a justice's court, or before a judge or other person out of court.

Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

If the witness be imprisoned in the county where the action or proceeding is pending, his production may be required. In all other cases his examination, when allowed, must be taken upon deposition.[17]

(16) Code of Civil Procedure, §§1993, 1994
(17) Code of Civil Procedure, §§1995–1997

Witnesses.

SECTION 149. *Duty to attend, and answer questions.* A witness served with a subpœna must attend at the time appointed, with any papers under his control lawfully required by the subpœna, and answer all pertinent and legal questions; and, unless sooner discharged, must remain until the testimony is closed.

He must answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for a felony; nor need he give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness must answer as to the fact of his previous conviction for felony.[18]

SECTION 150. *Right of, to protection from insult.* It is the right of a witness to be protected from irrelevant, improper, or insulting questions, and from harsh or insulting demeanor; to be detained only so long as the interests of justice require it; to be examined only as to matters legal and pertinent to the issue.[19]

(18) Code of Civil Procedure, §§2064, 2065
(19) Code of Civil Procedure, §2066

SECTION 151. *Right of, to protection from arrest.* Every person who has been, in good faith, served with a subpœna to attend as a witness before a court, judge, commissioner, referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, is exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there and returning therefrom. The arrest of a witness, contrary to the foregoing, is void, and when willfully made, is a contempt of the court; and the person making it is responsible to the witness arrested for double the amount of the damages which may be assessed against him, and is also liable to an action, at the suit of the party serving the witness with a subpœna, for the damages sustained by him in consequence of the arrest. The court or officer before whom the attendance is required. may discharge the witness from such an arrest, and if the court has adjourned before the arrest, or before application for the discharge, a judge of the court may grant the discharge.

It is also provided that an officer is not liable to the party for making the arrest in ignorance of the facts creating the exoneration, but is liable for any subsequent detention of the party, if such party claim the exemption and make an af-

fidavit stating, (1) that he has been served with a subpœna to attend as a witness before a court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpœna was issued; and (2) that he has not thus been served by his own procurement, with the intention of avoiding an arrest; (3) that he is at the time going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpœna. The affidavit may be taken by the officer, and exonerates him from liability for discharging the witness when arrested.[20]

Oaths and Affirmations.

SECTION 152. *Nature of an oath.* An oath has been defined to be the act of "calling on God to witness that what is said by the person swearing is true, and invoking the divine vengeance on his head if what he says is false."[21]

SECTION 153. *Authority of notary to administer.* Every court, every judge or clerk of any court, every justice and every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has power to administer oaths or affirmations.[22]

(20) Code of Civil Procedure, §§2067–2070
(21) 10 Ohio, 121
(22) Code of Civil Procedure, §2093

SECTION 154. *Form of.* An oath, or affirmation, in an action or proceeding, may be administered as follows, the person who swears, or affirms, expressing his assent when addressed in the following form: "You do solemnly swear (or affirm, as the case may be) that the evidence you shall give in this issue (or matter) pending between —— and ——, shall be the truth, the whole truth, and nothing but the truth, so help you God."[23] In People v. Collins, 6 Cal. App. 492, the form of the oath set forth in the indictment was not precisely the same as that given in the statute, and this was criticised by the appellant. The court said: "But the oath set forth is in substance the same as that specified in the statute, and besides 'It is no defense to a prosecution for perjury that an oath was administered or taken in an irregular manner'."

Any person who desires it, may at his option, instead of taking an oath, make his solemn affirmation or declaration. This is done by using the word "affirm" or "declare" instead of "swear" in the oath. The form of oath may be varied to suit the belief of the witness, and whenever the court before which a person is offered as a witness is satisfied that the witness has a pecu-

(23) Code of Civil Procedure, §2094

liar mode of swearing connected with or in addition to the usual form of administration, which, in his opinion, is more solemn or obligatory, the court may, in its discretion, adopt that mode. Therefore, when a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.[24]

(24) Code of Civil Procedure, §§2095–2097

CHAPTER IX.

BILLS AND NOTES

§155-156 Duty of Notary in respect to.
157 Negotiable instruments.
158-164 Bills of Exchange.
165-168 Promissory notes.
169-170 Checks.
171-172 Negotiability.
173-179 Form and validity.
180 Negotiation.
181-191 Indorsement.
192-195 Liability of indorsers.
196-198 Holder in due course.
199-206 Presentment and demand for payment.
207-218 Notice of dishonor.
219-224 Discharge of negotiable instruments.
225-227 Presentment of bills of exchange for acceptance.
228-230 Acceptance of bills of exchange.
231-239 Protest.
240-246 Acceptance of bills of exchange for honor.
247-248 Payment of bills of exchange for honor.
249 Bills in a set.
250-253 General definitions and meaning of words.

Duty of Notary in Respect to.

SECTION 155. *Protest.* Another of the duties of notaries public is, "When requested, to demand acceptance and payment of foreign, domestic and inland bills or promissory notes, and protest the same for nonacceptance and nonpayment. * * *" (See Duties, Sec. 5, sub. 1 *supra*). This duty cannot be performed safely or intelligently without a knowledge of the rules

of law governing negotiable instruments. While the term "protest" is the name of the formal instrument drawn up and signed by a notary public alleging the due presentment and dishonor of a bill or note and showing that the regular legal steps have been taken to fix the liability, as generally used the term includes all steps necessary to protect the holder against loss and fix the liability of the drawer and indorsers. These steps are, presentment of the instrument to the proper parties and demand for acceptance or payment, as the case may be, and in case of refusal the giving of due and legal notice of dishonor and the noting and drawing up of the instrument of protest—the main purpose of the protest being to furnish the legal holder with evidence of presentment, demand, and notice of dishonor to be used in actions against the drawer and indorsers.

For failure to properly protest a note so as to charge an indorser, the notary is liable on his bond. Authority to protest must come from holder, or some one authorized to have it presented.

SECTION 156. *Effect of Protest.* The protest of a notary, under his hand and official seal, of a bill of exchange, or promissory note, for non-acceptance or non-payment, stating the presentment for acceptance or payment. and the non-acceptance

or non-payment thereof, the service of notice on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to such bill of exchange or promissory note, and of the party to whom the same was given, and the post-office nearest thereto, is prima facie evidence of the facts contained therein.[1]

Negotiable Instruments.

SECTION 157. *What are.* The term "negotiable" applies to any written instrument which may be transferred by indorsement and delivery so as to vest the transferee with the legal title, so that he can sue on the instrument in his own name; and means (provided he is a bona fide holder in due course) that such transferee takes the instrument free from equities and defenses existing between prior parties. (See Holder in due course, Secs. 196-198 *post*).

Transfer after maturity does not protect holder against defenses and equities.

It is highly important to determine whether or not an instrument is negotiable paper, since such paper represents money, and is intended to pass as money, without notice to the debtor, and

(1) Political Code, §795

the purpose of the law is to protect such paper in the hands of third parties.

In 1917 California adopted the "Negotiable Instruments Law" for the purpose of making the law of California on this subject uniform with that of other states. Very few of the states have not adopted this law. The Negotiable Instruments Law is contained in Sections 3082-3266d of the Civil Code of California, and deals with bills of exchange, promissory notes, and checks. It must be understood that it applies only to instruments which are negotiable.

Bills of Exchange.

SECTION 158. *Definition and nature of.* A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future, a sum certain in money to order or to bearer.[2]

"Draft" is the common term for a bill of exchange.

A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts it.[3] (See Bills in a set, Sec. 249, *post*).

(2) Civil Code, §3207
(3) Civil Code, §3208

SECTION 159. *Parties.* The parties to a bill of exchange are: (1) The drawer; (2) the drawee; (3) the payee. If the drawee is willing to pay the bill at maturity and "accepts" the same upon presentation to him, he then becomes the acceptor. If the payee transfers the bill and all his rights under it by writing his name across the back and delivering it to another, he becomes an indorser, and the person to whom it is transferred becomes the payee. Such payee may again transfer by indorsement, and so on, again and again.

A bill may be addressed to two or more drawees jointly, whether they are partners or not, but not to two or more drawees in the alternative or in succession.[4]

The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.[5]

SECTION 160. *Liability of Drawer.* The drawer by drawing the instrument admits the exist-

(4) Civil Code, §3209
(5) Civil Code, §3212

ence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.[6]

SECTION 161. *Liability of Acceptor.* The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits—

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(2) The existence of the payee and his then capacity to indorse.[7]

SECTION 162. *When may be treated as a note.* Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.[8]

(6) Civil Code, §3142
(7) Civil Code, §3143
(8) Civil Code, §3211

SECTION 163. *Inland and Foreign Bills.* An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.[9]

The states of the Union are considered foreign to each other for the purposes of negotiable paper. The law does not require protest in case of the dishonor of an inland bill or promissory note, but these instruments *may* be protested under the law, and this precaution is usually taken for the purposes of evidence. Foreign bills must be protested in case of dishonor. (See Protest, Secs. 231-239 *post;* also see Protest, Secs. 155-156, *ante*).

SECTION 164. *Rules Applicable to Bills of Exchange.* Sections 171-224 inclusive and Sections 250-253 of this volume, relate to negotiable instruments in general and are applicable alike to bills of exchange, promissory notes and checks.

Sections 225-249 inclusive, relating to acceptance, presentment for acceptance, protest, acceptance for honor, and payment for honor, are applicable exclusively to bills of exchange, excepting that promissory notes may also be protested.

(9) Civil Code, §3210

Promissory Notes.

SECTION 165. *Definition and Nature of.* A negotiable promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer, but the negotiability of a promissory note otherwise negotiable in form, secured by a mortgage or deed of trust upon real or personal property, shall not be affected or abridged by reason of a statement therein that it is so secured, nor by reason of the fact that said instrument is so secured, nor by any conditions contained in the mortgage or deed of trust securing the same. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.[10]

SECTION 166. *Parties.* The parties to a promissory note are: (1) the maker, and (2) the payee. The payee of a promissory note may transfer the same by indorsement and delivery to a third person, and thus become an indorser the same as the payee of a bill of exchange.

SECTION 167. *Joint or joint and several.* If the note is signed by more than one person, the makers may be jointly, or jointly and severally

(10) Civil Code, §3265

liable, depending upon the form of the note. A note reading "We promise to pay" would be presumed to be joint; one reading "We, jointly and severally, promise to pay" is, of course, joint and several; and a promise made in the first person singular number would be presumed to be joint and several, as each signer promises to be responsible for the full amount.[11] All the makers must be joined as defendants in an action on a joint promissory note, whereas a joint and several obligation may be sued on as if made by any one of the signers alone.

SECTION 168. *Liability of maker.* The maker of a negotiable instrument, by making it, engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.[12]

Checks.

SECTION 169. *Defined.* A check is a bill of exchange drawn on a bank payable on demand.[13]

SECTION 170. *Subject to what rules.* A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. Where a check is

(11) Civil Code, §1659-1660
(12) Civil Code, §3141
(13) Civil Code, §3265

certified by the bank on which it is drawn, the certification is equivalent to an acceptance. Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon.

A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.

Except as in this section otherwise provided, the provisions of law applicable to a bill of exchange payable on demand apply to a check.[14]

Negotiability.

SECTION 171. *Requirements.* An instrument to be negotiable must conform to the following requirements:

1. *It must be in writing and signed by the maker or drawer.*

One who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency. Where

(14) Civil Code, §3265a-3265e

the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.[15] (See Forged signature, Sec. 179, *post*).

2. *It must contain an unconditional promise or order to pay a sum certain in money.*

The sum payable is a sum certain although it is to be paid—(1) with interest; or (2) by stated installments; or (3) by stated installments with a provision that upon default in payment of any installment or of interest the whole shall become due; or (4) with exchange, whether at a fixed rate or at the current rate; or (5) with costs of collection or an attorney's fee, in case payment shall not be made at maturity.

An unqualified order or promise to pay is unconditional though coupled with—(1) an in-

(15) Civil Code, §3082, 3099-3102

dication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or (2) a statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.[16]

3. *It must be payable on demand, or at a fixed or determinable future time.*

An instrument is payable on demand—(1) where it is expressed to be payable on demand, or at sight, or on presentation; or (2) in which no time for payment is expressed. Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

An instrument is payable at a determinable future time which is expressed to be payable—(1) at a fixed period after date or sight; or (2) on or before a fixed or determinable future time specified therein; or (3) on or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.[17]

(16) Civil Code, §3082-3084
(17) Civil Code, §3082, 3088, 3085

4. *It must be payable to order or to bearer.* The instrument is payable to order where it is drawn payable to the order of a specified person, or to him or his order. It may be drawn payable to the order of—(1) a payee who is not maker, drawer, or drawee; or (2) the drawer or maker; or (3) the drawee; or (4) two or more payees jointly; or (5) one or some of several payees; or (6) the holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

The instrument is payable to bearer—(1) when it is expressed to be so payable; or (2) when it is payable to a person named therein or bearer; or (3) when it is payable to the order of a fictitious or non-existing person and such fact was known to the person making it so payable; or (4) when the name of the payee does not purport to be the name of any person; or (5) when the only or last indorsement is an indorsement in blank.[18]

5. *Where the instrument is addressed to a drawee he must be named or otherwise indicated therein with reasonable certainty.*[19]

SECTION 172. *Matters which do not affect negotiability.* The validity and negotiable character

(18) Civil Code, §3082, 3089-3090
(19) Civil Code, §3082

of an instrument are not affected by the fact that—(1) it is not dated; or (2) does not specify the value given, or that any value has been given therefor; or (3) does not specify the place where it is drawn or the place where it is payable; or (4) bears a seal; or (5) designates a particular kind of money in which payment is to be made.

An instrument which contains an order or promise to do an act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which—(1) authorizes the sale of collateral securities in case the instrument is not paid at maturity; or (2) authorizes a confession of judgment if the instrument be not paid at maturity; or (3) waives the benefit of any law intended for the advantage or protection of the obligor; or (4) gives the holder an election to require something to be done in lieu of payment of money; but no provision or stipulation otherwise illegal is valid.[20]

Form and Validity.

SECTION 173. *Date.* Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or

(20) Civil Code, §3087, 3086

indorsement, as the case may be. The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered, acquires the title thereto as of the date of delivery. Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course, but as to him the date so inserted is to be regarded as the true date.[21]

SECTION 174. *Filling blanks.* Where an instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount.

(21) Civil Code, §3092-3094

In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Where an incomplete instrument has not been delivered, it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder as against any person whose signature was placed thereon before delivery.[22]

SECTION 175. *Delivery.* Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between the immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the person making, drawing, accepting, or indorsing, as the case may be; and in such case the delivery may be shown to have

(22) Civil Code, §3095-3096

been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.[23]

SECTION 176. *Construction.* Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

(2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

(23) Civil Code, §3097

(3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

(4) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

(6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.[24]

SECTION 177. *Consideration.* Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. Value in any consideration sufficient to support a simple contract. An antecedent or preexisting debt constitutes value, and is deemed such whether

(24) Civil Code, §3098

the instrument is payable on demand or at a future time. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who become such prior to that time. Where the holder has a lien on the instrument arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. Absence or failure of consideration is matter of defense as against any person not a holder is due course, and partial failure or consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.[25]

SECTION 178. *Accommodation party.* An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.[26]

SECTION 179. *Forged signature.* When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain

(25) Civil Code, §3105-3109
(26) Civil Code, §3110

the instrument, or to give a discharge thereof, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.[27]

Negotiation.

SECTION 180. *What constitutes.* An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.[28]

The warranty of a person who negotiates an instrument by delivery is the same as that of a qualified indorser. (See Warranty of qualified indorser, Sec. 192, *post*).

Indorsement.

SECTION 181. *How made.* The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the

(27) Civil Code, §3104
(28) Civil Code, §3111

indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue. Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others. Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer. Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.[29]

SECTION 182. *Indorser, who is.* A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor, is deemed

(29) Civil Code, §3112-3113, 3122-3125

to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.[30]

The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.[31]

SECTION 183. *Indorsement, kinds of.* An indorsement may be either special or in blank. It may be also either restrictive or qualified, or conditional.[32]

SECTION 184. *Special or in blank.* A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.[33]

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(30) Civil Code, §3144
(31) Civil Code, §3103
(32) Civil Code, §3114
(33) Civil Code, §3115-3116

Where an instrument, payable to bearer is indorsed specially it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.[34]

SECTION 185. *Restrictive.* An indorsement is restrictive, which either—

(1) Prohibits the further negotiation of the instrument; or

(2) Constitutes the indorsee the agent of the indorser; or

(3) Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

A restrictive indorsement confers upon the indorsee the right—

(1) To receive payment of the instrument;

(2) To bring any action thereon that the indorser could bring;

(3) To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

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[34] Civil Code, §3121

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.[35]

SECTION 186. *Qualified.* A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.[36] (See Warranty of Qualified indorsers, etc., Sec. 183, *post*).

SECTION 187. *Conditional.* Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.[37]

(35) Civil Code, §3117, 3128
(36) Civil Code, §3119
(37) Civil Code, §3120

SECTION 188. *Time and place.* Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. Except where the contrary appears every indorsement is presumed prima facie to have been made at the place where the instrument is dated.[38]

SECTION 189. *Striking out indorsement.* The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.[39]

SECTION 190. *Transfer without indorsement.* Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.[40]

(38) Civil Code, §3126-3127
(39) Civil Code, §3129
(40) Civil Code, §3130

SECTION 191. *Back to prior party.* Where the instrument is negotiated back to a prior party such party may reissue and further negotiate it, but he is not entitled to enforce payment against an intervening party to whom he was personally liable.[41]

Liability of Indorsers.

SECTION 192. *Warranty of qualified indorser, etc.* Every person negotiating an instrument by delivery or by a qualified indorsement, warrants—

(1) That the instrument is genuine and in all respects what it purports to be;

(2) That he has a good title to it;

(3) That all prior parties had capacity to contract (this does not apply to persons negotiating public or corporation securities, other than bills and notes);

(4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.[42]

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(41) Civil Code, §3131
(42) Civil Code, §3146

SECTION 193. *Warranty of general indorser.* Every indorser who indorses without qualification, warrants to all subsequent holders in due course—

(1) The matters and things mentioned in subdivision one, two and three of the next preceding section; and

(2) That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by this section, unless he discloses the name of his principal, and the fact that he is acting only as agent.[43]

SECTION 194. *Liability of irregular indorser.* Where a person not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser, in accordance with the following rules:

(43) Civil Code, §3147, 3150

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

Where a person places his indorsement upon an instrument negotiable by delivery, he incurs all the liabilities of an indorser.[44]

SECTION 195. *Order of liability.* As respects one another indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.[45]

Holder in Due Course.

SECTION 196. *Who is.* A holder in due course is a holder who has taken the instrument under the following conditions:

(1) That it is complete and regular upon its face;

(44) Civil Code, §3145, 3148
(45) Civil Code, §3149

(2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

(3) That he took it in good faith and for value;

(4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. The title of a person who negotiates an instrument is defective when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the

same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith. Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.[46]

SECTION 197. *Rights of.* A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting

(46) Civil Code, §3133-3137, 3140

the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

A holder may sue on the instrument in his own name, and payment to him in due course discharges the instrument.[47]

SECTION 198. *Payment in due course defined.* Payment is made in due course when it is made at or after maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.[48]

Presentment and Demand for Payment.

SECTION 199. *On principal debtor.* Presentment for payment is not necessary in order to charge the person primarily liable on the instrument, but if the instrument is payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender on his part. But presentment for payment is necessary to charge the drawer and indorsers, except that—

Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument;

Presentment for payment is not required in order to charge an indorser where the instrument

(47) Civil Code, §3138-3139, 3132
(48) Civil Code, §3169

was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.[49]

SECTION 200. *When to be made.* Where not payable on demand, presentment must be made on the day it falls due. Where payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. (See Reasonable time, how determined, Sec. 252, *post*).

Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

Where the instrument is payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.[50]

SECTION 201. *Maturity of instrument.* Every negotiable instrument is payable at the time fixed

(49) Civil Code, §3151, 3160-3161
(50) Civil Code, §3152, 3156, 3168

therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.[51]

SECTION 202. *How to be made.* Presentment for payment, to be sufficient, must be made—

(1) By the holder, or by some person authorized to receive payment on his behalf;

(2) At a reasonable hour on a business day;

(3) At a proper place (See Where to be made, Sec. 203, *post*);

(4) To the person primarily liable on the instrument or if he is absent or inaccessible, to

(51) Civil Code, §3166-3167

any person found on the place where the presentment is made.

The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.[52]

SECTION 203. *Where to be made.* Presentment for payment is made at the proper place—

(1) Where a place of payment is specified in the instrument and it is there presented;

(2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

(3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

(4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if,

(52) Civil Code, §3153, 3155

with the exercise of reasonable diligence, he can be found.

Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.[53]

SECTION 204. *Delay in, when excused.* Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.[54]

SECTION 205. *When dispensed with.* Presentment for payment is dispensed with—

(1) Where after the exercise of reasonable diligence presentment as required by this title can not be made;

(2) Where the drawee is a fictitious person;

(3) By waiver of presentment, express or implied.[55]

(53) Civil Code, §3154, 3157-3159
(54) Civil Code, §3162
(55) Civil Code, §3163

SECTION 206. *When instrument is dishonored by nonpayment.* The instrument is dishonored by nonpayment when—

(1) It is duly presented for payment and payment is refused or can not be obtained; or

(2) Presentment is excused and the instrument is overdue and unpaid.

And when dishonored by nonpayment an immediate right of recourse to all parties secondarily liable on the instrument accrues to the holder.[56]

Notice of Dishonor.

SECTION 207. *To whom must be given.* When a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. Notice of dishonor may be given either to the party himself or to his agent in that behalf. When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of busi-

(56) Civil Code, §3164-3165

ness of the deceased. Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.

Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.[57]

SECTION 208. *By whom given.* The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given.

It may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. Where given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of

(57) Civil Code, §3170, 3178-3182

recourse against the party to whom it is given. Where given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.[58]

SECTION 209. *Form and sufficiency of.* A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.[59]

(58) Civil Code, §3171-3175
(59) Civil Code, §3176-3177

SECTION 210. *When must be given.* Notice may be given as soon as the instrument is dishonored, and unless delay is excused (See Delay, when excused, Sec. 217, *post*) must be given—

Where the person giving and the person to receive notice reside in the same place, it must be given within the following times:

(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;

(2) If given at his residence, it must be given before the usual hours of rest on the day following;

(3) If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.[60]

Where the person giving and the person to receive reside in different places, the notice must be given within the following times:

(1) If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter;

(2) If given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it

(60) Civil Code, §§3183-3184

had been deposited in the post office within the time specified in the last subdivision.

Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. Notice is deemed to have been deposited in post office when deposited in any branch post office or in any letter box under the control of the post office department.[61]

SECTION 211. *Notice to subsequent party.* Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.[62]

SECTION 212. *Where must be sent.* Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

(1) Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters; or

(2) If he live in one place, and have his place of business in another, notice may be sent to either place; or

(61) Civil Code, §3185-3187
(62) Civil Code, §3188

(3) If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified, it will be sufficient, though not sent in accordance with these requirements.[63]

SECTION 213. *Waiver of.* Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be expressed or implied. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of formal protest, but also of presentment and notice of dishonor.[64]

SECTION 214. *When need not be given to drawer.* Notice of dishonor is not required to be given to the drawer in either of the following cases:

(1) Where the drawer and drawee are the same person;

(63) Civil Code, §3189
(64) Civil Code, §3190-3192

(2) When the drawee is a fictitious person or a person not having capacity to contract;

(3) When the drawer is the person to whom the instrument is presented for payment;

(4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;

(5) Where the drawer has countermanded payment.[65]

SECTION 215. *When need not be given to an indorser.* Notice of dishonor is not required to be given to an indorser in either of the following cases:

(1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

(2) Where the indorser is the person to whom the instrument is presented for payment;

(3) Where the instrument was made or accepted for his accommodation.[66]

SECTION 216. *Dispensed with, when.* Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be

(65) Civil Code, §3195
(66) Civil Code, §3196

given to or does not reach the parties sought to be charged.

Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary unless in the meantime the instrument has been accepted.

An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.[67]

SECTION 217. *Delay, when excused.* Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.[68]

SECTION 218. *Protest, when may be made.* Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange.[69] (See Protest, Secs. 231-239, *post*).

Discharge of Negotiable Instruments.

SECTION 219. *How discharged.* A negotiable instrument is discharged—

(67) Civil Code, §3193, 3197-3198
(68) Civil Code, §3194
(69) Civil Code, §3199

(1) By payment in due course by or on behalf of the principal debtor;

(2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

(3) By the intentional cancellation thereof by the holder. (See Cancellation, Sec. 224, *post*);

(4) By any other act which will discharge a simple contract for the payment of money;

(5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right.[70]

SECTION 220. *Persons secondarily liable, how discharged.* A person secondarily liable on the instrument is discharged—

(1) By any act which discharges the instrument;

(2) By the intentional cancellation of his signature by the holder;

(3) By the discharge of a prior party;

(4) By a valid tender of payment made by a prior party;

(5) By a release of the principal debtor unless the holder's right of recourse against the party secondarily liable is expressly reserved;

(6) By any agreement binding upon the holder

(70) Civil Code, §3200

to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.[71]

SECTION 221. *Material alteration avoids, when.* Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

Any alteration which changes—

(1) The date;

(2) The sum payable, either for principal or interest;

(3) The time or place of payment;

(4) The number or the relations of the parties;

(5) The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change

(71) Civil Code, §3201

or addition which alters the effect of the instrument in any respect, is a material alteration.[72] (See also Forged signature, Sec. 179, *ante*).

SECTION 222. *Right of party who discharges instrument.* Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except—

(1) Where it is payable to the order of a third person, and has been paid by the drawer; and

(2) Where it was made or accepted for accommodation, and has been paid by the party accommodated.[73]

SECTION 223. *Renunciation by holder.* The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation

(72) Civil Code, §3205-3206
(73) Civil Code, §3202

must be in writing, unless the instrument is delivered up to the person primarily liable thereon.[74]

SECTION 224. *Cancellation.* A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.[75]

Presentment of Bills of Exchange for Acceptance.

The sections following relating to presentment for acceptance (Sections 225-227), acceptance (Sections 228-230), acceptance for honor (Sections 240-246), payment for honor (Sections 247-248), and bills in a set (Section 249) apply exclusively to bills of exchange.

SECTION 225. *Presentment for acceptance, when must be made.* Presentment for acceptance must be made—

(1) Where the bill is payable after sight, or in any other case, where presentment for acceptance

(74) Civil Code, §3203
(75) Civil Code, §3204

is necessary in order to fix the maturity of the instrument; or

(2) Where the bill expressly stipulates that it shall be presented for acceptance; or

(3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

The holder of a bill which is required to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged. (See Reasonable time, how determined, Sec. 252, *post*).

Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and—

(1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

(2) Where the drawee is dead, presentment may be made to his personal representative;

(3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment. (See Sections 200-201, *ante*). When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon, on that day.

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.[76]

SECTION 226. *Presentment for acceptance, when excused.* Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:

(76) Civil Code, §3224-3228

(1) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill;

(2) Where, after the exercise of reasonable diligence, presentment can not be made;

(3) Where, although presentment has been irregular, acceptance has been refused on some other ground.[77]

SECTION 227. *Non-acceptance.* A bill is dishonored by nonacceptance—

(1) When it is duly presented for acceptance and such an acceptance as is prescribed below (See Secs. 219-221, *post*) is refused or cannot be obtained; or

(2) When presentment for acceptance is excused and the bill is not accepted. (See Presentment for acceptance, when excused, Sec. 226, *ante*).

Where a bill is duly presented for acceptance and is not accepted within the prescribed time the person presenting it must treat the bill as dishonored by nonacceptance, or he loses the right of recourse against the drawer and indorsers. When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers

(77) Civil Code, §3229

and indorsers accrues to the holder and no presentment for payment is necessary.[78]

Acceptance of Bills of Exchange.

SECTION 228. *Acceptance, how made.* The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored.

Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or

(78) Civil Code, §3230-3232

when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.[79]

SECTION 229. *Time allowed for acceptance.* The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.[80]

SECTION 230. *Kinds of acceptance.* An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

An acceptance to pay at a particular place is a

(79) Civil Code, §3213-3216, 3219
(80) Civil Code, §3217-3218

general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

An acceptance is qualified, which is—

(1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

(2) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(3) Local, that is to say, an acceptance to pay only at a particular place;

(4) Qualified as to time;

(5) The acceptance of some one or more of the drawees, but not of all.

The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to

the holder, or he will be deemed to have assented thereto.[81]

Protest.

SECTION 231. *When necessary.* Where a foreign bill appearing on its face to be such, is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such bill which has not been previously dishonored by nonacceptance, is dishonored by nonpayment, it must be duly protested for nonpayment.

If it is not protested, the drawer and indorsers are discharged.

Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.[82] (See Inland and foreign bills, Sec. 163, *ante*).

SECTION 232. *How made.* The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify—

(1) The time and place of presentment;

(2) The fact that presentment was made and the manner thereof;

(3) The cause or reason for protesting the bill;

(81) Civil Code, §3220-3223
(82) Civil Code, §3233

(4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.[83]

SECTION 233. *By whom made.* Protest may be made by—

(1) A notary public; or

(2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.[84]

SECTION 234. *When to be made.* When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.[85]

SECTION 235. *Where made.* A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some other person than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.[86]

(83) Civil Code, §3234
(84) Civil Code, §3235
(85) Civil Code, §3236
(86) Civil Code, §3237

SECTION 236. *Both for nonacceptance and nonpayment.* A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.[87]

SECTION 237. *Before maturity, when.* Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.[88]

SECTION 238. *Dispensed with, when.* Protest is dispensed with by any circumstances which would dispense with notice of dishonor. (See Sec. 216, *ante*). Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.[89]

SECTION 239. *Where bill is lost, etc.* When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.[90]

(87) Civil Code, §3238
(88) Civil Code, §3239
(89) Civil Code, §3240
(90) Civil Code, §3241

Acceptance of Bills of Exchange for Honor.

SECTION 240. *When bill may be accepted for honor.* Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.[91]

SECTION 241. *How made.* An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.[92]

SECTION 242. *Liability on.* The acceptor for honor is liable to the holder and to all parties to

(91) Civil Code, §3242
(92) Civil Code, §3243-3244

the bill subsequent to the party for whose honor he has accepted. By such acceptance, he engages that he will, on due presentment, pay the bill according to the terms of his acceptance, provided, it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given him.[93]

SECTION 243. *Maturity of bill.* Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance, and not from the date of the acceptance for honor.[94]

SECTION 244. *Protest of bill accepted for honor.* Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.[95]

SECTION 245. *Presentment for payment, how made.* Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where

(93) Civil Code, §3245-3246
(94) Civil Code, §3247
(95) Civil Code, §3248

the protest for nonpayment was made, it must be presented not later than the day following its maturity.

(2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified for the giving of notice of dishonor where the parties reside in different places. (See Sec. 210, *ante*).

Where there is delay in making presentment to the acceptor for honor or referee in case of need, the provisions of law excusing delay in making presentment for payment may be applied.[96] (See Sec. 204, *ante*).

SECTION 246. *Bill must be protested for dishonor by acceptor for honor.* When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.[97]

Payment of Bills of Exchange for Honor.

SECTION 247. *How made.* Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor which may

(96) Civil Code, §3249-3250
(97) Civil Code, §3251

be appended to the protest or form an extension to it. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.[98]

SECTION 218. *Effect of.* Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.[99]

(98) Civil Code, §3252-3255
(99) Civil Code, §3256-3258

Bills in a Set.

SECTION 249. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill. Where two or more parts are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon;

and except as otherwise stated herein, where one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.[100]

General Definitions and Meaning of Words.

SECTION 250. Unless the context otherwise requires—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counterclaim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instru-

(100) Civil Code, §3259-3264

ment complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.[101]

SECTION 251. *Person primarily liable, defined.* The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.[102]

SECTION 252. *Reasonable time, how determined.* In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.[103]

SECTION 253. *Time, how computed.* Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.[104]

(101) Civil Code, §3266
(102) Civil Code, §3266a
(103) Civil Code, §3266b
(104) Civil Code, §3266c

APPENDIX.

FORMS.

CERTIFICATES OF ACKNOWLEDGMENT.

No. 1.—General Form.

STATE OF CALIFORNIA
City and County of *San Francisco* } ss

On this *first* day of *March* in the year one thousand nine hundred and twenty-three, before me, *J. B.*, a notary public in and for the said *city and* county of *San Francisco*, state of California, residing therein, duly commissioned and sworn, personally appeared *M. A.*, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

J. B.,
Notary Public
in and for the *City and* County of *San Francisco*,
State of California.

No. 2.—Husband and Wife (or Plural).

STATE OF CALIFORNIA }
County of *Santa Clara* } ss

On this *first* day of *March* in the year one thousand nine hundred and twenty-three, before me, *C. A.*, a notary public in and for the said county of *Santa Clara*, state of California, residing therein, duly commissioned and sworn, personally appeared *H. W.* and *M. W.*, his wife, known to me to be the persons whose names are subscribed to the within instrument, and they and each of them acknowledged to me that they and each of them respective.y executed the same.

In Witness Whereof, etc.

No. 3.—General—When Party is Proven.

STATE OF CALIFORNIA }
County of *Marin* } ss

On this *first* day of *March* in the year one thousand nine hundred and twenty-three, before me, *A. B.*, a notary public in and for the said county of *Marin*, state of California, residing therein, duly commissioned and sworn, personally appeared *Joseph Smith*, satisfactorily proved to me to be the person described in and who executed the within instrument by the oath of *P. B.*, a competent and credible witness for that purpose by me duly sworn, and he, the said *Joseph Smith*, acknowledged to me that he executed the same.

In Witness Whereof, etc.

No. 4.—Corporation—President or Secretary.

STATE OF CALIFORNIA }
County of *Santa Barbara* } ss

On this *first* day of *March* in the year one thousand nine hundred and twenty-three, before me, *M. T.*, a notary public in and for the said county of *Santa Barbara*, state of California, residing therein duly commissioned and sworn, personally appeared *C. A. R.*, known to me to be the *president* (or secretary) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In Witness Whereof, etc.

No. 5.—Corporation—President, Secretary or Other Person.

STATE OF CALIFORNIA }
County of *San Mateo* } ss

On this *first* day of *March* in the year one thousand nine hundred and twenty-three, before me, *R. G.*, a notary public in and for the said county of *San Mateo*, state of California, residing therein, duly commissioned and sworn, personally appeared *L. A. H.*, known to me to be the *manager* (president, secretary, or other person) of the corporation described in and that executed the within instrument and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

In Witness Whereof, etc.

No. 6.—Corporation—by Two Officers.

STATE OF CALIFORNIA }
County of *Yuba.* } ss

On this *first* day of *March* in the year one thousand nine hundred and twenty-three, before me, *P. B.*, a notary public in and for the county of *Yuba*, state of California, residing therein, duly commissioned and sworn, personally appeared *A. B.*, known to me to be the *vice-president*, and *C. D.*, known to me to be the *secretary* of the corporation described in and that executed the within instrument, and also known to me to be the persons who executed it on behalf of the corporation therein named, and they and each of them acknowledged to me that such corporation executed the same.

In Witness Whereof, etc.

No. 7.—Attorney in Fact.

STATE OF CALIFORNIA }
County of *Santa Cruz.* } ss

On this *first* day of *March* in the year one thousand nine hundred and twenty-three, before me, *S. M.*, a notary public in and for the county of *Santa Cruz*, state of California, residing therein duly commissioned and sworn, personally appeared *J. P.*, known to me to be the person whose name is subscribed to the within instrument as the

attorney in fact of *L. P.*, and the said *J. P.* duly acknowledged to me that he subscribed the name of *L. P.* thereto as principal and his own name as attorney in fact.

In Witness Whereof, etc.

CERTIFICATES OF PROOF.

No. 8.—Subscribing Witness.

STATE OF CALIFORNIA }
County of *Solano.* } ss

On this *first* day of *March* in the year one thousand nine hundred and twenty-three, before me, *A. S.*, a notary public in and for the county of *Solano*, state of California, residing therein duly commissioned and sworn, personally appeared *W. P.* known to me to be the same person whose name is subscribed to the within instrument as a witness thereto, who, being by me duly sworn, deposed and said: That he resides in the town of *Suisun;* that he was present and saw *B. A.* (personally known to him to be the person described in and who executed the said instrument as party thereto), sign, seal and deliver the same; and that the said *B. A.* duly acknowledged in the presence of said affiant that he executed the same, and that he, the said affiant, thereupon and at his request subscribed his name as a witness thereto.

In Witness Whereof, etc.

No. 9.—Handwriting—When All the Parties and Subscribing Witnesses Are Dead.

STATE OF CALIFORNIA }
County of *Sonoma*. } ss

On this *first* day of *March* in the year one thousand nine hundred and twenty-three, before me, *R. D.*, a notary public in and for the county of *Sonoma*, state of California, residing therein, duly commissioned and sworn, personally appeared *C. E.*, known to be a credible witness, and after being by me sworn in the manner and form required by law, I exhibited to him an instrument in writing, to-wit, the deed to which this certificate is attached, upon which is written the signature of *H. L.* as grantor and *K. A.* as subscribing witness. After being sworn, the said *C. E.* testified in substance as follows: That said instrument has never been acknowledged; that, at the date of said nstrument, he knew personally *H. L.*, the said grantor, and *K. A.*, the said subscribing witness; that the parties and all the subscribing witnesses to said instrument are dead; that he then knew and now knows the handwriting of the said grantor and of the said subscribing witness; that the signature of the said grantor *H. L.* is genuine, and the signature of said *K. A.*, the only subscribing witness, is genuine; that he, the said witness,

resides in said county of *Sonoma*, state of California.

In Witness Whereof, etc.

No. 10.—Handwriting—When Parties and Subscribing Witnesses Are Nonresidents.

STATE OF CALIFORNIA }
County of *Stanislaus*. } ss

On this *first* day of *March* in the year one thousand nine hundred and twenty-three, before me, *G. H.*, a notary public in and for the county of *Stanislaus*, state of California, residing therein, duly commissioned and sworn, personally appeared *S. T.* known to me to be the person whose name is subscribed to the instrument to which this certificate is annexed, as a witness to the genuineness of the signature of *E. D.*, the grantor, and the genuineness of the signature of *F. P.*, the subscribing witness to said instrument. The said *S. T.* was sworn by me in the manner and form required by law, and testified in substance as follows: That he personally knew *E. D.*, the grantor, and *F. P.*, the subscribing witness, and also the grantee in said instrument named at the time said instrument was executed, to-wit, at the city of *Modesto*, County of *Stanislaus*, on the *second* day of *April* in the year *1922*. that since the execution of said instrument both of the parties to said instrument

and *F. P.* the sole subscribing witness to said instrument have become nonresidents of the state of California, to-wit, they reside in the *city of Paris, Republic of France;* that he, the said witness, is well acquainted with the signature of the grantor and with the signature of the said subscribing witness, and that the signature of the said grantor to said instrument and also the signature of the said subscribing witness, are genuine; that he is a resident of the town of *Newman*, county of *Stanislaus*, state of California, and that he subscribed his name to said instrument as a witness to the genuineness of the signatures of the said grantor and the said subscribing witness respectively.

In Witness Whereof, etc.

No. 11.—Handwriting—When Place of Residence Is Unknown.

STATE OF CALIFORNIA }
County of *Solano.* } ss

(Proceed as in No. 9 down to and including the words "After being duly sworn the said *C. E.* testified in substance as follows," and then add:) That he personally knew *H. L.* the grantor and, the subscribing witness, *K. A.*, at the date of said

instrument; that the place of residence of the parties and all the subscribing witnesses to said instrument is unknown to the said *C. E.;* that he, the said *C. E.* is the grantee named in said instrument; that said instrument was never acknowledged, and he desires to have it proved so that it may be recorded; that he has exercised due diligence to ascertain the residence of the parties and of the subscribing witnesses by making inquiries at their last known places of residence, by advertising in three daily papers published at their last known places of residence, for one week, and by personal inquiries among their friends, family and acquaintances, and he cannot ascertain the place of residence of all or any of said parties; that he is well acquainted with the signature of the said grantor and with the signature of the said subscribing witness, and that the signature of the said grantor to said instrument and also the signature of the said subscribing witness, are genuine; that he, the said *C. E.* is a resident of the city of *Fairfield*, county of *Solano*, state of California.

In W tness Whereof, etc.

CERTIFICATE TO DEPOSITION.

No. 12.—General Form.

STATE OF CALIFORNIA }
County of *Placer.* } ss

I, *A. B. C.*, a notary public in and for said county, do hereby certify: That *B. A.*, the witness in the foregoing deposition named, was by me duly sworn; that said deposition was then taken at the time and place mentioned in the annexed order (or stipulation), to-wit, at my office of the county of *Placer*, state of California, and on the *first* day of *March, 1923*, between the hours of *10 a. m.* and *3 p. m.* of that day; that said deposition was reduced to writing by me (or taken in shorthand by *C. P.* and thereafter transcribed) and when completed was by me carefully read to said witness, and being by him corrected, was by him subscribed in my presence.

In Witness Whereof, etc.

NOTICE OF PROTEST.

No. 13.—Of Promissory Note.

UNITED STATES OF AMERICA }
STATE OF CALIFORNIA } ss
County of *Alameda.* }

Sir:

Please take notice that a certain promissory note dated *March 1, 1923*, for the sum of *three*

thousand dollars, payable *thirty* days after date, made by *P. L.* in favor of *T. R.* and endorsed by you, was this day presented by me, a notary public, to said *P. L.*, the maker of the said note, and payment thereof demanded, which was refused, and the said promissory note having been dishonored the same was this day protested by me for the nonpayment thereof, and the holder looks to you for the payment thereof, together with all costs, charges, interest, expenses, and damages already accrued, or that may hereafter accrue thereon by reason of the nonpayment of said promissory note.

Oakland, Cal. *March 31, 1922.*

Note: This form can be easily made applicable to the case of a bill of exchange.

The above form gives notice of presentment and demand, dishonor, and protest.

PROTEST.

No. 14.—Of Note Payable at Particular Place—Notice of Protest Mailed.

UNITED STATES OF AMERICA
STATE OF CALIFORNIA } ss
City and County of *San Francisco.*

On the *30th* day of *March*, in the year of our Lord one thousand nine hundred and *twenty-two*, at the request of *M. B.*, holder of the promissory

note hereinafter set forth, I, *H. K.*, a notary public duly commissioned and sworn, dwelling in the *city and* county of *San Francisco*, state of California, did, during business hours of said day, present the original promissory note (a copy of which is endorsed on the reverse side of this sheet) at the *Bank of California* in the *city and* county of *San Francisco*, where the same is made payable, and demanded payment thereof from the paying teller, which he refused, saying: "No authority to pay."

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly protest, as well as against the makers and endorsers as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest, already incurred and to be hereafter incurred for the nonpayment of the said promissory note.

I do hereby certify that on the *30th* day of *March*, A. D. *1922*, notice of protest, demand and nonpayment of the above mentioned promissory note was served upon *A. B.* and *C. D.*, endorsers, by depositing the same in the United States Post Office in this city, postage fully pre-

paid thereon, directed to them respectively as follows:

A. B., Sacramento, California;
C. D., Santa Cruz, California;

such being the reputed places of residence of said respective parties and the post offices nearest thereto, according to the best information I could obtain.

Thus done and protested in the *city and* county of *San Francisco*, state of California aforesaid, the days and years above written.

(Seal) *H. K.*

Notary Public
in and for the *city and* county of *San Francisco*, state of California.

No. 15.—When Presented to Maker Personally—Notices Served Personally, Etc.

(Proceed as in No. 14 down to "(a copy of which is endorsed on the reverse side of this sheet)", to the maker in the *city and* county of *San Francisco*, state of California, and demanded payment thereof from him personally, which he refused saying, "I have no money."

Whereupon (proceed as in No. 14 to end of paragraph.)

I do hereby certify that on the *30th* day of *March, 1922*, notice of protest demand and non-payment of the above mentioned promissory note was served upon *M. B.* endorser, by delivering the same to him personally in said city (or, upon *T. R.* endorser, by delivering the same at his place of business, No. 3 Market Street, in this city, to a person of discretion in charge thereof, apparently acting for him).

(Close as in No. 14.)

No. 16.—When Maker Cannot Be Found and Has No Known Place of Business or Residence—Notices Mailed.

(Proceed as in No. 14 down to "(a copy of which is endorsed on the reverse side of this sheet)", to several persons at several places in said city, and did make due and diligent search and inquiry for the maker to demand payment thereof, but I could not find him or anyone to pay said note. I was credibly informed that said *A. B.* did not reside here and had no office or place of business in San Francisco.

Whereupon (proceed as in No. 14 to end of paragraph.)

I do hereby certify (proceed as in No. 14).

No. 17.—When Last Place of Residence Is Known but Maker Cannot Be Found—Notices Mailed.

(Proceed as in No. 14 down to and including "(a copy of which is endorsed on the reverse side of this sheet)", at *No. 3500 Pine* Street in this city, which I was informed was the last reputed place of residence in this city of *T. B.* the maker, the demanded payment thereof from a person in charge of said place of residence, which he refused saying "*A. B.* formerly lived here but I do not know his present address."

Whereupon (proceed as in No. 14 to the end.)

No. 18.—When Bill of Exchange Is Accepted for Honor—Notices Mailed.

UNITED STATES OF AMERICA
STATE OF CALIFORNIA
City and County of *San Francisco.* } ss

On the *1st* day of *March*, in the year one thousand nine hundred and *twenty-three*, at the request of *T. B.*, holder of the bill of exchange hereinafter set forth, I, *H. K.*, a notary public duly commissioned and sworn, dwelling in the *city and* county of *San Francisco*, did, during business hours of said day, present the original bill of exchange (a copy of which is endorsed on the reverse

side of this sheet) at the place of business of *A. C. & Co.*, the drawees, *No. 417 Montgomery Street*, in this city, and demanded acceptance thereof from a member of the firm, which he refused saying "*No advice*". I then presented said draft to *G. D.* the drawee in case of need, and demanded acceptance thereof from him, to which he replied "I will accept this '*supra* protest' for the honor of *J. B.* the drawer."

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly protest, as well as against the drawer and endorsers as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages and interests, already incurred and to be hereafter incurred for the non-acceptance of the said bill of exchange.

I do hereby certify, that on the *2nd* day of *March, 1923*, notice of protest, demand and non-acceptance of the above mentioned bill of exchange was served upon the drawer and endorsers by depositing etc. (as in No. 14).

INDEX.

	SEC.	PAGE
Abandonment of homestead	125	97
Acceptance of Bill of Exchange. (See Negotiable Instruments.)		
Acknowledgment of instruments	15–45	18–46
Authority of notary to take	19	21
By corporation	29	35
By married women	26	33
Certificate of acknowledgment	27–34	34–40
Defective, how amended	42–43	45
notary may not correct	42	45
action brought to amend	43	45
judgment may be recorded	44	46
validation of by legislature	45	46
Duty of notary to give	5	11
Fees for writing and giving	6	13
Form of, general	28	35–187
Form of, husband and wife	..	188
Forms, of corporation	29	35–189
Form of, attorney in fact	30	36–190
Must contain name and quality of officer	32	37
Notary must attach to instrument	27	34
Requisites of	32–33	37–8
Signature, name of office and seal	33	38
Venue	32	37
When not conclusive	34	39
When false, notary criminally liable	14	17
Disqualified, when	17	21
Duty of notary to take	5	11
Fees for taking	6	13
Judgments may be recorded without	47	48
Letters patent may be recorded	47	48
Mode of taking acknowledgments	20–25	22–33
Certificate must be attached	27	34
Identity of party must be established	20	22
Mere introduction insufficient	20–22	23–31
Negligence of injured party excuses notary	23	31
Statute must be complied with or notary liable	20–22	23–31
Notary's negligence must be proximate cause of injury	24	31
Witness swearing falsely commits perjury	25	33
Nature of acknowledgment	15	18
Of personal property mortgages	101	83
Purpose of acknowledgment	17	20
Necessary to permit instrument to be recorded	46	47
What may be recorded without acknowledgment	47–9	48–9
What instruments may be acknowledged or proved	18	20
When taken outside of state	31	36
Action to correct defective certificates	43	45
Judgment attached to permits recording of instrument	44	46

	SEC.	PAGE
Affidavits	128–135	100–5
Authority to take	130	102
Distinguished from depositions	128	100
Definition and nature of	128	100
Duty of notary to take	5	12
Fees for drawing and taking	6	13
Jurat to	134	104
Mode of taking	135	104
Must be in writing	128	100
Must be subscribed	131	102
Must accompany personal property mortgages	101	83
Jurisdiction to take	7	14
Oath must be administered	128	100
Presence of affiant	135	104
Requisites of	131–4	102–3
Taken over telephone	135	104
Title of cause	132	103
Use of	129	100
Venue	133	103
Affirmations. (See Oaths and Affirmations.)		
Appointment of notaries public	1	9
Arrest, right of witness to protection from	151	120
Proceedings in case of	151	120–1
Assignment, of debt	91	78
Of mortgage, record of as notice	92	78
Attachment of personal property mortgaged	110	88
Attorney in Fact, acknowledgment by	30	36
Execution of instrument by	69	64
(See Powers of Attorney.)		
Bills and Notes. (See Negotiable Instruments.)		
Bills of Exchange. (See Negotiable Instuments.)		
Bond of notary public to be given on qualifying	3	10
Liability on	13	17
For failure to comply with statute	21	23
Negligence of party injured excuses	21	31
For failure to properly protest	155	125
Certificate of acknowledgment	27–34	34–40
Defective, how amended	42–43	45
notary may not correct	42	45
action brought to amend	43	45
judgment may be recorded	44	46
Duty of notary to give	5	11
Fees for writing and giving	6	13
Form of, general	28	35–187
Form of, husband and wife	..	188
Forms of, corporation	29	35–189
Form of, attorney in fact	30	36–190
Immaterial variance	33	36
Must contain name and quality of officer	28	35
Notary must attach to instrument	27	34
Requisites of	32–3	37–8
Signature, name of office and seal	33	38
Substantial compliance required	27	34
Venue	32	37
When not conclusive	34	39
When false, notary criminally liable	12	17

	SEC.	PAGE
Certificate of county clerk to acknowledgment taken outside of state	31	36
Certificate to deposition	140	110
Form of	..	196
Certificate of facts given on qualifying	4	11
Certificate of proof of instrument when not acknowledged	41	44
Forms of	..	191-195
Certificate of residence	49	49
Certified copy of records of predecessor	10	17
Chattel Mortgages. (See Personal Property Mortgages.)		
Checks. (See Negotiable Instruments.)		
Compensation of notaries public	6	13
Community Property	60	58-9
Selection of homestead from	114	91-2
Consideration for transfer of property	64	62
(See also Negotiable Instruments.)		
Contempt of court—disobedience of notary's subpoena	145	116
Constructive delivery	77	67
Corporation, acknowledgment by	19	22-3
Forms of certificate of	29	35-189
May stockholder act	19	21
Covenants, implied in deeds	83	71
Criminal responsibility	14	17
Crops, mortgage on	111	89
Date, grant presumed to have been delivered at	75	66
(See also Negotiable Instruments.)		
Declaration of homestead	119-121	93-4
Contents of	119	93
Effect of filing for record	121	94
Recording of	120	94
Deeds	59-84	56-72
Definitions	59	56
Correction	59-66	58-62
Grant, bargain and sale	59	56
Gift	59	57
Life estates	59	57
Quit-claim	59	58
Trust deed	59	58
Joint tenancy	59	57
Delivery	57	66-7
Constructive	77	67
Deed takes effect from	75	66
In escrow	76	67
Necessity for	75	66
Redelivery	78	68
Effect of	80-83	69-71
As to tenants	81	70
How for conclusive	82	71
Implied covenants	83	71
What passes by conveyance	80	69

	SEC.	PAGE
Execution	67–70	63–4
By person who cannot write	68	63
By attorney in fact	69	64
By married women	70	64
In general	67	63
Form and contents of	62–66	60–2
Code form of	62	60
Consideration	64	62
Description of property	66	62
Parties to	63	61
Words of inheritance unnecessary	65	62
Implied covenants	83	71
Interpretation of	79	68
Intention of parties must be ascertained	79	68
Doubtful words how assisted	79	68
In favor of grantee, except	79	68
May be proved for record	41	44
Must be in writing	61	60
Parties to	63	61
Correct names required	63	61
Grantee must be a person	63	61
Void when made with intent to defraud	84	72
What passes by	80	69
Easements	80	70
Fee-simple title	80	69
Subsequently acquired interest	80	69
Transfer of greater interest than grantor has	80	69
Title to center of highway	80	70
When made on condition subsequent	80	70
When made on condition precedent	80	70
When deemed a mortgage	87	75
When grant of real property is recorded as a mortgage	97	81
Deeds of trust	88	76
Defective certificates	42–3	45
notary may not correct	42	45
action may be brought to amend	43	45
judgment may be recorded	44	46
Delivery	75–8	66–8
Constructive	77	67
Deed takes effect from	75	66
In escrow	76	66
Necessity for	75	66
Redelivery	78	68
Depositions	136–154	106–122
Attendance of witnesses, how enforced	141–8	111–8
Certificate to	140	110
Form of	...	196
Definition and nature of	136	106
Distinguished from affidavits	128	100
Duty of notary to take	5	11
Fees for taking	6	13

	SEC.	PAGE
Manner of taking in this state	137–8	107–8
To be used out of state, how taken	139	110
Oaths and affirmations	152–4	121–2
Authority of notary to administer	153	121
Form of	154	122
May be varied to suit belief of witness	154	122
Nature of	152	121
Subpoena	141–48	111–8
Defined	141	111
Disobedience of, contempt of court	145	116
Duty of witness when served with	149	119
How served	143	115
If witness be a prisoner, how brought	148	118
How issued	142	111
Obedience to, how enforced	147	117
Punishment in case of disobedience	146	117
When witness not obliged to obey	144	115
Witnesses	149–151	119–20
Deposition of, when may be taken	137	107
Duty of	149	119
Disobedience of subpoena, contempt of court	145	116
Form of oath may be varied to suit belief of	154	122
How served with subpoena	143	115
Must answer questions	149	119
Prisoner, how brought	148	118
Punishment in case of disobedience to subpoena	146	117
Obedience to subpoena, how enforced	147	117
Right of, to protection from arrest	151	120
Right of, to protection from insult	150	119
When not obliged to obey subpoena	144	115
Dishonor of negotiable instruments. (See Negotiable Instruments.)		
Disqualification of notary	19	21
Drawer and Drawee. (See Negotiable Instruments.)		
Duties of notary public	5	11
Easements pass with grant	80	69
Eligibility of notary	2	10
Effect of deeds	80–83	69–71
As to tenants	81	70
How far conclusive	82	71
Implied covenants	83	71
What passes by conveyance	80	69
Endorsement. (See Negotiable Instruments.)		
Escrow, delivery of deed in	76	67
Execution of instrument	67–70	63–4
By person who cannot write	68	63
By attorney in fact	69	64
By married women	70	64
In general	67	63

	SEC.	PAGE
Execution, proof of, when not acknowledged	35–39	41–44
By subscribing witness	36	41
Form of certificate of proof by	..	..
By handwriting, when may be made	38	42
Forms of	..	191–5
Certificate of proof	41	44
How made	35	41
Powers of officer taking	40	44
Execution, homestead exempt from	122	95
Homestead, subject to	123	96
Exemption of homestead	122	95
False certificate, notary may not give	12	17
Failure to record instrument, effect of	56	52
Fees of notaries public	6	13
Form of grant	62	60
Of mortgage of real property	96	81
Of mortgage of personal property	100	83
Of oath	154	122
Of certificates of acknowledgment	28-30	35–6 188–9
Of certificates of proof	..	191–5
Of certificate to deposition	..	196
Of notice of protest	..	196
Of protest	..	197–8
Fraud, instrument void when made in	84	72
Foreclosure of mortgage	89	77
Foreign bills of exchange. (See Negotiable Instruments.)		
Gift deed, defined	59	57
Grant, bargain and sale deed, defined	59	56
Grants. (See Deeds.)		
Handwriting, proof of, when may be made	38	42
Evidence of, must prove what	39	43
Forms of certificate of proof of	..	192–5
Recording of such instrument	52	50
Head of a Family, defined	113	91
Declaration of homestead by	119	93
Selection of homestead by	117	92
Homesteads	112–127	90–99
Abandonment of	125	97
Declaration of	119–21	93–4
Contents of	119	93
Effect of filing for record	121	94
Recording of	120	94
Execution, exempt from	122	95
Subject to	123	96
Head of family, defined	113	91
Declaration of homestead by	119	93
Selection of homestead by	117	92
How conveyed or encumbered	124	96

	SEC.	PAGE
Meaning of	112	90
Of insane persons	127	99
Proceedings on execution against	126	97
Selection of	114–118	91–2
From what it may be selected	114	91
From what it may not be selected	115	92
How made by head of a family	117	92
How made by other than head of a family	118	93
Limitation as to value	116	92
Proceedings when value exceeds exemption	126	97
Value, limitation as to	116	92
Honor, acceptance or payment for. (See Negotiable Instruments.)		
Husband and wife, deeds to and by	60	58
Identity of party making acknowledgement must be established	20	22
Swearing falsely to, is perjury	25	33
Implied, covenants	83	71
Indorsement. (See Negotiable Instruments.)		
Introduction by third person not sufficient	22	30
Interpretation of deed	79	68
Intention of parties must be ascertained	79	68
Doubtful words how assisted	79	68
In favor of grantee, except	79	68
Insane persons, homestead of	127	99
Judgments may be recorded without acknowledgment	47	48
Joint promissory notes defined	167	131
Joint and Several promissory notes defined	167	131
Joint tenancy deeds, defined	59	57
Jurat to affidavit	134	104
Jurisdiction of notaries public	7	14
Lease for one year must be in writing	61	60
Liability on bond	13	17
For failure to comply with statute	21	23–31
Negligence of party injured excuses	21	31
For failure to properly protest	155	125
Liability, criminal	14	17
Letters patent, may be recorded without acknowledgment	48	48
Maker of promissory note. (See Negotiable Instruments.)		
Mark, person may make who cannot write	68	63
Married women, conveyance and acknowledgment by	26	33
Execution of instrument by	70	64
May make power of attorney	72	65
Mode of taking acknowledgments	20–25	22–33
Certificate must be attached	24	33
Identity of party must be established	20	22
Mere introduction insufficient	20–22	23–30
Negligence of injured party excuses notary	23	31
Statute must be complied with or notary liable	20–22	23–30
Notary's negligence must be proximate cause of injury	24	31
Witness swearing falsely commits perjury	25	33

	SEC.	PAGE
Mortgages	85–111	73–89
Assignment of debt	91	78
Assignment of mortgage, record of	92	78
Definition and nature of	85	73
Acts impairing security	85	73
Lien of	85	73
Must be in writing	85	73
Subsequently acquired title	84	74
Duty of notary to take acknowledgment	5	11
Foreclosure of	89	77
How discharged of record	93	79
By mortgagee	93	79
By foreign executors and administrators	93	79
By record of certificate of discharge	93	79
Of real property	95–98	81–2
Form of mortgage of real property	96	81
Record of mortgages of real property	98	82
What real property may be mortgaged	95	81
When grant of real property is recorded as mortgage	97	81
Of personal property	99–111	82–89
Affidavit must accompany	101	83
Attachment of personal property mortgaged	110	88
Form of	100	83
Must be acknowledged	101	83
On crops	111	89
Pledge, change of possession would be	86	75
When property mortgaged may be taken as	109	87
Record of	102–107	84–85
Certified copy may be recorded	107	85
Of ships	103	84
Of property in transit	104	85
Of property of a common carrier	105	85
Of property in different places	106	85
When and where to be made	102	84
Removal of personal property mortgaged	108–9	86–7
Exempt from mortgage when	108	86
May be taken as a pledge when	109	87
What personal property may be mortgaged	99	82
Possession of property	86	74
Power of attorney to execute	90	77
Satisfaction of	94	80
Transfer of property when a mortgage	87	75
Negligence of Notary must be proximate cause of injury	24	31
Of injured party, excuses notary	23	31
Negotiable Instruments.		
Acceptance of bills of exchange. (See Bills of Exchange.)		
Acceptance for honor. (See Bills of Exchange.)		
Accommodation party, defined	178	142
Rights of to discharge of instrument	222	169
Accommodation indorser, liability of	194	151
Action defined	250	185

	SEC.	PAGE
Agent, signature by	171	133
Negotiation by	193	150
Notice of dishonor may be given to	207	159
Notice of dishonor may be given by	208	160
Effect of dishonor of instrument in hands of	208	160
Alteration of instrument avoids, when	221	168
Ambiguity in, how construed	176	140
Interest in case of ambiguity	176	140
Attorney's fee, stipulation for does not affect	171	134
Bank, defined	250	185
Certification of check by	170	132
Indorsement to officer of	181	143
Presentment for payment to be made at	200	155
Effect of instrument being payable at	200	185
Bankrupt, notice of dishonor how given to	207	160
Presentment for acceptance in case of	225	172
Bill of may be presented before maturity	237	179
Bearer, defined	250	185
Instrument, when payable to	171	136
How negotiated by	180-184	143-5
Blank indorsement, nature and effect of	184	145
By irregular indorser	194	150
Blanks in, filling of	174	138
Bill, defined	250	185
Bills of Exchange	158-164	127-130
Acceptance of	228-230	174-5
How made	228	174
Rights of holder presenting	228	174
Effect of, on separate paper	228	174
When bill may be accepted	228	174
Time allowed for	229	175
Kinds of	230	175
General acceptance defined	230	175
Qualified acceptance defined	230	175
Qualified may be refused	230	175
Of bills in a set	249	184
Acceptance for honor supra protest	240-246	180-182
When bill may be accepted for honor	240	180
How made	241	180
Liability of acceptor for honor	242	180
Maturity of bill accepted for honor	243	181
Protest of bill accepted for honor	244	181
Of bills in a set	249	184
Acceptance, defined	250	185
Acceptor, liability of	161	129
Bills in a set	249	184
Acceptance of	249	184
Indorsement of	249	184
Discharge of	249	184
Definition and nature of	158	127
Drawee must be named in	171	136

	SEC.	PAGE
Kinds of	163	130
Inland defined	163	130
Foreign defined	163	130
Liability of drawer	160	128
Liability of acceptor	161	129
Parties to	159	128
Payment of bills for honor	247-8	182-3
How made	247	182
When two or more offer to make	247	182
Effect of	248	183
Effect of refusing to receive	248	183
Rights of payer for honor	248	183
Presentment of bills for acceptance	225-7	170-1
When must be made	225	170
Effect of failure to present	225	171
To whom must be made	225	171
By whom must be made	225	171
How must be made	225	171
When drawee is dead	225	172
When drawee is bankrupt	225	172
Delay in, when excused	225	172
When excused	226	172
Effect of failure to treat as dishonored	227	173
Dishonored by nonacceptance, when	227	173
Presentment for payment, when to be made	199	154
(See also Presentment and demand for payment.)		
Presentment for payment to acceptor for honor	245	181
When to be made	245	181
Delay in, when excused	245	181
In case of dishonor must be protested	246	182
Referee in case of need, who is	159	128
Rules applicable to exclusively	164	130
When may be treated as note	162	129
Election to treat as note	176	140
(See also Indorsement, Notice of dishonor protest.)		
Cancellation	224	170
Discharge by	219-224	166-9
Effect of unintentional	224	170
Check	169-70	132
Defined	169	132
Subject to what rules	170	132
Conditional indorsement, defined	187	147
Consideration	172-177	137-141
Need not be specified	172	137
Necessity for	177	141
Absence of failure of	177	141
Accommodation party, liability of	178	142

	SEC.	PAGE
Construction, rules of in case of ambiguity	176	140
Corporation, indorsement by officer of	181	144
Indorsement by passes what interest	182	145
Date, effect of absence of	173	137
Effect of antedating or postdating	173	137
Wrong date, effect of	173	137
Undated instrument, how construed	176	141
Death, notice in case of, how given	207	159
Presentment for acceptance how made	225	172
Excuses presentment	226	173
Defective title to instrument, effect of	196	152
Defined	148	126
Delay, in presentment for payment excused	206	159
In giving notice of dishonor, when excused	217	166
In protesting, when excused	238	179
In presenting to acceptor for honor	245	182
Delivery, defined	250	185
Execution incomplete without	175	139
When instrument payable to bearer	180	143
When instrument payable to order	180	143
When instrument is indorsed in blank	184	145
Warranty in case of negotiation by	192	149
Demand, instrument payable on when	171	135
Presentment for payment when to be made (See Presentment and demand for payment.)	200	155
Determinable future time, defined	162	128
Discharge of negotiable instruments	219-224	166-170
By payment	219	166
By cancellation	219-224	167-170
When principal debtor becomes holder	219	167
By material alteration	221	168
By renunciation of holder	223	169
Unintentional cancellation, effect of	224	170
Rights of party who discharges	222	169
Discharge of persons secondarily liable	220	167
Discharge of bills in a set	249	184
Dishonor, effect of	206	159
By reason of nonpayment, when	206	159
By reason of nonacceptance, when	227	173
By acceptor for honor, effect of	246	182
Effect of failure to treat as dishonored (See also Notice of Dishonor)	227	173
Draft, defined	158	127
Drawee must be named	171	136
Drawer, liability of	160	128
When presentment to unnecessary	199	154
When notice of dishonor to is unnecessary	214	164
Duty with respect to	155	124
Fictitious drawee, effect of	162	129
Dispenses with presentment for payment	205	178
Dispenses with notice of dishonor	215	165
Excuses presentment for acceptance	226	172

	SEC.	PAGE
Fictitious drawer, dispenses with notice	214	164
Fictitious payee, effect of	171	136
Foreign bills of exchange, defined	163	130
Form and validity of	173–179	137–143
Date	173	137
Blanks in	174	138
Delivery	175	139
Construction rules	176	140
Consideration	177	141
Accommodation party	178	142
Forged signature	179	142
Holder, defined	250	185
Holder, in due course	196–198	151–153
Defined	196	151
When holder is not	196	152
Title of, when defective	196	152
Notice of infirmity, what constitutes	196	152
Defective title, effect of	196	153
Rights of	197	153
Of undated instrument	173	138
Of incomplete instrument	174	138
Valid delivery presumed	175	139
Consideration presumed	177	141
Accommodation party, liability of	178	142
May strike out indorsement	189	148
Transfer without indorsement, effect of	190	148
Indorsement	181–191	143–149
Defined	250	185
How made	181	143
By or to partners	181	144
By or to bank or corporation	181	144
By infant, effect of	182	145
Indorser, who is	182	144
Signer when deemed indorser	182	144
Liability of	192–195	149–151
Presentment to, when unnecessary	199	154
Notice of dishonor to, when unnecessary	215	165
Indorsees, transfer to, when inoporative	181	143
Kinds of	183	145
Special, defined	184	145
In blank, defined	184	145
Blank may be changed into special	184	145
Restrictive, defined	185	146
Qualified, explained	186	147
Conditional, explained	187	147
Time of, presumption as to	188	148
Place of, presumption as to	188	148
Striking out of	189	148
Transfer without	190	148
Back to prior party	191	149
Of bills in a set	249	184

	SEC.	PAGE
Inland bills of exchange, defined	163	130
Instrument, defined	250	185
Issue defined	250	185
Joint and joint and several, defined	167	131
When signed in first person	176	141
Joint parties, notice of dishonor to	207	160
Kinds of	157	126
Kind of money, need not be stated	172	136
Liability for failure to properly protest	155	125
Liability of parties to instruments		
Of drawer	160	128
Of acceptor	161	128
Of maker of note	168	132
Of acceptor for honor	233	174
Of qualified indorser	192	149
Of general indorser	193	150
Of irregular indorser	194	150
Of agent who negotiates instrument	193	150
Order of liability of indorsers	195	151
Lost bill, protest of, how made	239	179
Mailing of notice, what constitutes	209	161
Maker, liability of	168	132
Maturity of bill accepted for honor	243	181
Maturity of instrument, rules governing	201	155
Name, effect of signing assumed	171	133
Indorsement, where error in	181	144
Negotiability	171	133-137
Importance of determining	157	126
Requirements of	171	133-137
Signature	171	133
Sum payable	171	134
When payable	171	135
How payable	171	136
Drawee must be named	171	136
Matters which do not affect	172	137
May authorize sale of collateral	172	137
May authorize confession of judgment	172	137
May waive benefit of laws	172	137
May give election to do other act	172	137
Negotiation. (See Indorsement.)	180–191	143–149
Nonacceptance, dishonor by	227	173
Omission to give notice of dishonor for	216	166
When bill may be treated as dishonored by	226	172
Notice of dishonor	207–218	159–166
To whom must be given	207	159
In case of death of party	207	159
In case of partners	207	159
In case of joint parties	207	159
In case of bankrupt	207	160
By whom to be given	208	160
May be given by agent	208	160
Form and sufficiency of	209	161
May be delivered or mailed	209	161

	SEC.	PAGE
May be given verbally	209	161
When must be given	210	162
To parties residing in same place	210	162
To parties residing in different places	210	162
If sent by mail	210	162
If sent otherwise than by mail	210	162
Is deemed to have been mailed when	210	163
To subsequent party to instrument	211	163
Where must be sent	212	163
Waiver of	213	164
When need not be given to drawer	214	164
When need not be given to indorser	215	165
Dispensed with, when	216	165
Delay in, when excused	216	166
Protest when to be made	218	166
Notice of infirmity in instrument or title	196	152
Omissions in	174	139
Order, instrument payable to when	171	136
Instrument payable to, how negotiated	180	143
Order of liability of indorsers	195	151
Parties to bills of exchange	159	128
Liabilities of	160-161	128-129
Parties to promissory notes	166	131
Liability of	168	132
Partners, indorsement by or to	181	143
Notice of dishonor to	207	159
Payee, rules governing	171	136
Indorsement, where wrongly designated	181	143
Payable, on demand when	171	135
At determinable future time, when	171	135
On contingency, effect of	171	136
To order, when	171	136
To bearer, when	171	136
Payment in due course, defined	198	154
Payment, value need not be stated	172	137
Payment, instrument discharged by	219-220	166-168
Payment, presentment for, (See Presentment and Demand for Payment).		
Payment of bills for honor. (See Bills of Exchange).		
Person, defined	250	185
Person primarily liable, defined	251	186
Person secondarily liable, how discharged	220	167
Effect of discharge by	222	169
Place of payment need not be stated	172	137
Place of presentation for payment	203	157
Place of indorsement, presumption as to	188	148
Presentment and demand for payment	199-206	154-159
To principal debtor not necessary	199	154
To drawer and indorsers, when unnecessary	199	154
When to be made	200	155
Dispensed with, when	205	158

	SEC.	PAGE
Maturity, rules governing	201	155
How to be made	202	156
Where to be made	206	157
Delay in when excused	204	158
Instrument dishonored when	206	159
Presentment of bills of exchange for acceptance (See Bills of Exchange.)		
Presentment for payment of acceptor for honor (See Bills of Exchange.)		
Promissory notes	165–168	131–132
When bill is treated as	162	129
Definition and nature of	165	131
Parties to	166	131
Joint and joint and several defined	167	131
Liability of maker	168	132
(See also Negotiability.)		
Protest		
Duty of notary with respect to	155	124
Effect of	156	125
Liability for failure to properly protest	155	125
Purpose of	156	125
Only required in case of foreign bills	163	130
Waiver of, waives what	213	164
When may be made	218	166
When necessary	231	177
Effect of want of	231	177
Of bill not appearing to be foreign	231	177
How made	232	177
What must contain	232	177
By whom to be made	233	178
When to be made	234	178
Where to be made	235	178
May be for both nonacceptance and non-payment	236	179
When dispensed with	238	179
When may be made before maturity	237	179
Delay in, when excused	238	179
Of lost bill, how made	239	179
Of bill accepted for honor	244	181
Of bill dishonored by acceptor for honor	246	182
Qualified acceptance, defined	230	175
Holder may refuse	230	176
Qualified indorsement explained	186	147
Reasonable time, how determined	252	186
Referee in case of need, defined	159	128
Renunciation by holder discharges	223	169
Restrictive indorsement explained	185	146
Seal not necessary to	172	136
Signature to, how may be made	171	133
Ambiguity as to	176	141
Forged, effect of	179	142
Of indorser	181	143
Not necessary to notice of dishonor	209	161
Special indorsement, nature of	186	147
Sum certain, defined	171	134

	SEC.	PAGE
Sum payable construed	176	140
Time, how computed	253	186
Of payment must be expressed	171	135
Of payment, how determined	201	155
Of indorsement, presumption as to	188	148
Where transfer without indorsement	190	148
Allowed for acceptance of bill	229	175
Title, defective, effect of	196	151
Unconditional promise or order, defined	171	134
Unconditional promise to accept bill, effect of	228	174
Validity of. (See Form and Validity of.)		
Value, defined	250	186
Verbal notice of dishonor sufficient	209	161
Void, by reason of forged signature	179	142
By reason of material alterations	221	168
Waiver of presentment for payment	205	158
Of notice of dishonor	213	164
Warranty, of person who negotiates by delivery	180	143
Of qualified indorser	192	149
Of general indorser	193	150
Of irregular indorser	194	150
When negotiated by delivery only	192	149
Of acceptor for honor	242	180
Written, defined	256	186
Written and printed provisions, conflict in	176	140
Negotiable Instruments Law	155–253	124–186
Notaries public	1–2	9–15
Appointment of	1	9
Authority of, to take affidavits	130	102
Authority of, to take acknowledgments	19	21
Authority of, to administer oaths	153	121
Bond of	3–4	10–1
Compensation of	6	13
Disqualification of	19	21
Duties of	5	11
Eligibility of	2	10
Jurisdiction of	7	14
Liability of	13–4	17
May appoint clerk or shorthand reporter to take down testimony	138	108
May issue subpoena	142	113
Number of	1	9
Powers of, on taking proof of instruments	40	44
Qualification of, for office	3–4	10–1
Records of	9–10	16–7
Resignation of	8–9	15–6
Term of office	8	15
Vacancy in office of	8	15
Notice of Dishonor. (See Negotiable Instruments.)		
Number of notaries that may be appointed	1	9
Oath of Office	3	10

	SEC.	PAGE
Oaths and Affirmations	152–4	121–2
Authority of notary to administer	153	121
Form of	154	122
May be varied to suit belief of witness	154	122
Nature of	152	121
Must be administered on taking affidavit	131	102
Testifying falsely under, perjury	25	33
Taking over telephone	7, 135	14, 104
Official Bond. (See Bond.)		
Official Record, duty of notary to keep	5	12
Official Seal. (See Seal.)		
Parties to conveyance	63	61
Payment or extinction of negotiable instruments. (See **Negotiable Instruments.**)		
Payment for honor. (See **Negotiable Instruments.**)		
Personal Property Mortgages	99–111	82–9
Affidavit must accompany	101	83
Attachment of personal property mortgaged	110	88
Form of	100	83
Must be acknowledged	101	83
On crops	111	89
Pledge, change of possession would be	86	75
When property mortgaged may be taken as	109	87
Record of	102–7	84–5
Certified copy may be recorded	107	85
Of ships	103	84
Of property in transit	104	85
Of property of a common carrier	105	85
Of property in different places	106	85
When and where to be made	102	84
Removal of personal property mortgaged	108–9	86–7
Exempt from execution when	108	86
May be taken as a pledge when	109	87
What personal property may be mortgaged	99	82
Pledge, what	86	74
Power of Attorney to execute mortgage	90	77
Powers of Attorney	71–4	64–5
Defined	71	64
Duty of notary to take acknowledgment of	5	11
Married woman may make	72	65
Revocation of	73	65
Termination of	74	65
Presentment for Acceptance. (See **Negotiable Instruments.**)		
Presentment for Payment. (See **Negotiable Instruments.**)		
Prisoner, how brought to testify	148	118
Private writings may be acknowledged	18	20
Promissory Notes. (See **Negotiable Instruments.**)		
Proof of Execution of instruments when not acknowledged	35–9	41–4

	SEC.	PAGE
By subscribing witness	37	41
Form of certificate of proof by	..	191
By handwriting, when may be made	38	42
Forms of	..	192-5
Certificate of proof	41	44
How made	35	41
Powers of officer taking	40	44
Protest. (See Negotiable Instruments.)		
Qualification of notaries public	3-4	10-11
Quit-claim deed, defined	59	58
Real Property Mortgages	95-8	81-2
Form of mortgage of real property	96	81
Record of mortgages of real property	98	82
What real property may be mortgaged	95	81
When grant of real property is recorded as mortgage	97	81
(See Mortgages.)		
Recording of Instruments	46-58	47-55
Acknowledgment necessary	46	47
Effect of failure to record	56	52
Mode of	50-52	50
Where instrument must be recorded	50	50
When deemed recorded	51	50
When execution is established by proof of handwriting	52	50
Of mortgages of real property	98	82
Of discharge of	93	79
Of mortgages of personal property	102-7	84-5
Of powers of attorney and revocation	64-5	64
Of homesteads	120-1	94
Of grant to political corporation	46	48
Purpose and effect of	53-55	51-2
Constructive notice	53	51
Record may be used in evidence	55	52
Certified copy may be again recorded	54	51
Unrecorded instruments when valid	57	53
What may be recorded without acknowledgment	47-9	48-9
Certificates of residence	49	49
Judgments	47	48
Letters patent	48	48
Notice of location of mining claim	47	48
Records of notary, duty to keep	5	12
Must give certified copy of	5	12
In case of death or resignation	9	16
Of predecessor	10	16
Open to public inspection	11	17
Redelivery of deeds	78	68
Residence of notary public	2	10
Resignation of notary public	8-9	16
Revocation of power of attorney	73	65
Satisfaction of mortgage	94	80
Seal, duty of notary to keep and use	5	12
Style of	5, 12	12, 17
Must be annexed	12	17
How affixed	33	38

	SEC.	PAGE
Selection of homestead	114–18	91–2
From what it may be selected	114	91
From what it may not be selected	115	92
How made by head of a family	117	92
How made by other than head of a family	118	93
Limitation as to value	116	92
Proceedings when value exceeds exemption	126	97
Separate and community property	60	58–9
Selection of homestead from	114–5	90–1
Signature, must be attached	33	38
(See also Negotiable Instruments.)		
Subpoena	141–8	111–18
Defined	141	111
Disobedience of contempt of court	145	116
Duty of witness when served with	149	119
How served	143	115
If witness be a prisoner, how brought	148	118
How issued	142	111
Obedience to, how enforced	147	117
Punishment in case of disobedience	146	117
When witness not obliged to obey	144	115
Subscribing Witness, defined	36	41
Proof of execution, how made by	37	41
Form of certificate of proof, by	..	191
Successor—his term of office	8	15–6
Records of predecessor	9–10	16–7
Telephone, taking oath over	7, 135	14, 104
Tenants, attornment of	81	70
Term of office of notary public	8	15
Territorial limits of jurisdiction	7	14
Time and place of payment of negotiable instruments.		
(See Negotiable Instruments.)		
Title to affidavits	132	103
Transfers. (See Deeds.)		
Trust Deed, defined	59	58
Unlawful transfers	84	72
Unrecorded instrument, when valid	57	53
Vacancy in office	8–9	15–6
Value of homestead exemption	115	92
Venue to certificate of acknowledgment	32	37
To affidavit	133	103
Waiver. (See Negotiable Instruments.)		
Witnesses	149–51	119–20
Deposition of, when may be taken	137	107
Duty of	149	119
Disobedience of subpoena, contempt of court	145	116
Form of oath may be varied to suit belief of	154	122
How served with subpoena	143	115
Must answer questions	149	119

	SEC.	PAGE
Prisoner, how brought	148	118
Punishment in case of disobedience to sub poena	146	117
Obedience to subpoena, how enforced	147	117
Right of, to protection from arrest	151	120
Right of, to protection from insult	150	119
When not obliged to obey subpoena	144	115
Women. (See Married Women.)		
May be appointed	1	9
Write, person who cannot may make mark	68	63
Acknowledgment by person who cannot write	68	63
Words of inheritance unnecessary in deed	65	62

THE
NOTARY'S MANUAL
(NINTH EDITION)

and

ARIZONA
Notary Public Handbook

A Publication of the Arizona Secretary of State's Office

July 2000

ARIZONA

Notary Public Handbook

A Publication of the Arizona Secretary of State's Office

July 2000

The laws applicable to notaries public changed significantly effective July 20, 1996; July 21, 1997; August 6, 1999; and July 18, 2000. All Arizona notaries are now required to use a rubber stamp seal as their official notary seal. In addition, all Arizona notaries must now have on file a $5000 surety bond.If you have any questions about becoming a notary public or performing the duties of your office after being appointed a notary public, please contact the Secretary of State's Office, Notary Section at (602) 542-4758; visit the office at 1700 West Washington, Phoenix, Arizona; write us at 1700 West Washington, #7, Phoenix, Arizona 85007-2888; or send us an e-mail to: notary@mail.sosaz.com.

Table of Contents

To view this handbook in PDF, click here
Chapter 1. Applying to Become a Notary Public 5
Chapter 2. Definitions 11
Chapter 3. Getting Down to Basics 14
Chapter 4. Notary Bond 17
Chapter 5. Satisfactory Evidence of Identity 19
Chapter 6. How to Perform Your Notarial Duties 22
Chapter 7. Your Notary Journal 30
Chapter 8. Your Notary Seal 36
Chapter 9. Fees 38
Chapter 10. Violations of the Law 39
Chapter 11. Secretary of State Responsibilities 42
Chapter 12. Training, Information, and Insurance 43
Chapter 13. Miscellaneous Provisions 45
Chapter 14. Acknowledgments, Jurats, Oaths, and Affirmations 47
Chapter 15. Laws Pertaining to Notaries Public 52
Instructions for Completing the Application 67

Requires Adobe Acrobat Reader 3.x – Obtain it free by clicking here

Application Form - Available in PDF format only ***Fill it out in PDF, then print it out and follow the instructions!***

Name Change Form - Available in PDF format only

CHAPTER 1
APPLYING TO BECOME A NOTARY PUBLIC

101. What is a Notary Public?

An Arizona Notary Public is a public officer commissioned by the Secretary of State to perform notarial acts. A Notary is an impartial witness. (A.R.S. §§ 38-294, 41-313(9), and 41-328(B))

102. Can anybody become a Notary Public? What are the requirements for becoming an Arizona Notary Public?

To become an Arizona Notary Public, you must meet the following requirements:

- You must be an Arizona resident;
- You must be at least 18 years old; and
- You must not have been convicted of a felony unless your civil rights have been restored.

If you meet these requirements, you may be eligible to become an Arizona Notary Public. When you sign your application form, you are attesting that you meet these requirements. If we find that you do not meet these requirements, we may refuse to issue you a Notary commission or we may revoke your Notary commission. You could be guilty of lying or submitting false information on your application form. Lying on an application form constitutes perjury and is a fraudulent act. (A.R.S. §§ 41-213(E) and 41-330(A)(1))

103. You say I have to be an Arizona resident. Does that mean I have to be a citizen?

No. You can be an Arizona Notary Public if you are not a U.S. citizen but you must be an Arizona resident for tax purposes. That means you must claim your Arizona residence as your primary residence on state and federal tax forms. (Attorney General Opinion 78-119)

104. How do I know if I'm considered an Arizona resident?

In the context of your Notary Public commission, you are considered an Arizona resident if your primary residence or domicile is in Arizona. A person can have only one primary residence at any time. The following would indicate that Arizona is your primary residence:

- If you live within the borders of Arizona and claim your Arizona residence as your primary residence for tax purposes (that is, you declare it on your state and federal tax returns as your primary residence); or
- If you are currently registered to vote in Arizona.

The fact that you are out of this state for a temporary or transitory purpose would not defeat or negate your Arizona residency. On the other hand, if you are in Arizona for a temporary or transitory purpose, Arizona would not be your primary residence. (A.R.S. § 41-312(E)(2))

105. What if I have two primary residences because I spend six months in Arizona and six months at my other residence?

You must claim one residence as your primary residence for tax purposes. It is that residence that will determine whether you qualify to be an Arizona notary public.

106. So those are the requirements for becoming an Arizona Notary Public. What do I need to do to become an Arizona Notary Public?

You first need to read this entire booklet, including the laws. Then you need to fill out the application form and mail the application to the Secretary of State's Office at the address on the form. Make sure you enclose a check or money order for $25 made payable to SECRETARY OF STATE. You must also purchase a $5000 notary bond (see the Chapter on bonds for more information) and send the original of the bond to the Clerk of the Superior Court in your county of residence along with a check or money order for $18 made payable to the CLERK OF THE SUPERIOR COURT. You can speed up the process if you also send a copy of your bond to the Secretary of State's Office at the time you send us your application form. (A.R.S. §§ 41-126(A)(2), 41-312(B), 41-315, and 12-284)

107. Where do I get an application form to become an Arizona Notary Public?

You can find an application form in the back of this booklet. It is printed on perforated paper so that you can easily tear it out from the booklet. If this booklet has no application form, you can request one by calling the Secretary of State's Office. You can also get an application form from some bonding agents, but these agents may not have the most current form. Therefore, the Secretary of State's Office is the best place to obtain an application. You can also download a copy of the application form from

the Secretary of State's home page at www.sosaz.com.

108. Okay. I've got an application form. Now what do I do?

Leave the upper right-hand corner box empty. If you received the application form from the Secretary of State's Office, you may see some numbers there. These are for Office use only. You also skip the address box if it is blank or if your name and address are printed there. However, if anyone else's name appears in the address box, or if you are applying for a notary commission for the first time but there are numbers in the upper right-hand box, please call the Secretary of State's Office for a blank application form. DO NOT USE a form that has someone else's name in the address box or someone else's commission number in the upper right-hand box.

MAKE SURE you PRINT LEGIBLY or TYPE all information so that we can read it. If we cannot read your application form, or any portion of your application form, we will return it to you along with a new form for you to complete legibly. This will delay your Notary commission.

IF THE APPLICATION FORM YOU HAVE ONLY HAS ONE COLUMN AND THERE IS NO APPLICATION IN THE BACK OF THIS BOOKLET, PLEASE CONTACT THE OFFICE FOR THE NEW FORM OR DOWNLOAD THE NEW FORM FROM THE SECRETARY OF STATE'S WEB SITE AT www.sosaz.com.

In the box about halfway down the page, check the appropriate blank for a new appointment or a reappointment. If you have previously been commissioned as a notary, including your current commission which is about to expire, please print legibly or type the name (first, middle, last) under which you received your last commission.

IN THE LEFT-HAND COLUMN:

List the name under which you want to be commissioned. Place your last name first, followed by your first name and your middle name or initial. You do not necessarily have to be commissioned under your legal first or middle name or both, using your initials or a nickname, but we must have your legal surname (last name).

Example: Your name is John Quintano Public. You could be commissioned under the following names:

John Quintano Public

John Q. Public

J. Quintano Public

J.Q. Public

Johnny Public

Quin Public

On the line for your mailing address, list your address, a post office box number, mail drop, or other address. List also the city, the zip code, and the county in which the mailing address is.

Your home address must be the physical location of your residence. You MAY NOT list a P.O. Box number here or a mail drop or other address that is not your residence's physical address. Make sure you tell us the name of the city, the zip code, and the Arizona county in which you reside. (Note: This is for your county of residence, not country of residence. Please do not enter "U.S.") If you live in a rural area without street addresses, you must describe the location of your residence. We need your residence's physical location because this will help prove you are an Arizona resident.

Please list your social security number. This is used for identification purposes only when two or more notaries have the same name.

List your home telephone number, including the area code, even if the number is unlisted. This

information is now confidential and will not be released.

Tell us whether you are a male or a female.

List the name of your or your employer's business.

List your business address, city, and zip code.

List your business telephone.

List your e-mail address (please list only one e-mail address).

List your fax number (please list only one fax number).

You must give us a business address. If you operate your notary services from your home, then you would list your home address as your business address. If you leave the business name, address, and phone number blank, a Notary shall not perform the jurat and, if the application received in our office is missing this information, we will return it to you.

IN THE RIGHT-HAND COLUMN:

Answer the questions by placing an X on the appropriate blank line.

AT THE BOTTOM OF THE FORM:

Lastly, make sure that you sign the application form after reading carefully the statement at the bottom just above where you will sign. Your signature on that line means that you are certifying that all information on the form is correct, that you meet the requirements for being an Arizona Notary Public, and that you have read and understand the laws pertaining to Notaries Public. If you sign this application form knowing that some or all of the information is false, you may be convicted of perjury and your notary commission could be revoked.

Also, make sure that your signature contains the same names and initials as the printed version of your name on this application.

Take your application to an Arizona Notary Public who must perform a jurat.

Then send the completed application to the Secretary of State's Office along with a check, made payable to SECRETARY OF STATE, in the amount of $25. We also recommend that you include a copy of your bond with your application form so that we can match the dates.

If you have left blanks on your application form, a Notary Public shall not perform the jurat. If the Secretary of State's Office receives your application and it contains one or more blanks, the Office will return it to you without issuing you a commission and, if a Notary has performed the jurat, may revoke the commission of that Notary. Remember to always list a business address. Leaving the business address portion of the application blank will result in our returning the application to you for completion.

109. Is all the information on my application form public information? Can it be given to someone other than myself upon request?

Only your name and your business address are now public information. All other information on your application form is confidential. (A.R.S. § 41-312(F))

110. What if I live just across the border in another state but have an Arizona address?

You cannot be an Arizona Notary Public because you do not live within the borders of Arizona.

111. Some states allow nonresidents to become notaries if they live outside the borders of the state but work in that state. Does Arizona allow this?

No. You must be an Arizona resident in order to be an Arizona notary public.

112. If I was convicted of a felony but have had my civil rights restored, may I become an Arizona Notary Public?

Perhaps. But you need to send a copy of the court papers restoring your civil rights at the same time you send your application to the Secretary of State's Office. Even if your civil rights have been restored, we may deny you a Notary commission if your felony conviction had a reasonable relationship to the functions of the office of Notary Public.

113. How long does it take to become a Notary Public?

From the time you mail us your application until you receive your commission certificate in the mail, the entire process can take up to 4-6 weeks. Remember that both the Secretary of State's office and the county Clerks of the Superior Court are involved in the process.

114. Does it take as long to renew my Notary commission as it does to get a first-time Notary commission?

Yes. The process for renewing a commission and obtaining a commission for the first time are exactly the same.

115. Why does it take so long?

When we receive your Notary application, it usually is accompanied by 100-200 applications from other people in the same day's mail or received over the counter. The Public Services Division also receives up to 100 pieces of mail for other notary functions and additional programs our Division handles in that same day's mail. After opening the mail, we must attach all documents together for one application (the application form, the check or money order, and the copy of the bond if one is included). Then your application gets placed into a batch with up to 98 other applications for processing. We must check each application against our computer data base to see if the applicant has been a Notary before in Arizona because some applicants do not give us that information in the box asking whether the person has been an Arizona Notary previously.

We then input the information from the application form into our computer data base. Once the information for the entire batch is entered, we generate a proofing sheet and check the proofing sheet information against the application forms to ensure that we have entered the information into the data base correctly. After the material is proofed and corrections made, we print the commission certificates and the qualification forms. Then we sort the certificates and qualification forms, group them together by county, and send them to the Clerks of the Superior Court. The whole process can take two to three weeks depending on the number of Notary applications we get each day. Generally speaking, the process usually takes about two weeks in the Secretary of State's Office before we mail the certificates and qualification forms to the respective counties. The Clerk of the Superior Court in each county checks to see if you have filed your bond. If you have not, the Clerk must notify you that you have 20 days in which to file your bond. After the Notary bonds have been filed and approved, the Clerk sends the commission certificates to the Notaries and the qualification forms to the Secretary of State. When you receive your certificate, you are ready to obtain your official Notary seal and journal and begin notarizing signatures on documents.

116. What is a qualification form?

A qualification form is a document the Secretary of State's Office prepares and sends to the appropriate Clerk of the Superior Court along with each notary commission certificate. After the county Clerk of the Superior Court verifies that the notary has filed an appropriate bond, the Clerk fills in the time and date of the filing of the notary's bond and sends the qualification form back to the Secretary of State's Office. We then update the data base to show that the notary is now qualified to serve as a notary public.

117. How much does it cost to become an Arizona Notary Public?

- You must pay a $25 application processing/filing fee to the Secretary of State's Office and you must pay an $18 bond filing fee to the Clerk of the Superior Court in your county of residence. (A.R.S. § 41-126(2) and 12-284)

- You must also buy a $5000 bond, covering the four years of your commission. The cost of the bond varies. You may buy the bond from an insurance or bonding company. This bond protects the public if you notarize a document incorrectly or illegally. (A.R.S. §§ 41-312(B) and 41-315 and A.A.C. R2-12-1103)
- You may also wish to buy Errors and Omissions Insurance (commonly referred to as "E & O insurance") through your insurance or bonding company. This insurance would protect you if you inadvertently make an error or leave something off when notarizing a document. This insurance is not required and its cost may vary.
- You must also purchase a Notary seal and a Notary journal in which to record your notarial acts. (A.R.S. §§ 41-321 and 41-319)
- If you failed to notify us about a change in your mailing address or about a lost or stolen journal or seal within the time limits specified in A.R.S. § 41-323, you must also pay the $25 civil penalty per offense before we will renew your commission. (A.R.S. § 41-323)

118. After I've sent the Secretary of State's Office and the Superior Court Clerk in my county the appropriate fees and then I decide I don't want to be a Notary after all, can I get a refund?

No. You cannot get a refund from the Secretary of State's Office. Once your application has been processed, we consider it processed and filed. Therefore, we have already used your processing/filing fee. The only exception to this occurs when you send us a duplicate application and application fee for the same Notary commission term. In this instance, we can process a refund for you for the duplicate application (but not the first one) but please note that the refund process may take several weeks.

For the policy the Clerk of the Superior Court in your county follows, please contact that office.

119. I am in the military. Can I become an Arizona Notary Public?

If you are a commissioned officer in the armed forces of the United States, you are federally commissioned to perform notarial functions for other members of the armed forces and their dependents. The Arizona Attorney General specified this in Opinion I97-011. People other than commissioned officers wishing to become Arizona Notaries Public must meet the qualifications for Arizona Notaries Public and must apply just as if they were not in the military.

120. How long is my notary commission?

An Arizona Notary Public commission is a four-year term. This means that a commission beginning on June 1, 1999, will expire at midnight on May 31, 2003. (A.R.S. § 41-312(A))

121. How do I renew my commission?

About 60-90 days before your commission is due to expire, we will send you a renewal notice to the mailing address we have on file for you. You may also receive a renewal notice from a bonding company 3-6 months before your commission expires. You must submit your renewal application along with the processing/filing fee; you must meet the eligibility requirements; and you must buy a new bond that you must send to the Clerk of the Superior Court in your county of residence along with the appropriate filing fee. In other words, the procedure for renewing your Notary commission is the same as it was to apply for the first time.

122. What if I don't receive my notary renewal notice?

We cannot guarantee the delivery of the notice once it leaves our office. However, if you have moved or your mailing or residence address has changed (whether or not you have moved) during your four-year notary term, you are required by law to notify us within 30 days of the change by certified mail or other means providing a receipt that the Secretary of State's Office does not prepare or mail unless you have enclosed two copies of your notice to us and a stamped, self-addressed envelope. Failure to notify the Secretary of State's Office about your change of address will result in our assessing you a civil penalty of $25. You must then pay the Secretary of State's Office the civil penalty before we can

renew your commission. If we have your current mailing address and you still did not receive the renewal notice, please contact us. We will be happy to send you another form or you may download a copy of the notary application form from our web site at www.sosaz.com. (A.R.S. § 41-323)

123. If I forget to renew my commission in a timely manner, can I get the renewal expedited so that I don't miss time serving as a notary?

There is no real way for a commission application to be expedited. There are certain procedures within the Secretary of State's Office that we must follow. These procedures take time. Once we finish our work, we send the commission certificates and qualification sheets to the county Clerks of the Superior Court. After the Clerk has checked to make sure that the individual has filed an appropriate notary bond, the Clerk then sends the commission certificate to the notary and the qualification sheet to the Secretary of State. Each step takes time; thus expediting an application is not possible.

CHAPTER 2
DEFINITIONS

201. "Notary Public"

A Notary Public is a public officer, commissioned by the Secretary of State to perform notarial acts. A Notary is authorized by state government to administers oaths and to attest to the authenticity of signatures. A Notary serves as an impartial witness. (A.R.S. §§ 41-311, 41-312, 41-328, and 38-294)

202. "Notarial Acts"

There are four notarial acts that a notary can perform in Arizona:

- Acknowledgments,
- Jurats,
- Copy Certifications, and
- Oaths or Affirmations.

(A.R.S. §§ 41-311 and 41-313)

203. "Acknowledgment"

An acknowledgment is a notarial act in which a Notary certifies that a signer, whose identity is personally known to the Notary or is proven by satisfactory evidence, voluntarily signs a document for its stated purpose. The signer is not required to sign the document in the notary's presence for an acknowledgment; the signer may pre-sign the document or may choose to sign it in your presence. Because you are attesting to the genuineness of the signature, you may not perform an acknowledgment that will be signed at a later time. Even if a document has been pre-signed, the document signer must be in the Notary's presence at the time the Notary performs the notarization. (A.R.S. § 41-311)

204. "Jurat"

A jurat is a notarial act in which the Notary certifies that a signer, whose identity is personally known or is proven by satisfactory evidence, has made in the Notary's presence a voluntary signature and has taken an oath or affirmation vouching for the truthfulness of the signed document. Some states refer to this as an affidavit. Anytime the words "sworn to before me", "subscribed and sworn to before be", or similar words appear in notarial language in the notarial certificate, you must perform a jurat. (A.R.S. § 41-311)

205. What is the difference between a "jurat" and an "acknowledgment"?

With an acknowledgment, the Notary may or may not watch the person voluntarily make the signature after the signer's identity is proven to the Notary by means of satisfactory evidence. Keep in mind that

the signer must appear before you at the time you complete the acknowledgment.

With a jurat, the signer must also appear before you, AND you must place the signer under oath or affirmation before the signer signs the document. Only for jurats must the signer sign the document in the Notary's presence.

206. "Copy certification"

Copy certification is a notarial act in which the Notary certifies that the Notary made a photocopy of an original document that is neither a public record nor publicly recordable. (A.R.S. § 41-311)

207. "Oath" or "Affirmation"

An oath or an affirmation is a notarial act or part of a notarial act in which a person made a vow in the presence of the Notary under penalty of perjury, with reference to a supreme being in the case of an oath. (A.R.S. § 41-311)

208. "Impartial witness"

An impartial witness must have no conflict of interest. This means that, as the Notary, you cannot be a "party to the transaction" or a "party to the instrument" and you cannot have any financial or beneficial interest in the transaction, no matter how small. (A.R.S. § 41-328)

209. "Satisfactory evidence of identity"

Satisfactory evidence of identity means:

- At least one current form of identification issued by a federal, state, or tribal government containing the following:

  - The individual's photograph,
  - The individual's signature, and
  - The individual's written physical description that includes height, weight, color of hair, and color of eyes.

- Personal knowledge of the signer by the notary;
- The oath or affirmation of a credible person who is personally known to the notary and who personally knows the signer; or
- The oath or affirmation of a credible person who personally knows the individual and who provides satisfactory evidence of identity (a current form of identification issued by a federal, state, or tribal government with the individual's photograph, signature, and written physical description). (A.R.S. § 41-311)

210. "Personal knowledge of the signer by the Notary"

Personal knowledge of the signer by the Notary means that the Notary has familiarity with an individual resulting from interactions with that person over a sufficient time to eliminate reasonable doubt that the individual has the identity claimed.

211. "Credible person"

A credible person is a person who personally knows the signer and who either also personally knows the Notary or who presents satisfactory evidence of identity to the Notary. A "credible person" is also known as a "credible witness." (A.R.S. § 41-311)

212. "Party to the instrument"

An instrument is the document, a signature on which you are notarizing. A party to the instrument is someone who is mentioned in the document either by name or by job title or classification or who would have some kind of beneficial or financial interest in the document. If you are a party to the instrument, then you have an interest in the transaction and are no longer an impartial witness;

therefore you could not notarize a signature.

213. "Party to the transaction"

"Party to the instrument" means the same as "Party to the transaction".

214. "Financial or beneficial interest in the transaction"

You have financial interest in the transaction if you will gain (or lose) something of value in the transaction. You have beneficial interest in the transaction if the document will benefit you in some way. Family members are usually considered to have either a financial or beneficial interest in a transaction even if they are not specifically named in the document.

215. "Incomplete document"

An incomplete document is a document that has not been signed where a signature line is provided or where other obvious blanks appear in the document. (A.R.S. § 41-311)

216. "Commission" and "Commission certificate"

A commission certificate is the certificate issued by the Secretary of State's Office to a Notary. The commission certificate is an individual's proof that he or she has been commissioned as a Notary Public. (A.R.S. § 41-311) The commission certificate shows the Notary's name as it appears on the application form, the notary's commission number, the issuance date, and the expiration date of the commission, as well as the Secretary of State's name and signature.

217. "Notarial certificate"

A notarial certificate is the part of or attachment to a notarized document for completion by the Notary that bears the notary's signature and seal. (A.R.S. § 41-311)

CHAPTER 3
GETTING DOWN TO BASICS

301. Why do documents need to be notarized?

Documents need to be notarized in order to try to prevent fraud, to prove the authenticity of the signature, and to prove that the signature was made willingly rather than under duress.

302. What does a notarization on a document prove?

A notarization proves that a Notary Public has taken all reasonable steps to verify a signer's identity before notarizing that person's signature. If a jurat is performed, the document signer also is required vouch for the truthfulness of the document.

303. How long is my notary commission?

An Arizona Notary Public commission is a four-year term. This means that a commission beginning on June 1, 1999, will expire at midnight on May 31, 2003. (A.R.S. § 41-312)

304. Can I still notarize documents if I move out of the county in which I was commissioned?

Yes. Arizona Notaries are commissioned in their county of residence at the time of commissioning. However, they may notarize throughout the entire state of Arizona. When you next renew your commission, you will be commissioned from your new county of residence. You would continue to use your seal even if the county is no longer correct, however, because your bond is still filed at the Court Clerk's office in that county. (A.R.S. § 41-312)

305. What if I move out of state? Can I still notarize when I return to Arizona periodically?

A commission as an Arizona Notary is dependent on your being an Arizona resident. If you move out

of state, you would no longer be an Arizona resident. Therefore you would automatically vacate your office. You are then required to send, by certified mail or other means providing a receipt, your notary records to the County Recorder in the county in which you were commissioned; you are required to destroy your seal; and you must notify the Governor in writing that you are resigning your commission. (You should also notify the Secretary of State, the Clerk of the Superior Court where your notary bond was filed, and your bonding company.) Even if you return to Arizona occasionally, once you move out of state, you no longer have your primary residence in Arizona and thus are not considered an Arizona resident. Therefore you could not perform notarial acts here.

306. Can I notarize anything before I receive my new certificate?

If you are a new Notary, you cannot perform any notarial acts until you have your seal. You must have your commission certificate before you can order your seal. Therefore you cannot notarize anything before you receive your new certificate. (A.R.S. § 41-321)

If you are renewing a commission, you may continue to notarize until midnight of the expiration date of your current commission. You would not be qualified to perform notarial acts under your new commission until you receive your certificate because you must have your certificate in order to order a notary seal. (A.R.S. §§ 41-321)

You cannot order your Notary seal until you have received your Notary commission certificate because the vendor making your seal must see and keep a copy of your commission certificate. And you cannot notarize before you receive your seal because you are required by law to authenticate all your official acts with your seal. (A.R.S. §§ 41-321 and 41-313(B)(3))

307. Why do I have to have a commission certificate?

Your commission certificate is your proof that you are a Notary. The fact that you might have a notary journal and a notary seal is not proof that you are a Notary. You do not have to post your commission certificate, but you must keep it handy in case anyone ever asks you to prove that you are a Notary. (A.R.S. § 41-311(2))

308. When I receive my commission certificate, what do I do?

You will need to take a copy of your commission certificate to a stationery or office supply store or other vendor of rubber stamps to order your Notary seal. Please note that some vendors require you to bring in your original certificate, preferring to make their own copy of it for their files. Some bonding agents and professional notary organizations may also offer, as a service to their customers, the opportunity to purchase your Notary seal through the agent.

If your bonding agent uses an out-of-state vendor of notary seals to obtain your notary seal, that vendor would still have to have a copy of your commission certificate in hand before making your notary seal. Because the vendor would be making Arizona notary seals, whatever vendor the bonding agent uses would be bound by Arizona law in receiving a copy of your commission certificate before the vendor could make the seal and keeping a copy of your commission certificate on file for four years. (A.R.S. § 41-321)

See Chapter 8 for more information on your notary seal.

You must also purchase a notary journal. Please see Chapter 7 for more information about your notary journal.

309. So now I have my certificate, my seal, and my notary journal. Can I now notarize documents?

Yes. You are all set to perform notarial acts.

310. Can I sign my name any way I want to when notarizing a signature?

No. You must sign your name as you did on your application and bond. The names in your signature (first and last names and any initials) must match the signature on your bond and on your application. If you submitted a copy of your bond with your application, we would notify you about any

discrepancy between names or signatures or both. If you notarize a signature using "John Q. Public" but your application and bond say "John Quincy Public," we would not be able to certify your notarization. When we certify your notarization, we must attest that you were duly commissioned as a notary when the notarization was performed and that the signature of the Notary on the document is indeed your signature. Therefore using a name that's different from your application makes it impossible for us to attest to your signature. This could have a significant bearing if any document bearing a notarization you performed ends up in a court of law or must be sent to a foreign country. And, because you performed an improper notarization, your notary commission could be revoked.

311. How does a notary know when a signature must be notarized?

Usually the document will contain notarial language. If the document does not contain notarial language but the individual wants his/her signature notarized, you must ask the individual which type of notarization he/she wants. You can then type or neatly handwrite this information onto the document. You as the notary must never determine the notarial language yourself unless you are also an attorney.

312. Do I have to post my fees or my commission certificate?

You do not have to post your commission certificate, but you should keep it handy because it is your proof that you are a notary. However, A.R.S. § 38-412 requires notaries public to post a schedule of the fees they are allowed to charge in a conspicuous place.

313. My employer required me to be a notary. I am leaving that employment. My employer says that, because she paid the costs for commissioning me as a notary, my commission certificate, journals, and seal belong to her. Is that correct?

No. It makes no difference who paid the fees for you to become a notary. The state of Arizona commissioned you to be a notary public. Your seal, your commission, and your journals that contain only public records remain your property. (A.R.S. § 41-312(C))

314. I want to perform notarizations on my own time after work hours. However, my employer says he won't let me do that and said that, because he paid for my notary commission, I can only do notarizations during my work hours. Is this correct?

No. You can perform notarizations outside the workplace of your employer except during those times normally designated as your hours of duty for that employer. (A.R.S. § 41-312(C)(2))

315. I am a notary for my employer. I want to perform notarizations on my own time after work hours. However, my employer says that any money I receive for those notarizations belongs to him because he paid for my commission. Is this correct?

No. As stated in #314 above, you can perform notarizations outside the workplace of your employer except during those times normally designated as your hours of duty for that employer. All fees you receive for notarial services while not on duty remain your property. (A.R.S. § 41-312(C)(2)) Please remember that the fees you charge and receive for notarial services on your own time constitute earned income and must be reported on state and federal taxes.

316. My employer says that I can only perform notarizations for customers of the company. When a person walked in the office yesterday, my employer wouldn't let me perform the notarization. Is this correct?

No. An employer of a notary may not limit the notary's services to customers or other persons designated by that employer. (A.R.S. § 41-312(C)(3))

317. My employer paid for me to be commissioned as a notary. I am leaving that employment. My employer says she is going to cancel my notary commission because she paid for it. Can she do that?

No. As a notary public, you continue to serve until your commission expires, you resign your commission, you die, or the Secretary of State revokes your commission. An employer may not cancel the notary bond or notary commission of any notary who is an employee and who leaves that employment. (A.R.S. § 41-312(D))

318. I work for the City of Tucson. Can the city pay for me to be commissioned as a notary public?

Yes. The state or any of its political subdivisions may pay the fees and costs for the commissioning of a notary who is an employee of this state or any of its political subdivisions. The individual being commissioned must be required to perform notarial services in the course of the notary's employment. (A.R.S. § 41-312(G))

319. My mother was a Notary for many years. When she died, her will specified that I receive her commission and seal. Can I now notarize signatures?

No. Notary commissions are nontransferable. The commissions are only valid for the person named on the commission certificate.

CHAPTER 4
NOTARY BOND

401. Do I have to buy a bond before I can become a notary?

Yes. State law requires you to buy a surety bond before you receive your commission as a notary public and the rules of the Secretary of State's Office require the bond to be in the amount of $5,000. (A.R.S. §§ 41-312 and 41-315 and A.A.C. R2-12-1103) The bond must remain in effect for the four years of your commission. If your bond is cancelled by your bonding or insurance company before the end of your four-year commission, the Secretary of State will revoke your commission.

402. Where do I buy the bond? How much will it cost me?

You must buy a notary bond from a licensed surety. Bonds may be purchased from a notary bonding company, an insurance company, or through one of the two national notary organizations. Because prices vary, you may want to check with several companies or organizations before actually buying your bond. (A.R.S. § 41-315(A)) Please note, as stated in #412, that the State of Arizona does not designate an "official" bonding company.

403. Do I buy the bond before or after I send my application form to the Secretary of State?

You can buy it either before or after you send your application to this Office. However, if you do not send a copy of your bond to us at the time you send us your application and processing/filing fee, we will not be able to match the beginning and expiration dates on the bond to the beginning and expiration dates for your commission. In this instance, we would commission you with a commission start date the same as the date on which we enter your information into our computer data base or, if you are renewing a commission, the day after your current commission expires if that date is no more than 60 days in the future or 30 days past. If this date does not match the date on your bond, you may experience delays in receiving your commission, because the dates must match. We therefore suggest that you buy the bond first. Send the original of the bond to the Clerk of the Superior Court in your county of residence along with the filing fee and, at the same time, send your application (must be the original of your application), a copy of your bond, and your processing/filing fee to the Secretary of State's Office. This will allow us to match the dates and will save you a lot of time and aggravation later on. (A.R.S. §§ 41-312(B) and 41-315)

404. How old can the bond be for the Clerk of the Superior Court to accept it?

The bond cannot be issued more that 60 days before or 30 days after the beginning date of the

commission for which the bond was purchased. If you send a copy of your bond along with your application to the Secretary of State's Office and we discover that your bond dates do not fall within that 90-day window, we will try to alert you so that you can get a rider on your bond. Remember that the issue date of a bond may not be the same as the date the bond takes effect. The law states that the time limits apply to the date of issuance of a bond. (A.R.S. § 41-315(B))

405. What happens if you cannot use the dates on the bond?

We will try to call you to let you know that the bond dates are incorrect if you send us a copy of your bond with your application. If we cannot reach you by telephone, we will send you a letter specifying that the dates on your bond were incorrect and that you need to get a rider for your bond with the correct dates (the letter will specify the dates) and file the rider with the Clerk of the Superior Court. For the procedure your county's Court Clerk follows, please contact the Clerk's office directly.

406. What if I choose not to buy my bond before I send you my application?

You may do that. If we process your application and a copy of your bond is not included, we will begin your commission on the date we process it or, if you are renewing your commission, the day after your current commission expires if the date is no more than 30 days past or 60 days in the future. We will send your commission certificate showing the dates we used to the Clerk of the Superior Court in your county of residence. By law, the Clerk is to notify you that the Clerk's office has received your certificate from the Secretary of State's Office. You then have 20 days to buy your bond and submit it to the Clerk's Office along with the appropriate filing fee.

407. The bond I am required to buy protects me if I inadvertently do something wrong, doesn't it?

No. The surety bond that you are required to buy before being commissioned as a notary protects the public for whom you are performing the notarizations. If you wish to protect yourself, you may wish to purchase Errors and Omissions Insurance (also called E&O Insurance). E&O insurance will protect you in the event your mistake is inadvertent.

Please note that, if you purposely do something wrong when performing a notarization, nothing will protect you.

408. As a notary, am I considered to be a public official even though I am not elected? And if I am a public official, do I take an oath of office?

Yes, a Notary Public is a public official. You must take an oath of office before being commissioned as a notary. (A.R.S. § 41-312)

409. Is the oath of office given verbally?

No. The oath of office appears on your notary bond. You will sign your name under the oath of office indicating that you will abide by what it says. (A.R.S. § 38-233(B))

410. Do I have to buy a new bond when I apply for a renewal commission?

Yes. A notary bond is good for the four years of your notary commission. Thus, for every new commission you receive, you will have to purchase a new bond. (A.R.S. § 41-315)

411. Can I sign my name any way I want on the bond or does my signature have to match something?

Your signature on your notary bond must match the signature on your application form.

412. Does the State of Arizona designate an "official" bonding company?

No. The State of Arizona does not designate an "official" bonding company. However, one or more bonding companies may solicit your business and you might think, because of the wording of their material they send to you, that a particular company has been designated as the "official" bonding company for Arizona. DO NOT be misled.

CHAPTER 5
SATISFACTORY EVIDENCE OF IDENTITY

501. What kinds of identification are satisfactory?

In Arizona, you can identify a signer four ways (A.R.S. § 41-311):

- You can use personal knowledge of the individual if you have known the individual for a sufficient length of time that you are assured that the individual has the identity claimed.
- You can use an identification card issued by a state, federal, or tribal government that contains the individual's photo, signature, and written physical description. The ID card must meet all these requirements; you cannot use one ID card that has some of the requirements and another one that has the other requirements. The written physical description must contain, at a minimum, the individual's height, weight, color of hair, and color of eyes. The identification card must be current.
- If you do not know the signer and the signer doesn't have an identification described above, you can use a credible person to identify the signer. The credible person must be someone whom you know and who knows the signer. You must place the credible person under oath and have him or her swear or affirm that the signer has the identity claimed. The credible person must sign your journal and you must list in your journal the type of satisfactory evidence of identity used for the credible person, in this case personal knowledge. The signer must also sign your journal.
- If you do not know the signer and the signer doesn't have an identification described above, you can also use a credible person whom you don't know to identify the signer. The credible person, in this instance, must present you with satisfactory evidence of identity. You must place the credible person under oath and have him or her swear or affirm that the signer has the identity claimed. The credible person must sign your journal and you must list in your journal the type of satisfactory evidence of identity used for the credible person, in this case an identification card. The signer must also sign your journal.

502. What kinds of things can I look for on an identification card to determine if it's legitimate?

- Look at the type faces. If they do not match, the ID may be fraudulent.
- Look at the physical description, which must specify the individual's height, weight, color of hair, and color of eyes. Compare what is written to the physical characteristics of the person appearing before you.
- Look at the issuance date. All identification cards get some wear and tear on them (scratches, worn places). If the issuance date is old but the card looks brand new, the ID may be fraudulent.
- Look at the photo and run your finger over the edge of it. If the photo is raised, a new photo may have been laminated over the original one indicating a fraudulent ID.
- Look for obvious erasures or liquid correction fluid marks. These would be indications that the ID may be fraudulent.

503. Is there somewhere I can learn more about detecting false IDs?

Some police departments and sheriff's offices in Arizona offer classes. You should check with your local police department of sheriff's office to see if there is a class scheduled or whether you could arrange for an officer to come to your place of employment to offer this type of class.

504. If the document is pre-signed, how do I know the signer actually signed the

document?

The signer must present you satisfactory evidence of identity. If the signer is someone you know, presumably you would recognize the person's signature. If the signer is someone you do not know, that person must present an ID card that contains his/her signature. Even if the signer does not have an appropriate and acceptable ID card and uses a credible person, the signer still must sign your journal. You can then compare the signatures. If they look like they were signed by the same person, you can accept it and perform the acknowledgment. If they look different and you cannot be sure the signatures were made by the same person, you may have the signer sign the document again in your presence.

505. Which way to identify someone is best?

The best way to verify a signer's identity is to know the person yourself (personal knowledge). An "eyewitness" report is usually the strongest form of identification. When you verify a person's identity because of personal knowledge, you do not need to use witnesses or identification cards.

506. If I need to notarize the signature of someone who does not have a picture identification card, what do I do?

Use a credible person to establish the identity of the person without proper photo identification, as explained in #501. If the person without proper picture identification is a minor, find out if the minor is authorized to sign the document. It's also a good idea to have the signer print his/her name after the signer's signature on the document. If there is no credible person and the person has no picture identification issued by a state, federal, or tribal government, you must refuse the notarization.

507. How can a credible person verify a signer's identity?

A credible person must always know the signer. The notary must place the credible person under oath and the credible person must swear or affirm that the signer has the identity claimed. When using a credible person for identification purposes, both the signer and the credible person must sign your journal.

508. What is the procedure for accepting a credible person's verification of the signer?

If you know the individual serving as the credible person and you know that individual to be truthful, then you have established an unbroken chain of personal knowledge. That is, you know the credible person and the credible person personally knows the signer and attests to that knowledge under oath. In addition, both the credible person and the signer must be present when you perform the notarization. If the individual serving as the credible person is someone unknown to you, then you must be willing to accept the identification card presented to you by that individual. Just as in the first instance, the credible person must know the signer personally; you must place the credible person under oath; and both the credible person and the signer must be present when you perform the notarization. In both instances, you must have both the signer and the credible person sign your journal.

509. When I must check someone's identification, what kind of identification should I ask for?

The identification you must ask for is current identification issued by a state, federal, or tribal government with a photograph and a physical description of the individual. In addition, the physical description must be in writing and must include, at a minimum, height, weight, color or hair, and color of eyes. One card must have all requirements; you cannot use one card with two of the three requirements and one card with the third requirement. Some specific types of identification cards you could accept, provided they meet all our statutory requirements, are the following:

- Driver's license
- Military ID
- State-issued ID card

- Federal or state agency ID card

A foreign passport may also be acceptable if it is current and contains the person's photograph, signature, and written physical description. Just remember that you must be able to read the language in which the passport is written to ensure that all requirements for Arizona notarial identification are met. U.S. passports do not have a written physical description and thus cannot be used for Arizona notarial identification.

510. Of the four ways of verifying a signer's identity, which one is the least effective and why?

The least effective method of verifying a signer's identity is by means of identification cards when you do not know the person and there is no credible witness whom both you and the signer know. Phony identification cards are proliferating in today's society. A Notary must take reasonable steps to examine the identification cards or papers when trying to verify a person's identity.

511. Is there anything I as a Notary should look for on identification cards? How can I know if an identification card or paper is legitimate?

You need to be alert to ways to check for falsified identification cards and other means of fraud:

- The identification cards the signer presents to you may be counterfeit if:

- The bearer presents two or more forms of identification which are unusually similar in appearance or style;
- The name of the agency issuing the card appears to be hand-typed or suspicious in any way;
- The card's issue date and the wear and tear on the card are not consistent;
- Words are misspelled;
- Some of the textures or patterns don't look right; or
- The person's picture is the same on two or more different forms of identification.

- A person may be an imposter if:

- Vital data is obscured or is unknown to the bearer;
- The person's identification cards all appear to be new; or
- The person is unwilling to give his/her fingerprint as a mark. (A fingerprint is not required under Arizona law and you may not refuse a notarization on this point alone.)

- The document presented for identification may have been altered if:

- The type faces on the same identification card vary and don't match;
- The signature does not match the bearer's signature on the document to be notarized;
- The edges or thickness around the photo appear unusual;
- Smudges, erasure smears, or discolorations obscure information; or
- The identification is not normally laminated in plastic.

512. If I think the identification card or paper is not legitimate, can I refuse to perform the notarization?

Yes.

513. Is a credible witness the same as a credible person?

Yes. Some other states and jurisdictions use the term "credible witness". In Arizona, the correct term is "credible person".

CHAPTER 6
HOW TO PERFORM YOUR NOTARIAL DUTIES

601. As a Notary Public, what are my duties?

Your duties are specified in A.R.S. § 41-313. You can perform four different types of notarial acts when someone makes a reasonable request for you to do so. You are required to keep a journal of all your official acts. You are required to keep a notary seal imprinted with five specific things. And you are required to authenticate all your official acts with your official seal. Information about your journal and your seal appear in Chapters 7 and 8 respectively.

602. What are the four notarial acts?

The four notarial acts you can perform are acknowledgments, jurats, copy certifications, and oaths and affirmations. These terms are defined in Chapter 2.

603. In some states, Notaries can perform marriages. Can I, as an Arizona Notary, perform marriages?

No. Notaries in Arizona are not allowed to perform marriage ceremonies. Only notaries in Maine, South Carolina, and Florida may perform wedding ceremonies.

604. How do I perform an acknowledgement?

For an acknowledgment, the signer must be in your presence and must present you with satisfactory evidence of identity. The signer could either bring in a document that he/she pre-signed or the signer could sign the document in your presence. The wording of the notarial certificate would be "Acknowledged before me..." Please refer to Chapter 14 for sample acknowledgment wording to use if the document does not already contain it and the signer has requested an acknowledgment.

After you have verified the signer's identity, have the signer sign both the document, if it is not already signed, and your journal and, if you wish, print his/her name and address. (If the signer does not print his/her name and address, then you must do it.) Compare the signature against the signature on the document. If they look like the same person signed the document, complete the acknowledgment. Read the notarial certificate language. Once you have signed your name to the notarial certificate, you are attesting not only that the signature of the signer is genuine but that the notarial language is correct. Cross out any incorrect information, write the corrected information above it, and initial the changes. Then fill in all blanks in the notarial certificate. Sign your name. Affix your seal. The seal generally is affixed to the left of your signature.

605. If the document is pre-signed, how do I know the signer actually signed the document?

The signer must present you satisfactory evidence of identity. If the signer is someone you know, presumably you would recognize the person's signature. If the signer is someone you do not know, that person must present an ID card that contains his/her signature. Even if the signer does not have an appropriate and acceptable ID card and uses a credible person, the signer still must sign your journal. You can then compare the signatures. If they look like they were signed by the same person, you can accept it and perform the acknowledgment. If they look different and you cannot be sure the signatures were made by the same person, you may have the signer sign the document again in your presence.

606. What kinds of identification are satisfactory?

Refer to Chapter 5 for information on satisfactory evidence of identity.

607. How do I perform a jurat?

First, look at the document. If there are any blanks in the document, you must either have the signer

fill in the information or use "n/a" as appropriate. You may not perform a jurat if the document has blanks. You also must be able to read enough of the document to be able to describe the document in your journal. This means that, if the document is printed in a foreign language, you must know enough of that foreign language to understand what type of a document it is.

Second, the signer must present you with satisfactory evidence of identity. If you must use a credible person, you must have the credible person present you with satisfactory evidence of identity. Then you must place the credible person under oath and have him/her swear or affirm that the signer has the identity claimed.

Third, you must place the signer under oath and have the signer swear or affirm that the contents of the document are true and correct. Then the person can sign the document.

Fourth, you must have the signer sign your journal and print his/her name and address (unless you choose to print the signer's name and address yourself).

Fifth, if you use a credible person, the credible person must also sign your journal.

Sixth, you can fill out the notarial certificate, taking care to read it to ensure that the language is correct. Once you have signed your name to the notarial certificate, you are attesting not only that the signature of the signer is genuine but that the notarial language is correct. Cross out any incorrect information, write the corrected information above it, and initial the changes. Then sign your name and affix your seal. The seal is usually placed to the left of your signature.

608. How do I perform a copy certification?

You must first determine whether the document presented to you for copy certification is an original document. If it is original, then you must determine whether the document is a public record or is publicly recordable. If it is a public record or is publicly recordable, or if the document is not the original, you must refuse to perform the copy certification.

If the document is not a public record or publicly recordable, then you must physically make the photocopy. If you do not have access to a photocopy machine, you must refuse to perform the copy certification.

Make the photocopy and then write or type on the face of it the notarial language for a copy certification (see Chapter 14). Complete the notarial certificate, sign your name, and affix your seal.

609. How do I place someone under oath?

Have the person raise his/her right hand and, if the oath is being administered to the document signer, ask one of the oaths below, or an adaptation of one of these oaths.

You may place someone under oath or affirmation in two different ways, depending on whether the individual wishes to "swear" to the facts (oath) or "affirm" the facts (affirmation). The following are examples:

- "Do you swear that you are the person whose identification was presented to me and do you swear that the statements in this document are true and correct? If so, please state `I so swear'." (Oath)
- "Do you swear that the individual signing this document has the identity claimed? If so, please state `I so swear'." (Oath of credible person)
- "Do you affirm that you are the person whose identification was presented and do you affirm that the statements in this document are true? If so, please state `I so affirm'." (Affirmation)
- "Do you affirm that you personally know the true identity of this individual? If so, please state `I so affirm'." (Affirmation of credible person)
- Note that, rather than figuring out ahead of time whether the person will swear or affirm, you can combine both forms into one oath: "Do you swear or affirm that you are the person whose identification you presented to me and do you swear or affirm that the statements in this document are true and correct? If so, please state `I so swear' or `I so affirm'."

610. What's the difference between "swearing" and "affirming"?

For an oath, the person is swearing to a supreme being. For a member of one of the Christian religions, the person would swear to God. For a member of a different religion, the person would swear to whatever supreme being was recognized by that religion. If the individual does not believe in a supreme being or doesn't want to swear to a supreme being, the person makes an affirmation. The person being placed under oath must make the decision about which type is appropriate.

611. Can I notarize documents anywhere in Arizona?

Yes. Although a Notary commission is issued to a Notary public and specifies the county in which the Notary resided at the time the commission was issued, the Notary may perform notarizations throughout the state of Arizona.

612. On most documents, the notarial language has a space for the state and the county. What do I fill in here?

You would fill in the state as "Arizona"; the county is the Arizona county in which you are performing the notarization. This is known as the venue information.

Notaries in Arizona are commissioned in their counties of residence. However, they may perform notarizations throughout Arizona. Thus the county specified in the venue information may not be the same county specified on your notarial seal.

If you are commissioned in one county and move to another county, your seal is still good until next you renew your commission. For more information on notary seals, please refer to Chapter 8.

613. Can I notarize documents outside the state of Arizona? I am an Arizona Notary but I work across the state line in Nevada.

You may only notarize documents within the state boundaries of Arizona. If you work in a neighboring state, you cannot perform a notarization there unless that state allows you to be a nonresident notary and issues you an appropriate notary commission. Even if an Arizona resident brings you an Arizona document to notarize because you are an Arizona notary, if you are not standing or sitting within the borders of Arizona, you cannot perform the notarial act unless you are commissioned as a business notary by the other state.

614. Am I required to notarize documents every time someone asks me?

You may not refuse service to somebody who makes a reasonable and lawful request for a notarization. Remember that you must treat all people fairly and equally. However, there may be times when you can legitimately refuse to perform a notarization. The following are examples of when you could refuse a notarization:

- If you feel the signer is being coerced or forced into signing the document;
- If the signer cannot produce satisfactory evidence of identity and a credible witness is not available.
- If you feel that the signer is not in full control of his/her mental faculties and does not understand what he/she is doing.
- If you feel the ID card presented to you is fraudulent.
- If the ID card presented to you is not current.

615. If I refuse a notarization, how can I be sure that the person I refused won't try to sue me because I refused the notarization?

You can't. However, in order to protect yourself, you may want to make a notation in your journal about the refusal and your grounds for doing so. Other notaries have been protected by doing this. There is no guarantee that a journal entry would exonerate you but, if you don't make a journal entry,

you have no protection.

616. How do I know if the signature is being made willingly?

Engage the signer in conversation. You can ask the person some key questions. Watch for pressure being exerted by family members or others present to witness the notarization.

617. If I decide that the signer is being coerced into signing the document, what do I do?

Refuse to notarize the signature.

618. Okay. That's how I can watch for fraud before I notarize a document. But how can I prevent fraud from happening after I have notarized a document?

The best way to prevent fraud from occurring after you have notarized a document is to watch for three things:

- Blanks or gaps in the text;
- Unsigned signature lines or blocks; and
- No notarial wording on the document or an attached document.

If you are performing a jurat, the document cannot be incomplete.

619. What can I do when someone presents a document to me for notarization and I notice several blank lines in the document?

If the notarial language indicates the notarization is a jurat, you must refuse to perform the jurat on an incomplete document. You might have the signer fill in the blanks or write "N/A" before you perform the jurat. In the case of an acknowledgment, you could notarize a document containing blanks, but it's still not a good idea. Blanks in a document indicate that the document has the possibility of being altered after you notarize the signer's signature. (A.R.S. § 41-328(A))

620. Can I notarize a signature that was placed on the document before it was brought to me for notarization?

Yes and no, depending on the type of notarial act.

For an acknowledgment, the document could be signed before it was brought to you for notarization. The signer must appear before you at the time you perform the notarization and provide satisfactory evidence of identity. You must check the signatures on the form of identity (if you do not personally know the person), in your journal, and on the document to try to determine if the signatures were made by the same person. (A.R.S. § 41-311)

For a jurat, the person must appear before the notary and be placed under oath before signing the document, and the signer must sign the document in the notary's presence.

621. Can a Notary perform a notarization on a document and also serve as a witness to the signing of that document?

No. Unless the language on the document specifically states that the Notary is also the witness, you cannot sign the document as both a witness and a Notary.

622. Can I notarize my own signature?

No. First of all, you are not an impartial witness to your own signature. Secondly, you cannot physically appear before yourself, a requirement for both acknowledgments and jurats. You cannot use a mirror to claim you appeared before yourself. (A.R.S. § 41-328(B))

623. Can I notarize for a family member?

Arizona law states that you cannot notarize for anyone related to you by marriage or adoption. The law also states that you as a notary are an impartial witness. While the provision specifying that you cannot notarize for anyone related to you by marriage or adoption would allow you to notarize for

your brother or sister but not your brother-in-law or sister-in-law, it's a good idea not to do so because many courts have found that family members have some financial or beneficial interest in transactions involving other family members. So just because the law allows you to notarize for blood relatives, we recommend that you not do so, unless you can prove, beyond a shadow of a doubt, that you were an impartial witness to the transaction. (A.R.S. § 41-328(B))

624. If I am asked to certify a document for someone, can I do so?

No. As an Arizona Notary, you acknowledge the signatures on documents but you cannot certify the validity of the document or any of its contents.

625. Can I certify a photocopy of a document?

You may certify that a photocopy is a true and correct copy of the original only if you personally make the photocopy from the original document. You may not perform a copy certification on any document that is a public record or that is publicly recordable. (A.R.S. § 41-311)

626. What kinds of documents are public records or are publicly recordable?

Some of these types of documents include:

- Birth certificates
- Death certificates
- Divorce papers
- Marriage licenses
- Court records
- Real estate deeds

627. Why perform a copy certification; what does it prove?

A copy certification proves that the Notary made a photocopy from the original document and thus the copy is a true and correct copy. Sometimes the party requesting the certified copy does not need the original but want to ensure that what is sent is a true and correct copy of the original.

628. Can I prepare a document for someone and then notarize it?

No. Unless you are an attorney, do not prepare documents yourself.

629. What is an attestation and do I have to use it?

Every time you perform a notarial act, you are attesting that the person appeared before you and that the person signed the document. The description of what you witnessed is commonly known as an attestation or a notarial certificate and must appear on every document you notarize.

630. Can I notarize a thumb print or an "X" mark?

Yes. A "signature" or "subscription" includes any kind of mark when a person cannot write, providing that the person's name is written near the mark and the mark is witnessed by a person who writes his or her own name as witness. If a person who cannot write is either known to the Notary or can provide sufficient evidence of his identity to the Notary, then the Notary can write the person's name near his or her mark. Otherwise an additional witness who knows the person who cannot write would be needed to identify the person making the mark and the Notary would notarize both the making of the mark and the writing of that person's name by the identifying witness.

631. Can I use a rubber stamp for my signature when I perform an acknowledgment, a jurat, or a copy certification?

No. The law says you must sign the notarial certificate, unless you have a physical handicap that would prevent you from signing your name. In this instance, the rubber stamp signature would have to be the one that appeared on the notary application and on the notary bond.

632. Can I use a separate sheet of paper on which I place the notarial certificate, my

signature, and my seal and simply attach it to the document?

It is best to keep the notarial certificate, your signature, and your official seal on the same page as the signatures being witnessed or acknowledged so that the page you have signed notarizing a signature cannot be fraudulently attached to another document. If it is necessary to use an additional page for the notarization, you may want to extend part of the original document to that page so that the signatures being notarized appear above the notarial certificate. You should also describe, as completely as possible, the document to which you are attaching the separate certificate in order to prevent the possibility of someone detaching the notarial certificate from that document and attaching it to another document.

633. If the document has preprinted notarial wording, I'll be safe in using it. Right?

Not necessarily. You must always read the wording. Sometimes the document was prepared in another state or jurisdiction using preprinted wording that may not be legal in Arizona. When you sign the document as a Notary, you are held accountable for every word in the preprinted wording. If any part of the notarial certificate is incorrect, either cross out the incorrect words with ink or cross out the entire wording and type in the correct wording. Remember to initial all changes.

634. If the preprinted notarial information on the document is incorrect, can I use correction fluid to correct it?

No. Never use correction fluid or other correction products on a document. Someone to whom the document is then presented may not accept the document because it would appear to have been altered and the person would not know if the alteration was done before or after you notarized the document. As stated above, use a pen (not a pencil or erasable ink) to cross out incorrect wording and to write in the corrected text. Always initial your changes.

635. My boss wants me to notarize an individual's signature on the document. The signer cannot appear before me, but my boss says he witnessed the individual signing the document. Can I notarize the document?

Not according to Arizona notary law. Some states allow the use of a subscribing witness (in this case, your boss). However, Arizona notary law specifies that the signer must always be in the notary's presence before the notary can complete the notarization. Thus, you cannot use a subscribing witness in Arizona.

636. My boss travels frequently. When he is out of the office, we use a rubber stamp of his signature to sign documents. Can we notarize this rubber-stamped signature?

No. Your boss did not appear before you (a requirement of both an acknowledgment and a jurat). Even if the boss was in the office, you would not be able to notarize his or her rubber-stamp signature unless the rubber-stamp was his/her legal signature.

637. If a person comes to me as a notary and wants me to certify a document that he or she must send to a foreign country, how do I do that?

You don't. The Secretary of State's Office is the only office in Arizona that is authorized to issue a certification or apostille for a document going to a foreign country. This is explained in A.R.S. § 41-325.

638. I am a court reporter. Do I have to get persons to whom I administer an oath or affirmation in a judicial proceeding to sign my journal?

No. A.R.S. § 41-324 specifies that you are exempt from this requirement for oaths and affirmations administered in judicial proceedings. However, you must fulfill the journal requirement for all other notarizations you perform.

639. What happens if I notarize a document that does not have notarial wording on it

and I don't type in the proper notarial wording? Can I just sign my name and affix my seal?

If you simply sign your name and affix your seal without any notarial wording, you have performed an invalid notarization. The notarial wording must appear on the document, because the type of notarization must be specified. If the proper wording does not appear and you do not add it or change it appropriately, the notarization of that document could be declared invalid in a court of law. And the Secretary of State could revoke your commission.

640. My husband and I are in business together and I am a notary. Can I notarize his signature on business documents?

No. State law now prohibits notarizing for a person related to you by marriage or adoption. If the document is for a corporation, you may notarize it unless you are individually named in the document either by your name or by your position. If you have an interest in the document, either financially or beneficially, you should never notarize a signature on that document.

641. What if I think the signatures were made by the same person but later a court of law determines that the document was forged?

You should still be okay, because presumably you took care to compare the signatures on the document and in your journal and they appeared to have been made by the same person. But make sure you closely check the identification presented at the time of notarization to determine if the signer matches the physical description and photo.

642. What if the date on a document I am asked to notarize is a later date than the date I perform the notarization?

You technically cannot perform a notarial act before the document exists. Either the date of the document must be changed to reflect the date of notarization or you would refuse to perform the notarization.

643. A person came to me requesting that I perform an acknowledgment on a document. The document's date was a week in the future. The signer wanted me to postdate my notarization. Should I do this?

No. Never postdate a notarial certificate. One reason is because you technically cannot notarize a document before it is created. Another reason is because you must show in your journal the date of notarization and all your entries in your journal must appear in chronological order. Postdating a notarial certificate would mean that this entry would be in the correct order as far as the time you actually performed the notarization but would be out of order when dates were compared. To save yourself later problems, simply refuse to postdate any notarial certificate.

644. You say I cannot refuse to perform a notarial act when a reasonable request is made. What does "reasonable" mean?

If you are a notary for a business and the business posts its hours on the door, then any request made to you during your business hours, even at one minute before closing, is a reasonable request. If you perform notarizations for your employer and also for others during your off-duty hours, then a request made to you at your home at 8 p.m. at night would be a reasonable request. If you only perform notarial acts while on duty for your employer and don't take your journal and seal home, then a request made at 8 p.m., if that time is normally an off-duty time for you, would be an unreasonable request. Black's Law Dictionary defines "reasonable" in part to be: "fair, proper, just, moderate, suitable under the circumstances..."

645. Where do I place my seal?

You normally place your seal to the left of your signature in the notarial certificate.

646. What if there is not room in the notarial certificate for me to affix my seal?

Documents should be prepared meeting our notarial requirements. However, many of them are not so prepared. When you have a document where insufficient space is left for your seal, just do the best job you can of affixing it. If you have to cover up language on the document, it is better to cover up preprinted language than it would be to partially or wholly cover a signature. Preprinted language could always be reconstructed. A signature might be lost forever.

647. I've known John and Mary Whatsinaname for several years. Recently, John needed his signature acknowledged on a document. He signed it and then Mary brought it to me to notarize. Because I had known John for many years and recognized his signature, I performed the acknowledgment. Should I have done that? What if it had been a jurat?

No. Arizona notary law requires the signer to ALWAYS be present when the notarization is done. In this case the signer, John, was not present. You should not have performed the acknowledgment. If that document end up in court and the notarization is declared invalid, not only could you be fined for improperly notarizing a document, but the Secretary of State could revoke your notary commission.

Had the wording been jurat language instead of acknowledgment language, you would have also performed an improper notarization, not only because the signer was not present, but because a jurat requires you to place the signer under oath and testify that the contents of the document are true and correct.

CHAPTER 7
YOUR NOTARY JOURNAL

701. Do I need anything besides my certificate and my seal to perform notarial duties?

Yes. You must keep a journal. This is now a requirement for all Arizona notaries, regardless of when your commission began. Stationery and office supply stores usually sell notary journals. Professional notary organizations also sell journals. (A.R.S. §§ 41-313 and 41-319)

702. Are there any specific requirements for the journal?

Yes. The journal must be a paper journal (with one exception, discussed in item #711 below) with the pages consecutively numbered, and the Notary must record all notarial acts in chronological order. Although the law does not require the journal to be permanently bound, the Secretary of State's Office recommends that you use a permanently bound journal for your own protection. Permanently bound pages are a little more difficult to remove from a journal than loose-leaf pages. (A.R.S. § 41-319)

703. What does a journal entry include?

Each journal entry must include at least:

- The date of the notarial act;
- A description of the document or type of notarial act;
- The printed full name, address, and signature of each person for whom a notarial act is performed.
- The type of satisfactory evidence of identity presented to the notary by each person for whom a notarial act is performed, if other than the notary's personal knowledge of the individual is used as satisfactory evidence;
- A description of the identification document, its serial or identification number and its date of issuance or expiration;
- The fee, if any, charged for the notarial act.

The Notary also must furnish, when requested, a certified copy of any record in the Notary's journal. (A.R.S. § 41-319)

704. The entry must include the date of the notarial act. My journal has a place to show the time of day. Do I have to fill that in?

You are not required to list the time of day when you perform the notarization. However, if your journal has a place for this information, you may want to list it. Indicating the time of day may help jog your memory if you are ever asked to recall that particular notarization.

705. What do you mean by "description of the document"?

A description of the document would include the kind of document (power of attorney, car title, etc.) If the document is written in a foreign language, you must be able to read enough of that language to describe the document in your journal. If you cannot read it, you should refuse to perform the notarization.

706. What is the "Type of notarial act"?

The type of notarial act is one of the four notarial acts which you, as a notary, can perform. These are: acknowledgment, jurat, copy certification, and oath or affirmation.

707. The law says a description of the document OR type of notarial act. Does this mean I can pick which I want to enter into my journal?

In essence, yes. However, we recommend that you do both. The more information you put in your journal, the better off you will be. And most journals have a space for both pieces of information.

708. Do I have to print the signer's name and address in my journal?

You can, if you so desire. Or you could choose to have the signer do this at the time the signer signs his/her name.

709. What do you mean by "satisfactory evidence of identity?"

Satisfactory evidence of identity is defined in Chapter 2 and further explained in Chapter 5.

710. When I describe the identification document, do I list either the issuance date or the expiration date?

Yes. You must list at least one of those dates. However, we recommend that you list both dates. Of the two dates, the more important is the expiration date because that will tell you if the ID is current. An ID must be current to be used as a notarial ID. However, some state-issued ID cards and tribal-issued ID cards may not list an expiration date. For these types of ID cards, you will be able to list only the issuance date. Other requirements for IDs are specified in Chapter 5.

711. I work for an attorney and we always keep a copy of every notarized document. Do I still have to keep a journal?

Not necessarily. If you always know the signer personally and you always keep a copy of the notarized document, either in paper or electronic format, you would not have to make a journal entry for the notarization. However, if ever there is a person for whom you perform a notarization whom you don't know, you must then keep a journal entry for all notarizations. (A.R.S. § 41-319(B))

712. I notarize for the same people over and over again. Do I have to make a journal entry every time?

Yes, you do have to make a journal entry every time. However, you may want to have the people for whom you are performing the notarization present satisfactory evidence of identity and sign your journal only once every six months. A.R.S. § 41-319(C))

713. I sometimes do several notarizations on the same kind of document for the same

person at one time. Do I have to have a separate entry for each document?

No. You may group like documents notarized at the same time for the same person together into one entry in your journal. (A.R.S. § 41-319(D))

714. I perform notarizations for my company and I also perform notarizations on my own time. Can I have one journal for those notarizations I perform for my company and a second journal for those notarizations I perform on my own?

No. You can have only one journal at a time. The one exception to this is a journal that contains nonpublic records. If one or more entries in your journal are not public records, you may keep one journal that contains only entries that are public records and one journal that contains only records that are not public records. (A.R.S. § 41-319(E))

715. I work for a state agency and perform notarizations that must remain confidential by state law. Therefore, my journal contains entries that are not public record. When I leave this employment, do I keep that journal or does my employer keep that journal?

Your employer will keep those journals that contain entries that are not public records. You will keep journals that contain only entries that are public records. (A.R.S. § 41-319(E))

716. What purpose does the journal serve?

The journal provides proof that you performed the notarization, no matter how long ago you may have performed that notarization. The journal also verifies that you took the reasonable steps necessary to identify the signer of a document.

717. There are several Notaries in our office. Can we share a journal?

No. Each Notary must maintain his/her own journal.

718. My boss says that my journal is not a public record. Doesn't the law say that all notary journals are public record?

Most notary journals are public record. However, notary records that violate the attorney/client privilege or that are confidential due to state or federal law are not public record. If you work for a business that is not an attorney's office or that is not governed by state or federal confidentiality laws, your journal entries are public records.

If you perform notarizations that are not public record and also perform notarizations that are public record, you may keep two journals: one that contains only the nonpublic records, and one that contains only public records.

719. Can I take my notary records with me if I leave the job that I had when I became a Notary?

It depends on whether your journal contains nonpublic records. A.R.S. § 41-319(E) specifies that, a notary may keep one journal containing only public records and one that contains only nonpublic records. Your journal containing only nonpublic records would stay with your employer when you left that employment, but your journal containing only public records remains with you.

720. How long do I have to keep my notarial records?

A Notary is responsible for his/her own records and must keep them until "vacating the office" or for at least five years while you are a notary. "Vacating the office" means you are no longer commissioned as a Notary, perhaps because you did not renew your commission, you are moving out of state, or your commission was revoked. A.R.S. § 41-317(B))

721. If someone asks, do I have to give a certified copy of any record in my journal?

If your journal records are public records, then your journal may be viewed by or copied for any

member of the public. However, the individual making the request to view or have copied a record from your journal must present to you a written request that details the month and year of the notarial act, the name of the person whose signature was notarized, and the type of document or transaction. If the person cannot supply you with that information or the request is not in writing, you can refuse to let the person see your journal or you can refuse to copy the records. (A.R.S. § 41-319(F))

722. When I make the copy of a requested record, do I copy all entries on the page?

No. You can cover up the entries above and below the requested entry before making the copy.

723. When I show someone my journal after the person has made a proper request, do I let the person see all entries on the page?

No. As stated in #722, you can cover up all entries above and below the requested record before you show the requested record to the person.

724. How do I cover up the page? And can I do that all the time?

You can take some heavy-stock paper, such as cardboard or card stock, and cover entries above and below a requested record. The cardboard or card stock should be thick enough that the information on the page doesn't show through. You can also use the same procedure when you have a signer sign your journal. Just because you are performing a notarization for that individual doesn't mean that the signer has the right to see the information about other notarizations you have recently performed.

725. My employer paid all the fees for me to become a Notary. Now that I am leaving his employ, he told me he owns my journal, seal, and commission certificate. Is that right?

No. You, the Notary, own your journal, commission certificate, bond, and seal, no matter who paid for them. The only exception to this is a journal containing nonpublic records which would stay with the employer when you left that employment. (A.R.S. § 41-312(C))

726. What do I do with my Notarial records when I no longer wish to be a Notary?

When you resign your commission, you die, and you fail to renew your commission, or the Secretary of State revokes your commission, the Notary or personal representative of a Notary's estate shall deliver, by certified mail or other means providing a receipt, to the County Recorder in the county in which the Notary was commissioned, the Notary's journal and other records. If you fail to do so within three months of the resignation, revocation, or failure to renew, you would have to forfeit to the state not less than $50 nor more than $500. The personal representative of a Notary's estate would also forfeit not less than $50 nor more than $500 if the representative fails to deliver the Notary's records to the County Recorder within three months of appointment as the personal representative of the Notary. (A.R.S. § 41-317)

727. Can I just send old notary journals to the County Recorder so that I don't have to make room for them?

No. You must keep your journals and records in your possession for at least five years, unless during that five-year period you cease being an Arizona notary public. You only send the journals and records to the County Recorder when you are no longer an Arizona notary public.

728. I am a Notary in an office that handles confidential matters. If the documents I notarize are confidential, how can I, in good faith, turn over records to the County Recorder and have them become public record?

If you journal contains records that are not public record, as explained in previous questions, you would leave the journal with your employer with you left that employment. If your journal contains only public record entries, your journal is your property and you are responsible for turning it in to the County Recorder when you cease being a notary. (A.R.S. § 41-319(E))

729. What if, after I have turned over my records to the county, I am asked to prove that I notarized something?

This can happen. You may wish to make a copy of your notarial records before you turn them over to the County Recorder. However, because the records are in the hands of the County Recorder, you could refer the requestor to the County Recorder who can then locate your records and make a certified copy of the appropriate record.

730. Does the County Recorder keep the notary records indefinitely?

No. The law now specifies that County Recorders are only required to keep the notary records for a maximum of 5 years.Remember, too, that you only have to keep your records back five years. Thus, notarial records are kept for a total of 10 years only. (A.R.S. § 41-317(B))

731. If my journal is lost or stolen, what do I do?

If the journal is stolen, you must notify the appropriate law enforcement agency. You must also, within 10 days of the loss or theft of your journal, deliver to the Secretary of State's Office a signed notice of the loss or theft; this notice must be sent by certified mail or other means that provides you with a receipt that the Secretary of State's Office does not prepare or mail at Office expense. You can then purchase a new journal and start using it. (A.R.S. § 41-323(B))

729. If my journal is lost or stolen, can I still perform notarizations?

Yes. But first you must purchase a new journal. We recommend that you explain in your journal when you start using a new seal or journal. (A.R.S. § 41-323(B)

730. How do I know if my journal contains the correct information?

As long as the journal you use contains space for all of the information required in A.R.S. § 41-319 (A), then you are using a correct journal. Most journals that you can purchase contain space for the information Arizona requires plus additional information. For example, California requires thumbprints for certain real estate transactions. Thus, most notary journals contain a space for a thumbprint. However, a thumbprint is not required by Arizona law.

Shown on the next page is a sample of a journal entry. Some journals spread the blank spaces over two pages. Other journals only use one page for the entire entry. This sample uses both pages, although both pages' information are shown on one page here: The left side is shown first, followed by the right side.

State of Arizona)
)
County of _____)

On this _____ day of _____, 19___, before me personally appeared _____ (name of signer), whose identity was proved to me on the oath of _____ (Name of credible person), a credible person by me duly sworn, and acknowledged that the signer signed the above/attached document.

(seal) _____
Notary Public
My commission expires _____

CHAPTER 8

YOUR NOTARY SEAL

801. Can I notarize documents before I receive my commission certificate?

No. You must first receive your certificate. You must give a copy of your commission certificate to an office supply or stationery store in order to purchase a notary seal. The office supply or stationery store (or whatever vendor your use to make your notary seal) may want to see your original certificate which the vendor will then photocopy; the vendor must also keep the copy of your commission on file for the four years of your Notary commission. (A.R.S. § 41-321(A))

802. What kind of seal is required, an embosser or a rubber stamp?

All Arizona Notaries must use a rubber stamp seal and imprint the seal on notarized documents in dark ink. You may also use an embosser (sometimes called a crimper), but only in conjunction with the rubber stamp. (A.R.S. §§ 41-313(B) and 41-321(B))

803. What does the seal have on it?

The seal must contain the words "Notary Public", the county in which you are commissioned, your name as it appears on your notarial application which should match the name on your commission certificate, the expiration date of your commission, and the Arizona state seal. (A.R.S. § 41-313(B))

804. Does my commission expiration date have to be on the seal?

Yes, this is required. You cannot use a separate stamp with your commission expiration date on it. The stamp you use must always have your current commission's expiration date on it. You cannot continue to use a stamp beyond the expiration date specified on it by crossing out one date and inserting a different date. This means that you have to purchase a new notary stamp each time you renew your commission. (A.R.S. § 313(B))

805. What color ink should I use with my rubber stamp seal?

You must use a dark ink as required by law. For example, dark blue, dark purple, black, dark green, or dark brown inks would all be acceptable. Many notaries like to use a color other than black so that they can tell at a glance that it is the original stamp. If you use black ink, a person will not be able to readily tell the original document from a photocopy. We strongly suggest that you NOT use red ink because red does not uniformly photocopy or scan well and may not be covered under the definition of "dark ink." (A.R.S. § 41-313(B))

806. Where do I put my seal when notarizing a document?

We recommend that you place your seal just below the attestation and to the left, if possible. Please be careful not to stamp over signatures or other writing on the document and make sure that the seal is stamped clearly.

807. What if there isn't room in the notarial certificate for my seal?

Do the best job you can of affixing your seal. You should never stamp over any text or signatures. However, if insufficient room is left for you to affix your seal, it is better to stamp over preprinted language than to stamp over signatures.

808. Can I use a computer-generated seal to notarize documents?

The law doesn't specifically address this issue. However, the law does state that you may have only one official notary seal and that it must imprinted in dark ink. The intent behind this phrase was that the seal be a rubber stamp. This would appear to preclude your use of a computer-generated seal.

809. My employer paid all the fees for me to become a Notary. Now that I am leaving his employ, he told me he owns my journal, seal, and commission certificate. Is that right?

No. You, the Notary, own your journal, commission certificate, bond, and seal, no matter who paid

for them. The only exception to this is a journal containing nonpublic records which would stay with the employer when you left his employment. (A.R.S. § 41-312(C))

810. What do I do with my Notary seal after I send my journal and records to the county recorder because I am no longer a notary?

You must destroy your seal. Make sure that you destroy it so that no one else could use it. Don't simply throw it away. If you are destroying an embossing seal, pop the metal plate bearing the notarial seal out of the embosser. Then take a big hammer, find the hardest surface you can, and hammer the seal flat so that no one else can use it. If you have a rubber-stamp seal, take a sharp knife and slash the rubber to shreds so that no one else can use it.

Do not simply throw your seal in the trash or garbage. Someone else might find it and try to impersonate you. That person's actions could cause you a lot of needless problems. So make sure you DESTROY YOUR SEAL. If you wish, you could replace the notarial plate in your embossing seal with another plate, such as "From the library of".

811. What happens when I forget to put my seal on a document I have notarized?

You have performed an incomplete notarization. Arizona law requires you to place your seal on each document you notarize. If your notary seal does not appear on the document, a court of law could declare the notarization of that document to be invalid. In addition, the Secretary of State could revoke your notary commission. (A.R.S. § 41-330(A)(4))

812. If my seal is lost or stolen, what do I do?

If the seal is stolen, you must notify the appropriate law enforcement agency. You must also, within 10 days of the loss or theft of your seal, deliver to the Secretary of State's Office a signed notice of the loss or theft; this notice must be sent by certified mail or other means that provides you with a receipt that the Secretary of State's Office does not prepare or mail at Office expense. (A.R.S. § 41-323(B))

813. If my seal is lost or stolen, can I still perform notarizations?

Yes. But first you must purchase a new seal. To order a new seal, you must take a copy of your commission certificate to a rubber stamp company or office supply store or stationery store and order a new seal. We recommend that you get a new seal that looks different from your original seal. Then you must notify the Secretary of State's Office, telling us what your old seal looked like and the date it was lost or stolen and what your new seal looks like and the date you started using the new seal. That way, if we ever have to certify any document that you have notarized, we will know if it is a legitimate notarization. We recommend that you explain in your journal when you start using a new seal. (A.R.S. §§ 41-323 and 41-321)

814. You say my seal should be a different shape. What shapes are allowed?

There are no shape requirements for notary seals. However, they cannot be more than 1-1/2 inches high and 2-1/2 inches long. (A.R.S. § 41-321(B))

CHAPTER 9
FEES

901. Can I charge people to notarize their documents?

Yes. The fees are outlined in A.A.C. R2-12-1102 are the only amounts that you may charge. (Rules in Arizona have the full force and effect of law.) If you charge fees for performing notarial acts, you either charge the fees up to the amounts specified by rule or you perform the notarial acts for free. You are not allowed to charge more than the amounts specified in A.A.C. R2-12-1102, even if you call the extra charge a "service fee" or some other such name. That would constitute "charging excessive fees" which is not allowed pursuant to A.R.S. §§ 38-413 and 41-316(C). If you charge higher fees than those allowed by rule, you are liable to the party aggrieved in an amount four times

the fee you unlawfully demanded and received. You would also be guilty of a class 5 felony. If your company or office tells you to charge more than is allowed by rule, please show the owner or manager or other supervisor the laws and rules pertaining to Notaries Public and explain that you are being asked to commit a felony. If they have questions about this, they may call the Secretary of State's Office. Please note: if you charge fees for notarial acts, you must post a list of those fees in a conspicuous location. (A.R.S. §§ 41-316, 38-412, and 38-413)

902. Can I charge some people one price and other people another price?

If you do this, the people whom you charged a higher amount could claim that you discriminated against them. It's best to set your fees and then stick to them. Either charge the same fee for every notarization or don't charge at all. When you discriminate against one or more individuals, you could face a discrimination lawsuit.

903. Do I have to post my fees?

A.R.S. § 38-412 requires notaries to post in a conspicuous place a schedule of the fees they are allowed to charge. Publishing the fees in a brochure is not considered a "conspicuous" posting.

904. What happens if I charge more than the rules say I can? Can I add on a "service charge"?

If you charge more than the rules allow for a notarization, you are liable to the person whom you charged the excess fee an amount four times the fee unlawfully demanded and received. In addition, you would be guilty of a Class 5 felony. (A.R.S. §§ 38-415, 41-413, and 41-316(C)).

You could charge a travel mileage fee and charge per diem, however, if you must travel a distance to perform the notarization. The travel mileage fee and the per diem that you could charge would be the amount allowed Arizona state employees. As of July 18, 2000, the mileage fee is 32.5¢ per mile. The per diem charge depends on when you leave your home base (either a business address or a home address, depending on whether you are performing the notarization for your employer or on your own time), when you return to your home base, and how long you were gone for the purpose of performing the notarization. The rates change periodically. Check with the Secretary of State's Office before charging a customer to ensure that you charge the correct amount.

905. What if my company or organization requires me to charge more than the maximum fees specified in A.R.S. § 41-316?

If your company or organization requires you to charge more than is allowed by law, the company or organization is requiring you to perform your notarial duties in violation of the law. You as the notary will be the one who must answer for your actions in court or during an investigation. You as the notary will be the one whose notary commission may be revoked. It is vitally important that you inform your superiors in your company or organization that they are telling you to violate state statute and commit a felony. You as the notary are expected to obey the notary laws.

CHAPTER 10
VIOLATIONS OF THE LAW

1001. What happens if I commit a felony or other offense in violation of my official duties during my Notary term of office?

The Secretary of State may revoke your notary commission after you have been convicted of a felony or a violation of your official duties and we receive notification of your conviction. As a public official, conviction of a felony means that you must vacate your office. You must destroy your notary seal, and you must turn in your journal and other notarial records to the County Recorder's office in the county in which you were commissioned.

1002. Can I be held liable for anything when I perform a notarial service?

Yes. You could be held liable for misconduct considered "official misconduct." Official misconduct includes any wrongful exercise of a power or performance of a duty. Possible examples of official misconduct by a Notary and grounds for the Secretary of State to revoke a notary's commission are specified in A.R.S. § 41-330 and as follows:

- Substantial and material misstatement or omission in the application for a notary public commission that is submitted to the secretary of state.
- Conviction of a felony unless restored to civil rights, or of a lesser offense involving moral turpitude or of a nature that is incompatible with the duties of a notary public. A conviction after a plea of no contest is deemed to be a conviction for purposes of this paragraph.
- Revocation, suspension, restriction or denial of a professional license if that action was for misconduct, dishonesty or any cause that substantially relates to the duties or responsibilities of a notary public.
- Failure to discharge fully and faithfully any of the duties or responsibilities required of a notary public.
- The use of false or misleading advertising in which the notary public has represented that the notary public has duties, rights or privileges that the notary public does not possess by law.
- Charging more than the fees authorized by statute.
- The commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit the notary public or another person or to substantially injure another person.
- Failure to complete the acknowledgment or jurat at the time the notary's signature and seal are affixed to the document.
- Failure to administer the oath or affirmation required at the time of performing a jurat for an individual.
- Execution of any notarial certificate by the notary public containing a statement known by the notary public to be false.
- The return for insufficient funds or any other reason for nonpayment of a check issued for application fees to the secretary of state or the bond filing fees to the clerk of the superior court in the applicant's county of residence.

In addition, the following would be included in the above specifications:

- Engaging in any fraudulent or deceptive conduct that is related in any way to one's capacity as a Notary Public. This would include using someone else's Notary seal or letting someone else use your Notary seal.
- Failing to take all reasonable steps to verify a signer's identity.
- Representing or implying by use of your title that you have the qualifications, powers, duties, rights, or privileges that by law you do not possess, either in English or in a foreign language. (A.R.S. § 41-329)
- Performing a jurat when the signer has not personally signed the document in front of the Notary or on a document that is incomplete.

If you are found guilty of official misconduct, a court could hold you to unlimited liability. In Arizona your Notary commission could be revoked, perhaps permanently. In some states, the employer of a Notary Public could also be held jointly and severally liable with the Notary for damages caused by official misconduct of the Notary if the Notary was acting within the scope of the Notary's employment or if the employer had actual knowledge of, or reasonably should have known of, the Notary Public's official misconduct. (A.R.S. § 41-329(B))

1003. Could I be fined or go to prison for misconduct?

Yes. If you are prosecuted for criminal fraud, you could be fined and/or imprisoned and/or required to make restitution. If you are found civilly liable, you could face unlimited financial damages, court

costs, and attorney fees.

1004. I work in an office with other people, but I'm the only notary. My boss told me to leave my notary seal in an unlocked drawer so that someone else could use it to notarize documents when I'm not there. Is this legal?

No. Notary commissions are not transferable. No one is allowed to use your Notary seal or your Notary journal except you. You are the one responsible for ensuring that your seal and journal are placed in a secure location to which no one else has access. If you are proven to have used someone else's notary seal, your Notary commission or the other person's Notary commission, or both, could be revoked. If you use another person's Notary seal, or another person uses your Notary seal, you could face fines or jail time, depending on the court's action.

1005. What happens if my boss tells me to notarize something which would violate our state's Notary law?

The State of Arizona commissioned you as a Notary Public; your boss did not. You must obey the state law. We suggest that your company adopt a manual of Notary policies and procedures including the laws applicable to Notaries Public.

1006. What happens when I forget to put my seal on a document I have notarized?

You have performed an incomplete notarization. Arizona law requires you to place (affix) your seal on each document you notarize. If your notary seal does not appear on the document, a court of law could declare the notarization of that document to be invalid. In addition, the Secretary of State could revoke your notary commission. (A.R.S. § 41-330)

1007. What happens if I notarize a document that does not have notarial wording on it and I don't type in the proper notarial wording?

You have performed an invalid notarization. The notarial wording must appear on the document. If the proper wording does not appear and you do not add it or change it appropriately, the notarization of that document could be declared invalid in a court of law. And the Secretary of State could revoke your commission. (A.R.S. § 41-330)

1008. What if I notarize a document that contains blank spaces?

You cannot perform a jurat on a document that contains blank spaces or that is incomplete. There is no such limitation when performing acknowledgments, although the Secretary of State's Office recommends that you never notarize a document containing blank spaces, although we recommend that you do not notarize a signature on any document containing blank spaces. (A.R.S. § 41-328(A))

1009. I have friends, neighbors, and coworkers who are Hispanic. Can I refer to myself as a "Notario Publico" when I perform notarial services for them?

Other than a single desk plaque, you cannot advertise your services in a foreign language unless you are an attorney or, if you are not an attorney and you advertise, either by written or verbal means, then you must post or otherwise include with the advertisement a notice in English and the other language. The notice must be of conspicuous size, if in writing, and shall state, "I am not an attorney and cannot give legal advice about immigration or any other legal matters."

Any notary public who violates this section of the notary law is guilty of a class 6 felony and the Secretary of State shall permanently revoke the notary's commission. (A.R.S. § 41-329)

1010. What do I do when I have a complaint against a notary?

You can submit your complaint in writing to the Secretary of State. We will forward your complaint to the Attorney General's office who shall investigate and take action on all complaints involving allegations of any violations of Notary Public law. Should the violation be one that falls into one of the categories specified for revocation of a Notary's commission, the Attorney General shall notify the Secretary of State who shall then revoke the Notary's commission and send the Notary notice of the

revocation. (A.R.S. § 41-331) Revocation of a Notary's commission is an appealable agency decision and the Notary must be afforded the opportunity to request a hearing.

CHAPTER 11
SECRETARY OF STATE RESPONSIBILITIES

1101. If a person comes to me as a notary and wants me to certify a document that he or she needs to send to a foreign country, how do I do that?

You don't. The Secretary of State's Office is the only office in Arizona that is authorized to issue a certification or apostille for a notarized document going to a foreign country. (A.R.S. § 41-325) We also issue certifications and apostilles for certain other public documents as well, including those issued by the Governor, the County Recorders, and the Registrar of Vital Records.

1102. What is an apostille?

An apostille is a certificate of authority, issued by the Secretary of State (if issued in the United States) or other authenticating authority (if issued in a foreign country), attached to a notarized document or a certified recorded document. For notarized documents, an apostille attached to the document indicates that the person who notarized the document was, in fact, a notary public at the time of the notarization. For certified recorded documents, the apostille certifies that the person who certified the document was, in fact, the official authorized to do so. The form of the apostille is dictated by the Hague Convention and is uniform among all subscribing countries. (A.R.S. § 41-326)

1103. Do documents going to every foreign country require an apostille?

No. Apostilles are used for documents going to countries that subscribe to the Hague Convention of 1961. Documents going to countries that do not subscribe to the Hague Convention receive a conventional certificate issued by the Secretary of State's office. Conventional certificates, unlike apostilles, vary in format from country to country and from jurisdiction to jurisdiction.

CHAPTER 12
TRAINING, INFORMATION, AND INSURANCE

1201. Does the Secretary of State's Office provide notaries with any information about performing their duties?

Yes. The Secretary of State publishes a booklet containing current notary laws. This booklet is available free of charge to any Arizona notary upon request. The Office also includes a copy of the law booklet when we mail an application form and an instruction sheet to persons requesting information on becoming notaries and to notaries whose commissions will soon expire.

The Office also publishes this Handbook and a newsletter, Notary Notes. The newsletter is published approximately every six months and is sent to all current notaries via the U.S. mail, e-mail, or fax. In addition, the newsletter, the Handbook, and the law booklet are all available on the Internet through the Secretary of State's home page at www.sosaz.com.

The Secretary of State's Office also presents 1/2-day workshops for notaries public throughout the state. Schedules for these workshops appear in the Notary Notes newsletter. The workshops cover the current notary law, pertinent sections of other laws, and any proposed legislation. Advanced registration is required for these workshops. In addition, Office staff may present shorter programs to interested groups on an as-requested basis. Contact the Office at (602) 542-4086 if your group would be interested in such a program.

1202. Is there any other training offered to notaries public?

From time to time, groups and organizations come into Arizona to present general notary information

at workshops or seminars. The Secretary of State's does not require that groups or organizations presenting workshops/seminars notify the Office, although several do afford the Office that courtesy. Please note: these groups and organizations are private entities and do not represent the Arizona Secretary of State's Office. We are listing these groups and organizations here for information purposes only and not as an endorsement of their services or views.

National Notary Association
9350 De Soto Ave., P.O. Box 2402
Chatsworth, CA 91313-2402
1-818-739-4000
www.nationalnotary.org
Contact: Hilary Mahan

American Society of Notaries
P.O. Box 5707
Tallahassee, FL 32314-5707
1-800-522-3392
904-671-5164
www.notaries.org
Contact: Lisa Fisher

Notary Law Institute
P.O. Box 58595
Salt Lake City, UT 84158
1-800-722-8708
801-467-0758
Contact: Peter Van Alstyne

The National Notary Association and the American Society of Notaries are nonprofit membership organizations that offer publications and other educational services.

The National Notary Association (NNA) was established in 1957 and is based in Chatsworth, California. NNA's goals include supporting the 4.5+ million notaries in the United States and providing valuable information to Notaries about Notary laws, customs, and practices. Among the NNA's publications are The National Notary magazine, the Notary Bulletin, and The Arizona Notary Law Primer.

The American Society of Notaries (ASN) moved to Tallahassee, Florida, from Washington, D.C. in 1994. ASN's primary goals are to educate Notaries and to inspire a high ethical code of conduct in our nation's Notaries. The Society publishes the bi-monthly American Notary and manuals for several states. ASN also dedicates itself to the historical aspects of the office of Notary Public and has an extensive collection of notarial memorabilia, antique documents, seals, and artifacts.

Both of these organizations hold annual conferences for their members featuring programs on many issues presented by experts in notarial practices. The locations of the conferences vary each year. Contact them directly for specific conference information.

NNA and ASN also serve as advocates for Notaries and Notary law. Both organizations have promoted and influenced the development of current notarial laws and practices. They are both recognized and respected for their expertise and valuable services.

If you are interested in joining either or both of these organizations, contact them directly at the addresses or web sites listed above for membership information, benefits, and fees.

Other organizations may also provide notary training workshops or seminars and sell notary publications.

1203. Are any of these groups "official" Arizona Notary workshop presenters?

No.

1204. I am so scared that I will do something wrong. Is there any training required for required for Notaries like there is in California?

Arizona law does not require training for Notaries Public. However, if you wish to attend a training session, you have several options.

The Secretary of State's Office offers workshops for Notaries. The schedule for workshops appears in the Notary Notes newsletter. Pre-registration is required for these workshops. The Office does not charge a registration fee; however, you may have to pay for parking fees, depending on the location.

We've already mentioned that some companies and organizations come in to Arizona to present seminars to Arizona notaries (see #1202 above). These companies each charge a registration fee. Contact the specific organization for additional information.

In addition, the Secretary of State's Office publishes a newsletter, Notary Notes, at least once a year. The newsletter contains a wealth of information about notaries and their duties and responsibilities.

1205. How can I make sure I stay out of trouble?

In order for you to stay out of trouble, you must require the signer to appear personally before you; you must place the signer under oath when performing a jurat; you must always place a credible person under oath; you must positively identify the signer by the means specified by law; you must protect your Notary seal from unauthorized use; and you must faithfully keep a journal.

CHAPTER 13
MISCELLANEOUS PROVISIONS

Name Changes

1301. What if I receive a Notary commission under one name and then get married before my commission expires? Can I use my new married name?

If you get married and change your name at that time, you can use your new married name. Just sign your married name and below that signature, sign the name under which you were commissioned. If your name is changed by any means other than marriage, you must apply for a new commission. You must also notify the Secretary of State's Office within 30 days when your name changes due to marriage and you continue to function as a notary under your previous name. (A.R.S. § 41-327)

1302. That's a lot of work. Can I just renew my commission under my new name?

Yes, you can. However, you must apply for your new commission just as if you were applying for the first time including filling out an application, paying the necessary fees, buying a new bond, and buying a new Notary seal.

1303. What if I legally had my name changed but not because I got married?

Then you must apply again, pay the fees, buy a new bond, and obtain a new Notary seal. In order for your new name to be used as your legal name, a court of law must authorize the change.

1304. What if get divorced and go back to a previous name? Do I still have to apply for a new commission?

Because your name would be changing other than by marriage, you would have to apply for a new commission.

Change of Address

1305. Can I still notarize documents if I move out of the county in which I was commissioned?

Yes. Arizona Notaries are commissioned in their county of residence at the time of commissioning. However, they may notarize throughout the entire state of Arizona. When you next renew your commission, you will be commissioned from your new county of residence. You would continue to use your seal in the meantime even if the county is no longer correct, because your bond is still filed at the Court Clerk's office in that county.

1306. What if I move out of state? Can I still notarize when I return to Arizona periodically?

A commission as an Arizona Notary is dependent on your being an Arizona resident. If you move out of state, you would no longer be an Arizona resident nor would you have a primary residence in Arizona. Therefore you would automatically vacate your office. You are then required to send your Notary records to the County Recorder in the county in which you were commissioned; you are required to destroy your seal; and you must notify the Governor in writing that you are resigning your commission. (You should also notify the Secretary of State, the Clerk of the Superior Court where your Notary bond was filed, and your bonding company.) Even if you return to Arizona occasionally, once you move out of state, you are no longer considered an Arizona resident and therefore cannot perform notarial acts here.

1307. If I move, do I have to notify you?

- Yes. If you move within Arizona (home or mailing address only), you must notify the Secretary of State by certified mail or another means providing a receipt that you have moved and what your old address was and what your new address is. Failure to follow this procedure will result in our assessing you a $25 civil penalty. (A.R.S. § 41-323)
- If you move out of state, you must notify us that you are no longer living within Arizona. From the date you move out of state, your Arizona Notary commission is no longer valid. You are also required by law to turn in your Notary records to the County Recorder's Office of the county in which you were commissioned. In addition you are responsible for destroying your seal. You must also resign your commission in writing to the governor. (A.R.S. § 38-294)
- If your business address changes, simply notify us in writing, listing your name as it appears on your commission certificate and your old and new business address. This notification can be done through the regular mail.

1308. What happens if I forget to notify you?

If you fail to notify us about your change of mailing or residential address, we will assess you a $25 civil penalty which you must pay to this office before we can renew your notary commission. If your business address changes, you may notify us by regular mail, fax, or e-mail. There is no penalty for failing to change a business address. (a.R.S. § 41-323)

1309. If I move to another state, can I get you to transfer my notary commission to my new state?

No. Each state has its own commissioning requirements. Notary commissions do not transfer from state to state.

1310. Are notary laws the same in every state?

No. Every state's notary law is different. For example, California requires a thumbprint whenever a notarization involving a real estate transaction is performed. Arizona does not require thumbprints. In three states, notaries are allowed to perform marriages. Arizona notaries are not allowed to perform marriages.

Other Provisions

1311. I'm a commissioned officer in the military and, as such, can notarize signatures of members of the Armed Services and their families under federal law. Are those notarizations valid in Arizona?

Yes. (Attorney General Opinion I97-011 (R97-033))

1312. What does "by certified mail or other means providing a receipt" mean?

That means that you are required to send the appropriate notice or material by a means that will provide you with a receipt that the receiving office does not pay to create or mail back for you.

CHAPTER 14
ACKNOWLEDGMENTS, JURATS, OATHS, AND AFFIRMATIONS

You may use the standard form for notarial certificates for acknowledgments as specified in the Uniform Recognition of Acknowledgments Act (A.R.S. § 33-501 et seq.). The forms below may also be used.

1401. Acknowledgments

1. Acknowledgment where document signer is personally known by the Notary:

Formal wording:

State of Arizona)
)
County of _____)

On this _____ day of_____, 20____, before me personally appeared _____(name of signer), whom I know personally, and acknowledged that he/she executed the same.

(seal)_____

Notary Public

Informal wording:

State of Arizona)
)
County of _____)

On _____(date)_____, _____(name of signer), personally appeared before me, whom I know personally to be the person who signed the above/attached document and he/she proved he/she signed it.

(seal)_____

Notary Public

2. Acknowledgment where the document signer's identity is proven by a credible person whom the notary knows personally or whose identity was proved to the notary on the basis of satisfactory evidence of identity:

State of Arizona)
)
County of _____)

On this _____ day of _____, 20____, before me personally appeared _____(name of signer), whose identity was proved to me on the oath of _____(Name of credible person), a credible person by me duly sworn, and acknowledged that the signer signed the above/attached document.

(seal)_____

Notary Public

3. Acknowledgment where the document signer's identity is proven by satisfactory evidence:

State of Arizona)
)
County of _____)

On this _____ day of _____, 20____, before me personally appeared _____(name of signer), whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed the above/attached document.

(seal)_____

Notary Public

1402. JURAT

State of Arizona)
)
County of _____)

Subscribed and sworn (or affirmed) before me this _____ day of _____, 20____.

(seal)_____

Notary Public

1403. COPY CERTIFICATION

State of Arizona)
)
County of _____)

I, _____, a notary public, do certify that, on the _____ day of _____, 19____, I personally made the above/attached copy of _____ from the original, and it is a true, exact, complete, and unaltered copy.

(seal)_____

Notary Public

1404. Sample Oaths

When administering an oath, you may either ask the person to repeat after you or ask the person to answer the question. You should always have the person raise his/her right hand before administering the oath or affirmation.

Sample Oaths

For a jurat where the signer is unknown to the notary (question to be answered):

"Do you swear or affirm that you are the person whose identification card(s) you presented to me and do you swear or affirm that the contents of this document are true and correct? If so, please state `I do swear' or `I do affirm.'"

For a jurat where the signer is unknown to the notary (signer to repeat after you):

"I, _____, swear or affirm that I am the person whose identification card(s) I presented to you and I swear or affirm that the contents of this document are true and correct."

For a jurat where the signer is personally known to the notary (question to be answered):

"Do you swear or affirm that the contents of this document are true and correct? If so, please state `I do swear' or `I do affirm.'"

For a jurat where the signer is personally known to the notary (signer to repeat after you):

"I, _____, swear or affirm that the contents of this document are true and correct."

For a credible person personally known to the notary when the notarial act is an acknowledgment (question to be answered):

"Do you swear or affirm that the person appearing before me and who signed this document is the person he [or she] claims to be? If so, please state `I do swear' or `I do affirm.'"

For a credible person personally known to the notary when the notarial act is an acknowledgment (credible person to repeat after you):

"I, _____, swear or affirm that the person appearing before you and who signed this document is the person he [or she] claims to be."

For a credible person personally known to the notary when the notarial act is a jurat (question to be answered):

"Do you swear or affirm that the person appearing before me and who signed this document in my presence is the person he [or she] claims to be? If so, please state `I do swear' or `I do affirm.'"

For a credible person personally known to the notary when the notarial act is a jurat (credible person to repeat after you):

"I, _____, swear or affirm that the person appearing before you and who signed this document in your presence is the person he [or she] claims to be."

For a credible person not known to the notary when the notarial act is an acknowledgment (question to be answered):

"Do you swear or affirm that you are the person whose identification card(s) you presented to me and do you swear or affirm that the person appearing before me and who signed this document is the person he [or she] claims to be? If so, please state `I do swear' or `I do affirm.'"

For a credible person not known to the notary when the notarial act is an acknowledgment (question to be answered):

"I, _____, swear or affirm that I am the person whose identification card(s) I presented to you and I swear or affirm that the person appearing before you and who signed this document is the person he [or she] claims to be."

For a credible person not known to the notary when the notarial act is a jurat (question to be answered):

"Do you swear or affirm that you are the person whose identification card(s) you presented to me and do you swear or affirm that the person appearing before me and who signed this document in my presence is the person he [or she] claims to be? If so, please state `I do swear' or `I do affirm.'"

For a credible person not known to the notary when the notarial act is a jurat (credible person to repeat after you):

"I, _____, swear or affirm that I am the person whose identification card(s) I presented to you and I swear or affirm that the person appearing before you and who signed this document in your presence is the person he [or she] claims to be."

If you give someone an oath of office, the language for the oath is usually prescribed either by statute or by the board, commission, or other body to which the person has been appointed or elected.

CHAPTER 15
LAWS PERTAINING TO NOTARIES PUBLIC

Title 41. State Government
Chapter 2. Administrative Officers
Article 2. Notaries Public

§ 41-311. Definitions

In this article, unless the context otherwise requires:

1. "Acknowledgment" means a notarial act in which a notary certifies that a signer, whose identity is proven by satisfactory evidence, appeared before the notary and acknowledged that the signer signed the document.
2. "Commission" means to authorize to perform notarial acts and the written authority to perform those acts.
3. "Copy certification" means a notarial act in which the notary certifies that the notary has made a photocopy of an original document that is neither a public record nor publicly recordable.
4. "Identity is personally known" means familiarity with an individual resulting from interactions with that person over a sufficient time to eliminate reasonable doubt that the individual has the identify claimed.
5. "Incomplete document" means a document that has not been signed where a signature line is provided or where other obvious blanks appear in the document.
6. "Jurat" means a notarial act in which the notary certifies that a signer, whose identity is proven by satisfactory evidence, has made in the notary's presence a voluntary signature and has taken an oath or affirmation vouching for the truthfulness of the signed document.
7. "Notarial act" and "Notarization" means any act that a notary is authorized to perform under section 41-313.
8. "Notarial certificate" and "certificate" means the part of or attachment to a notarized document for completion by the notary that bears the notary's signature and seal.
9. "Notary public" and "notary" means any person commissioned to perform notarial acts under this article.
10. "Oath" or "Affirmation" means a notarial act or part of a notarial act in which a person made a vow in the presence of the notary under penalty of perjury, with reference made to a supreme being in the case of an oath.
11. "Satisfactory evidence of identity" means that proof of identity is evidence by either:
    (a) At least one current form of identification issued by a federal, state or tribal government with the individual's photograph, signature and physical description. The individual's physical description

contained in the form of identification shall be written and shall include at a minimum of description the individual's height, weight, color of hair and color of eyes.

(b) The oath or affirmation of a credible person who is personally known to the notary and who personally knows the individual.

(c) The oath or affirmation of a credible person who personally knows the individual and who provides satisfactory evidence of identity pursuant to subdivision (a) of this subsection.

(d) Personal knowledge of the individual by the notary.

§ 41-312. Appointment; term; oath and bond

A. The secretary of state may appoint notaries public in each county to hold office for four years who shall have jurisdiction in the county in which they reside and in which they are appointed. Acknowledgments of documents may be taken and executed and oaths may be administered by a notary public in any county of the state although the commission is issued to the notary public in and for another county.

B. The secretary of state shall transmit the commission of the person appointed as notary public to the clerk of the superior court in the county for which the notary was appointed. The clerk shall give notice of the appointment to the person appointed, who shall, within twenty days after receiving such notice, take the oath prescribed by law, and give a bond to the state, with sureties approved by the clerk, in an amount prescribed by the secretary of state and file it with the clerk. Upon filing the official oath and bond the clerk shall deliver the commission to such person, and give notice to the secretary of state of the time and filing of the oath and bond.

C. A notary public is a public officer commissioned by this state and the following apply without regard to whether the notary public's employer or any other person has paid the fees and costs for the commissioning of the notary public, including costs for the official seal and journals:

1. A notary public's official seal and commission and any journal that contains only public record entries remain the property of the notary public.
2. A notary public may perform notarizations outside the workplace of the notary's employer except during those times normally designated as the notary public's hours of duty for that employer. All fees received by a notary public for notarial services provided while not on duty remain the property of the notary public.
3. An employer of a notary public shall not limit the notary public's services to customers or other persons designated by the employer.

D. A notary public shall continue to serve until the notary public's commission expires, the notary public resigns the commission, the notary public dies or the secretary of state revokes the commission. An employer may not cancel the notary bond or notary commission of any notary public who is an employee and who leaves that employment.

E. A notary public shall comply with all of the following:

1. Be at least eighteen years of age.
2. Be a resident of this state for income tax purposes and claim the individual's residence in this state as the individual's primary residence on state and federal tax returns.
3. Except as provided in section 41-330, subsection A, paragraph 2, never have been convicted of a felony.

F. An applicant for appointment and commission as a notary public shall complete an application form prescribed by the secretary of state. Except for the applicant's name and business address, all information on the application is confidential and may not be disclosed to any person other than the applicant, the applicant's personal representative or an employee or officer of the federal, state or local government who is acting in an official capacity. The secretary of state shall use the information contained on the application only for carrying out the purposes of this article.

G. The state or any of its political subdivisions may pay the fees and costs for the commissioning of a notary public who is an employee of this state or any of its political subdivisions who performs notarial services in the course of the notary public's employment or for the convenience of public employees.

§ 41-313. Duties

Notaries public shall perform the following notarial acts, when requested:

1. Take acknowledgments and give a certificate of the acknowledgment endorsed on or attached to the

instrument.
2. Administer oaths and affirmations.
3. Perform jurats.
4. Perform copy certification.

B. Notaries public shall:
1. Keep, maintain and protect as a public record a journal of all official acts performed by the notary as described in section 41-319.
2. Provide and keep the official seal that is imprinted in dark ink with the words "Notary Public", the name of the county in which the notary is commissioned, the name of the notary as it appears on the notarial application, the great seal of the state of Arizona and the expiration date of the notarial commission.
3. Authenticate with the official seal all official acts, and affix the date of the expiration of the notary's commission as a notary on every certificate or acknowledgment signed and sealed by the notary.

§ 41-314. Repealed

§ 41-315. Bond

A. A person who has been commissioned as a notary shall file an oath of office and a bond in an amount prescribed by the secretary of state with the clerk of the superior court in the notary's county of residence in order for the commission to become effective. A licensed surety shall execute the bond. The bond shall be effective for four years beginning on the commission's effective date.

B. The clerk of the superior court shall not accept any bond that was issued more than sixty days before or thirty days after the date on which the secretary of state commissions a notary.

§ 41-316. Fees

A. The secretary of state shall establish fees that notaries public may charge for notarial acts. These fees shall be established by rules adopted pursuant to chapter 6 of this title.

B. Notaries public may be paid an amount up to the amount authorized for mileage expenses and per diem subsistence for state employees as prescribed by title 38, chapter 4, article 2.

C. A notary shall not charge or receive a fee for performing a notarial act except as specifically authorized by statute.

§ 41-317. Depositing notarial journals and records; failure to comply; storing records; certified copies

A. On the resignation or revocation of a notarial commission or the death of a notary, the notarial journal and records, except those records of notarial acts that are not public record, shall be delivered by certified mail or other means providing a receipt to the office of the county recorder in the notary's county of residence. If a notary does not apply for reappointment, on expiration of the notarial commission the journal and records shall be delivered to the county recorder as required for resignation under this subsection. A notary who neglects for three months thereafter to deposit such records and papers, or the personal representative of a deceased notary who neglects for three months after his appointment to deposit such records and papers, shall forfeit to the state not less than fifty nor more than five hundred dollars.

B. While a notary public is commissioned, a notary public shall keep all records and journals of the notary's acts for at least five years after the date the notarial act was performed. On receipt of the records and journals from a notary public who is no longer commissioned, the county recorder shall keep all records and journals of notaries public deposited in the county recorder's office for five years and shall give certified copies thereof when required, and for the copy certifications the county recorder shall receive the same fees as are by law allowed to notaries public. The copy certifications shall be as valid and effectual as if given by a notary public.

§ 41-318. Wilful destruction of records; penalty

Any person who knowingly destroys, defaces or conceals any journal entry or records belonging to the office of a notary public shall forfeit to the state an amount not exceeding five hundred dollars and shall be liable for damages to any party injured thereby.

§ 41-319. Journal

A. The notary shall keep a paper journal and, except as prescribed by subsection D [E], shall keep only one journal at a time. The notary shall record all notarial acts in chronological order. The notary shall furnish, when requested, a certified copy of any public record in the notary's journal. Records of notarial acts that

violate the attorney client privilege or that are confidential pursuant to federal or state law are not public record. Each journal entry shall include at least:

1. The date of day of the notarial act.
2. A description of the document or type of notarial act.
3. The printed full name, signature and address of each person for whom a notarial act is performed.
4. The type of satisfactory evidence of identity presented to the notary by each person for whom a notarial act is performed, if other than the notary's personal knowledge of the individual is used as satisfactory evidence of identity.
5. A description of the identification document, its serial or identification number and its date of issuance or expiration.
6. The fee, if any, charged for the notarial act.

B. If a notary has personal knowledge of the identity of a signer, the requirements of subsection A, paragraphs 1 through 5 may be satisfied by the notary retaining a paper or electronic copy of the notarized documents for each notarial act.

C. If a notary does more than one notarization for an individual within a six month period, the notary shall have the individual provide satisfactory evidence of identity the first time the notary performs the notarization for the individual but may not require satisfactory evidence of identity or the individual to sign the journal for subsequent notarizations performed for the individual during the six month period.

D. If a notary performs more than one notarization of the same type for a signer either on like documents or within the same document and at the same time, the notary may group the documents together and make one journal entry for the transaction.

E. If one or more entries in a notary public's journal are not public records, the notary public may keep one journal that contains entries that are not public records and one journal that contains entries that are public records. A notary public's journal that contains entries that are not public records is the property of the employer of that notary public and shall be retained by that employer if the notary public leaves that employment. A notary public's journal that contains only public records is the property of the notary public without regard to whether the notary public's employer purchased the journal or provided the fees for the commissioning of the notary public.

F. Except as provided in subsections A and D [E], the notary's journal is a public record that may be viewed by or copied for any member of the public, but only upon presentation to the notary of a written request that details the month and year of the notarial act, the name of the person whose signature was notarized and the type of document or transaction.

§ 41-320. Competency of bank and corporation notaries

A. It is lawful for a notary public who is a stockholder, director, officer or employee of a corporation to take the acknowledgment or oath of any party to any written instrument executed to or by the corporation, or to administer an oath to any other stockholder, director, officer, employee or agent of the corporation, or to protest for nonacceptance or nonpayment of bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by the corporation.

B. It is unlawful for any notary public to take the acknowledgment of an instrument executed by or to a corporation of which he is a stockholder, director, officer or employee, where the notary is a party to the instrument, either individually or as a representative of the corporation, or to protest any negotiable instrument owned or held for collection by the corporation, where the notary is individually a party to the instrument.

§ 41-321. Obtaining a seal; violation; classification

A. A vendor of notary seals may not provide an official seal to a person unless the person presents a photocopy of the person's notarial commission. The vendor shall retain the photocopy for four years.

B. A notary public's official seal may be any shape and shall produce a stamped seal that is no more than one and one-half inches high and two and one-half inches wide. A notary public may possess only one official seal but may also possess and use an embossing seal that may be used only in conjunction with the notary public's official seal. An embossing seal is not an official seal of a notary public.

C. A person who violates this section is guilty of a class 3 misdemeanor.

§ 41-322. Evidence of authenticity of a notarial act

A. If a notarial act is performed by any of the persons described in section 33-501, paragraphs 1 through 4, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank or title and serial number, if any, of the person is sufficient proof of the authority of the person to perform the act. Further proof of the person's authority is not required.

B. If a notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, any of the following is sufficient proof of the authority of the person to perform the act:

1. Certification by a foreign service officer of the United States resident in the country in which the notarial act is performed or a diplomatic or consular officer of the foreign country resident in the United States that a person who holds the office that the person holds is authorized to perform notarial acts.
2. Affixation to the notarized document of the official seal of the person performing the notarial act.
3. The appearance either in a digest of foreign law or in a list that is customarily used as a source of such information of the title and the indication of authority to perform notarial acts of the person.

C. If a notarial act is performed by a person other than a person described in subsections A and B of this section, sufficient proof of the authority of the person to act exists if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of the person and to the person's authority to perform the notarial act.

D. The signature and title of a person performing a notarial act are prima-facie evidence that the person is a person with the designated title and that the signature is genuine.

§ 41-323. Change of address; lost journal or seal; civil penalty

A. Within thirty days after the change of a notary's mailing or residential address, the notary shall deliver to the secretary of state, by certified mail or other means providing a receipt, a signed notice of the change that provides both the old and new addresses.

B. Within ten days after the loss or theft of an official journal or seal, the notary shall deliver to the secretary of state, by certified mail or other means providing a receipt, a signed notice of the loss or theft. The notary also shall inform the appropriate law enforcement agency in the case of theft.

C. If a notary fails to comply with subsection A or B the secretary of state may impose a civil penalty of twenty-five dollars against the notary. The notary shall pay any civil penalty imposed by the secretary of state pursuant to this subsection prior to the renewal of the notary's commission.

§ 41-324. Court reporters; notarial acts

A. Court reporters who administer oaths and affirmations in judicial proceedings are exempt from the provisions of this chapter other than section 41-315. Court reporters who are commissioned as notaries and who perform notarial acts outside of judicial proceedings are subject to all provisions of this chapter and of other laws of this state that regulate notaries public.

B. A court reporter who prepares a transcript of a judicial proceeding shall attach a certificate page to the transcript. On the certificate page, the court reporter shall attest to the fact that the reporter administered an oath or affirmation to each witness whose testimony appears in the transcript.

C. An affidavit of nonappearance that is prepared by a court reporter does not need to be witnessed by a notary.

§ 41-325. Evidence of authenticity of a notarial act performed in Arizona

A. The authenticity of the official notarial seal and signature of a notary may be evidenced by either:

1. A certificate of authority from the secretary of state, authenticated as necessary.
2. An apostille from the secretary of state in the form prescribed by the Hague Convention abolishing the requirement of legalization of foreign public documents of October 5, 1961.
3. An apostille as specified by the Hague Convention shall be attached to any document that requires authentication and that is sent to a nation that has signed and ratified this convention.

§ 41-326. Apostille

An apostille prescribed by the Hague Convention, as cited in 28 United States Code in annotations to Rule 44 of the federal rules of civil procedure, shall be in the form of a square with sides at least nine centimeters long and shall contain exactly the following wording:

Apostille
(Convention de la Haye du 5 Octobre 1961)
1. Country: _____
This public document
2. Has been signed by _____
3. Acting in the capacity of _____
4. Bears the seal/stamp of _____
Certified
5. At _____ 6. The _____
7. By _____
8. No. _____
9. Seal/stamp 10. Signature:

_____

§ 41-327. Name change; new commission

A. A notary public who has a change of surname due to marriage may continue to use the official seal and commission in the notary public's prior name until that commission expires. While using a married name in notarizations, the notary shall sign the married name on the line that is designated for the notary public's signature on the notarial certificate. Immediately below that signature, the notary public shall sign the name under which the notary was commissioned. The notary public shall notify the secretary of state's office within thirty days of the notary's change of surname due to marriage.

B. Except as prescribed by subsection A, a notary public whose name changes shall apply for a new notary commission under the new name.

§ 41-328. Prohibited conduct; incomplete documents; signatures of relatives

A. A notary public shall not perform a jurat on a document that is incomplete. If a notary public is presented with a document that the notary knows from experience to be incomplete or if the document on its face is incomplete the notary public shall refuse to perform the jurat.

B. A notary public is an impartial witness and shall not notarize the notary's own signature or the signatures of any person who is related by marriage or adoption.

§ 41-329. Notary public title; foreign language; violation; classification

A. Every notary public who is not an attorney who advertises, by any written or verbal means, the services of a notary public in a language other than English, with the exception of a single desk plaque, shall post or otherwise include with the advertisement a notice in English and the other language. The notice shall be of conspicuous size, if in writing, and shall state: "I am not an attorney and cannot give legal advice about immigration or any other legal matters."

B. A notary public who violates subsection A of this section is guilty of a class 6 felony and the notary public's commission shall be permanently revoked.

§ 41-330. Grounds for refusal or revocation of commission

A. The secretary of state may refuse to appoint any person as a notary public or may revoke the commission of any notary public for any of the following reasons:

1. Substantial and material misstatement or omission in the application for a notary public commission that is submitted to the secretary of state.
2. Conviction of a felony unless restored to civil rights, or of a lesser offense involving moral turpitude or of a nature that is incompatible with the duties of a notary public. A conviction after a plea of no contest is deemed to be a conviction for purposes of this paragraph.
3. Revocation, suspension, restriction or denial of a professional license if that action was for misconduct, dishonesty or any cause that substantially relates to the duties or responsibilities of a notary public.
4. Failure to discharge fully and faithfully any of the duties or responsibilities required of a notary public.
5. The use of false or misleading advertising in which the notary public has represented that the notary public has duties, rights or privileges that the notary public does not possess by law.
6. Charging more than the fees authorized by rule.
7. The commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit

the notary public or another person or to substantially injure another person.

8. Failure to complete the acknowledgment or jurat at the time the notary's signature and seal are affixed to the document.
9. Failure to administer the oath or affirmation required at the time of performing a jurat for an individual.
10. Execution of any notarial certificate by the notary public containing a statement known by the notary public to be false.
11. The return for insufficient funds or any other reason for nonpayment of a check issued for application fees to the secretary of state or the bond filing fees to the clerk of the superior court in the applicant's county of residence.

B. If an application is denied the secretary of state shall notify the applicant within thirty days after receipt of the application and shall state the reasons for the denial.

C. On revocation of a notary public's commission, the secretary of state shall give notice to the notary public and shall provide the person with notice of the opportunity for a hearing on the revocation. The revocation of a notary public commission is an appealable agency action.

§ 41-331. Complaints; investigations

Any person may make a complaint to the office of the secretary of state regarding a notary public. The secretary of state shall receive any complaints and shall provide notice of those complaints to the office of the attorney general who shall investigate and take action on all complaints involving allegations of any violations of this article.

§ 41-332. Secretary of state; deputy county clerk; county clerk functions

Notwithstanding any other provision of this article, if the clerks of the superior court in all counties and the secretary of state agree to centralize the functions of clerks of the superior court prescribed in this article in the office of the secretary of state, each clerk of the superior court shall deputize the secretary of state and the secretary's designees as deputy county clerks of the superior court solely for the performance of the superior court clerk's functions prescribed in this article and the clerks of the superior court and the secretary of state shall enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 to address issues relating to the centralization of functions.

Title 10. Corporations and Associations
Chapter 2. Corporations and Associations Not for Profit
Article 2. Electric Cooperative Non Profit Membership Corporations

§ 10-781. Taking of acknowledgments by officer of member

A person authorized to take acknowledgments under the laws of this state shall not be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party, by reason of being an officer, director or member of the cooperative.

Title 12. Courts and Civil Proceedings
Chapter 2. Judicial Officers and Employees
Article 8. Clerk of the Superior Court

§ 12-284. Fees

A. Except as otherwise provided by law, the clerk of the superior court shall receive fees classified as follows:

Class Description Fee
E Minimum clerk fee
Filing oath and bond of notary public 18.00
Notary public certificate 18.00
G Special fees
Notary services 5.00

Title 14. Decedents' Estates, Guardianships, Protective Proceedings and Trusts
Chapter 5. Protection of Persons Under Disability and Their Property

Article 5. Powers of Attorney

§ 14-5501. Durable power of attorney; creation; validity

A. A durable power of attorney is a written instrument by which a principal designates another person as the principal's agent. The instrument shall contain words that demonstrate the principal's intent that the authority conferred in the durable power of attorney may be exercised:

1. If the principal is subsequently disabled or incapacitated.
2. Regardless of how much time has elapsed, unless the instrument states a definite termination time.

B. The written instrument may demonstrate the principal's intent required by subsection A of this section using either of the following statements or similar language:

1. "This power of attorney is not affected by subsequent disability or incapacity of the principal or lapse of time."
2. "This power of attorney is effective on the disability or incapacity of the principal."

C. A power of attorney executed in another jurisdiction of the United States is valid in this state if the power of attorney was validly executed in the jurisdiction in which it was created.

D. From and after August 1, 1998, except as provided in section 28-370, an adult, known as the principal, may designate another adult, known as the agent, to make financial decisions on the principal's behalf by executing a written power of attorney that satisfies all of the following requirements:

1. Contains language that clearly indicates that the principal intends to create a power of attorney and clearly identifies the agent.
2. Is signed or marked by the principal or signed in the principal's name by some other individual in the principal's conscious presence and at the principal's direction.
3. Is witnessed by a person other than the agent, the agent's spouse, the agent's children or the notary public.
4. Is executed and attested by its acknowledgment by the principal and by an affidavit of the witness before notary public and evidenced by the notary public's certificate, under official seal, in substantially the following form:

I, _____, the principal, sign my name to this power of attorney this ____ day of _____, and being first duly sworn, do declare to the undersigned authority that I sign and execute this instrument as my power of attorney and that I sign it willingly, or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes expressed in the power of attorney and that I am eighteen years of age or older, of sound mind and under no constraint or undue influence.

_____

Principal

I, _____, the witness, sign my name to the foregoing power of attorney being first duly sworn and do declare to the undersigned authority that the principal signs and executes this instrument as his/her power of attorney and that he/she signs it willingly, or willingly directs another to sign for him/her, and that I, in the presence and hearing of the principal, sign this power of attorney as witness to the principal's signing and that to the best of my knowledge the principal is eighteen years of age or older, of sound mind and under no constraint or undue influence.

_____

Witness

The State of _____

County of _____

Subscribed, sworn to and acknowledged before me by _____, the principal, and subscribed and sworn to before me by _____, the witness, this _____ day of _____.

(signed)

_____

_____

(notary public)

E. The execution requirements for the creation of a power of attorney provided in subsection D of this section do not apply if the principal creating the power of attorney is:

1. A person other than a natural person.
2. Any person, if the power of attorney to be created is a power coupled with an interest. For the purposes of this paragraph, "power coup[led with an interest" means a power that forms a part of a contract and is security for money or for the performance of a valuable act.

Title 16. Elections and Electors
Chapter 5. Political Parties
Article 2. Party Organization and Government

§ 16-828. Proxies

A. A political party may choose, through its bylaws, to allow the use of proxies at its meetings, in which event the following shall be minimum regulations:

1. No proxy shall be given by a member of the state committee for use at a meeting of the committee except to a qualified elector of the county where the member resides.
2. No proxy shall be given by a member of the county committee for use at a meeting of the committee except to a qualified elector of the precinct where the member resides.

B. The duration of any proxy so given shall extend only for the length of the meeting for which it is given.

C. Every proxy shall be attested by a notary public or two witnesses.

Title 22. Justices of the Peace and Other Courts Not of Record
Chapter 2. Civil Proceedings in Justice Courts
Article 4. Appeals

§ 22-281. Fees and Deposits

G. Special fees

Notary services 4.00

Title 26. Military Affairs and Emergency Services
Chapter 1. Emergency and Military Affairs
Article 3. National Guard

§ 26-160. Oaths or affirmations

Oaths or affirmations required in the military service shall be administered by any commissioned officer, or other officer authorized to administer oaths, and no charge shall be made therefor.

Title 33. Property
Chapter 4. Conveyances and Deeds
Article 5. Uniform Recognition of Acknowledgments Act

§ 33-501. Recognition of notarial acts performed outside this state

For purposes of this article, "notarial acts" means acts which the laws and regulations of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed

outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this state:

1. A notary public authorized to perform notarial acts in the place in which the act is performed.
2. A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed.
3. An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place in which the act is performed.
4. A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: a merchant seaman of the United States, a member of the armed forces of the United States, or any other person serving with or accompanying the armed forces of the United States.
5. Any other person authorized to perform notarial acts in the place in which the act is performed.

§ 33-502. Authentication of authority of officer

A. If the notarial act is performed by any of the persons described in § 33-501, paragraphs 1 to 4, inclusive, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank, or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his authority is not required.

B. If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if:

1. Either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act, or
2. The official seal of the person performing the notarial act is affixed to the document, or
3. The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

C. If the notarial act is performed by a person other than one described in subsections A and B, there is sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.

D. The signature and title of the person performing the act are prima facie evidence that he is a person with the designated title and that the signature is genuine.

§ 33-503. Certificate of person taking acknowledgment

The person taking an acknowledgment shall certify that:

1. The person acknowledging appeared before him and acknowledged he executed the instrument, and
2. The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

§ 33-504. Recognition of certificate of acknowledgment

The form of a certificate of acknowledgment used by a person whose authority is recognized under § 33-501 shall be accepted in this state if:

1. The certificate is in a form prescribed by the laws or regulations of this state, or
2. The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken, or
3. The certificate contains the words "acknowledged before me", or their substantial equivalent.

§ 33-505. Certificate of acknowledgment

The words "acknowledged before me" mean that:

1. The person acknowledging appeared before the person taking the acknowledgment.
2. He acknowledged he had executed the instrument.

3. In the case of:
   (a) A natural person, he executed the instrument for the purposes therein stated.
   (b) A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated.
   (c) A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated.
   (d) A person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated.
   (e) A person acknowledging as a public officer, trustee, personal representative, administrator, guardian, conservator or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated.
4. The person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

33-506. Short forms of acknowledgment

The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law of this state. The forms shall be known as "Statutory Short Forms of Acknowledgment" and may be referred to by that name. The authorization of the following forms does not preclude the use of other forms:

1. For an individual acting in his own right:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (Date) by (Name of person acknowledged.)
(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

2. For a corporation:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (Date) by (Name of officer or agent, title of officer or agent) of (Name of corporation acknowledging) a (State or place of incorporation) corporation, on behalf of the corporation.
(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

3. For a partnership:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (Date) by (Name of acknowledging partner or agent), partner (or agent) on behalf of (Name of partnership) a partnership.
(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

4. For an individual acting as principal by an attorney in fact:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (Date) by (Name of attorney in fact) as attorney in fact on behalf of (Name of principal).
(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

5. By any public officer, trustee, or personal representative:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (Date) by (Name and title of position).
(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

§ 33-507. Acknowledgments not affected by this article
A notarial act performed prior to the effective date of this article is not affected by this article. This article provides an additional method of proving notarial acts. Nothing in this article diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of this state.

§ 33-508. Uniformity of interpretation
This article shall be so interpreted as to make uniform the laws of those states which enact it.

Title 33. Property
Chapter 4. Conveyances and Deeds
Article 6. Acknowledgments

§ 33-511. Acknowledgment within the state
The acknowledgment of any instrument may be made in this state before:
1. A judge of a court of record.
2. A clerk or deputy clerk of a court having a seal.
3. A recorder of deeds.
4. A notary public.
5. A justice of the peace.
6. A county recorder.

§ 33-512. Acknowledgment by a married woman
An acknowledgment of a married woman may be made in the same form as though she were unmarried.

§ 33-513. Action to correct certificate of acknowledgment
When an acknowledgment is properly made, but defectively certified, any party interested may bring an action in the superior court to obtain a judgment correcting the certificate.

Title 38. Public Officers and Employees
Chapter 2. Qualification and Tenure
Article 4. Oath of Office

§ 38-233. Filing oaths of record
A. The official oaths of state elective officers shall be filed of record in the office of the secretary of state. The official oaths of all other state officers and employees shall be filed of record in the office of the employing state board, commission or agency.
B. The official oaths of elective county and elective precinct officers shall be filed of record in the office of the county recorder, except the oath of the recorder, which shall be filed with the clerk of the board of supervisors. The official oaths of notaries public shall be endorsed upon their bond and filed with the clerk of the superior court of that county to which they are appointed. The official oaths of all other county and precinct officers and employees shall be filed of record in the office of the employing county or precinct board, commission or agency.
C. The official oaths of all city, town or municipal corporation officers or employees shall be filed of record in the respective office of the employing board, commission or agency of the cities, towns and municipal corporations.
D. The official oaths of all officers and employees of all school districts shall be filed of record in the school district office.
E. The official oaths of all officers and employees of each public educational institution except school districts

shall be filed of record in the respective offices of said public educational institutions.

F. The official oath or affirmation required to be filed of record shall be maintained as an official record for a period of five years after the termination of the employment for which the oath was filed.

Title 38. Public Officers and Employees
Chapter 2. Qualification and Tenure
Article 6. Vacancy in Office

§ 38-291. Vacancy defined

An office shall be deemed vacant from and after the occurrence of any of the following events before the expiration of a term of office:

1. Death of the person holding the office.
2. Insanity of the person holding the office, when judicially determined.
3. Resignation of the person holding the office and the lawful acceptance of the resignation.
4. Removal from office of the person holding the office.
5. If the office is elective, the person holding the office ceasing to be a resident of the state, or, if the office is local, or from a legislative or congressional district, the person holding the office ceasing to be a resident of the district, county, city, town or precinct for which he was elected, or within which the duties of his office are required to be discharged.
6. Absence from the state by the person holding the office, without permission of the legislature, beyond the period of three consecutive months.
7. The person holding the office ceasing to discharge the duties of office for the period of three consecutive months.
8. Conviction of the person holding the office of a felony or an offense involving a violation of his official duties.
9. Failure of the person elected or appointed to such office to file his official oath or bond within the time prescribed by law.
10. Decision of a competent tribunal declaring void the election or appointment of the person elected or appointed to the office.
11. Failure of a person to be elected or appointed to the office.
12. Violation of section 38-296 by the person holding the office.

§ 38-294. Resignations

Resignations shall be in writing, and made as follows:

1. By members of the legislature, to the presiding officer of the body of which he is a member, who shall immediately transmit the resignation to the governor.
2. By state officers, notaries public and officers of the militia, to the governor.
3. By other officers commissioned by the governor, to the governor.
4. By county officers, to the chairman of the board of supervisors of their county.
5. By the chairman of the board of supervisors, to the county recorder of the county.
6. In cases not otherwise provided for, by filing the resignation in the office of the secretary of state.
7. By appointive officers, to the body or officer which appointed them, unless otherwise provided.

Editor's Note: Because a notary public's bond is filed with the county of the notary's residence, a notary who resigns should also give written notice to the clerk of the superior court in the notary's county of residence.

Title 38. Public Officers and Employees
Chapter 3. Conduct of Office
Article 2. Fees

§ 38-412. Posting schedule of fees

Recorders, clerks of the superior courts, sheriffs, justices of the peace, constables and notaries public shall keep posted at all times in a conspicuous place in their respective offices a complete list of the fees they are

allowed to charge.

§ 38-413. Charging excessive fees; classification

A. If an officer demands and receives a higher fee than prescribed by law, or any fee not so allowed, such officer shall be liable to the party aggrieved in an amount four times the fee unlawfully demanded and received by him.

B. An officer who violates this section is guilty of a class 5 felony.

Title 38. Public Officers and Employees
Chapter 3. Conduct of Office
Article 3. Records

§ 38-423. Making or giving false certificate; classification

A public officer authorized by law to make or give any certificate or other writing, who makes and delivers as true such a certificate or writing containing a statement which he knows is false, is guilty of a class 6 felony.

Title 39. Public Records, Printing and Notices
Chapter 1. Public Notices
Article 2. Searches and Copies

§ 39-122. Free searches for and copies of public records to be used in claims against United States; liability for noncompliance

A. No state, county or city, or any officer of board thereof shall demand or receive a fee or compensation for issuing certified copies of public records or for making search for them, when they are to be used in connection with a claim for a pension, allotment, allowance, compensation, insurance or other benefits which is to be presented to the United States or a bureau or department thereof.

B. Notaries public shall not charge for an acknowledgment to a document which is to be so filed or presented.

C. The services specified in subsections A and B shall be rendered on request of an official of the United States, a claimant, his guardian or attorney. For each failure or refusal so to do, the officer so failing shall be liable on his official bond.

Title 39. Public Records, Printing and Notices
Chapter 1. Public Notices
Article 4. False Instruments and Records

§ 39-161. Presentment of false instrument for filing; classification

A person who acknowledges, certifies, notarizes, procures or offers to be filed, registered or recorded in a public office in this state an instrument he knows to be false or forged, which, if genuine, could be filed, registered or recorded under any law of this state or the United States, or in compliance with established procedure is guilty of a class 6 felony. As used in this section "instrument" includes a written instrument as defined in § 13-2001.

Title 41. State Government
Chapter 1. Executive Officers
Article 2. The Secretary of State and the Department of State

§ 41-126. Fees; expedited services

A. The secretary of state shall receive the following fees:

1. Making a copy of any document on file in his office, no more than ten cents for each page or partial page.
2. Filing and recording each official bond and transmitting a commission for a notary public, no more than twenty five dollars.
10. Filing, recording or certifying any other document not specified in this section, no more than three dollars.

Title 42. Taxation
Chapter 2. Real Property and Secured Personal Property
Article 3. Exemptions

§ 42-274. Affidavit

A. Except as provided in § 42-274.01 and subsection B of this section, a person claiming exemption from taxation under the provisions of article IX, § 2. 2.1 or 2.2, Constitution of Arizona, shall appear before the county assessor when such exemption is claimed for the first time and in subsequent years shall appear before the county assessor or a notary public and make an affidavit as to his eligibility, answering fully all questions appearing on a form provided by the county assessor for such purpose or otherwise propounded, but a person in the military service of the United States who is absent from the state, or who is confined in a veterans' hospital or in any licensed hospital, may make the required affidavit in the presence of any officer authorized to administer oaths upon a form obtained from the county assessor.

B. Within ten days of receipt of an initial affidavit of eligibility submitted by a nonprofit organization owning property used primarily for religious worship pursuant to § 42-271, subsection A, paragraph 7, the assessor shall upon request issue a receipt to the applicant for the affidavit. If the organization files with the assessor evidence of the organization's tax exempt status under § 501(c)(3) of the internal revenue code or § 43-1201, the organization is exempt from the requirement of filing subsequent affidavits under subsection A of this section until either:

1. All or part of the property is conveyed to a new owner.
2. All or part of the property is no longer used for religious worship pursuant to § 42-271, subsection A, paragraph 7, at which time the church shall notify the assessor in writing of the change.

C. A nonprofit organization upon obtaining title to property previously owned by another nonprofit organization must comply with this section to qualify and establish its eligibility for exemption.

D. In the case of a nonprofit organization holding title to property used primarily for religious worship that fails to file the affidavit required by this section in a timely manner, but otherwise qualifies for exemption, the county board of supervisors, on petition by the organization, shall direct the county treasurer to:

1. Refund any property taxes paid by the organization for any taxable year if the organization submits a claim for the refund to the county treasurer within one year of the date such taxes were paid. The county treasurer shall pay the claim within thirty days after it is submitted to the treasurer. The county treasurer is entitled to credit for the refund in the next accounting period with the state and each political subdivision to which the tax monies may have been transmitted.
2. Forgive and strike off from the tax roll any property taxes and accrued interest and penalties that are due but not paid.

E. A false statement made or sworn to in the affidavit shall constitute and be punishable as perjury.

Rules of Civil Procedure

Rule 44. Proof of records

44(a) Records of public officials. The records required to be made and kept by a public officer of the state, county, municipality, or any body politic, and copies thereof certified under the hand and seal of the public officer having custody of such records, shall be received in evidence as prima facie evidence of the facts therein stated.

44(c). Proof of records of notaries public. Declarations and protests made and acknowledgments taken by notaries public, and certified copies of their records and official papers, shall be received in evidence as prima facie evidence of the facts therein stated.

Rules of the
Office of the Secretary of State

TITLE 2. ADMINISTRATION
CHAPTER 12. SECRETARY OF STATE

ARTICLE 11. NOTARY PUBLIC BONDS AND FEES

Section
R2-12-1101. Definitions
R2-12-1102. Notary Public Fees
R2-12-1103. Notary Public Bonds

ARTICLE 11. NOTARY PUBLIC BONDS AND FEES

R2-12-1101. Definitions

The following definitions shall apply in this Article unless the context otherwise requires:

"Acknowledgment" means the same as defined in A.R.S. §§ 41-311(1).

"Bond" means a surety bond to the state, with sureties approved by the clerk of the superior court in the county in which the individual is being commissioned as a notary public.

"Copy certification" means the same as defined in A.R.S. § 41-311(3).

"Credible person" means a person used to identify a signer when the signer does not have other satisfactory evidence of identity as specified in A.R.S. § 41-311(11).

"Jurat" means the same as defined in A.R.S. § 41-311(6):

"Oath" or "affirmation" means the same as defined in A.R.S. § 41-311(10).

"Satisfactory evidence of identity" means the same as defined in A.R.S. § 41-311(11).

R2-12-1102. Notary Public Fees

Notaries public may charge the following fees:

1. For acknowledgments, $2 per signature;
2. For jurats, $2 per signature
3. For copy certifications, $2 per page certified;
4. For oaths or affirmations without a signature, $2.

R2-12-1103. Notary Public Bonds

A. Notaries public shall purchase a bond in the amount of $5,000 before being commissioned as a notary public. The original of the bond shall be filed with the clerk of the superior court in the applicant's county of residence.

B. The bond shall contain, on its face, the oath of office for the notary public as specified in A.R.S. § 38-233 (B). This oath shall be as specified in A.R.S. § 38-231. The notary shall endorse the oath on the face of the bond, immediately below the oath, by signing the notary's name under which the person has applied to be commissioned as a notary and exactly as the name appears on the notary application form filed with the Secretary of State's Office.

Attorney General Opinions

Opinion I97-015 (R97-040), dated December 30, 1997

The Attorney General has held that the Secretary of State has the authority to revoke a notary public's commission, or to seek to remove a notary public from office, for cause as specified in State law, after notice and an opportunity for a hearing. The Legislature may, by statute, expressly grant the Secretary of State additional authority to regulate and remove notaries public from office.

Opinion I97-011 (R97-033), dated August 15, 1997

The Attorney General has held that notarial acts performed in Arizona under the authority of federal law for members of the armed forces and related eligible recipients of federal legal assistance are valid in Arizona.

To qualify for an Arizona Notary Public Commission, you:

- Must be an Arizona resident.

- Must be 18 years of age or older.
- Must not be a convicted felon.

DO NOT APPLY if you fail to meet any of the above requirements.

A notary public commission is an appointment to public office. It is your responsibility to familiarize yourself with the laws pertaining to the performance of this office. A booklet containing the laws relating to notaries public for the state of Arizona is available from the Secretary of State's office if you did not receive one with this application form.

PROCEDURES FOR THE NOTARY PUBLIC APPLICATION PROCESS are listed below. You must follow exactly all the procedures listed in order to be appointed a Notary Public.

CAUTION: Your Notary appointment is not official until you receive a recorded certificate from the Clerk of the Superior Court. The official rubber stamp, containing the expiration date of your appointment, must be affixed on all documents.

NOTARY PUBLIC APPLICATION PROCEDURES

STEP 1. Complete the Notary Public Application as follows:

- Print your name exactly as you want your notary commission to be issued.
- Show your middle initial or name only if you intend to use it when signing your name as a notary public.
- List the physical location of your residence because you are commissioned from your home address.
- Fill in all blank areas on the form and sign the application exactly as your name is printed.
- Your signature must be an original signature on the application you submit to the Secretary of State's Office.

STEP 2. Buy a 4-year $5,000 Notary bond and duplicate from an insurance or bonding agent.

- The bond must show your name printed exactly as it is shown on the application.
- The bond must indicate the county in which you reside and the effective and expiration dates of the bond. Remember, the expiration date is always one day less than the effective date four years later.
- You must sign both the original and the duplicate copy of the bond in two places. Your name must be consistent on both the application and the bond.
- Your signature must be properly notarized with the notary seal visible on both the original and the copy of the bond.
- Both the Arizona resident bonding agent and attorney-in-fact must sign the bond, if indicated.

STEP 3. Filing procedures.

Send to the Secretary of State - Notary, 1700 W. Washington, #7, Phoenix, AZ 85007-2888:

1. The original application with an original signature.
2. The duplicate copy of the bond, if you want the Secretary of State to match the dates. Please remember, your bond cannot be issued more than 60 days before or 30 days after the Secretary of State commissions you as a notary.
3. Check or money order in the amount of $25 made payable to the Secretary of State.

Send to the Clerk of the Superior Court of the county in which you reside:

1. The original bond (notarized and including the original signature).
2. Check or money order in the amount of $18.00 made payable to Clerk of the Superior Court.

DO NOT send your notary application to the Clerk of the Superior Court

STEP 4. Official Notary Seal.

- Order a notary seal (stamp) from a stationery store, office supply, or insurance company AFTER you receive your commission certificate from the Clerk of the Superior Court of your county of residence.
- You must use a rubber stamp as your official seal if your commission began on or after July 20, 1996. You may affix an embosser in addition to the rubber stamp, but the rubber stamp and dark ink are required.
- The rubber stamp must contain five things:

1. The words "NOTARY PUBLIC";
2. The name of the county in which you are commissioned;
3. Your name exactly as it appears on the bond and the application form;
4. The expiration date of your commission; and
5. The Great Seal of Arizona.

****

THE CLERK OF THE SUPERIOR COURT IN THE COUNTY IN WHICH YOU ARE COMMISSIONED WILL SEND YOU YOUR COMMISSION CERTIFICATE DESIGNATING YOU AS AN AUTHORIZED NOTARY PUBLIC. If you have any questions regarding these procedures, contact the Secretary of State's Office, (602) 542-4086, for assistance.

ARIZONA CLERKS OF THE SUPERIOR COURT

Clerk of the Superior Court - Apache Co.
Box 365
St. Johns, Arizona 85936
(520) 337-4364, ext. 261

Clerk of the Superior Court - Cochise Co.
P.O. Box CK
Bisbee, Arizona 85603
(520) 432-9360

Clerk of the Superior Court - Coconino Co.
Courthouse
110 West Congress
Flagstaff, Arizona 86001
(520) 779-6535, ext. 728

Clerk of the Superior Court - Gila Co.
1400 East Ash Street
Globe, Arizona 85501
(520) 425-3231, ext. 246

Clerk of the Superior Court - Graham Co.
Courthouse P.O. Box 1265
800 Main Street
Safford, Arizona 85546
(520)761-7808

Clerk of the Superior Court - Greenlee Co.
P.O. Box 1027 Courthouse
Clifton, Arizona 85533
(520) 865-4242

Clerk of the Superior Court - La Paz Co.

Clerk of the Superior Court - Mohave Co.
P.O. Box 7000
Kingman, Arizona 86402
(520) 753-0713, Ext. 4321

Clerk of the Superior Court - Navajo Co.
P.O. Box 668
Holbrook, Arizona 86025
(520) 524-4188, ext. 283

Clerk of the Superior Court - Pima Co.
Tucson, Arizona 85701
(520) 740-3282

Clerk of the Superior Court - Pinal Co.
P.O. Box 889
Florence, Arizona 85232
(520) 868-6296

Clerk of the Superior Court - Santa Cruz Co.
Courthouse P.O. Box 1265
Nogales, Arizona 85621
(520) 428-3100

Clerk of the Superior Court - Yavapai Co.
Courthouse
Prescott, Arizona 86301
(520) 771-3312

Clerk of the Superior Court - Yuma Co.

1316 Kofa Ave., Ste. 607 168 South Second Street
Parker, Arizona 85344 Yuma, Arizona 85364
(520) 669-6131 (520) 329-2162

Clerk of the Superior Court - Maricopa Co.
Notary Bonds
P.O. Box 52826
Phoenix, Arizona 85072-2826
(602) 506-7400

Notary Public Name Change Form
Secretary of State, Public Service Division, Notary Section
1700 W. Washington, #7
Phoenix, AZ 85007-2888

Name Notary was Commissioned as:
Date of Name Change:
Surname Changed to:
Reason for Name Change:

Signature of Notary:

According to A.R.S. § 41-327

A notary public who has a change of surname due to marriage may continue to use the official seal and commission in the notary public's prior name until that commission expires. While using a married name in notarizations, the notary shall sign the married name on the line that is designated for the notary public's signature on the notarial certificate. The notary public shall sign the name under which the notary was commissioned immediately below that signature. The notary public shall notify the Secretary of State's Office within 30 days of the notary's change of surname due to marriage.

Except as prescribed by the paragraph above, a notary public whose name changes shall apply for a new notary commission under the new name.

Send this completed form to the address shown at the top. If bringing the form to the Secretary of State's office, come to Room 103 in the State Capitol Executive Tower.

New Mexico Statutes Annotated

Chapter 14, Article 12 "Notaries Public"

(References are to New Mexico Statutes Annotated, 1978 and 1981 Supplement)

Section 14-12-1. NOTARIES-POWERS AND DUTIES. The office of "notary public" is established. At any place within the state, a notary public may:

A. administer oaths;

B. take and certify acknowledgments of instruments in writing;

C. take and certify depositions;

D. make declarations and protests; and

E. perform other duties as provided by law.

Section 14-12-2. NOTARIES-QUALIFICATIONS.

Each notary public shall:

A. be a resident of New Mexico;

B. be at least eighteen years of age;

C. be able to read and write the English language;

D. not have been convicted of a felony; and

E. not have had a notary public commission revoked during the past five years.

Section 14-12- 3. NOTARIES--APPLICATION.

Each applicant for appointment as a notary public shall submit to the Secretary of State:

A. an application for appointment on a form prescribed by the secretary of State which includes a statement of the applicant's qualifications and contains evidence of his good moral character as shown by signatures of two citizens of this state;

B. the oath prescribed by the constitution for state officers and an official bond to the state, with two sureties, in the amount of five hundred dollars ($500) conditioned for the faithful discharge of duties as a notary public;

C. an application which is made by and signed by the applicant using his surname and one given name, plus an initial or additional name, if he so desires, or surname and at least two initials; and

D. an application fee in the amount of ten dollars ($10.00).

Section 14-12-4. NOTARIES-APPOINTMENT TERM.

Upon receipt of the completed application for appointment and the application fee, and upon approval of the applicant's bond, the Secretary of State shall notify the Governor who shall appoint the applicant as a notary public for a term of four (4) years from the date of appointment unless sooner removed by the Governor. The Secretary of State shall issue a commission to each notary public appointed by the Governor.

Section 14-12-5. NOTARIES--SEAL OR STAMP.

Each notary shall provide himself with a notarial seal or stamp containing his name and the words NOTARY PUBLIC--STATE OF NEW MEXICO, and shall authenticate his official acts and acknowledgments with the seal or stamp.

Section 14-12-6. NOTARIAL SEAL.

Each notary shall authenticate his official acts and acknowledgments with a notarial seal or stamp which, if a seal, shall contain his name and the words "NOTARY PUBLIC-STATE OF NEW MEXICO", and which if a stamp, shall be in substantially the following form:

"SEAL OFFICIAL SEAL
STATE OF
NEW MEXICO (name of notary printed)
NOTARY PUBLIC--STATE OF NEW MEXICO
My Commission Expires _____
(date)

(Please note the above Sections 14-12-5 and 14-15-6 reflect a change in the law. Either a seal or stamp may be used; however, a stamp should not have a signature line. In any case, the notary MUST sign acknowledgments on documents.)

Section 14-12-7. NOTARIES-CERTIFICATION.

Upon request, the Secretary of State shall certify to official acts of a notary public.

Section 14-12-8. NOTARIES--ACTION ON BOND.

Any person damaged by an unlawful act, negligence or misconduct of a notary public in his official capacity may bring a civil action on the notary public's official bond.

Section 14-12-9. NOTARIES- REAPPOINTMENT.

At least thirty (30) days before expiration of each notary public term, the

Secretary of State shall mail a notice of the expiration to the notary public's address of record. A notary public may be reappointed upon making application in the same manner as required for an original application.

Section 14-12-10. PROTESTING BILLS AND NOTES-NOTICE.

Each notary public when any bill of exchange, promissory note, or other written instrument shall be by such notary protested for nonacceptance or nonpayment shall give notice in writing thereof to the maker and to each and every endorser of such bill of exchange, and to the maker of each security, or the endorsers of any promissory note or other written instrument, immediately after such protest shall have been made.

Section 14-12-11. SERVICE OF NOTICE OF PROTEST.

Each notary public may serve notice personally upon each person protested against by delivering to such person a notice in writing, or he may make such service by placing such notice in a sealed envelope with sufficient postage thereon addressed to the person to be charged, at his last place of residence, according to the best information that the person giving the notice may obtain, and by depositing such envelope containing such notice in the United States mail or post office.

Section 14-12-12. RECORDING PROTEST NOTICES--USE AS EVIDENCE.

Each notary public shall keep record of all protest notices and of the time and manner in which the same were served and of the names of all persons to whom the same were directed. Also the description and the amount of the instrument protested, which record, or a copy thereof certified by the notary public under seal, shall at all times be competent evidence to prove such notice in any court of this state.

Section 14-12-13. NOTARIES-REMOVAL FROM OFFICE.

A. The Governor may revoke the commission of any notary public who:

(1) submits an application for appointment as a notary public which contains a false statement;

(2) is or has been convicted of any felony or of a misdemeanor arising out of a notarial act performed by him;

(3) engages in the unauthorized practice of law;

(4) ceases to be a New Mexico resident; or

(5) commits a malfeasance in office.

B. A notary's commission may be revoked under the provisions of this section only if action is taken subject to the rights of the notary public to notice, hearing, adjudication and appeal.

Section 14-12-14. NOTARIES--CHANGE OF ADDRESS.

Each notary public shall promptly notify the Secretary of State of any change of his mailing address.

Section 14-12-15. NOTARIES--CHANGE OF NAME.

Upon any change of his name, a notary public shall promptly make application to the Secretary of State for issuance of a corrected commission. The application shall be on a form prescribed by the Secretary of State. Upon receipt of the completed application, the Secretary of State shall issue a corrected commission showing the notary public's new name. The corrected commission expires on the same date as the original certificate it replaces.

Section 14-12-16. ENDORSING EXPIRATION DATE OF COMMISSION.

Every notary public certifying to any acknowledgment, oath or other matter shall, immediately opposite or following his signature to the jurat or certificate of acknowledgment, endorse the date of the expiration of such commission; such endorsement may be legibly written, stamped or printed upon the instrument, but must be disconnected from the seal and shall be substantially in the following form:

"My commission expires (stating date of expiration of commission)."

Section 14-12-17. DISQUALIFIED NOTARY EXERCISING POWERS--PENALTY.

Any notary public who exercises the duties of his office with the knowledge that his commission has expired or that he is otherwise disqualified, is guilty of a misdemeanor,

and upon conviction thereof shall be punished by a fine of one hundred dollars ($100) and shall be removed from office by the Governor.

Section 14-12-18. FALSE CERTIFICATE-AUTHENTICATING DOCUMENTS IN ABSENCE OF PROPER PARTY-PENALTY.

If any notary public, or any other officer authorized by law to make or give any certificate or other writing containing statements which he knows to be false, or appends his official signature to acknowledgments or other documents when the parties executing same have not appeared in person before him shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding two hundred dollars ($200), or by imprisonment for a period not exceeding three (3) months, or both such fine and imprisonment.

Section 14-12-19. FEES

A. Every notary public in this state shall be entitled to collect the following fees for his services:

(1) for each act of protest and certificate thereof 1.00

(2) for each notice of protest prepared and mailed to the parties in interest..... .25

(3) for any certificate under seal..... 1.00

(4) for each acknowledgment to deed or other document..... 1.00

(5) for administering or certifying to any oath 1.00

B. Whenever a notary shall be authorized by proper process to take testimony or depositions and report the same to the proper authority without making findings of fact or law, such notary public shall be entitled to collect the following fees for his services:

(1) for noting each meeting to take testimony 1.00

(2) for noting each adjournment from one day to another..... 1.00

(3) for swearing each witness..... .25

(4) for certifying and transmitting the record 1.50

(5) for transcribing or reducing to writing testimony, per folio of one hundred words, original. ..... .15

(6) for each additional copy of same, per folio..... .05

And every notary in addition to collecting fees when called from his office shall be entitled to ten cents ($.10) per mile.

Section 14-12-20. NOTARY AFFILIATED WITH BANK OR CORPORATION DOWER RESTRICTED.

It shall be lawful for any notary public who is a stockholder, director, officer or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other

stockholder, director, officer, employee or agent of such corporation, or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer or employee, where such notary is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument.

ARTICLE 13

Acknowledgments and Oaths

14-13-1. Administration of oath.

Whenever any person shall be required to take an oath before he enters upon the discharge of any office, place or business, or on any lawful occasion, any person administering the oath shall do so in the following form, viz: the person swearing shall, with his right hand uplifted, follow the words required in the oath as administered, beginning: I do solemnly swear, and closing: so help me God.

14-13-2. Administration of affirmation in lieu of oath.

Whenever any person is required to take or subscribe an oath and shall have conscientious scruples against taking the same, he shall be permitted, instead of such oath, to make a solemn affirmation, with uplifted right hand, in the following form, viz: you do solemnly, sincerely and truly declare and affirm, and close with: and this I do under the pains and penalties of perjury, which affirmation shall be equally valid as if such person had taken an oath in the usual form; end every person guilty of falsely, willfully or corruptly declaring as aforesaid, shall be liable to punishment for the same as for perjury

14-13-3. Oaths; power to administer.

The Secretary of State of New Mexico, county clerks, clerks of probate courts, clerks of district courts, clerks of magistrate courts if the magistrate court has a seal, and all duly commissioned and acting notaries public, are hereby authorized and empowered to administer oaths and affirmations in all cases where magistrates and other officers within the state authorized to administer oaths may do so, under existing laws, and with like effect.

14-13-4 to 14-13-10. Repealed.

14-13-11. Wage and salary assignments.

A. All assignments of wages or salaries due or to become due to any person, in order to be valid, shall be acknowledged by the party making the assignment before a notary public or other officer authorized to take acknowledgments. The assignment shall be recorded in the office of the county clerk of the county in which the money is to be paid and a copy served upon the employer or person who is to make payment.

B. Any assignment of wages or salary is void if it provides for an assignment of more than twenty-five percent of the assignor's disposable earnings for any pay period. As used

in this section, "disposable earnings" means that part of the assignor's wage or salary remaining after deducting the amounts which are required by law to be withheld.

14-13-12. Instrument needs no acknowledgment in absence of statutory requirement.

An acknowledgment of an instrument of writing shall not be necessary to its execution unless expressly so provided by statute.

14-13-13. Validation of former acknowledgments; 1951 act.

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof had been in the form prescribed by law.

14-13-14. Validation of former acknowledgments; 1957 act.

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

14-13-15. Validation of former acknowledgments; 1965 act.

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of

said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

14-13-16. Validation of former acknowledgments; 1967 act.

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

14-13-17. Validation of former acknowledgments; 1971 act.

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

14-13-18. Validation of former acknowledgments; 1975 act.

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the

officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

14-13-19 to 14-13-23. Repealed.

14-13-24. Validation of certain prior acknowledgments.

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by either the laws of the jurisdiction where taken or the laws of this state to take such acknowledgments, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding the form of the certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment [acknowledgment] was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-3-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

14-13-25. Validation of certain prior acknowledgments.

All acknowledgments taken outside the state before any officer authorized by either the laws of the jurisdiction where taken or the laws of this state to take such acknowledgments, and all acknowledgments taken within this state before any officer authorized by law to take acknowledgments, that have been filed and are of record in the appropriate office as provided by law for a period of ten years or more without challenge to the form or content of the acknowledgment, are considered valid, notwithstanding the form of the certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom the acknowledgment was taken or the failure to show that the seal of the officer was affixed to the instrument acknowledged, and notwithstanding the failure of the acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978 if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though the certificate of acknowledgment and the record thereof had been in the form prescribed by law.

New Mexico Statutes Annotated

Chapter 14, Article 14, "Uniform Law on Notarial Acts"

14-14-1. Definitions.

As used in the Uniform Law on Notarial Acts [14-14-1 to 14-14-11 NMSA 1978]:

A. "notarial act" means any act that a notary public of this state is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument;

B. "acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein;

C. "verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation;

D. "in a representative capacity" means:

(1) for and on behalf of a corporation, partnership, trust or other entity, as an authorized officer, agent, partner, trustee or other representative;

(2) as a public officer, personal representative, guardian or other representative, in the capacity recited in the instrument;

(3) as an attorney in fact for a principal; or

(4) in any other capacity as an authorized representative of another; and

E. "notarial officer" means a notary public or other officer authorized to perform notarial acts.

14-14-2. Notarial acts.

A. In taking an acknowledgment, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

B. In taking a verification upon oath or affirmation, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

C. In witnessing or attesting a signature the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.

D. In certifying or attesting a copy of a document or other item, the notarial officer shall determine that the proffered copy is a full, true and accurate transcription or reproduction of the one that was copied.

E. In making or noting a protest of a negotiable instrument the notarial officer shall determine the matters set forth in Section 55-3-505 NMSA 1978.

F. A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is:

(1) personally known to the notarial officer;

(2) identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or

(3) identified on the basis of identification documents.

14-14-3. Notarial acts in this state.

A. A notarial act may be performed within this state by the following persons:

(1) a notary public of this state;

(2) a judge, clerk or deputy clerk of any court of this state; or

(3) a person authorized by the law of this state to administer oaths.

B. Notarial acts performed within this state under federal authority as provided in Section 5 [14-14-5 NMSA 1978] of the Uniform Law on Notarial Acts have the same effect as if performed by a notarial officer of this state.

C. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

14-14-4. Notarial acts in other jurisdictions of the United States.

A. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if performed in another state, commonwealth, territory, district or possession of the United States by any of the following persons:

(1) a notary public of that jurisdiction;

(2) a judge, clerk or deputy clerk of a court of that jurisdiction; or

(3) any other person authorized by the law of that jurisdiction to perform notarial acts.

B. Notarial acts performed in other jurisdictions of the United States under federal authority as provided in Section 5 [14-14-5 NMSA 1978] of the Uniform Law on Notarial Acts have the same effect as if performed by a notarial officer of this state.

C. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

D. The signature and indicated title of an officer listed in Paragraph (1) or (2) of Subsection A of this section conclusively establish the authority of a holder of that title to perform a notarial act.

14-14-5. Notarial acts under federal authority.

A. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed anywhere by any of the following persons under authority granted by the law of the United States:

(1) a judge, clerk or deputy clerk of a court;

(2) a commissioned officer on active duty in the military service of the United States;

(3) an officer of the foreign service or consular officer of the United States; or

(4) any other person authorized by federal law to perform notarial acts.

B. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

C. The signature and indicated title of an officer listed in Paragraph (1), (2) or (3) of Subsection A of this section conclusively establish the authority of a holder of that title to perform a notarial act.

14-14-6. Foreign notarial acts.

A. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

(1) a notary public or notary;

(2) a judge, clerk or deputy clerk of a court of record; or

(3) any other person authorized by the law of that jurisdiction to perform notarial acts.

B. An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

C. A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of that nation stationed in the United States conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

D. An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

E. An official stamp or seal of an officer listed in Paragraph (1) or (2) of Subsection A of this section is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

F. If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

14-14-7. Certificate of notarial acts.

A. A notarial act shall be evidenced by a certificate signed and dated by a notarial officer. The certificate shall include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate shall also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it shall also include the officer's rank.

B. A certificate of a notarial act is sufficient if it meets the requirements of Subsection A of this section and it:

(1) is in the short form set forth in Section 8 [14-14-8 NMSA 1978] of the Uniform Law on Notarial Acts;

(2) is in a form otherwise prescribed by the law of this state;

(3) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(4) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

C. By executing a certificate of a notarial act, the notarial officer certifies that he has made the determinations required by Section 2 [14-14-2 NMSA 1978] of the Uniform Law on Notarial Acts.

14-14-8. Certificates of notarial acts; short forms.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by Subsection A of Section 7 [14-14-7 NMSA 1978] of the Uniform Law on Notarial Acts:

A. for an acknowledgment in an individual capacity:

State of _____
(County) of _____

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

(Seal, if any)

(Signature of notarial officer)
Title (and Rank)
[My commission expires:_____]

B. for an acknowledgment in a representative capacity:

State of _____
(County) of _____

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

(Seal, if any)

(Signature of notarial officer)
Title (and Rank)
[My commission expires:_____]

C. for a verification upon oath or affirmation:

State of _____
(County) of _____

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

(Seal, if any)

(Signature of notarial officer)
Title (and Rank)
[My commission expires:_____]

D. for witnessing or attesting a signature:

State of _____
(County) of _____

Signed or attested before me on (date) by (names(s) of person(s)).

(Seal, if any)

(Signature of notarial officer)
Title (and Rank)
[My commission expires:_____]

E. for attestation of a copy of a document:

State of _____
(County) of _____

I certify that this is a true and correct copy of a document in the possession of _____.

Dated _____.

(Seal, if any)

(Signature of notarial officer)
Title (and Rank)
[My commission expires:_____]

14-14-9. Notarial acts affected by the uniform law on notarial acts.

The Uniform Law on Notarial Acts [14-14-1 to 14-14-11 NMSA 1978] applies to notarial acts performed on or after its effective date.

14-14-10. Uniformity of application and construction.

The Uniform Law on Notarial Acts [14-14-1 to 14-14-11 NMSA 1978] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to its subject among states enacting it.

14-14-11. Short title.

This act [14-14-1 to 14-14-11 NMSA 1978] may be cited as the "Uniform Law on Notarial Acts".

CHAPTER 14 / Notaries Public
RECORDS, LEGAL NOTICES AND OATHS
Article
1. Preservation, Restoration and Destruction of Records, 14-1-1 through 14-1-8.
2. Inspection of Public Records, 14-2-1 through 14-2-12.
2A. Use of Police Reports, 14-2A-1.
3. Public Records, 14-3-1 through 14-3-25.
3A. Confidential Materials, 14-3A-1 through 14-3A-2.
4. State Rules, 14-4-1 through 14-4-11.
5. Public Records Recovery, 14-5-1 through 14-5-10.
6. Health and Hospital Records, 14-6-1 through 14-6-3.
7. Financial Institution Records, 14-7-1 through 14-7-2.
8. Recording, 14-8-1 through 14-8-16.
9. Records Affecting Real Property, 14-9-1 through 14-9-9.
10. Index of Records, 14-10-1 through 14-10-5.
11. Publication of Notice, 14-11-1 through 14-11-13.
12. Notaries Public, 14-12-1 through 14-12-20.
13. Acknowledgments and Oaths, 14-13-1 through 14-13-25.
14. Uniform Law on Notarial Acts, 14-14-1 through 14-14-11.
15. Electronic Authentication of Documents, 14-15-1 through 14-15-6.
16. Uniform Electronic Transactions, 14-16-1 through 14-16-19.

ARTICLE 1
PRESERVATION, RESTORATION AND DESTRUCTION OF RECORDS
Section
14-1-1. Filing certified copy of document when original is in danger of damage or destruction.
14-1-2. Effect of filing certified copy.
14-1-3. Method of copying.
14-1-4. "Public officer" defined for purpose of microfilming records.
14-1-5. Authorization for photographing and microfilming public records.
14-1-6. Photographed or microfilmed copies deemed original records.
14-1-7. Destruction of obsolete county records.
14-1-8. Obsolete county records; notice of proposed destruction; preservation desired by state records administrator; delivery of documents.
14-1-1. [Filing certified copy of document when original is in danger of damage or destruction.] (1939)
Statute text
Whenever any map, plat or other document on file with or in the official custody of any county clerk in this state shall be in danger of damage or destruction by reason of age, mutilation or any other cause, it shall be lawful for the board of county commissioners of such county to authorize the county clerk to have a true and correct copy thereof made and filed in the office of said county clerk, after having been certified by such county clerk to be a true, correct and compared copy of the original.
History
History: Laws 1939, ch. 130, § 1; 1941 Comp., § 13-401; 1953 Comp., § 71-4-1.
Annotations
Cross references. - For state records administrator advising and assisting in programs for disposition of records, see 14-3-18 NMSA 1978.
For durability of records, see 14-8-7, 14-8-8 NMSA 1978.
Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws §§ 81, 128.

76 C.J.S. Records § 2 et seq.

14-1-2. [Effect of filing certified copy.] (1939)

Statute text

The filing of such certified copy of map, plat or other document in the office of the county clerk shall relate back to the date of the filing of the original and such certified copy shall have the same validity and effect as the original.

History

History: Laws 1939, ch. 130, § 2; 1941 Comp., § 13-402; 1953 Comp., § 71-4-2.

14-1-3. [Method of copying.] (1939)

Statute text

That copies of such maps, plats or other documents may be made in any manner which the county clerk shall determine to be best to correctly and completely exemplify the original, including the making of copies by photographic, photostatic or any other mechanical process.

History

History: Laws 1939, ch. 130, § 3; 1941 Comp., § 13-403; 1953 Comp., § 71-4-3.

14-1-4. ["Public officer" defined for purpose of microfilming records.] (1947)

Statute text

The term public officer means any officer of the legislative, executive and judicial departments of the state whether elected or appointed, including officers of the boards, commissions, bureaus and all other agencies of this state and the departments thereof, and including officers of the state legislature and the officers and clerks of the courts of this state and, in like manner, the county and municipal officers of the counties, cities, towns and villages of this state.

History

History: 1941 Comp., § 13-406, enacted by Laws 1947, ch. 185, § 1; 1953 Comp., § 71-4-6.

Annotations

Newspapers maintained by county clerks may be microfilmed, so long as the microfilm is accessible to the public. 1979 Op. Att'y Gen. No. 79-16.

14-1-5. [Authorization for photographing and microfilming public records.] (1947)

Statute text

Any public officer of the state may cause any or all records, papers or documents kept by him to be photographed, microfilmed, microphotographed or reproduced on film. Such photographic film and the device used to reproduce such records on such film shall be one which accurately reproduces the original thereof in all details.

History

History: 1941 Comp., § 13-407, enacted by Laws 1947, ch. 185, § 2; 1953 Comp., § 71-4-7.

Annotations

Cross references. - For provision that recording "book" includes microfilm, see 14-8-3 NMSA 1978.

When public record may be destroyed. - A public record may not be destroyed until its reproduction in film has been approved, copies of such reproduction have been made and filed and unless the original has been a public record for at least five years or has been audited by the state comptroller's (now state auditor's) office. 1947-48 Op. Att'y Gen. No. 5092.

Section controlled by 14-3-15 NMSA 1978. - Although this section permits county officials to microfilm the records maintained by them, 14-3-15 NMSA 1978 is the more specific statute and is controlling. 1979 Op. Att'y Gen. No. 79-26.

Newspapers maintained by county clerks may be microfilmed, so long as the microfilm is accessible to the public. 1979 Op. Att'y Gen. No. 79-16.

Authority of penitentiary warden to microfilm records, etc. - Since the penitentiary warden is an appointed public officer, he can microfilm all records, papers and documents and destroy the original records after obtaining approval, after he has made two reproductions of all original records, papers or documents, keeping one copy where the original record was kept and the other

copy being sent to the secretary of state for his archives. No original records, papers or documents are to be destroyed, after copies have been made, until such records, papers or documents have been a public record for five years, or until the records have been audited by the office of the state comptroller (now state auditor). 1955-56 Op. Att'y Gen. No. 6113.

14-1-6. [Photographed or microfilmed copies deemed original records.] (1947)

Statute text

Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original.

History

History: 1941 Comp., § 13-408, enacted by Laws 1947, ch. 185, § 3; 1953 Comp., § 71-4-8.

Annotations

Newspapers maintained by county clerks may be microfilmed, so long as the microfilm is accessible to the public. 1979 Op. Att'y Gen. No. 79-16.

Copy did not violate best evidence rule. - A copy of the statement defendant gave to the police which was introduced into evidence did not violate the best evidence rule. State v. Darden, 86 N.M. 198, 521 P.2d 1039 (Ct. App. 1974).

14-1-7. Destruction of obsolete county records. (1967)

Statute text

The following county records shall be deemed obsolete and may be destroyed:

A. purchase vouchers which are six years old;

B. chattel mortgages six years after the expiration of their term;

C. security agreements filed under the Uniform Commercial Code [Chapter 55 NMSA 1978] six years after the expiration of their term;

D. copies of state highway project contracts filed by the chief highway engineer three years after the date of filing;

E. duplicate information reports filed in the offices of county officials, including but not limited to duplicate reports of the county treasurer, sheriff, county agricultural agents and county health officers, which are two years old;

F. chattel mortgage releases six years after the date of filing; and

G. termination statements filed under the Uniform Commercial Code six years after the date of filing.

History

History: 1953 Comp., § 71-4-10, enacted by Laws 1957, ch. 192, § 1; 1965, ch. 123, § 1; 1967, ch. 82, § 1.

Annotations

County employee payment vouchers and county clerk receipt books. - County employee payment vouchers for the period 1920 through 1950 presumably can be considered obsolete and can be destroyed after following the procedure set forth in 14-1-8 NMSA 1978. The same would apply to county clerk receipt books which are more than four years old. 1961-62 Op. Att'y Gen. No. 61-127.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws § 10. 76 C.J.S. Records § 30 et seq.

14-1-8. [Obsolete county records; notice of proposed destruction; preservation desired by state records administrator; delivery of documents.] (1961)

Statute text

An official charged with the custody of any records and who intends to destroy those records, shall give notice by registered or certified mail to the state records administrator, state records center, Santa Fe, New Mexico, of the date of the proposed destruction and the type and date of the records he intends to destroy. The notice shall be sent at least sixty days before the date of the

proposed destruction. If the state records administrator wishes to preserve any of the records, the official shall allow the state records administrator to have the documents by calling for them at the place of storage.

History

History: 1953 Comp., § 71-4-11, enacted by Laws 1957, ch. 192, § 2; 1961, ch. 81, § 1.

Annotations

Determination records obsolete to be made. - Prior to destroying any records under the authority of this section, a factual determination that the particular records are obsolete must be made. 1961-62 Op. Att'y Gen. No. 61-127.

Destruction of original records without action by records administrator. - If microfilmed and certified pursuant to 14-3-15 NMSA 1978, originals of records, including newspapers kept by county clerks, may be destroyed without any action on the part of the records administrator. 1979 Op. Att'y Gen. No. 79-16.

ARTICLE 2

INSPECTION OF PUBLIC RECORDS

Section

14-2-1. Right to inspect public records; exceptions.
14-2-2. Repealed.
14-2-2.1. Copies of public records furnished.
14-2-3. Repealed.
14-2-4. Short title.
14-2-5. Purpose of act; declaration of public policy.
14-2-6. Definitions.
14-2-7. Designation of custodian; duties.
14-2-8. Procedure for requesting records.
14-2-9. Procedure for inspection.
14-2-10. Procedure for excessively burdensome or broad requests.
14-2-11. Procedure for denied requests.
14-2-12. Enforcement.

14-2-1. Right to inspect public records; exceptions. (1993)

Statute text

A. Every person has a right to inspect any public records of this state except:

(1) records pertaining to physical or mental examinations and medical treatment of persons confined to any institution;

(2) letters of reference concerning employment, licensing or permits;

(3) letters or memorandums which are matters of opinion in personnel files or students' cumulative files;

(4) law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with any criminal investigation or prosecution by any law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed above;

(5) as provided by the Confidential Materials Act [14-3A-1, 14-3A-2 NMSA 1978];

(6) trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;

(7) public records containing the identity of or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education; and

(8) as otherwise provided by law.

B. At least twenty-one days before the date of the meeting of the governing board of a public institution of higher education at which final action is taken on selection of the person for the

position of president of the institution, the governing board shall give public notice of the names of the finalists being considered for the position. The board shall consider in the final selection process at least five finalists. The required notice shall be given by publication in a newspaper of statewide circulation and in a newspaper of county-wide circulation in the county in which the institution is located. Publication shall be made once and shall occur at least twenty-one days and not more than thirty days before the described meeting.

C. Postponement of a meeting described in Subsection B of this section for which notice has been given does not relieve the governing body from the requirement of giving notice of a rescheduled meeting in accordance with the provisions of Subsection B of this section.

D. Action taken by a governing body without compliance with the notice requirements of Subsections B and C of this section is void.

E. Nothing in Subsections B through D of this section prohibits a governing body from identifying or otherwise disclosing the information described in this section.

History

History: 1941 Comp., § 13-501, enacted by Laws 1947, ch. 130, § 1; 1953 Comp., § 71-5-1; Laws 1973, ch. 271, § 1; 1981, ch. 47, § 3; 1993, ch. 260, § 1; 1998 (1st S.S.), ch. 3, § 1; 1999, ch. 158, § 1.

Annotations

I. General Consideration.
II. Records Subject to Inspection.
III. Exceptions.

I. GENERAL CONSIDERATION.

Cross references. - For use of police reports for commercial solicitation, see 14-2A-1 NMSA 1978.

For provisions of Arrest Record Information Act, see Chapter 29, Article 10 NMSA 1978.

The 1993 amendment, effective June 18, 1993, substituted "person" for "citizen of this state" in the introductory language, substituted "institution" for "institutions" in Subsection A, added Subsection D, and redesignated former Subsections D and E as Subsections E and F.

The 1998 amendment, effective May 11, 1998, designated the former introductory paragraph as Subsection A, redesignated the existing paragraphs thereunder as Paragraphs A(1)-(5) and (7), and added Paragraph A(6), making minor stylistic changes; and added Subsection B.

The 1999 amendment, effective April 5, 1999, in Subsection A added Paragraph (6) and redesignated the remaining paragraphs accordingly.

Purpose and intent. - The legislature has clearly and unequivocally indicated that public records are to be made public with the exception of certain confidential information and except as otherwise provided by law. 1957-58 Op. Att'y Gen. No. 58-197.

Right of citizen to inspect. - A citizen has a fundamental right to have access to public records. The citizen's right to know is the rule, and secrecy is the exception. Where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

Common-law concept. - The right of the public to inspect records which are in custody of a public officer is a common-law concept and exists even without statute. 1953-54 Op. Att'y Gen. No. 5933.

Public's right to inspection is not absolute. 1969 Op. Att'y Gen. No. 69-89.

Dissemination of information not necessarily included. - The right to inspect public records does not necessarily include the right to disseminate the information contained in those records. 1969 Op. Att'y Gen. No. 69-89.

Limited privacy of accused. - Section 29-10-4 NMSA 1978 protects the confidentiality of information concerning the identity of a person who has been accused, but not charged, with a crime only if that information has been collected in connection with an investigation of, or otherwise relates to, another person who has been charged with committing a crime. However, information in other records which identifies a person accused but not charged with or arrested for a crime may be protected from public disclosure under this section. Finally, even if it would otherwise be protected under either statute, information about a person accused but not charged with a crime is open to public inspection if it is contained in a document listed in 29-10-7 NMSA 1978. 1994 Op. Att'y Gen. No. 94-02.

Identity of individuals arrested or charged with crime not protected. - Neither the Arrest Record Information Act nor the Inspection of Public Records Act authorizes a law enforcement agency to protect the identity of persons who have been arrested or charged with a crime. 1994 Op. Att'y Gen. No. 94-02.

No defense to invasion of privacy action. - The right of inspection is no defense to an action for invasion of privacy based upon publication of matters which an individual has the right to keep private. 1969 Op. Att'y Gen. No. 69-89.

Term "public records" is intended to include all papers or memoranda in the possession of public officers which are required by law to be kept by them. 1966 Op. Att'y Gen. No. 66-131.

Definition of "public records" in Public Records Act does not apply to section, the "right-to-know law." Such definition is so broad that no reasonable interpretation of this section could possibly include all of the records that would be subject to inspection by public under that definition. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977)See 14-3-1 to 14-3-16 NMSA 1978 for Public Records Act.

Criterion for determining what information is public record is whether the information is required by law to be kept or is necessarily kept in the discharge of a duty imposed by law. 1969 Op. Att'y Gen. No. 69-89.

Elements essential to constitute a public record are that it be made by a public officer and that the officer be authorized by law to make it. 1963-64 Op. Att'y Gen. No. 63-55.

Provisions of section contemplate some exception to the Public Records Act, 14-3-1 NMSA 1978 et seq. 1963-64 Op. Att'y Gen. No. 64-19.

Custodian may make reasonable restrictions and conditions on access. - Fact that request for inspection would pose an extreme burden on personnel office of state university was not a legitimate reason, by itself, for failure to make records available for inspection or for copying, but custodian could make reasonable restrictions and conditions on access to the records. Reasonable regulations could be made as to times when and places where they may be inspected or copied, and custodian could insist upon reasonable supervision for the safekeeping of the records. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

Citizen must follow court-ordered arrangement to inspect records. - When a citizen enforces this section through an action to compel production of documents, the citizen must comply with the court-ordered arrangements for inspection. Newsome v. Farer, 103 N.M. 415, 708 P.2d 327 (1985).

The threshold requirements for an in camera inspection are that the custodian of the records must first determine whether the person requesting disclosure is a citizen and whether the request is for a lawful purpose; second, the custodian must justify why the records should not be furnished. State ex rel. Blanchard v. City Comm'rs, 106 N.M. 769, 750 P.2d 469 (Ct. App. 1988).

Justification for refusing to release records. - Fact that information was obtained under a promise of confidentiality, standing alone, would not suffice to preclude disclosure. The promise would have to coincide with reasonable justification, based on public policy, for refusing to release the records. Furthermore, the justification would have to be articulated by the custodian for the record. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

Duty of custodian to determine whether information can be justifiably withheld. - There may be circumstances under which the information contained in the record can be justifiably withheld. The custodian has the initial duty to make this determination as to each record requested. He must first determine that the person requesting access is a citizen and that he is requesting the information for a lawful purpose. The burden is upon the custodian to justify why the records sought to be examined should not be furnished. It shall then be the court's duty to determine whether the explanation of the custodian is reasonable and to weigh the benefits to be derived from nondisclosure against the harm which may result if the records are not made available. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

Nondisclosure of names of terminated employees. - Where the reason for termination of public employees is a matter of public knowledge before the individuals are terminated, the privacy of the disciplinary proceeding can only be protected by upholding the administrative decision not to disclose the names of the individuals affected. State ex rel. Barber v. McCotter, 106 N.M. 1, 738 P.2d 119 (1987).

Transferring duty as custodian prohibited. - By reason of this section, the records of the director of the department of public health (now secretary of health) are, in some instances, not open to public inspection, and the duty of the custodian of those records, to wit, the director of public health (now secretary), in the maintenance of the secrecy of those records would prohibit him, the governor or any other person from transferring the duty as custodian of the records to any other person. 1953-54 Op. Att'y Gen. No. 5943.

Imposing charge tantamount to denial of right to inspect. - A charge of $25.00 per month may not be imposed by counties upon abstract and title companies for such facilities as lights, telephone and janitorial services to reimburse the counties therefor in connection with abstract and title companies inspecting and copying public records, because this practice amounts to a denial of the right to inspect records. 1957-58 Op. Att'y Gen. No. 57-102.

Law reviews. - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

For survey of 1988-89 Administrative Law, see 21 N.M.L. Rev. 481 (1991).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 37A Am. Jur. 2d Freedom of Information Acts § 1 et seq. 52 Am. Jur. 2d Mandamus § 204; 66 Am. Jur. 2d Records and Recording Laws §§ 12 to 31.

Enforceability by mandamus of right to inspect public records, 60 A.L.R. 1356, 169 A.L.R. 653.

Right to inspect motor vehicle records, 84 A.L.R.2d 1261.

Confidentiality of records as to recipients of public welfare, 54 A.L.R.3d 768.

Payroll records of individual government employees as subject to disclosure to public, 100 A.L.R.3d 699.

Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information, 1 A.L.R.4th 959.

What constitutes preliminary drafts or notes provided by or for state or local governmental agency, or intra-agency memorandums, exempt from disclosure or inspection under state freedom of information act, 26 A.L.R.4th 639.

Patient's right to disclosure of his or her own medical records under state freedom of information act, 26 A.L.R.4th 701.

What are "records" of agency which must be made available under state freedom of information act, 27 A.L.R.4th 680.

What constitutes an agency subject to application of state freedom of information act, 27 A.L.R.4th 742.

What constitutes "trade secrets" exempt from disclosure under state freedom of information act, 27 A.L.R.4th 773.

What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public, 40 A.L.R.4th 333.

State freedom of information act requests: right to receive information in particular medium or format, 86 A.L.R.4th 786.
Use of Freedom of Information Act (5 USCS § 552) as substitute for, or as means of, supplementing discovery procedures available to litigants in federal civil, criminal, or administrative proceedings, 57 A.L.R. Fed. 903.
What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of identity of confidential source and, in specified instances, of confidential information furnished only by confidential source (5 USCS § 552(b)(7)(D)), 59 A.L.R. Fed. 550.
Waiver by federal government agency as affecting agency's right to claim exemption from disclosure requirements under the Freedom of Information Act (5 USCS § 552(b)), 67 A.L.R. Fed. 595.
When are government records "similar files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6)) exempting certain personnel, medical, and "similar" files, 106 A.L.R. Fed. 94.
What constitutes "final opinion" or "order" of federal administrative agency required to be made available for public inspection and copying within meaning of 5 USCS § 552(a)(2)(A), 114 A.L.R. Fed. 287.
What constitutes "trade secrets and commercial or financial information obtained from person and privileged or confidential," exempt from disclosure under Freedom of Information Act (5 USCS § 552 (b)(4)) (FOIA), 139 A.L.R. Fed. 225.
What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.
Actions brought under Freedom of Information Act, 5 U.S.C.A. § 522 et seq. - supreme court cases, 167 A.L.R. Fed. 545.
What are interagency or intra-agency memorandums or letters exempt from disclosure under the Freedom of Information Act (5 U.S.C.A. § 552(b)), 168 A.L.R. Fed. 143.
What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of confidential source and, in some instances, of information furnished by confidential source (5 U.S.C.A. § 552(b)), 171 A.L.R. Fed. 193.
76 C.J.S. Records § 48 et seq.

II. RECORDS SUBJECT TO INSPECTION.
Court opinions subject to inspection or copying. - The supreme court and the court of appeals are required to make available their current and past opinions to the public for inspection or for copying. 1979 Op. Att'y Gen. No. 79-14.
Reimbursement or other consideration to courts for copying costs. - The supreme court and the court of appeals should require reasonable reimbursement for the costs incurred by them for copying opinions for the public or for retrieving their opinions for inspection. However, such a charge need not be made in those cases in which the courts receive some other form of consideration in return for supplying their opinions to private individuals or enterprises. 1979 Op. Att'y Gen. No. 79-14.
Jury lists. - A jury list is a public record and the media are entitled to inspect and publish it. State ex rel. New Mexico Press Ass'n v. Kaufman, 98 N.M. 261, 648 P.2d 300 (1982).
All records which do not deal with physical or mental examinations or medical treatment of patients are public records. This type of record would include payrolls, receipts and disbursements, etc. Any record which might fairly be called a record of examination of a patient or a record of medical treatment of a patient of any institution is not a public record and need not be submitted to public scrutiny. 1959-60 Op. Att'y Gen. No. 60-155.
Data compiled from case histories. - Case histories furnished by attending physicians on individual patients from which mortality data is to be taken are confidential records, but the data

compiled from such case histories where the individual identity is lost are not confidential. 1959-60 Op. Att'y Gen. No. 59-158.

Workers' compensation claim files. - The workers' compensation division maintains workers' compensation claim files in the course of its statutory function of adjudicating claims filed by workers, which makes them public records within the meaning of state freedom of information laws. 1988 Op. Att'y Gen. 88-16.

For a discussion of whether certain specific documents found in workers' compensation claim files should be made available for public inspection, see 1988 Op. Att'y Gen. No. 88-16.

Medical records introduced into evidence. - To the extent any medical records that otherwise are exempt from disclosure are introduced into evidence during the course of a formal workers' compensation hearing which is open to the public, such records lose their exempt status and may be inspected by the public. 1988 Op. Att'y Gen. No. 88-16.

Records of state penitentiary are public records and should be made available for public inspection in accordance with the provisions of this section. 1951-52 Op. Att'y Gen. No. 5342.

Voter registration records. - A county chairman of a political party is entitled to have the working master record of the voter registration records of the county copied, or duplicated at his expense under the county clerk's supervision, as these records are public records. Ortiz v. Jaramillo, 82 N.M. 445, 483 P.2d 500 (1971).

Public school records. - Business records, expenditures, daily attendance records and permanent records of an individual student's grades kept by the public schools are public records. 1961-62 Op. Att'y Gen. No. 61-137.

Any citizen of this state has a right to examine the public records of a school district when such records have been made a part of central records of such school district. This right to inspection is spelled out by statute, and the legislature has specified that the denial of such right of access is punishable as a misdemeanor. 1961-62 Op. Att'y Gen. No. 61-137.

Instructional material used in public school. - Local school boards have no authority to prohibit citizens of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No. 88-37.

Immunization records of school children are available to the public. 1959-60 Op. Att'y Gen. No. 59-158.

Names and addresses of teachers employed in New Mexico school systems which are contained in lists compiled by the department of education are public records. 1969 Op. Att'y Gen. No. 69-89.

Employee's file held by state personnel office. - Personnel actions, supervisor's ratings, arrest records, letters of commendation or condemnation from the employing agency, present employment history, the job application itself and educational history in an employee's file held by the state personnel office is a matter of public record. 1968 Op. Att'y Gen. No. 68-110.

Supreme court declined to hold that all information in employment records of state university regarding military discharges or arrest records should be exempted from disclosure. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

Salary information pertaining to state employee which is possessed by the state personnel office is a matter of public record. 1968 Op. Att'y Gen. No. 68-110.

Because the state personnel director is required by law to establish and maintain a roster for all state employees showing the employee's pay rate, 10-9-12 NMSA 1978, the salary of a state employee is a matter of public record. 1968 Op. Att'y Gen. No. 68-110.

Job applicant's test score and position on eligibility list under 10-9-13 NMSA 1978, possessed by the state personnel office, is a public record. 1968 Op. Att'y Gen. No. 68-110.

Minutes of board of bar examiners meet the requirements of the definition of public records, and, as such, are required under the common law adopted by this state and also by this section, as amended, to be public records and, as such, are subject to the inspection of the public. 1953-54 Op. Att'y Gen. No. 5933.

Interstate stream commission. - Under the provisions of this section, any public records reflecting the work or action of the interstate stream commission are subject to public inspection. 1961-62 Op. Att'y Gen. No. 62-80.
County fair board. - Since the legislature has specifically granted counties the authority to conduct county fairs, a county fair board is an arm of the county and its records are county records which are subject to inspection as provided in this section and former 14-2-2 NMSA 1978. 1964 Op. Att'y Gen. No. 64-109.

III. EXCEPTIONS.
Data of personal nature used in educating pupils not subject. - Such records or memoranda as may be kept by a teacher, or other school official, for informational purposes on individual students, and which may contain data of a personal nature for use in assisting teachers or school personnel in educating pupils, do not fall within the classification of public records entitled to be scrutinized by the public. 1961-62 Op. Att'y Gen. No. 61-137.
Temporary or partial grades or records kept by individual teachers are not public records. 1961-62 Op. Att'y Gen. No. 61-137.
Records of non-mandated university employment office. - Student complaints against man who utilized the services of university employment office to obtain domestic help by means of job postings were not "public records," since there was no legal mandate for the operation of the employment office, nor was there an obligation of the office to make or keep records of the complaints. Spadaro v. University of N.M. Bd. of Regents, 107 N.M. 402, 759 P.2d 189 (1988).
Portions of applicant's file may be classified as confidential by state personnel board. - Not all records kept by a public officer are public records. The state personnel board has, within statutory limits, a limited and restricted right to classify certain portions of an applicant's file as confidential. Any portion which would be made available to the state only on a confidential and restricted basis may be treated by the state personnel board as confidential. This right, however, should be narrowly and restrictively applied. 1968 Op. Att'y Gen. No. 68-110.
Under the rule-making authority of 10-9-10 and 10-9-13 NMSA 1978, the state personnel board has a limited and restricted right to classify as confidential certain portions of an individual's personnel file which would not otherwise be made available to the state unless on a confidential or restricted basis. 1963-64 Op. Att'y Gen. No. 64-19.
Personnel records of state university employees pertaining to illness may be confidential. - Personnel records of employees of state university which pertain to illness, injury, disability, inability to perform a job task and sick leave are considered confidential under this section and not subject to release to the public, except by the consent or waiver of the particular employee. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).
Medical history and employment history solicited from applicant's previous employer for 10-9-13 NMSA 1978 are not public records. 1968 Op. Att'y Gen. No. 68-110.
Privilege of inquiry as to faculty salary matters must be suspended until the board of regents reaches its final conclusion, i.e., the culmination of the contract between the board and the individual. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).
Thought processes, or the offer of a contract, are not such a public record as would require public inspection. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).
Right to inspect records of the board of regents of a state university on the subject of salary contract negotiations before the task was completed should be denied. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).
Criminal complaints. - Complaints filed in J. P. (now magistrate) court by district attorney and sheriff's office do not constitute public records when the person complained against has not been arrested and is not subject to public inspection. 1947-48 Op. Att'y Gen. No. 5074.
Information obtained under Mental Health and Developmental Disabilities Code. - A district court clerk may not release the information identified in 43-1-19A NMSA 1978, governing

disclosure under the Mental Health and Developmental Disabilities Code, without obtaining the consent of the person to whom that information pertains. 1988 Op. Att'y Gen. No. 88-75.
Records of human services department. - Since other statutory provisions are made for inspection of records of the welfare department (now human services department), they are open for inspection only in accordance with 27-2-35. 1947-48 Op. Att'y Gen. No. 5032.
Meaning of "as otherwise provided by law". - The exception in Subsection F of this section incorporates an administrative regulation that effectuates the legislature's intent in enacting the Public Employee Bargaining Act [now repealed]; any benefit to the public from inspecting the representation petition filed under that act would be significantly outweighed by a public employee's privacy interest. City of Las Cruces v. Public Employee Labor Relations Bd. 1996-NMSC-024, 121 N.M. 688, 917 P.2d 451.

14-2-2. Repealed. (1993)

Annotations

Repeals. - Laws 1993, ch. 258, § 10 repeals 14-2-2 NMSA 1978, as enacted by Laws 1947, ch. 130, § 2, requiring officers having custody of certain records to provide opportunity and facilities for inspection, effective June 18, 1993. For provisions of former section, see 1988 Replacement Pamphlet.

14-2-2.1. Copies of public records furnished. (1979)

Statute text

When a copy of any public record is required by the veterans' administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans' administration, the official custodian of such public record shall, without charge, provide the applicant for such benefits, or any person acting on his behalf, or the authorized representative of the veterans' administration, with a certified copy of such record.

History

History: Laws 1979, ch. 23, § 1.

Annotations

Am. Jur. 2d, A.L.R. and C.J.S. references. - 37A Am. Jur. 2d Freedom of Information Acts § 1 et seq. 66 Am. Jur. 2d Records and Recording Laws §§ 10, 12 to 15, 19.
Enforceability by mandamus of right to inspect public records, 60 A.L.R. 1356, 169 A.L.R. 653.
76 C.J.S. Records § 48 et seq.

14-2-3. Repealed. (1993)

Annotations

Repeals. - Laws 1993, ch. 258, § 10 repeals 14-2-3 NMSA 1978, as amended by Laws 1983, ch. 141, § 1, providing a remedy for citizens who have been refused the right to inspect any public record, effective June 18, 1993. For provisions of former section, see 1988 Replacement Pamphlet. For present comparable provisions, see 14-2-11 NMSA 1978.

14-2-4. Short title. (1993)

Statute text

Chapter 14, Article 2 NMSA 1978 may be cited as the "Inspection of Public Records Act".

History

History: Laws 1993, ch. 258, § 1.

14-2-5. Purpose of act; declaration of public policy. (1993)

Statute text

Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act [this article] is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a

representative government and an integral part of the routine duties of public officers and employees.
History
History: Laws 1993, ch. 258, § 2.
Annotations
Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.
14-2-6. Definitions. (1993)
Statute text
As used in the Inspection of Public Records Act [this article]:
A. "custodian" means any person responsible for the maintenance, care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control;
B. "inspect" means to review all public records that are not excluded in Section 14-2-1 NMSA 1978;
C. "person" means any individual, corporation, partnership, firm, association or entity;
D. "public body" means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education; and
E. "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.
History
History: Laws 1993, ch. 258, § 3.
14-2-7. Designation of custodian; duties. (1993)
Statute text
Each public body shall designate at least one custodian of public records who shall:
A. receive and respond to requests to inspect public records;
B. provide proper and reasonable opportunities to inspect public records;
C. provide reasonable facilities to make or furnish copies of the public records during usual business hours; and
D. post in a conspicuous location at the administrative office of each public body a notice describing:
(1) the right of a person to inspect a public body's records;
(2) procedures for requesting inspection of public records;
(3) procedures for requesting copies of public records;
(4) reasonable fees for copying public records; and
(5) the responsibility of a public body to make available public records for inspection.
History
History: Laws 1993, ch. 258, § 4; 2001, ch. 204, § 1.
Annotations
The 2001 amendment, effective June 15, 2001, added Subsection D.
Am. Jur. 2d, A.L.R. and C.J.S. references. - 37A Am. Jur. 2d Freedom of Information Acts § 1 et seq.
What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.
14-2-8. Procedure for requesting records. (1993)
Statute text

A. Any person wishing to inspect public records may submit an oral or written request to the custodian. However, the procedures set forth in this section shall be in response to a written request. The failure to respond to an oral request shall not subject the custodian to any penalty.
B. Nothing in the Inspection of Public Records Act [this article] shall be construed to require a public body to create a public record.
C. A written request shall provide the name, address and telephone number of the person seeking access to the records and shall identify the records sought with reasonable particularity. No person requesting records shall be required to state the reason for inspecting the records.
D. A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.
E. In the event that a written request is not made to the custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester. The notification to the requester shall state the reason for the absence of the records from that person's custody or control, the records' location and the name and address of the custodian.
History
History: Laws 1993, ch. 258, § 5.
Annotations
Am. Jur. 2d, A.L.R. and C.J.S. references. - 37A Am. Jur. 2d Freedom of Information Acts § 414 et seq.
What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.
14-2-9. Procedure for inspection. (1993)
Statute text
A. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. If necessary to preserve the integrity of computer data or the confidentiality of exempt information contained in a database, a partial printout of data containing public records or information may be furnished in lieu of an entire database.
B. A custodian:
(1) may charge reasonable fees for copying the public records, unless a different fee is otherwise prescribed by law;
(2) shall not charge fees in excess of one dollar ($1.00) per page for documents eleven inches by seventeen inches in size or smaller;
(3) may require advance payment of the fees before making copies of public records;
(4) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and
(5) shall provide a receipt, upon request.
History
History: Laws 1993, ch. 258, § 6.
Annotations
Right to make copies. - The right to inspect or examine public records commonly includes the right of making copies thereof as the right to inspect would be valueless without this correlative right. 1959-60 Op. Att'y Gen. No. 59-170.
It is permissible for an individual or a company such as an abstractor to photocopy voter registrations in the offices of the county clerks so long as adequate precautions are taken to insure

the integrity of the records and to preserve their availability for inspection by others. 1959-60 Op. Att'y Gen. No. 59-170.

Right subject to reasonable restrictions and conditions. - The right to inspect public records commonly carries with it the right to make copies thereof, subject, however, to reasonable restrictions and conditions imposed as to their use, reasonable regulations as to appropriate times when and places where they may be inspected and copied and such reasonable supervision by the custodian thereof as may be necessary for their safety and as will secure equal opportunity for all to inspect and copy them. Ortiz v. Jaramillo, 82 N.M. 445, 483 P.2d 500 (1971).

Charges not to be imposed. - A charge of $25.00 per month may not be imposed by counties upon abstract and title companies for such facilities as lights, telephone and janitorial services to reimburse the counties therefor in connection with abstract and title companies inspecting and copying public records, because this practice amounts to a denial of the right to inspect records. 1957-58 Op. Att'y Gen. No. 57-102.

Public's right to inspection is not absolute. 1969 Op. Att'y Gen. No. 69-89.

Court opinions subject to inspection or copying. - The supreme court and the court of appeals are required to make available their current and past opinions to the public for inspection or for copying. 1979 Op. Att'y Gen. No. 79-14.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 37A Am. Jur. 2d Freedom of Information Acts § 434 et seq.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

14-2-10. Procedure for excessively burdensome or broad requests. (1993)

Statute text

If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request. The requester may deem the request denied and may pursue the remedies available pursuant to the Inspection of Public Records Act [this article] if the custodian does not permit the records to be inspected in a reasonable period of time.

History

History: Laws 1993, ch. 258, § 7.

Annotations

Am. Jur. 2d, A.L.R. and C.J.S. references. - 37A Am. Jur. 2d Freedom of Information Acts § 425 et seq.

14-2-11. Procedure for denied requests. (1993)

Statute text

A. Unless a written request has been determined to be excessively burdensome or broad, a written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied. The person requesting the public records may pursue the remedies provided in the Inspection of Public Records Act [this article].

B. If a written request has been denied, the custodian shall provide the requester with a written explanation of the denial. The written denial shall:

(1) describe the records sought;

(2) set forth the names and titles or positions of each person responsible for the denial; and

(3) be delivered or mailed to the person requesting the records within fifteen days after the request for inspection was received.

C. A custodian who does not deliver or mail a written explanation of denial within fifteen days after receipt of a written request for inspection is subject to an action to enforce the provisions of the Inspection of Public Records Act and the requester may be awarded damages. Damages shall:

(1) be awarded if the failure to provide a timely explanation of denial is determined to be unreasonable;
(2) not exceed one hundred dollars ($100) per day;
(3) accrue from the day the public body is in noncompliance until a written denial is issued; and
(4) be payable from the funds of the public body.
History
History: Laws 1993, ch. 258, § 8.
Annotations
Am. Jur. 2d, A.L.R. and C.J.S. references. - 37A Am. Jur. 2d Freedom of Information Acts § 443 et seq.
What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.
14-2-12. Enforcement. (1993)
Statute text
A. An action to enforce the Inspection of Public Records Act [this article] may be brought by:
(1) the attorney general or the district attorney in the county of jurisdiction; or
(2) a person whose written request has been denied.
B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Inspection of Public Records Act.
C. The exhaustion of administrative remedies shall not be required prior to bringing any action to enforce the procedures of the Inspection of Public Records Act.
D. The court shall award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of the Inspection of Public Records Act.
History
History: Laws 1993, ch. 258, § 9.
Annotations
Remedy for denial of access to tax assessment records. - Taxpayers who believed that assessor wrongfully denied them access to public records should have pursued the remedies provided in this section. To the extent the board found that the information sought was irrelevant to the assessment of taxpayers' property, there was no error in the board's refusal to sanction assessor. Hannahs v. Anderson, 1998-NMCA-152, 126 N.M. 1, 966 P.2d 168, cert. denied, 126 N.M. 532, 972 P.2d 351 (1998).

ARTICLE 2A
USE OF POLICE REPORTS
Section
14-2A-1. Protection of victims of crimes or accidents; police reports; commercial solicitation prohibited.
14-2A-1. Protection of victims of crimes or accidents; police reports; commercial solicitation prohibited. (1993)
Statute text
No attorney, health care provider or their agents shall inspect, copy or use police reports or information obtained from police reports for the purpose of the solicitation of victims or the solicitation of the relatives of victims of reported crimes or accidents.
History
History: Laws 1993, ch. 123, § 1.
Annotations
Cross references. - For right to inspect public records and exceptions, see 14-2-1 NMSA 1978.

ARTICLE 3

PUBLIC RECORDS

Section

14-3-1. Short title.
14-3-2. Definitions.
14-3-3. State commission of public records; creation.
14-3-4. Duties and powers of commission.
14-3-5. Gifts, donations and loans.
14-3-6. Administrator; duties.
14-3-7. Inspection and survey of public records.
14-3-8. Records center.
14-3-9. Disposition of public records.
14-3-10. Disagreement as to value of records.
14-3-11. Destruction of records.
14-3-12. Transfer of records upon termination of state agencies.
14-3-13. Protection of records.
14-3-14. Advisory groups.
14-3-15. Reproduction on film; evidence; review, inventory and approval of systems.
14-3-15.1. Records of state agencies; public records; copy fees; computer databases; criminal penalty.
14-3-15.2. Electronic authentication; substitution for signature.
14-3-16. Attorney general may replevin state records.
14-3-17. Approval of existing state agency systems.
14-3-18. County and municipal records.
14-3-19. Storage equipment, supplies and materials; microfilm services and supplies; purchase by state records commission state commission of public records for resale.
14-3-20. Interstate compacts; filing; index.
14-3-21. State publications; manuals of procedure; rules; reports; uniform style and form.
14-3-22. Public policy on certain publications; state commission of public records duties.
14-3-23. Manuals of procedure; preparation by state agencies; review by state records administrator; publication.
14-3-24, 14-3-25. Recompiled.

14-3-1. Short title. (1995)

Statute text

Chapter 14, Article 3 NMSA 1978 may be cited as the "Public Records Act".

History

History: 1953 Comp., § 71-6-1, enacted by Laws 1959, ch. 245, § 1; 1995, ch. 110, § 7.

Annotations

Cross references. - For Public Health Act records being confidential, see 24-1-20 NMSA 1978. For the Electronic Authentication of Documents Act, see Chapter 14, Article 15 NMSA 1978.

The 1995 amendment, effective July 1, 1995, substituted "Chapter 14, Article 3 NMSA 1978" for "This act".

Names and charges of juvenile arrestees. - A law enforcement agency is not prohibited by the Children's Code, 32A-1-1 NMSA 1978 et seq., the Arrest Record Information Act, 29-10-1 NMSA 1978 et seq., or any other law of New Mexico from releasing to the public the names of juveniles who have been arrested for criminal acts, and the charges for which they were arrested. 1987 Op. Att'y Gen. No. 87-29.

Law reviews. - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

14-3-2. Definitions. (1995)

Statute text

As used in the Public Records Act [this article]:

A. "commission" means the state commission of public records;
B. "administrator" means the state records administrator;
C. "public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference and stocks of publications and processed documents are not included;
D. "agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico;
E. "records center" means the central records depository which is the principal state facility for the storage, disposal, allocation or use of noncurrent records of agencies or materials obtained from other sources;
F. "microphotography system" means all microphotography equipment, services and supplies; and
G. "microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission.

History

History: 1953 Comp., § 71-6-2, enacted by Laws 1959, ch. 245, § 2; 1963, ch. 186, § 1; 1977, ch. 301, § 1; 1995, ch. 27, § 2.

Annotations

The 1995 amendment, effective June 16, 1995, added Subsection G.

Term "public records" in this section includes the records of various public officials as that term is used in the inspection of public records provisions, former 14-2-1 to 14-2-3 NMSA 1978, being those "public records" which are necessary or incidental to fulfilling the public officer's duties imposed upon his office by operation of law. 1969 Op. Att'y Gen. No. 69-139.

In order to be considered a "public record," an item must have some continuing significance or importance. There must be some purpose or reason for its preservation. Therefore, general correspondence files are not public records per se. Certainly there are many items in such a file which should be treated as public records because their contents bring them within the statutory definition. However, there are many items which should be classified as transitory in value and interest. To treat such items as public records and to require their retention for at least three years (as formerly required under 14-3-11 NMSA 1978) would be burdensome, wasteful and unnecessary. 1959-60 Op. Att'y Gen. No. 60-72.

"Public records" not applicable to "right-to-know law". - Definition of "public records" in Public Records Act, 14-3-1 NMSA 1978 et seq., does not apply to 14-2-1 NMSA 1978, the "right-to-know law." Such definition is so broad that no reasonable interpretation of 14-2-1 NMSA 1978 could possibly include all of the records that would be subject to inspection by public under that definition. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

Confidential data not public record. - Data concerning the reliability, honesty, capability and personality traits of an individual which had been solicited with the understanding that they would be kept confidential are not public records. 1967 Op. Att'y Gen. No. 67-57.

County and municipal records are not included in the term "public records" as that term is defined in this article. 1959-60 Op. Att'y Gen. No. 60-181.

Records of elected state officials are "public records" within the meaning and scope of this article. 1969 Op. Att'y Gen. No. 69-139.

State officials' records are "public records" except when not required by law to be kept. - Papers and memoranda in the possession of elected state officials which are not required by law to be kept by such officials as an official record are not public records. 1969 Op. Att'y Gen. No. 69-139.

Generally, reports of private individuals to government officials, correspondence of public officials to private individuals and memoranda of public officials made for their own convenience are not public records. 1969 Op. Att'y Gen. No. 69-139.

Papers and memoranda in the possession of public officers which are not required by law to be kept by a public official as an official record may not be public records. Generally, reports of private individuals to government officials, correspondence of public officials to private individuals and memoranda of public officers made for their own convenience are not public records. 1967 Op. Att'y Gen. No. 67-57.

Records which contain both official and personal matters are still public records and should be in the custody of the state records commission (now state commission of public records) at the state records center. 1969 Op. Att'y Gen. No. 69-139.

Records used to carry out duties deemed public. - It is clear that those records which are necessary and incidental to carrying out the duties imposed upon an individual by operation of law are generally deemed public records. 1961-62 Op. Att'y Gen. No. 61-137.

Accident reports. - Accident reports made by police officers as a part of their regular course of duty are considered public records. 1959-60 Op. Att'y Gen. No. 59-213.

School records deemed public. - Business records, expenditures, daily attendance records and permanent records of an individual student's grades kept by the public schools are public records. 1961-62 Op. Att'y Gen. No. 61-137.

Records kept for informational purposes or those containing data used in educating pupils not "public". - The attendance records and the grade and achievement records of students are public records, but records of information kept for informational purposes or which contain data of a personal nature for use in assisting teachers and school personnel in educating pupils do not fall within the category of public records. 1967 Op. Att'y Gen. No. 67-57.

Such records or memoranda as may be kept by a teacher, or other school official, for informational purposes on individual students, and which may contain data of a personal nature for use in assisting teachers or school personnel in educating pupils, do not fall within the classification of public records entitled to be scrutinized by the public; nor are temporary or partial grades or records kept by individual teachers public records in nature. 1961-62 Op. Att'y Gen. No. 61-137.

Availability to teacher of reports, etc., on teacher. - The reports of supervisors, comments of fellow teachers and parents concerning the reliability, honesty, capability and personality traits of the public school teacher are not public records which are available for inspection by the teacher except in accordance with the regulations of the governing body of the school. 1967 Op. Att'y Gen. No. 67-57.

A wallet placed in a probate file as an effect of a decedent is not a public record. 1987 Op. Att'y Gen. No. 87-26.

Privilege of inquiry as to faculty salary matters must be suspended until the board of regents reaches its final conclusion, i.e., the culmination of the contract between the board and the individual. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).

Thought processes, or the offer of a contract, are not such a public record as would require public inspection. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).

Right to inspect records of the board of regents of a state university on the subject of salary contract negotiations before the task was completed should be denied. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).

"State agency" indicates specific type of governmental organization and not state governmental entities generally. 1978 Op. Att'y Gen. No. 78-23.

Counties and municipalities not included in term "agency". - "Agency" includes only portions of the state government or other bodies that are under the direct supervision of, or are branches of, a portion of the state government. Counties and municipalities are not included in the term "agency," as it is defined in this section. 1959-60 Op. Att'y Gen. No. 60-181.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws §§ 1 to 3.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

What constitutes "agency" for purposes of Freedom of Information Act (5 U.S.C. § 552), 165 A.L.R. Fed. 591.

76 C.J.S. Records § 2 et seq.

14-3-3. State commission of public records; creation. (1983)

Statute text

A. A "state commission of public records" is established consisting of:

(1) the secretary of state;

(2) the secretary of general services;

(3) the state law librarian;

(4) the director of the museum of New Mexico;

(5) the state auditor;

(6) the attorney general; and

(7) a recognized, professionally trained historian in the field of New Mexico history, resident in New Mexico, appointed by the governor for a term of six years. Each member of the commission may designate an alternate to serve in his stead.

B. The commission shall elect one of its members to be chairman and another to be secretary. The members of the commission shall serve without compensation other than actual expenses of attending meetings of the commission or while in performance of their official duties in connection with the business of the commission.

C. The commission shall hold not less than four meetings during each calendar year and may hold special meetings as may be necessary to transact business of the commission. All meetings shall be called by the chairman or when requested in writing by any two members of the commission. Four members of the commission shall constitute a quorum.

D. The administrator shall attend all meetings of the commission.

History

History: 1953 Comp., § 71-6-3, enacted by Laws 1959, ch. 245, § 3; 1977, ch. 247, § 181; 1983, ch. 301, § 32.

Annotations

Cross references. - For Per Diem and Mileage Act, see 10-8-1 NMSA 1978 et seq.

Appropriations. - Laws 1994, ch. 147, § 2M, effective March 9, 1994, appropriates $50,000 from the computer systems enhancement fund to the state commission of public records for expenditure in the eighty-second and eighty-third fiscal years to establish an agency-wide information system. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the computer systems enhancement fund.

Governor has no constitutional or statutory power to establish agency to meet governmental printing and duplication needs as a new division of the commission of public records whose existence and scope of functioning is based on a legislative enactment which cannot fairly be construed to include authority to undertake such services. 1969 Op. Att'y Gen. No. 69-3.

14-3-4. Duties and powers of commission. (1959)

Statute text

It shall be the duty of the commission to:

A. employ as state records administrator a competent, experienced person professionally trained as an archivist and records manager who shall serve at the pleasure of the commission. He need

not be a resident of New Mexico at the time of his employment. His salary shall be fixed by the commission;
B. approve the biennial budget covering costs of the operations set forth in this act [14-3-1 to 14-3-16 NMSA 1978], as prepared by the administrator for presentation to the state legislature;
C. decide, by majority vote, any disagreements between the administrator and any state officer regarding the disposition of records within the custody of said officer, such decisions to have the effect of law;
D. consider the recommendations of the administrator for the destruction of specifically reported records, and by unanimous vote either order or forbid such destruction;
E. approve in writing, or reject, the written terms and conditions of each proposed loan of documentary material to the records center, as agreed upon by the lender and the administrator;
F. adopt and publish rules and regulations to carry out the purposes of the Public Records Act [this article];
G. request any agency to designate a records liaison officer to cooperate with, assist and advise the administrator in the performance of his duties and to provide such other assistance and data as will enable the commission and administrator properly to carry out the purposes of the Public Records Act; and
H. prepare an annual report to the governor on the operations conducted under the terms of this act during the previous year, including a complete fiscal report on costs and effected savings, and cause same to be published.

History

History: 1953 Comp., § 71-6-4, enacted by Laws 1959, ch. 245, § 4.

Annotations

Necessary and implied authority. - The commission of public records has all necessary and implied authority to carry out the responsibilities delegated to it by law. 1969 Op. Att'y Gen. No. 69-3.

Duty not to exceed authority. - The commission of public records has a duty not to exceed the authority delegated to it by law. 1969 Op. Att'y Gen. No. 69-3.

Governor has no constitutional or statutory power to establish agency to meet governmental printing and duplication needs as a new division of the commission of public records whose existence and scope of functioning is based on a legislative enactment which cannot fairly be construed to include authority to undertake such services. 1969 Op. Att'y Gen. No. 69-3.

14-3-5. Gifts, donations and loans. (1959)

Statute text

The commission may receive from private sources, financial or other donations to assist in building, enlarging, maintaining or equipping a records center, or for the acquisition by purchase of documentary material, in accordance with plans made and agreed upon by the commission and the administrator. Funds thus received shall be administered by the commission separately from funds supplied by the state for the execution of this act [14-3-1 to 14-3-16 NMSA 1978], but shall be audited by the state. Such funds shall not be subject to reversion to the general fund if unexpended at the close of the fiscal year. Although all material acquired by expenditure of such donated funds and all such donated material shall become the unqualified and unrestricted property of the state, permanent public acknowledgment of the names of the donors may in each case be made in an appropriate manner.

The commission may receive either as donations or loans from private sources, other state agencies, counties, municipalities, the federal government and other states or countries, documentary materials of any physical form or characteristics which are deemed to be of value to the state and the general public for historical reference or research purposes. Acceptance of both donations and loans shall be at the discretion of the commission upon advice of the administrator. Accepted donations shall become, without qualification or restriction, the property of the state of New Mexico. Loans shall be accepted only after a written agreement covering all terms and

conditions of each loan shall have been signed by the lender and the administrator and approved by the commission.

History

History: 1953 Comp., § 71-6-5, enacted by Laws 1959, ch. 245, § 5.

Annotations

State commission of public records may receive private documents if they are deemed to be of value to the state and general public for historical reference and research purposes. The legislature intended the state records center to be the repository for private documents that are primarily valuable for historical reference and research purposes. This is not to say that such private documents are public records. But if such documents are donated or loaned to the commission from any source, the commission is authorized to take custody of them and retain them in the state records center in perpetuity, in the case of donations, or for the period specified in the loan agreement, in the case of loans. 1961-62 Op. Att'y Gen. No. 61-7.

Receipts of state commission of public records derived from sale of boxes and archival materials in the state records center are not funds that have been appropriated to the commission, and may not be expended by the commission. 1959-60 Op. Att'y Gen. No. 60-169. (See 2002 enactment of 14-3-8.1 NMSA 1978).

14-3-6. Administrator; duties. (1983)

Statute text

The administrator is the official custodian and trustee for the state of all public records and archives of whatever kind which are transferred to him from any public office of the state or from any other source. He shall have overall administrative responsibility for carrying out the purposes of the Public Records Act [this article], and may employ necessary personnel, purchase equipment and provide facilities as may be required in the execution of the powers conferred and duties imposed upon him. He shall keep the commission advised throughout the year of operations conducted and future operations projected, and shall report annually to the commission which records have been destroyed, transferred or otherwise processed during the year. The administrator shall establish a records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation and disposal of official records. It shall be the duty of the administrator, in cooperation with and with the approval of the general services department, to establish standards, procedures and techniques for effective management of public records, to make continuing surveys of paperwork operations, and to recommend improvements in current records management practices including the use of space, equipment and supplies employed in creating, maintaining and servicing records. It shall be the duty of the head of each state agency to cooperate with the administrator in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the agency's records. The administrator shall establish records disposal schedules for the orderly retirement of records and adopt regulations necessary for the carrying out of the Public Records Act. Records disposal schedules shall be filed with the librarian of the supreme court library, and shall not become effective until thirty days after the date of filing. Records so scheduled may be transferred to the records center at regular intervals, in accordance with the regulations of the administrator.

History

History: 1953 Comp., § 71-6-6, enacted by Laws 1959, ch. 245, § 6; 1965, ch. 81, § 1; 1983, ch. 301, § 33.

Annotations

Adoption of regulations by administrator. - The administrator may adopt regulations which will guide state officers in determining which records are "public records" and providing for separate disposal standards and retention periods for nonpublic record correspondence. The disposition of those records found to be "public records" within the meaning of the statutory definition must be

controlled by the applicable portions of the Public Records Act, 14-3-1 NMSA 1978 et seq. 1959-60 Op. Att'y Gen. No. 60-72.
Administrator has authority to ensure compliance by county officials with the applicable provisions of 14-3-15 NMSA 1978. 1979 Op. Att'y Gen. No. 79-26.
14-3-7. Inspection and survey of public records. (1959)
Statute text
The administrator is authorized to inspect or survey the records of any agency, and to make surveys of records management and records disposal practices in the various agencies, and he shall be given the full cooperation of officials and employees of the agencies in such inspections and surveys. Records, the use of which is restricted by or pursuant to law or for reasons of security or the public interest, may be inspected or surveyed by the administrator, subject to the same restrictions imposed upon employees of the agency holding the records.
History
History: 1953 Comp., § 71-6-7, enacted by Laws 1959, ch. 245, § 7.
14-3-8. Records center. (1959)
Statute text
A records center is established in Santa Fe under the supervision and control of the administrator. The center, in accordance with the regulations established by the administrator and the commission, shall be the facility for the receipt, storage or disposition of all inactive and infrequently used records of present or former state agencies or former territorial agencies which at or after the effective date of this act may be in custody of any state agency or instrumentality, and which are not required by law to be kept elsewhere, or which are not ordered destroyed by the commission.
Records required to be confidential by law and which are stored in the center shall be available promptly when called for by the originating agency, but shall not be made available for public inspection except as provided by law. All other records retained by the center shall be open to the inspection of the general public, subject to reasonable rules and regulations prescribed by the administrator. Facilities for the use of these records in research by the public shall be provided in the center.
History
History: 1953 Comp., § 71-6-8, enacted by Laws 1959, ch. 245, § 8.
Annotations
Meaning of "effective date of this act." - The phrase "effective date of this act", appearing in the second sentence of the first paragraph, means June 12, 1959, the effective date of Laws 1959, ch. 245.
Official documents and correspondence of former officials. - It is clear that the official documents and correspondence of a former territorial governor, chief justice, representative and delegate should be in the custody of the commission in the state records center. 1961-62 Op. Att'y Gen. No. 61-7.
Records which contain both official and personal matters are still public records and should be in the custody of the commission at the state records center. 1969 Op. Att'y Gen. No. 69-139.
14-3-9. Disposition of public records. (1959)
Statute text
Upon completion of an inspection or survey of the public records of any agency by the administrator, or at the request of the commission or the head of any agency, the administrator, attorney general and the agency official in charge of the records of that agency shall together make a determination as to whether:
A. the records shall be retained in the custody of the agency;
B. the records shall be transferred to the records center; or
C. a recommendation for destruction of the records shall be made to the commission.

If it is determined that the records are to be transferred to the records center, they shall be within a reasonable time so transferred. A list of the records so transferred shall be retained in the files of the agency from which the records were transferred.
Public records in the custody of the administrator may be transferred or destroyed only upon order of the commission.
History
History: 1953 Comp., § 71-6-9, enacted by Laws 1959, ch. 245, § 9.
Annotations
County officials are not required to comply with specific terms of 14-3-9 through 14-3-11 NMSA 1978, when they destroy the records kept by them. 1979 Op. Att'y Gen. No. 79-16.
Disposition of official's records upon expiration of term. - After his term of office has expired, an elected state official may not dispose of his official public records in any manner other than that prescribed by the New Mexico commission of public records. 1969 Op. Att'y Gen. No. 69-139.
14-3-10. Disagreement as to value of records. (1959)
Statute text
In the event the attorney general and the administrator determine that any records in the custody of a public officer including the administrator are of no legal, administrative or historical value, but the public officer having custody of the records or from whose office the records originated fails to agree with such determination or refuses to dispose of the records, the attorney general and the administrator may request the state commission of public records to make its determination as to whether the records should be disposed of in the interests of conservation of space, economy or safety.
History
History: 1953 Comp., § 71-6-10, enacted by Laws 1959, ch. 245, § 10.
Annotations
County officials are not required to comply with specific terms of 14-3-9 through 14-3-11 NMSA 1978, when they destroy the records kept by them. 1979 Op. Att'y Gen. No. 79-16.
14-3-11. Destruction of records. (1965)
Statute text
If it is determined by the administrator, attorney general and agency head that destruction of records will be recommended, the administrator shall have prepared a list of records, together with a brief description of their nature, and shall place upon the agenda of the next meeting of the commission the matter of destruction of the records. The records may be stored in the center awaiting decision of the commission.
The commission's decision with reference to destruction of the records shall be entered on its minutes, together with the date of its order to destroy the records and a general description of the records which it orders to be destroyed. A copy of the commission's order shall be filed with the librarian of the supreme court library.
No public records shall be destroyed if the law prohibits their destruction.
History
History: 1953 Comp., § 71-6-11, enacted by Laws 1959, ch. 245, § 11; 1965, ch. 81, § 2.
Annotations
Destruction of paper originals reproduced by microphotography. - It is clear from reading this article that "public records," as defined herein, may be reproduced by microphotography. However, there is no implication that the paper originals can then be destroyed by the administrator. Destruction of such documents can be accomplished only as provided in 14-3-9 to 14-3-11 NMSA 1978, which require, among other things, an appropriate order by the commission. 1959-60 Op. Att'y Gen. No. 60-68.
County officials are not required to comply with specific terms of 14-3-9 through 14-3-11 NMSA 1978, when they destroy the records kept by them. 1979 Op. Att'y Gen. No. 79-16.

Records made or kept by municipality under its own authority and for its own purposes may be disposed of as the municipality sees fit. What the municipality has power to create, it has power to destroy, but what is created by the state, or by authority of the state, can only be destroyed by the state, or with its permission. 1961-62 Op. Att'y Gen. No. 61-36.

14-3-12. Transfer of records upon termination of state agencies. (1959)

Statute text

All public records of any agency, upon the termination of the existence and functions of that agency, shall be checked by the administrator and the attorney general and either transferred to the custody of another agency having a use for the records, or to the custody of the administrator at the center in accordance with the procedure of the Public Records Act [this article].

When an agency is terminated or reduced by the transfer of its powers and duties to another agency or to other agencies, its appropriate public records shall pass with the powers and duties so transferred.

History

History: 1953 Comp., § 71-6-12, enacted by Laws 1959, ch. 245, § 12.

14-3-13. Protection of records. (1959)

Statute text

The administrator and every other custodian of public records shall carefully protect and preserve such records from deterioration, mutilation, loss or destruction and, whenever advisable, shall cause them to be properly repaired and renovated. All paper, ink and other materials used in public offices for the purposes of permanent records shall be of durable quality.

History

History: 1953 Comp., § 71-6-13, enacted by Laws 1959, ch. 245, § 13.

Annotations

Cross references. - For durability of county clerks' records, see 14-8-7 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws § 10. 76 C.J.S. Records § 30 et seq.

14-3-14. Advisory groups. (1959)

Statute text

The commission upon recommendation of the administrator may from time to time appoint advisory groups to more effectively obtain the best professional thinking of the bar, historians, political scientists, librarians, accountants, genealogists, patriotic groups, associations of public officials and other groups, on the steps to be taken with regard to any particular group or type of records.

History

History: 1953 Comp., § 71-6-14, enacted by Laws 1959, ch. 245, § 14.

14-3-15. Reproduction on film; evidence; review, inventory and approval of systems. (1977)

Statute text

A. Any public officer of the state or of any district or political subdivision may cause any public records, papers or documents kept by him to be photographed, microphotographed or reproduced on film.

B. The state records administrator shall review any proposed state agency microphotography system and shall advise and consult with the agency. The administrator has the authority to approve or disapprove the system of any state agency.

C. The microphotography system used pursuant to this section shall comply with the minimum standards approved by the New Mexico commission of public records. The microphotography system used to reproduce such records on film shall be one which accurately reproduces the original in all details.

D. The administrator shall establish and maintain an inventory of all microfilm equipment owned or leased by state agencies. The administrator is authorized to arrange the transfer of

microphotography equipment from a state agency which does not use it, and which has released it, to a state agency needing such equipment for a current microphotography system.
E. Photographs, microphotographs or photographic film made pursuant to this section shall be deemed to be original records for all purposes, including introduction in evidence in all courts and administrative agencies. A transcript, exemplification or certified copy, for all purposes, shall be deemed to be a transcript, exemplification or certified copy of the original.
F. Whenever such photographs, microphotographs or reproductions on film are properly certified and are placed in conveniently accessible files, and provisions are made for preserving, examining and using them, any public officer may cause the original records from which the photographs or microphotographs have been made, or any part thereof, to be disposed of according to methods prescribed by Sections 14-3-9 through 14-3-11 NMSA 1978. Copies shall be certified by their custodian as true copies of the originals before the originals are destroyed or lost, and the certified copies shall have the same effect as the originals. Copies of public records transferred from the office of origin to the administrator, when certified by the administrator or his deputy, shall have the same legal effect as if certified by the original custodian of the records.
G. For the purposes of this section, "state agency" shall include the district courts.
History
History: 1953 Comp., § 71-6-15, enacted by Laws 1959, ch. 245, § 15; 1975, ch. 215, § 1; 1977, ch. 301, § 2.
Annotations
Cross references. - For provision that recording "book" includes microfilm, see 14-8-3 NMSA 1978.
Subsection B applies only to governmental organizations which are considered state agencies and not to governmental organizations generally. State institutions are considered to be distinct governmental organizations not included within the term "state agency." State educational institutions, as state institutions, are not therefore considered to be state agencies within the terms of the statute. 1978 Op. Att'y Gen. No. 78-23.
Subsection C standards apply to state educational institutions. - The state records administrator only has the authority to insure that state educational institutions comply with the standards for microphotography established pursuant to Subsection C; the administrator does not have the authority to review and to approve or disapprove the microphotography systems of state educational institutions in their entirety. 1978 Op. Att'y Gen. No. 78-23.
Subsection D applies only to state agencies and not to state educational institutions. 1978 Op. Att'y Gen. No. 78-23.
Section controls microfilming of records by county officials. - Although 14-1-5 NMSA 1978 permits county officials to microfilm the records maintained by them, this section is the more specific statute and is controlling. 1979 Op. Att'y Gen. No. 79-26.
County clerks may microfilm papers kept by them. - County clerks, as public officials of a political subdivision of the state, may microfilm the papers kept by them. 1979 Op. Att'y Gen. No. 79-16.
Administrator has authority to ensure compliance by county officials with the applicable provisions of this section. 1979 Op. Att'y Gen. No. 79-26.
Subsections A, C, E, and F are applicable to county officials and the microphotography undertaken by them. 1979 Op. Att'y Gen. No. 79-26.
Subsections B, D, G and 14-3-17 NMSA 1978 apply only to state agencies and not to counties or other governmental organizations. 1979 Op. Att'y Gen. No. 79-26.
Procedure where public officer offers his records to state after microfilming. - If any public officer sees fit to offer his records to the state records administrator, after microfilming them, then the procedure to determine the disposition of the records is exactly as outlined in 14-3-9 NMSA 1978, with the state records administrator surveying the records involved and determining, in

conjunction with the attorney general and the agency official involved, what disposition shall be made of them. 1959-60 Op. Att'y Gen. No. 60-179.
Destruction of original records without action by records administrator. - If microfilmed and certified pursuant to this section, originals of records, including newspapers kept by county clerks, may be destroyed without any action on the part of the records administrator. 1979 Op. Att'y Gen. No. 79-16.
County officials are not required to comply with specific terms of 14-3-9 through 14-3-11 NMSA 1978, when they destroy the records kept by them. 1979 Op. Att'y Gen. No. 79-16.
Am. Jur. 2d, A.L.R. and C.J.S. references. - 29A Am. Jur. 2d Evidence § 1121 et seq.
32A C.J.S. Evidence § 834 et seq.
14-3-15.1. Records of state agencies; public records; copy fees; computer databases; criminal penalty. (1995)
Statute text
A. Except as otherwise provided by federal or state law, information contained in information systems databases shall be a public record and shall be subject to disclosure in printed or typed format by the state agency that has inserted that information into the database, in accordance with the Public Records Act [this article], upon the payment of a reasonable fee for the service.
B. The administrator shall recommend to the commission the procedures, schedules and technical standards for the retention of computer databases.
C. The state agency that has inserted data in a database may authorize a copy to be made of a computer tape or other medium containing a computerized database of a public record for any person if the person agrees:
(1) not to make unauthorized copies of the database;
(2) not to use the database for any political or commercial purpose unless the purpose and use is approved in writing by the state agency that created the database;
(3) not to use the database for solicitation or advertisement when the database contains the name, address or telephone number of any person unless such use is otherwise specifically authorized by law;
(4) not to allow access to the database by any other person unless the use is approved in writing by the state agency that created the database; and
(5) to pay a royalty or other consideration to the state as may be agreed upon by the state agency that created the database.
D. If more than one state agency is responsible for the information inserted in the database, the agencies shall enter into an agreement designating a lead agency. If the agencies cannot agree as to the designation of a lead state agency, the commission shall designate one of the state agencies as the lead agency to carry out the responsibilities set forth in this section.
E. Subject to any confidentiality provisions of law, any state agency may permit another state agency access to all or any portion of a computerized database created by a state agency.
F. If information contained in a database is searched, manipulated or retrieved or a copy of the database is made for any private or nonpublic use, a fee shall be charged by the state agency permitting access or use of the database.
G. Except as authorized by law or rule of the commission, any person who reveals to any unauthorized person information contained in a computer database or who uses or permits the unauthorized use or access of any computer database is guilty of a misdemeanor, and upon conviction the court shall sentence that person to jail for a definite term not to exceed one year or to payment of a fine not to exceed five thousand dollars ($5,000) or both. That person shall not be employed by the state for a period of five years after the date of conviction.
History
History: Laws 1986, ch. 81, § 9; 1993, ch. 197, § 11; 1978 Comp., § 15-1-9, amended and recompiled as 1978 Comp., § 14-3-15.1 by Laws 1995, ch. 110, § 8.
Annotations

Cross references. - For electronic authentication and substitution for signature, see 14-3-15.2 NMSA 1978.
For format of rules filings under Stat Rules Act, see 14-4-3 NMSA 1978.
For Computer Crimes Act, see 30-45-1 to 30-45-7 NMSA 1978.
The 1993 amendment, effective July 1, 1993, substituted "commission" for "council" in Paragraph (4) of Subsection C and made minor stylistic changes in Subsections A, C and G.
The 1995 amendment, effective July 1, 1995, renumbered the section; substituted "administrator" for "secretary" and made a minor stylistic change in Subsection B; deleted "with the approval of the secretary" following "database" in Subsection C; deleted "secretary and the" preceding "state agency" in Paragraph (2) of Subsection C; deleted "the commission and" following "writing by" in Paragraph (4) of Subsection C; deleted "the secretary and" preceding "the state agency"; substituted the language beginning with "the agencies shall enter" and ending with "the lead agency" for "a single state agency shall be designated by the secretary" in Subsection D; deleted "to be prescribed by rule of the secretary" following "a fee" in Subsection F; and substituted "commission" for "secretary" in Subsection G.
Repeals. - Laws 1986, ch. 81, § 15 repeals former 15-1-9 NMSA 1978, as enacted by Laws 1984, ch. 64, § 12, relating to records contained in information systems databases, effective May 21, 1986. For provisions of former section, see 1985 Cumulative Supplement.
Am. Jur. 2d, A.L.R. and C.J.S. references. - 50 Am. Jur. 2d Larceny § 67 et seq.; 66 Am. Jur. 2d Records and Recording Laws §§ 1 to 3, 10, 12 to 15, 19.
Enforceability by mandamus of right to inspect public records, 60 A.L.R. 1356, 169 A.L.R. 653.
Proof of public records kept or stored on electronic computing equipment, 71 A.L.R.3d 232.
Criminal liability for theft of, interference with or unauthorized use of, computer programs, files, or systems, 51 A.L.R.4th 971.
52A C.J.S. Larceny § 129(2); 76 C.J.S. Records § 1 et seq.
14-3-15.2. Electronic authentication; substitution for signature. (1995)
Statute text
Whenever there is a requirement for a signature on any document, electronic authentication that meets the standards promulgated by the commission may be substituted.
History
History: Laws 1995, ch. 27, § 1.
Annotations
Cross references. - For format of rules filings under State Rules Act, see 14-4-3 NMSA 1978.
For electronic filing of report of campaign expenditures and contributions, see 1-19-31 NMSA 1978.
For electronic filing under Taxation and Revenue Department Act, see 9-11-6.4 NMSA 1978.
For electronic filing of annual statement by insurer, see 59A-5-29 NMSA 1978.
For electronic copies and abstracts of motor vehicle records, see 66-2-7 NMSA 1978.
For electronic filing of title applications for motor vehicle titles, see 66-3-201 NMSA 1978.
For use of electronic versions of uniform traffic citations in the issuance of citations, see 66-8-128 NMSA 1978.
For submission of required information to the Motor Vehicle Division of penalty assessments under municipal programs via electronic means, see 66-8-130 NMSA 1978.
For electronic filing of abstract of record in cases involving violations of Motor Vehicle Code, see 66-8-135 NMSA 1978.
For electronic filing of court documents not requiring filing fee in the First Judicial District Court, see LR1-212.
For the Electronic Authentication of Documents Act, see Chapter 14, Article 15 NMSA 1978.
Effective dates. - Laws 1995, ch. 27, contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is effective on June 16, 1995, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions or Legislature" table.

14-3-16. Attorney general may replevin state records. (1959)
Statute text
On behalf of the state and the administrator, the attorney general may replevin any papers, books, correspondence or other public records which were formerly part of the records or files of any public office in the territory or state of New Mexico, and which the state still has title to or interest in and which have passed out of the official custody of the state, its agencies or instrumentalities.
History
History: 1953 Comp., § 71-6-16, enacted by Laws 1959, ch. 245, § 16.
14-3-17. Approval of existing state agency systems. (1975)
Statute text
Upon the effective date of this act, the state records administrator shall review any existing state agency microphotography system and, after consultation with the agency, shall approve, disapprove or require modification to the system. For the purposes of this section, "state agency" shall include the district courts. Upon disapproval, the agency shall cease to use the system. Modifications shall be completed within a period specified by the administrator.
History
History: 1953 Comp., § 71-6-17, enacted by Laws 1975, ch. 215, § 2.
Annotations
Compiler's notes. - Laws 1963, ch. 303, § 30-1, repealed former 71-6-17, 1953 Comp. (Laws 1959, ch. 245, § 17), relating to unlawful disposition of public records. For present comparable provisions, see 30-26-1 NMSA 1978.
Meaning of "effective date of this act". - The phrase "effective date of this act", appearing near the beginning of this section, means July 1, 1975, the effective date of Laws 1975, Chapter 215.
Subsections B, D and G of 14-3-15 NMSA 1978 and this section apply only to state agencies and not to counties or other governmental organizations. 1979 Op. Att'y Gen. No. 79-26.
14-3-18. County and municipal records. (1965)
Statute text
The administrator may advise and assist county and municipal officials in the formulation of programs for the disposition of public records maintained in county and municipal offices.
History
History: 1953 Comp., § 71-6-17.1, enacted by Laws 1963, ch. 186, § 2; 1965, ch. 81, § 3.
14-3-19. Storage equipment, supplies and materials; microfilm services and supplies; purchase by state records commission [state commission of public records] for resale. (1968)
Statute text
The state records commission [state commission of public records] may purchase for resale such storage boxes, forms, microfilm supplies necessary to the providing of microfilm services and other supplies and materials, as in its judgment are necessary to facilitate the various aspects of its programs. The commission may sell such items and services at a cost plus a five percent handling charge. All receipts from such sales shall go into the special revolving fund established by Laws 1961, Chapter 111, which is hereby continued. In addition to any moneys in the special revolving fund, there is hereby appropriated the sum of five hundred dollars ($500).
History
History: 1953 Comp., § 71-6-18, enacted by Laws 1968, ch. 14, § 1.
Annotations
Repeals and reenactments. - Laws 1968, ch. 14, § 1, repeals 71-6-18, 1953 Comp., relating to purchase by state records commission of storage equipment, etc., for resale, and enacts the above section.
Compiler's notes. - Laws 1961, Chapter 111, referred to in this section, which was compiled as former 71-6-18, 1953 Comp., was repealed by Laws 1968, ch. 14, § 1. See heading, "Repeals and reenactments," in notes to this section.

14-3-20. Interstate compacts; filing; index. (1981)
Statute text
A. Each agency of this state and each political subdivision of the state entering into or administering an interstate compact or other intergovernmental agreement between or among states, subdivisions of this state and other states or between this state or any subdivision and the federal government, having the force of law and to which this state or any subdivision is a party, shall file with the records center:
(1) a certified copy of the compact or agreement;
(2) a listing of all other jurisdictions party to the compact or agreement and the date on which each jurisdiction entered into participation;
(3) the status of each compact or agreement with respect to withdrawals of participating jurisdictions;
(4) citations to any act or resolution of the congress of the United States consenting to the compact or agreement; and
(5) any amendment, supplementary agreement or administrative rule or regulation having the force of law and implementing or modifying the compact or agreement.
B. The records center shall index these documents and make them available for inspection upon request of any person during normal business hours.
C. The provisions of this section are in addition to other requirements of law for filing, publication or distribution.
D. No compact or agreement entered into after the effective date of this section shall become effective until filed as required in this section.
E. The executive official in charge of any state agency or political subdivision which fails to file any compact or agreement required by this section to be filed is guilty of a misdemeanor.
F. The records center shall be furnished copies of all interstate compacts, when available, as defined in this section, which have been filed with the supreme court librarian.
History
History: 1953 Comp., § 71-6-19, enacted by Laws 1963, ch. 185, § 1; 1981, ch. 221, § 1.
Annotations
"Effective date of this section". - The phrase "effective date of this section", referred to in Subsection D, means June 7, 1963, the effective date of Laws 1963, ch. 185, § 1.
Interstate contract is not instrument similar to rules, reports and notices issued by state agencies. State v. Ellis, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).
State does not have valid prisoner transfer agreement with Arizona. - Due to fact that an exhaustive search of the supreme court library found only one contract for a term from April 24, 1973, to June 30, 1974, and a renewal for July 1, 1975, to June 30, 1976, New Mexico does not have a valid agreement with Arizona concerning transfers of prisoners. State v. Ellis, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).
14-3-21. [State publications; manuals of procedure; rules; reports; uniform style and form.] (1965)
Statute text
The state records administrator shall develop and recommend to the state commission of public records uniform standards of style and format for the following:
A. manuals of procedure prepared and published by state agencies for the guidance of public officers and employees engaged in operations required for the efficient operation of state and local government, including but not limited to acquiring space, budgeting, accounting, purchasing, contracting, vouchering, printing, appointment and dismissal of employees and record maintenance;
B. manuals of procedure prepared and published by state agencies for the guidance of their own employees and for their own operations;

C. official rules and regulations and reprints of laws published by state agencies, excluding session laws published by the secretary of state; and
D. official reports of state agencies required by law, excluding the budget document presented to the legislature.
The state commission of public records, after consultation with the affected agencies, and with the approval of the governor, shall adopt and promulgate uniform standards of style and format for the above publications and a schedule of distribution for each class of publication which shall be binding upon all state agencies. "Agencies" means, for the purposes of this section, all state departments, bureaus, commissions, committees, institutions and boards, except those agencies of the legislative and judicial branches, and those educational institutions listed in Article 12, Section 11 of the New Mexico Constitution.
History
History: 1953 Comp., § 71-6-20, enacted by Laws 1965, ch. 154, § 1.
Annotations
Cross references. - For provisions of the State Rules Act, see Chapter 14, Article 4 NMSA 1978.
14-3-22. Public policy on certain publications; state commission of public records duties. (1983)
Statute text
A. It is the intent of the legislature and the public policy of this state to reduce unnecessary expense to the taxpayers of this state in connection with publications of state agencies designed primarily for the purpose of reporting to or the informing of the governor, the legislature, other state agencies or the political subdivisions of this state.
B. The state commission of public records shall develop and adopt regulations which shall be binding upon all state agencies. The regulations shall provide for uniform standards for those publications set forth in Subsection A of this section and shall include but be not limited to:
(1) a standard size format to accommodate paper of the most economical type available;
(2) prohibiting the use of expensive covers, binders and fasteners;
(3) prohibiting the use of photographs, art work and design, unless absolutely necessary for clarification of the report;
(4) limiting the use of color stock paper, where such color stock would be more expensive than the use of white paper; and
(5) requiring offset or mimeograph or other means of duplication when it cannot be demonstrated that printing of such publication would be equal to or less than the cost of offset, mimeograph or other means of duplication.
C. The state commission of public records shall maintain constant and continuing supervision of such publications by state agencies and shall report persistent violations of the regulations made pursuant to this act [this section] to the secretary of general services.
History
History: 1953 Comp., § 71-6-21, enacted by Laws 1977, ch. 209, § 1; 1983, ch. 301, § 34.
14-3-23. [Manuals of procedure; preparation by state agencies; review by state records administrator; publication.] (1965)
Statute text
Each state agency which has an official duty to establish methods and procedures involved in the internal structure and operation of state government, including but not limited to acquiring space, budgeting, accounting, purchasing, contracting, vouchering, printing, appointment and dismissal of employees and record-keeping, shall prepare, within the means provided by current operating budgets, manuals of procedure for the guidance of public officers and employees engaged in such work. Such manual or manuals shall be reviewed and ordered published by the state records administrator and in accordance with uniform standards of style and format promulgated by the state commission of public records.
History
History: 1953 Comp., § 71-6-22, enacted by Laws 1965, ch. 154, § 3.

14-3-24, 14-3-25. Recompiled.
Annotations
Recompilations. - Laws 1995, ch. 110, § 9, recompiles 14-3-24 and 14-3-25 NMSA 1978, describing duties of the state records administrator, as 14-4-10 and 14-4-11 NMSA 1978, effective July 1, 1995.

ARTICLE 3A
CONFIDENTIAL MATERIALS
Section
14-3A-1. Short title.
14-3A-2. Donation of confidential material.
14-3A-1. Short title. (1981)
Statute text
Sections 1 and 2 [14-3A-1, 14-3A-2 NMSA 1978] of this act may be cited as the "Confidential Materials Act".
History
History: Laws 1981, ch. 47, § 1.
Annotations
Cross references. - For public records generally, see Chapter 14, Article 3 NMSA 1978.
Am. Jur. 2d, A.L.R. and C.J.S. references. - What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of identity of confidential source and, in specified instances, of confidential information furnished only by confidential source (5 USCS § 522(b)(7)(D)), 59 A.L.R. Fed. 550.
14-3A-2. Donation of confidential material. (1981)
Statute text
A. Any library, college, university, museum or institution of the state or any of its political subdivisions may hold in confidence materials of a historical or educational value upon which the donor or seller has imposed restrictions with respect to access to and inspection of the materials for a definite period of time as specified by the donor or seller.
B. Access to and inspection of such materials may be restricted during the period specified by the donor or seller in the manner specified by the donor or seller.
C. The provisions of Subsections A and B of this section do not apply to materials which were public records of New Mexico as defined in Section 14-2-1 NMSA 1978 while in the possession of the donor or seller at the time of the donation or sale.
History
History: Laws 1981, ch. 47, § 2.

ARTICLE 4
STATE RULES
Section
14-4-1. Short title.
14-4-2. Definitions.
14-4-3. Format of rules; filing; distribution.
14-4-4. Publication filing and distribution; official depository.
14-4-5. Filing and compliance required for validity.
14-4-5.1. Temporary provision; savings provision.
14-4-6. Trade, sale and exchange of agency rules, publications and reports by records center.
14-4-7. Current listing of rules; rule repeals.
14-4-7.1. New Mexico register.
14-4-7.2. New Mexico Administrative Code.
14-4-8. Documents not required to be filed with state library.

14-4-9. Law governing filing of agency rules, documents and publications.
14-4-10. State publications for sale or issue by state agencies; listing by state records administrator.
14-4-11. Personal files, records and documents of elected state officials; placing in state archives by the state records administrator.
14-4-1. Short title. (1995)
Statute text
Chapter 14, Article 4 NMSA 1978 may be cited as the "State Rules Act".
History
History: 1953 Comp., § 71-7-1, enacted by Laws 1967, ch. 275, § 1; 1995, ch. 110, § 1.
Annotations
The 1995 amendment, effective July 1, 1995, substituted "Chapter 14, Article 4, NMSA 1978" for "This act".
State corporation commission (now public regulation commission) may promulgate regulations interpreting school bus exemption in Motor Carrier Act without holding hearing prior to the issuance of the regulation, so long as it complies with State Rules Act, unless and until the legislature were to place the state corporation commission (now public regulation commission) under the Administrative Procedures Act, 12-8-1 NMSA 1978 et seq. 1969 Op. Att'y Gen. No. 69-100.
This act is inapplicable to interstate agreements. State v. Ellis, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).
Interstate contract is not similar to rules, reports and notices issued by state agencies. State v. Ellis, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).
Law reviews. - For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).
For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).
For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).
For survey of 1988-89 Administrative Law, see 21 N.M.L. Rev. 481 (1991).
Am. Jur. 2d, A.L.R. and C.J.S. references. - 73 C.J.S. Public Administrative Law and Procedure §§ 112, 114.
14-4-2. Definitions. (1969)
Statute text
As used in the State Rules Act [this article]:
A. "agency" means any agency, board, commission, department, institution or officer of the state government except the judicial and legislative branches of the state government;
B. "person" includes individuals, associations, partnerships, companies, business trusts and corporations; and
C. "rule" means any rule, regulation, order, standard, statement of policy, including amendments thereto or repeals thereof issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing such rule or to affect persons not members or employees of such issuing agency. An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed such a rule nor shall it constitute specific adoption thereof by the agency. Such term shall not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the Springer Boys' School, the Girls' Welfare Home, of any hospital nor to rules made relating to the management of any particular educational institution, whether elementary or otherwise, nor to rules made relating to admissions, discipline, supervision, expulsion or graduation of students therefrom.
History

History: 1953 Comp., § 71-7-2, enacted by Laws 1967, ch. 275, § 2; 1969, ch. 92, § 1.

Annotations

Compiler's notes. - The New Mexico boys' school at Springer and the girls' welfare home, referred to in the last sentence of Subsection C, were provided for in Chapter 33, Article 4 and Chapter 33, Article 5 NMSA 1978, respectively. Both of those Articles were repealed by Laws 1988, ch. 101, § 51.

"Rules" and "standards". - The terms "rule" and "standard" include procedural standards, manuals, directives and requirements if they purport to affect one or more agencies besides the issuing agency or persons other than the issuing agencies' members or employees. 1993 Op. Att'y Gen. No. 93-1.

A standard is a rule, if the proper procedure has been followed in promulgating it. Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n, 93 N.M. 546, 603 P.2d 285 (1979).

Orders and decisions excluded by definition from class of rules to which State Rules Act applies are not subject to the provisions of those sections and, in particular, are not governed by 14-4-3 and 14-4-5 NMSA 1978. Op. Att'y Gen. No. 79-32.

Law reviews. - For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

14-4-3. Format of rules; filing; distribution. (1995)

Statute text

Each agency promulgating any rule shall place the rule in the format and style required by rule of the records center and shall deliver one original paper copy and one electronic copy to the records center. The records center shall note thereon the date and hour of filing. The records center shall maintain the original copy as a permanent record open to public inspection during office hours and shall have the rule published in a timely manner in the New Mexico register and compiled into the New Mexico Administrative Code. At the time of filing, an agency may submit to the records center an additional paper copy, for annotation with the date and hour of filing, to be returned to the agency.

History

History: 1953 Comp., § 71-7-3, enacted by Laws 1967, ch. 275, § 3; 1969, ch. 92, § 2; 1987, ch. 40, § 1; 1995, ch. 110, § 2.

Annotations

Cross references. - For records of state agencies and databases under Public Records Act, see 14-3-15.1 NMSA 1978.

For electronic authentication and substitution for signature, see 14-3-15.2 NMSA 1978.

The 1995 amendment, effective July 1, 1995, substituted "deliver one original paper copy and one electronic copy" for "cause seven copies to be delivered" in the first sentence; substituted "maintain the original copy" for "a list of places to file copies" in the third sentence; added the language at the end of the section beginning "and shall have"; and made minor stylistic changes throughout the section.

Records center may require certificate of compliance. - Pursuant to its authority under this section to adopt a rule governing the style and format of the rules and regulations to be filed, the records center may require a certificate of compliance as a matter of style or format. While the records center has no authority to look behind a certificate of compliance or to make any determination of actual compliance, failure to incorporate such a certificate of compliance on rules and regulations submitted for filing would constitute a failure to comply with the required style and format. 1978 Op. Att'y Gen. No. 78-7.

Orders and decisions excluded by definition from class of rules to which this article and 13-3-24 and 13-3-25 NMSA 1978 apply are not subject to the provisions of those sections and, in particular, are not governed by this section and 14-4-5 NMSA 1978. Op. Att'y Gen. No. 79-32.

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).
For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).
14-4-4. Publication filing and distribution; official depository. (1995)
Statute text
Each agency issuing any publication, pamphlet, report, notice, proclamation or similar instrument shall immediately file five copies thereof with the records center. The records center shall deliver three copies to the state library, which shall keep one copy available for public inspection during office hours. All other copies may be circulated. The state library is designated to be an official depository of all such publications, pamphlets, reports, notices, proclamations and similar instruments.
History
History: 1953 Comp., § 71-7-5, enacted by Laws 1967, ch. 275, § 5; 1969, ch. 92, § 3; 1995, ch. 110, § 3.
Annotations
The 1995 amendment, effective July 1, 1995, added the section heading.
What and with whom matters to be filed. - Formerly, all official reports, pamphlets, publications, regulations, rules, codes of fair competition, proclamations and orders issued, prescribed or promulgated by the state corporation commission of general application were to be filed, in accordance with statute, with the supreme court librarian of the state of New Mexico, with the exception of any rule or regulation or order or other document of the corporation commission, wherein it is exercising its duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telephone, telegraph, sleeping car or similar company and common carrier within the state. 1953-54 Op. Att'y Gen. No. 5814.
Actual notice of rule does not dispel necessity of compliance with State Rules Act. State v. Joyce, 94 N.M. 618, 614 P.2d 30 (Ct. App. 1980).
Law reviews. - For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).
14-4-5. Filing and compliance required for validity. (1995)
Statute text
No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act [this article]. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register. Emergency regulations may go into effect immediately upon filing with the records center, but shall be effective no more than thirty days unless they are published in the New Mexico register.
History
History: 1953 Comp., § 71-7-6, enacted by Laws 1967, ch. 275, § 6; 1969, ch. 92, § 4; 1995, ch. 110, § 4.
Annotations
The 1995 amendment, effective July 1, 1995, added the section heading, substituted the language at the end of the first sentence beginning "filed with" for "so filed and shall only be valid and enforceable upon such filing and compliance with any other law", and added the last two sentences.
What and with whom matters to be filed. - Formerly, all official reports, pamphlets, publications, regulations, rules, codes of fair competition, proclamations and orders issued, prescribed or promulgated by the state corporation commission (now public regulation commission) of general application were to be filed, in accordance with statute, with the supreme court librarian of the state of New Mexico, with the exception of any rule or regulation or order or other document of the corporation commission (now public regulation commission), wherein it is exercising its duty

of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telephone, telegraph, sleeping car or similar company and common carrier within the state. 1953-54 Op. Att'y Gen. No. 5814.

Policies that affect other agencies. - If a policy manual or directive contains statements of policy purporting to affect one or more agencies besides the agency issuing the manual or to affect persons not members or employees of the issuing agency, it must be filed in accordance with the State Rules Act. 1993 Op. Att'y Gen. No. 93-1.

When rule becomes valid or enforceable. - The language of this section is categorical: a rule is not valid or enforceable until it is filed. There is no implicit exception that makes the rule effective before filing with respect to those with actual notice of the rule. Pineda v. Grande Drilling Corp. 111 N.M. 536, 807 P.2d 234 (Ct. App. 1991).

Statute does not authorize center to investigate validity of rules. - The statute makes no provision for a preliminary investigation by the records center with respect to the compliance of the submitting agency to any notice and hearing requirements. As an administrative body, the records center can only act within the scope of the authority delegated by statute, and any independent investigation into the validity of the rules and regulations submitted for filing does not come within the records center's authority; therefore the records center has no power to make a determination as to whether, in fact, the promulgating agency has complied with notice and hearing requirements. 1978 Op. Att'y Gen. No. 78-7.

Orders and decisions excluded by definition from class of rules to which State Rules Act applies are not subject to the provisions of those sections and, in particular, are not governed by 14-4-3 NMSA 1978 and this section. Op. Att'y Gen. No. 79-32.

Prisoner disciplinary rules not covered by act. - Disciplinary rules promulgated by the secretary of corrections, governing the conduct of prisoners confined within a penitentiary, were not required to be filed with the state's record center in the manner required under State Rules Act. Johnson v. Francke, 105 N.M. 564, 734 P.2d 804 (Ct. App. 1987).

No fundamental right to notice and hearing. - There is no fundamental right to notice and hearing before the adoption of a rule. Such a right is statutory only. Livingston v. Ewing, 98 N.M. 685, 652 P.2d 235 (1982).

Actual notice of rule does not dispel necessity of compliance with State Rules Act. State v. Joyce, 94 N.M. 618, 614 P.2d 30 (Ct. App. 1980).

Effect of failure to comply with statutory requirements. - Where the board of cosmetology failed to (1) comply with the repeal procedure of 12-8-4A NMSA 1978, in failing to give notice to interested parties and to hold a hearing prior to taking action, and (2) failed to file the record of its regulatory proceedings with the state records administrator as required by this section, the action of the board in repealing a licensing reciprocity regulation was contrary to law and the repeal was invalid. Rivas v. Board of Cosmetologists, 101 N.M. 592, 686 P.2d 934 (1984).

Effect of unfiled rules and regulations. - Former statutes (4-10-13 to 4-10-19, 1953 Comp.) did not provide that all unfiled rules and regulations were ineffective, but merely provided that such rules and regulations would not be valid as against any person who did not have actual knowledge of their contents. Maestas v. Christmas, 63 N.M. 447, 321 P.2d 631 (1958).

Effect of departure from procedures and regulations prescribed. - Local board's failure to give timely notice constituted a substantial departure from the procedures and regulations prescribed by the state board, and state board's finding that teacher was not prejudiced by this departure was prejudicial. Tate v. New Mexico State Bd. of Educ. 81 N.M. 323, 466 P.2d 889 (Ct. App. 1970).

Where teacher with tenure rights was only given two days' notice - excluding the date of service - before the end of the school year and under the regulations prescribed by the state board, she was entitled to no less than 14 days' notice before the end of the school year, the conduct of the local board in failing to follow the regulation amounted to unfairness, an issue which may properly be raised in a proceeding of this nature, and although teacher may have known her principal was going to recommend to the local board that she not be reemployed, this placed no burden upon

her to employ an attorney, or to otherwise begin the preparation of her defense, in anticipation of the ruling of the local board. She was entitled, insofar as statute and rule permitted, to a timely notice, pursuant to the requirements of the rule. Brininstool v. New Mexico State Bd. of Educ. 81 N.M. 319, 466 P.2d 885 (Ct. App. 1970).

Amendment has no effect on validity of previous resolution. - The subsequent adoption of an amended resolution has no effect on the validity of a previous resolution. Livingston v. Ewing, 98 N.M. 685, 652 P.2d 235 (1982).

Criminal trespass charges not a means to enforce rule until filing. - Criminal trespass charges under 30-20-13 NMSA 1978 are not a means to enforce a rule available to the state until the rule is properly filed in compliance with State Rules Act. State v. Joyce, 94 N.M. 618, 614 P.2d 30 (Ct. App. 1980).

Law reviews. - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

14-4-5.1. Temporary provision; savings provision. (1995)

Statute text

Notwithstanding the provisions of 14-4-5 NMSA 1978, rules filed prior to July 1, 1995 shall continue in effect if such rules were filed with the state records center in accordance with the law applicable at the time of filing, and they have not otherwise been repealed, amended, or superseded.

History

History: Laws 1995, ch. 110, § 10.

Annotations

Effective dates. - Laws 1995, ch. 110, § 12 makes the act effective July 1, 1995.

14-4-6. [Trade, sale and exchange of agency rules, publications and reports by records center.] (1967)

Statute text

The records center is hereby authorized to trade, sell or exchange such rules, pamphlets, reports or similar instruments for rules, pamphlets, reports or similar instruments of similar value and to sell the same at a reasonable price.

History

History: 1953 Comp., § 71-7-7, enacted by Laws 1967, ch. 275, § 7.

Annotations

Law reviews. - For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

14-4-7. Current listing of rules; rule repeals. (1991)

Statute text

A. The state records administrator shall prepare and publish a listing and index of all current rules which are filed with the records center.

B. All pamphlets, reports, proclamations or similar instruments which are filed with the librarian of the supreme court law library of the state of New Mexico on the effective date of the State Rules Act [this article] and which would, if filed after the effective date of the State Rules Act, be filed with the records center shall be transferred to the records center.

C. The records center shall be furnished a reasonable opportunity to obtain copies of all rules, as defined in the State Rules Act, filed with the librarian of the supreme court law library of the state of New Mexico on the effective date of the State Rules Act.

D. All rules filed with the librarian of the supreme court law library that have not been filed with the records center pursuant to the State Rules Act by June 30, 1991 are repealed.

History

History: 1953 Comp., § 71-7-8, enacted by Laws 1967, ch. 275, § 10; 1969, ch. 92, § 5; 1991, ch. 221, § 1.

Annotations

The 1991 amendment, effective June 14, 1991, added the section heading; designated the formerly undesignated provisions as Subsections A to C; deleted the former last sentence of the section which read: "The librarian of the supreme court shall not be required to retain more than the original or one copy thereof"; added Subsection D; and made minor stylistic changes throughout the section.

"Effective date of the State Rules Act". - The phrase "effective date of the State Rules Act", used three times in this section, means April 14, 1967, the effective date of Laws 1967, Chapter 275.

Interstate agreement not contemplated within this act. - Despite the broad language in this section regarding "[a]ll pamphlets, reports, proclamations or similar instruments," an interstate agreement contract is not contemplated within the State Rules Act. State v. Ellis, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).

Interstate contract is not instrument similar to rules, reports and notices issued by state agencies. State v. Ellis, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).

Law reviews. - For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

14-4-7.1. New Mexico register. (1995)

Statute text

A. The state records administrator shall provide for publication of a New Mexico register at least twice a month. The New Mexico register shall be published in such a way as to minimize the cost to the state. To accomplish this, the state records administrator is authorized to provide for charges for subscriptions and for publication of notice and other items, including advertising, in the register.

B. The New Mexico register shall be the official publication for all notices of rule makings and filings of adopted rules, including emergency rules, by agencies.

(1) The register shall include the full text of any adopted rules, including emergency rules. Proposed rules may be published in full or in part at the discretion of the issuing agency.

(2) Upon request of an issuing agency, the state records administrator may determine that publication in the register of the full text of an adopted rule would be unduly cumbersome, expensive or otherwise inexpedient, and may publish instead a synopsis of the adopted rule and a statement that a copy of the rule is available from the issuing agency.

C. The New Mexico register shall be available by subscription and single copy purchase to any person, including agencies of the executive, judicial and legislative branches of state government and its political subdivisions, at a reasonable charge approved by the state records administrator. The administrator may authorize distribution of a certain number of copies of the register without charge to agencies or political subdivisions as deemed economically feasible and appropriate.

D. The New Mexico register may include a summary or the text of any governor's executive order, a summary, listing or the text of any attorney general's opinion, a calendar listing the date, time and place of all or selected agency rule-making hearings, a list of gubernatorial appointments of state officials and board and commission members or other material related to administrative law and practice.

E. The state records administrator shall adopt and promulgate rules necessary for the implementation and administration of this section.

History

History: Laws 1989, ch. 38, § 1; 1995, ch. 110, § 5.

Annotations

The 1995 amendment, effective July 1, 1995, in Subsection A, substituted "for publication" for "if economically feasible, for development and publication" and deleted "after January 1, 1990" following "month"; in Subsection B, redesignated the last two sentences as Paragraph (1) and rewrote the paragraph to make publication of the full text of adopted rules mandatory, and added Paragraph (2); and made minor stylistic changes throughout the section.

Adequate notice under Open Meetings Act. - A notice of proposed rulemaking in the New Mexico register probably would not constitute reasonable notice under the Open Meetings Act, 10-15-1 to 10-15-4 NMSA 1978, because the register is not widely circulated and is not readily available to the general public. 1993 Op. Att'y Gen. No. 93-2.
Notice requirements for legal publication. - A notice published in the New Mexico register would not fulfill the requirements for legal publication under 14-11-1 to 14-11-8 NMSA 1978 because the register is not a newspaper of general paid circulation. 1993 Op. Att'y Gen. No. 93-2.
Publication in human services register. - Publication of a notice, proposed rule, or adopted rule in the New Mexico human services register does not fulfill the human services department's duty to publish materials required by the New Mexico register. 1993 Op. Att'y Gen. No. 93-2.
Publication requirements under the Administrative Procedures Act. - The state rules administrator was not required to publish a separate bulletin under former 12-8-6 NMSA 1978 for agencies subject to the Administrative Procedures Act. Specifically, the provisions of this section superseded the requirements in former 12-8-6 NMSA 1978 for issuing a bimonthly publication, for publishing the full text of rules except under the specified conditions and for providing bulletins free of charge to state agencies and political subdivisions upon request. 1993 Op. Att'y Gen. No. 93-3.
Incorporation by reference. - An agency may not avoid filing and publishing a rule by incorporating by reference and otherwise properly filed and published rule. However, this section grants the state records administrator and the issuing agency discretion to agree on publication of less than a full text of incorporated materials. 1993 Op. Att'y Gen. No. 93-1.
14-4-7.2. New Mexico Administrative Code. (1995)
Statute text
A. The state records administrator shall create and have published a New Mexico Administrative Code, which shall contain all adopted rules. The administrator shall adopt regulations setting forth procedures for the compilation of the code and prescribing the format and structure of the code, including provisions for at least annual supplementation or revision.
B. All rulemaking agencies shall revise, restate and repromulgate their existing rules as needed to expedite publication of the New Mexico Administrative Code.
History
History: 1978 Comp., § 14-4-7.2, enacted by Laws 1995, ch. 110, § 6.
Annotations
Effective dates. - Laws 1995, ch. 110, § 12 makes the act effective January 1, 1995.
14-4-8. Documents not required to be filed with state library. (1977)
Statute text
The state librarian may by appropriate written instructions advise the records center that he no longer desires a particular class of instrument to be filed with the state library and thereafter such records center shall no longer file such class of documents with the state library unless such rejection is rescinded in writing and sent to such agency or agencies.
History
History: 1953 Comp., § 71-7-9, enacted by Laws 1967, ch. 275, § 11; 1977, ch. 246, § 47.
14-4-9. [Law governing filing of agency rules, documents and publications.] (1967)
Statute text
Wherever any law requires an agency to file a rule, pamphlet, document or publication with the librarian of the supreme court law library such shall be accomplished by the delivery and filing as provided in the State Rules Act [this article].
History
History: 1953 Comp., § 71-7-10, enacted by Laws 1967, ch. 275, § 12.
14-4-10. State publications for sale or issue by state agencies; listing by state records administrator. (1995)
Statute text

The state records administrator shall maintain a file of all state publications which are for sale or issue by agencies of the state. He shall prepare and publish a list of all such publications which are current and effective. The list shall include such documents as books, manuals, pamphlets, bulletins, monographs and periodicals designed to instruct, inform or direct either the general public or public officers and employees. Correspondence and those documents developed by agencies for their own internal administration are excluded.

History

History: 1953 Comp., § 71-6-23, enacted by Laws 1967, ch. 275, § 8; 1977, ch. 301, § 3; 1978 Comp., § 14-3-24, recompiled as 1978 Comp., § 14-4-10 by Laws 1995, ch. 110, § 9.

14-4-11. [Personal files, records and documents of elected state officials; placing in state archives by the state records administrator.] (1995)

Statute text

The state records administrator may accept and place in the state archives the personal files, records and documents of elected state officials or of former elected state officials, subject to any reasonable restrictions, moratoriums and requirements concerning their use by other persons. Such restrictions, moratoriums and requirements made by the donor, however, shall not prevent the archivist of the state records center from having access to the files, records and documents for indexing and cataloguing purposes.

History

History: 1953 Comp., § 71-6-24, enacted by Laws 1967, ch. 275, § 9; 1978 Comp., § 14-3-25, recompiled as 1978 Comp., § 14-4-11 by Laws 1995, ch. 110, § 9.

ARTICLE 5

PUBLIC RECORDS RECOVERY

Section

14-5-1. Short title.
14-5-2. Definitions.
14-5-3. Recovery authorized.
14-5-4. Method of recovery.
14-5-5. Return of public record.
14-5-6. Refusal to appear and produce document; procedure.
14-5-7. District court findings and orders.
14-5-8. Replacement of recovered document.
14-5-9. Effect of replacement of recovered document.
14-5-10. Alternative method.

14-5-1. Short title. (1973)

Statute text

This act [14-5-1 to 14-5-10 NMSA 1978] may be cited as the "Public Records Recovery Act".

History

History: 1953 Comp., § 71-8-1, enacted by Laws 1973, ch. 270, § 1.

14-5-2. Definitions. (1973)

Statute text

As used in the Public Records Recovery Act [14-5-1 to 14-5-10 NMSA 1978]:

A. "public officer" means any officer or employee of the legislative, executive or judicial departments of the state or any of its agencies, and any officer or employee of any of the political subdivisions of the state, who is the official custodian of any public record or class of public records; and

B. "public record" means all instruments and documents duly recorded in the records of the county clerk, district court or probate court, which affect interest in real property.

History

History: 1953 Comp., § 71-8-2, enacted by Laws 1973, ch. 270, § 2.

14-5-3. Recovery authorized. (1973)
Statute text
Any public officer is authorized to recover public records and to duplicate copies of them in the possession of any private party.
History
History: 1953 Comp., § 71-8-3, enacted by Laws 1973, ch. 270, § 3.
14-5-4. Method of recovery. (1973)
Statute text
Upon determining that a particular public record is not in the hands of the official custodian of such record and upon forming a reasonable belief that those records or copies of them are in the possession of a private party or parties, the public officer shall send a postage prepaid, certified letter, return receipt requested, to the party believed to be in possession of the records or copies of them, making demand for the production of the record if he has it and if he does not have it, any copy of the record. The letter shall:
A. name with particularity the record, the original or copy of which is believed to be in the possession of the private party;
B. allege that the public record is not in the hands of the official custodian of the record;
C. state the grounds on which the public officer believes that the private party is in possession of the public record or a copy of it; and
D. demand that within thirty days of the receipt of the letter, the recipient shall appear at a time and place stated in the letter, bringing the named public record or if the demand is for a copy, the copy with him.
History
History: 1953 Comp., § 71-8-4, enacted by Laws 1973, ch. 270, § 4.
14-5-5. Return of public record. (1973)
Statute text
If the recipient of the public officer's letter complies with the demand and produces the document or documents, the public officer:
A. shall determine if the document produced is a missing record or a copy of a missing record; and
B. then shall duplicate the document and return the private party's document to him if it is a copy, or if it is the original public record, give the private party a copy and keep the original public record.
History
History: 1953 Comp., § 71-8-5, enacted by Laws 1973, ch. 270, § 5.
14-5-6. Refusal to appear and produce document; procedure. (1973)
Statute text
If within thirty days of the receipt of the letter, the recipient fails to appear or fails to produce the requested document or documents without showing cause, the public officer making the demand shall apply to the district court in the judicial district where the documents are allegedly located for an order compelling production of the documents for recovery or copying as provided above.
A. The application shall:
(1) name with particularity the record, the original or copy of which is believed to be in the possession of the third party;
(2) allege that the public record is not in the hands of the official custodian of the record;
(3) state the grounds upon which the public officer believes that the private party is in possession of the public record or copies of it; and
(4) state, by affidavit or otherwise, that due demand as required by the Public Records Recovery Act [14-5-1 to 14-5-10 NMSA 1978] has been made and that the private party or parties have either failed or refused to produce the document or documents.

B. The application shall be docketed in the district court as a civil proceeding and shall proceed as a civil suit under the rules of civil procedure of the district courts.
History
History: 1953 Comp., § 71-8-6, enacted by Laws 1973, ch. 270, § 6.
14-5-7. District court findings and orders. (1973)
Statute text
If the district court finds that the petition of the public officer is true and that the named document or documents are in the possession of the named party or parties, the court shall order that the document or documents be turned over for recovery or duplication as required in Subsection B of Section 4 [14-5-4 NMSA 1978] of the Public Records Recovery Act.
History
History: 1953 Comp., § 71-8-7, enacted by Laws 1973, ch. 270, § 7.
Annotations
Compiler's notes. - The reference to Subsection B of Section 4 of the Public Records Recovery Act probably should be to Subsection D of that section, 14-5-4 NMSA 1978.
14-5-8. Replacement of recovered document. (1973)
Statute text
Records recovered by any public officer or duplicated by the public officer pursuant to the Public Records Recovery Act [14-5-1 to 14-5-10 NMSA 1978] shall immediately be returned to the official custodian entitled to possession of the record. Prior to replacing the recovered documents, the public officer shall attach a certificate to each of them in a manner that it cannot be removed without destruction of the document stating the date on which the documents were recovered and the name of the person who had possession of the original or copy, the statement under oath of the person who had possession as to the authenticity of the original or copy, and if possible attesting to the belief of the public officer that the recovered documents are previously missing public records, or true copies of them.
History
History: 1953 Comp., § 71-8-8, enacted by Laws 1973, ch. 270, § 8.
14-5-9. Effect of replacement of recovered document. (1973)
Statute text
Nothing in the Public Records Recovery Act [14-5-1 to 14-5-10 NMSA 1978] shall be construed to enlarge the rights of a person claiming an interest in real property under a document recovered under the terms of that act, or to make any conclusive presumptions as to the authenticity of the recovered documents.
History
History: 1953 Comp., § 71-8-9, enacted by Laws 1973, ch. 270, § 9.
14-5-10. Alternative method. (1973)
Statute text
The remedies provided in this act [14-5-1 to 14-5-10 NMSA 1978] are in addition to and not in lieu of any remedies contained in Section 14-3-16 NMSA 1978 or any other statute relating to the recovery of public records.
History
History: 1953 Comp., § 71-8-10, enacted by Laws 1973, ch. 270, § 10.

ARTICLE 6
HEALTH AND HOSPITAL RECORDS
Section
14-6-1. Health information; confidentiality; immunity from liability for furnishing.
14-6-2. Hospital records; retention.
14-6-3. Access to medical records by applicants for disability benefits; violations.
14-6-1. Health information; confidentiality; immunity from liability for furnishing. (1977)

Statute text

A. All health information that relates to and identifies specific individuals as patients is strictly confidential and shall not be a matter of public record or accessible to the public even though the information is in the custody of or contained in the records of a governmental agency or its agent, a state educational institution, a duly organized state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such facilities.

B. A custodian of information classified as confidential in Subsection A may furnish the information upon request to a governmental agency or its agent, a state educational institution, a duly organized state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such facilities, and the custodian furnishing the information shall not be liable for damages to any person for having furnished the information.

C. Statistical studies and research reports based upon confidential information may be published or furnished to the public, but these studies and reports shall not in any way identify individual patients directly or indirectly nor in any way violate the privileged or confidential nature of the relationship and communications between practitioner and patient.

D. This section does not affect the status of original medical records of individual patients and the rules of confidentiality and accessibility applicable to these records continue in force. This section does not affect the status of vital statistical records of the health and environment department.

History

History: 1953 Comp., § 12-18-1, enacted by Laws 1971, ch. 137, § 1, and recompiled as 1953 Comp., § 12-25-6, by Laws 1972, ch. 51, § 9; 1977, ch. 253, § 37.

Annotations

Cross references. - For use of medical records by medical review commission, see 41-5-15, 41-5-16 NMSA 1978.

Health and environment department. - Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment.

Law reviews. - For article, "Disclosure of Medical Information - Criminal Prosecution of Medicaid Fraud in New Mexico," see 9 N.M. L. Rev. 321 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 81 Am. Jur. 2d Witnesses §§ 262 et seq., 417, 434. Physician-patient privilege as extending to patient's medical or hospital records, 10 A.L.R.4th 552.

97 C.J.S. Witnesses §§ 293 to 314.

14-6-2. Hospital records; retention. (1977)

Statute text

A. Unless provided otherwise in this section, a hospital shall retain and preserve all records directly relating to the care and treatment of a patient for a period of ten years following the last discharge of the patient. Retention and preservation of such records in microfilm or other photographically reproduced form shall be deemed compliance with this subsection and such reproduced and retained copies shall be deemed originals for the purposes of the rules of evidence promulgated by the supreme court of New Mexico.

B. Laboratory test records and reports may be destroyed one year after the date of the test recorded or reported therein provided that one copy is placed in the patient's record. If a copy of the laboratory test records and reports is not placed in the patient's record, they may not be destroyed for a period of four years from the date of the test recorded or reported.

C. X-ray films may be destroyed four years after the date of exposure, if there are in the hospital record written findings of a radiologist who has read such x-ray films. At any time after the third year after the date of exposure, and upon proper identification, the patient may recover his own x-

ray films as may be retained pursuant to this section. Such written radiological findings shall be retained as provided in Subsection A of this section.
D. At any time after the retention periods specified in Subsections A, B and C of this section, the hospital may, without thereby incurring liability, destroy such records, by burning, shredding or other effective method in keeping with the confidential nature of their contents; provided, however, that destruction of such records must be in the ordinary course of business and no record shall be destroyed on an individual basis.
E. For the purposes of this section, "hospital" means an institution for the reception and care of the ill or infirm which is licensed by the health and social services department [department of health].
History
History: 1953 Comp., § 12-34-24, enacted by Laws 1977, ch. 371, § 1.
Annotations
Bracketed material. - The bracketed material in Subsection E was inserted by the compiler, as Laws 1977, ch. 253, § 5, abolished the health and social services department, and Laws 1977, ch. 253, § 4, established the health and environment department under former 9-7-4 NMSA 1978. Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978 and enacted a new 9-7-4 NMSA 1978 creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.
Am. Jur. 2d, A.L.R. and C.J.S. references. - Medical malpractice: presumption or inference from failure of hospital or doctor to produce relevant medical records, 69 A.L.R.4th 906.
14-6-3. Access to medical records by applicants for disability benefits; violations. (1999)
Statute text
A. Within thirty days of receiving a request from a patient or former patient who is applying for benefits based on social security disability or who is appealing a denial of such benefits or from an authorized representative of such a patient or former patient, a health care provider shall furnish the requestor with a copy of that patient's medical records. A fee as established by the department of health, may be charged by the health care provider to the requestor for the copies or for the service in obtaining the records.
B. A request made pursuant to Subsection A of this section shall include a statement or document from the agency that administers the benefits that confirms the application or appeal.
C. As used in this section:
(1) "health care provider" means a person who is licensed, certified or otherwise authorized by law to provide or render health care in the ordinary course of business or practice of a profession and includes a facility employing, or contracting with, such a person; and
(2) "medical records" means information in a medical or mental health patient file, including drug or alcohol treatment records, medical reports, clinical notes, nurses' notes, history of injury, subjective and objective complaints, test contents and results, interpretations of tests, reports and summaries of interpretations of tests and other reports, diagnoses and prognoses, bills, invoices, referral requests, consultative reports and reports of services requested by the health care provider.
D. Nothing in this section shall be interpreted to grant access for a patient or patient's representative to medical records that are otherwise protected by law.
E. The department of health shall enforce the provisions of this section and may impose a civil penalty in an amount not to exceed one hundred dollars ($100) for a violation of this section. The department may promulgate rules necessary for the implementation and enforcement of the provisions of this section, including a fee schedule by obtaining records as provided in Subsection A of this section for a patient who has a financial ability to pay.
History
History: Laws 1999, ch. 206, § 1.
Annotations

Effective dates. - Laws 1999, ch. 206 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ARTICLE 7
FINANCIAL INSTITUTION RECORDS
Section
14-7-1. Requiring notice of intent to gain access to records of financial institutions.
14-7-2. Requirements of state agencies, boards and commissions prior to access to a financial institution's records.

14-7-1. Requiring notice of intent to gain access to records of financial institutions. (1977)
Statute text
A. At least seven days prior to a state agency, board or commission requesting or gaining access to or copies of the records of a person, corporation, company or organization, maintained by a bank, savings and loan association, small loan company or other similar financial institution, the agency, board or commission shall notify by certified or registered mail, the person, corporation, company or other organization of its intent to gain access or acquire such records.
B. The requirement of notice set forth in Subsection A of this section shall not apply to the audit of any bank, savings and loan association, small loan company or other similar financial institution by a state agency, when conducted pursuant to the agency's statutory directive.
C. The provisions of Subsection A of this section shall not apply to requests for records made pursuant to an administrative subpoena. In such instances at least twenty-four hours' notice shall be given to the person, corporation, company or organization.
History
History: 1953 Comp., § 48-10-13, enacted by Laws 1977, ch. 291, § 1.
Annotations
Am. Jur. 2d, A.L.R. and C.J.S. references. - 73 C.J.S. Public Administrative Law and Procedure §§ 77 to 79, 82, 83.

14-7-2. Requirements of state agencies, boards and commissions prior to access to a financial institution's records. (1977)
Statute text
A. Prior to a state agency, board or commission receiving access to or copies of the records of a person, corporation, company or organization maintained by a bank, savings and loan association, small loan company or other similar financial institution, the agency, board or commission shall:
(1) allow the institution forty-eight hours to comply with an administrative subpoena;
(2) allow the institution to provide authenticated copies of original records rather than the original copies in response to an administrative subpoena; and
(3) pay the institution the reasonable cost of production of such records including both the cost of materials and wages.
B. The provisions of Subsection A of this section shall not apply to the audit of any bank, savings and loan association, small loan company or other similar financial institution by a state agency when conducted pursuant to the agency's statutory directive.
History
History: 1953 Comp., § 48-10-14, enacted by Laws 1977, ch. 337, § 1.

ARTICLE 8
RECORDING
Section
14-8-1. County clerk as ex-officio recorder.
14-8-2. Duties of recorder.
14-8-3. Recording books.

14-8-4. Acknowledgment necessary for recording; decrees; exceptions.
14-8-5. Mining location notices; recording.
14-8-6. Endorsement on receipt of documents; constructive notice of contents.
14-8-7. Durability of records; required inks and ribbons.
14-8-8. Noncompliance with durability requirements; penalty.
14-8-9. Security of books of record; delivery to successors.
14-8-10. County clerks; failure to perform duties as recorder; fees.
14-8-11. Standard form of instruments; supplies.
14-8-12. Recording fees; when instrument not photocopied.
14-8-12.1. Temporary provision; validation.
14-8-12.2. Recording fees; when instrument is photocopied.
14-8-12.3. Recording fee; assignments or releases of interest in property.
14-8-12.4. Recording fee; more than two acknowledgments; more than two hundred words; when number of words is in excess of standard form.
14-8-13. Fees; copying records; issuing licenses; acknowledgments.
14-8-14. Searching records; fees.
14-8-15. Payment of fees.
14-8-16. Filings of legal descriptions and plats of real property authorized; recording; fees.

14-8-1. [County clerk as ex-officio recorder.]

Statute text

The county clerks of the different counties of this state, shall be ex-officio recorders in their respective counties.

History

History: Laws 1855-1856, p. 18, § 1; C.L. 1865, ch. 88, § 1; C.L. 1884, § 429; C.L. 1897, § 776; Code 1915, § 4779; C.S. 1929, § 118-101; 1941 Comp., § 13-101; 1953 Comp., § 71-1-1.

Annotations

Compiler's notes. - The 1915 Code compilers substituted the words "county clerks" for the words "clerks of the probate courts," apparently to correspond with N.M. Const., art. VI, § 22, providing that the county clerk shall act as probate clerk until otherwise provided by law.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws §§ 81, 83.

76 C.J.S. Records § 9 et seq.

14-8-2. [Duties of recorder.]

Statute text

It shall be the duty of the county clerk to record in a book of good size, which he shall keep in his office for this purpose, all land titles and other papers which by law should be recorded.

History

History: Laws 1855-1856, p. 18, § 2; C.L. 1865, ch. 88, § 2; C.L. 1884, § 430; C.L. 1897, § 777; Code 1915, § 4780; C.S. 1929, § 118-102; 1941 Comp., § 13-102; 1953 Comp., § 71-1-2.

Annotations

Cross references. - For durability of records, see 14-8-7, 14-8-8 NMSA 1978.

Compiler's notes. - The 1915 Code compilers substituted the words "county clerk" for the word "recorder." See compiler's note to 14-8-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws §§ 84 to 86, 132, 133.

76 C.J.S. Records § 9 et seq.

14-8-3. Recording books. (1963)

Statute text

When used in Articles 1 to 5 and 8 to 10 of Chapter 14 NMSA 1978, "book" includes microfilm.

History

History: 1953 Comp., § 71-1-2.1, enacted by Laws 1963, ch. 52, § 1.

Annotations

Cross references. - For microfilming of records, see 14-1-4 to 14-1-6 NMSA 1978.

For provisions relating to reproduction on film under the Public Records Act, see 14-3-15 NMSA 1978.

14-8-4. Acknowledgment necessary for recording; decrees; exceptions. (1981)

Statute text

Any instrument of writing, duly acknowledged and certified, may be filed and recorded. Any instrument of writing, not duly acknowledged and certified, may not be filed and recorded, nor considered of record, though so entered; provided, however, that judicial decrees or certified copies, patents, land office receipts, certified copies of foreign wills duly authenticated and instruments of writing in any manner affecting lands in the state, when these instruments have been duly executed by an authorized public officer, need not be acknowledged but may be filed and recorded; provided further, any filing or recording permitted or required under the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978] need not comply with the requirements of this section; and provided further, that instruments acknowledged on behalf of a corporation need not have the corporation's seal affixed thereto in order to be filed and recorded.

History

History: Laws 1901, ch. 62, § 18; Code 1915, § 4795; C.S. 1929, § 118-119; 1941 Comp., § 13-103; 1953 Comp., § 71-1-3; Laws 1961, ch. 96, § 11-118; 1967, ch. 10, § 1; 1981, ch. 219, § 1.

Annotations

Cross references. - For notary publics and validation of certain prior acknowledgments, see 14-13-13 to 14-13-25 NMSA 1978.

For short forms of acknowledgment, see 14-14-8 NMSA 1978.

Generally. - Under the wording of this section, it is provided that any instrument of writing which is not duly acknowledged and certified is not entitled to be filed and recorded, nor considered of record, though so entered, unless expressly excepted under the terms of such statute. 1961-62 Op. Att'y Gen. No. 62-1.

Death certificates. - County clerks could not issue certified copies of death certificates pursuant to this section so that persons may avoid the higher fees charged for the issuance of certificates by the vital statistics bureau. 1988 Op. Att'y Gen. No. 88-01.

Taking acknowledgment ministerial duty. - The duties performed by an officer in taking an acknowledgment in this state are ministerial in character rather than judicial. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).

Necessity for acknowledgment. - Laws 1874, ch. 14 (now superseded), cured defective acknowledgments to deeds made prior to January 8, 1874, but did not supply the want nor obviate the necessity of an acknowledgment as between the parties to the deed. Armijo v. New Mexico Town Co. 3 N.M. (Gild.) 427, 5 P. 709 (1885)See note to 14-13-13 NMSA 1978.

This section does not require deeds to be acknowledged except for recordation and for the protection of the grantee against subsequent purchasers in good faith and without notice. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).

An acknowledgment of a deed, or other writing, affecting real estate, by the party whose real estate is affected, in the manner established by statute, is a necessary prerequisite to its being recorded. McBee v. O'Connell, 16 N.M. 469, 120 P. 734 (1911).

Although acknowledgment is not essential to validity of conveyance as between parties, without it the instrument may not be admitted to record. Kitchen v. Canavan, 36 N.M. 273, 13 P.2d 877 (1932).

A chattel mortgage or sales contract, if not properly acknowledged, should not be filed and indexed by the county clerk. 1937-38 Op. Att'y Gen. 137.

Absent valid acknowledgment, instrument may not be treated as recorded. New Mexico Properties, Inc. v. Lennox Indus., Inc. 95 N.M. 64, 618 P.2d 1228 (1980); F & S Co. v. Gentry, 103 N.M. 54, 702 P.2d 999 (1985).

Instruments filed pursuant to provisions of Uniform Commercial Code not required to be acknowledged. - In keeping with the declared purpose of the Uniform Commercial Code (Chapter 55 NMSA 1978) to simplify, clarify and modernize the law governing commercial transactions, and the rule of construction that the Code shall be liberally construed and applied so as to promote its underlying purposes and policies, such instruments as are filed pursuant to the provisions of the Uniform Commercial Code are not required to be acknowledged as a prerequisite to being filed with the county clerks. 1961-62 Op. Att'y Gen. No. 62-1 (opinion rendered prior to 1967 amendment adding second proviso to section).

Effect of unacknowledged deed. - Where there is a quitclaim deed not attested to by a notary public, this section only prevents the recording of the deed and does not make it void. The general rule is that an unacknowledged deed is binding between the parties thereto, their heirs and representatives and persons having actual notice of the instrument. Baker v. Baker, 90 N.M. 38, 559 P.2d 415 (1977).

An unacknowledged mortgage is not entitled to record and gives no constructive notice. Vorenberg v. Bosserman, 17 N.M. 433, 130 P. 438 (1913).

Restrictive covenants not effective. - Since the instrument purporting to establish the subdivision covenants tendered for filing on June 5, 1978 was not properly acknowledged and did not comply with the requirements of the statute, it was ineffective to establish restrictive covenants against the subdivision which ran with the land. Pollock v. Ramirez, 117 N.M. 187, 870 P.2d 149 (Ct. App. 1994).

Developer's declaration of covenants was legally ineffective to establish restrictive covenants that run with the land because it was not acknowledged before a notary public. Cyprus Gardens, Ltd. v. Platt, 1998-NMCA-007, 124 N.M. 472, 952 P.2d 467.

Constructive notice not found. - Because the covenants sought to be imposed did not comply with the requirements of this section and the covenants were recorded subsequent to the conveyance to the decedents, constructive notice of the existence of valid covenants cannot properly be implied. Pollock v. Ramirez, 117 N.M. 187, 870 P.2d 149 (Ct. App. 1994).

Acknowledgment not part of instrument. - Although an acknowledgment is required before an instrument may be filed, in the absence of a statute so providing, an acknowledgment is not a part of an instrument and is not necessary to its validity. Garrett Bldg. Centers, Inc. v. Hale, 95 N.M. 450, 623 P.2d 570 (1981); Germany v. Murdock, 99 N.M. 679, 662 P.2d 1346 (1983).

Recorded and filed lien, lacking acknowledgment, valid and binding. - A valid materialmen's lien which lacked an acknowledgment, but had been filed and recorded, was valid and binding as between the parties to an action on the lien. Garrett Bldg. Centers, Inc. v. Hale, 95 N.M. 450, 623 P.2d 570 (1981).

Acknowledgment when signature made by mark. - A deed executed by using the hand of a person to make his mark thereon at the place of signature is void where the grantor does not consciously assent to the signature so made, nor afterwards ratify the same, and a certificate of acknowledgment placed thereon under such circumstances does not operate to render such conveyance valid. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).

Certificate of acknowledgment is not conclusive and may be contested. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).

Certificate of acknowledgment should be impeached by only clear and convincing evidence. - A certificate of acknowledgment duly executed as required by law is prima facie evidence of the execution of the instrument it acknowledges, and should be impeached only by clear and convincing evidence. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).

Where evidence for plaintiff to the effect that a deed had not been consciously executed by the grantor and that the notary's certificate of acknowledgment thereon was false, if believed by the trial court, is clear and convincing, a judgment setting aside such deed will not be disturbed on appeal, although evidence on behalf of defendants may be in direct conflict therewith. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).

Law reviews. - For article, "Attachment in New Mexico - Part I," see 1 Nat. Resources J. 303 (1961).
For annual survey of New Mexico law relating to property, see 12 N.M.L. Rev. 459 (1982).
Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgment §§ 4, 60 et seq.; 66 Am. Jur. 2d Records and Recording Laws § 77.
Sufficiency of certificate of acknowledgment, 25 A.L.R.2d 1124.
Record of instrument without acknowledgment or insufficiently acknowledged as notice, 59 A.L.R.2d 1299.
1A C.J.S. Acknowledgments § 7; 76 C.J.S. Records § 9 et seq.
14-8-5. [Mining location notices; recording.] (1971)
Statute text
All recordings of unacknowledged mining location notices and amended or additional notices made pursuant to Section 69-3-1, 69-3-2, 69-3-12 or 69-3-21 [repealed] NMSA 1978, and the record thereof in the office of the county clerk, are hereby confirmed and made valid, the provisions of Section 14-8-4 NMSA 1978 notwithstanding; provided, however, existing or intervening rights of others are not affected. Hereafter, such notices need not be acknowledged but may be filed, recorded and considered of record if properly signed by the locator.
History
History: 1953 Comp., § 71-1-3.1, enacted by Laws 1971, ch. 202, § 1.
Annotations
Compiler's notes. - Section 69-3-21 NMSA 1978, referred to in the first sentence, was repealed by Laws 1981, ch. 310, § 7.
14-8-6. [Endorsement on receipt of documents; constructive notice of contents.]
Statute text
When any land title, or other document, shall be delivered to the county clerk to be recorded, it shall be his duty to endorse immediately on that document, or other paper, the day, month and year in which he received it, and he shall record it in the book of record as soon as possible, and the said documents from the date on which they were delivered to the county clerk shall be considered as recorded, and this shall be sufficient notice to the public of the contents thereof.
History
History: Laws 1855-1856, p. 18, § 3; C.L. 1865, ch. 88, § 3; C.L. 1884, § 431; C.L. 1897, § 778; Code 1915, § 4781; C.S. 1929, § 118-103; 1941 Comp., § 13-104; 1953 Comp., § 71-1-4.
Annotations
Cross references. - For recording assignment of royalties, see 70-1-1, 70-1-2 NMSA 1978.
Compiler's notes. - The 1915 Code compilers substituted the words "county clerk" for the word "recorder." See compiler's note to 14-8-1 NMSA 1978.
Am. Jur. 2d, A.L.R. and C.J.S. references. - Priority where senior instrument is recorded after execution but before recording of junior instrument, 32 A.L.R. 344.
Withdrawal of paper after delivery to proper officer as affecting question whether it is filed, 37 A.L.R. 670.
Use of diminutive or nickname as affecting operation or record as notice, 45 A.L.R. 557.
Effect of neglect or fault of recording or filing officer, 70 A.L.R. 595.
Necessity of recording appointment of substitute for trustee under deed of trust securing bonds, 98 A.L.R. 1159.
Improper insertion or omission of middle initial of one's name as affecting constructive notice from public records, 122 A.L.R. 909.
Fraudulent misrepresentation or concealment, public records as constructive notice of, so as to start running of statute of limitations against action for fraud, 152 A.L.R. 461.
Record of instrument which comprises or includes an interest or right that is not proper subject of record, 3 A.L.R.2d 577.

Reformation of instruments as against third persons, record of incorrect instrument as notice of intended contents, 79 A.L.R.2d 1180.
Recorded real property instrument as charging third party with constructive notice of provisions of extrinsic instrument referred to therein, 89 A.L.R.3d 901.
76 C.J.S. Records § 9 et seq.
14-8-7. [Durability of records; required inks and ribbons.] (1923)
Statute text
It shall be the duty of county clerks in this state to use either a good grade of nonfadeable permanent black ink or a good grade of black record typewriter ribbon in recording all instruments of writing which by law they are required to record.
History
History: Laws 1923, ch. 114, § 1; C.S. 1929, § 118-114; 1941 Comp., § 13-105; 1953 Comp., § 71-1-5.
Annotations
Cross references. - For protection of records, see 14-3-13 NMSA 1978.
For provision that recording books include microfilm, see 14-8-3 NMSA 1978.
Legislative intent. - The legislature in enacting this section intended merely to require that recording be done by a method insuring permanency and durability. A recording by photographic copy if legible and durable would not constitute a violation of this section. 1939-40 Op. Att'y Gen. 148.
Am. Jur. 2d, A.L.R. and C.J.S. references. - Photostatic or other method of recording instrument, 57 A.L.R. 159.
Mutilations, alterations, and deletions as affecting admissibility in evidence of public record, 28 A.L.R.2d 1443.
76 C.J.S. Records 9 et seq.
14-8-8. [Noncompliance with durability requirements; penalty.] (1923)
Statute text
Any county clerk who shall fail to comply with the provisions of this act [14-8-7, 14-8-8 NMSA 1978], upon conviction thereof, shall be fined not less than fifty dollars [($50.00)] nor more than five hundred dollars [($500)].
History
History: Laws 1923, ch. 114, § 2; C.S. 1929, § 118-115; 1941 Comp., § 13-106; 1953 Comp., § 71-1-6.
Annotations
Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.
14-8-9. [Security of books of record; delivery to successors.]
Statute text
It shall be the duty of the county clerks to keep their books of record well secured, and when they go out of office as such clerks, they shall deliver them complete to their successors.
History
History: Laws 1855-1856, p. 18, § 4; C.L. 1865, ch. 88, § 4; C.L. 1884, § 432; C.L. 1897, § 779; Code 1915, § 4782; C.S. 1929, § 118-104; 1941 Comp., § 13-107; 1953 Comp., § 71-1-7.
Annotations
Compiler's notes. - The 1915 Code compilers substituted the words "county clerks" for the word "recorders" and the words "such clerks" for the words "clerks of the probate court." See compiler's note to 14-8-1 NMSA 1978.
14-8-10. County clerks; failure to perform duties as recorder; fees. (1965)
Statute text
A. For failure to comply with Sections 14-8-1 through 14-8-9 NMSA 1978, each county clerk is responsible on his official bond for all damages suffered by the injured party.

B. Each county clerk shall collect:
(1) ten cents ($.10) for every hundred words recorded in accordance with Sections 14-8-1 through 14-8-9 NMSA 1978;
(2) one dollar ($1.00) for each certificate and seal to documents recorded except marriage licenses; and
(3) one dollar and fifty cents ($1.50) for each certificate and seal to marriage licenses recorded.
History
History: Laws 1855-1856, p. 18, § 5; C.L. 1865, ch. 88, § 5; C.L. 1884, § 433; C.L. 1897, § 780; Code 1915, § 4783; C.S. 1929, § 118-105; 1941 Comp., § 13-108; 1953 Comp., § 71-1-8; Laws 1965, ch. 97, § 1.
Annotations
Cross references. - For provision requiring fees to be paid in advance of filing or recording, see 14-8-15 NMSA 1978.
Section determines fee by the clerk for filing a lis pendens. 1921-22 Op. Att'y Gen. 67.
Fee for certificate and seal controlling. - This section is controlling and in direct conflict with 14-8-13 NMSA 1978, and the fee which it sets out for each certificate and seal to documents recorded is the proper fee to be charged by county clerks. 1967 Op. Att'y Gen. No. 67-53.
County clerks must charge for certified copies of public records requested by the American Red Cross. 1943-44 Op. Att'y Gen. No. 4221.
14-8-11. [Standard form of instruments; supplies.] (1939)
Statute text
The state comptroller, with the approval of the attorney general, shall select the form of instrument which shall be considered as the New Mexico standard form of such instrument for purposes of determining fees to be charged for recordation, and county clerks are hereby empowered and directed to purchase printed forms for recording in record books of warranty, quitclaim and mortgage deeds, transcripts of judgment, bills of sale, releases and such other ordinary instruments as are in common use in New Mexico.
History
History: Laws 1939, ch. 179, § 1; 1941 Comp., § 13-109; 1953 Comp., § 71-1-9.
Annotations
Office of state comptroller abolished. - The office of state comptroller has been abolished, and all records have been transferred to the department of finance or the state auditor. See Laws 1957, ch. 251, § 9, compiled as 11-1-34, 1953 Comp., and repealed by Laws 1977, ch. 26, § 1.
Filing or recording bill of sale not required. - There is no statute which requires the filing or recording of a bill of sale, although such an instrument is entitled to be recorded if in proper form. Garrison Gen. Tire Serv., Inc. v. Montgomery, 75 N.M. 321, 404 P.2d 143 (1965).
14-8-12. Recording fees; when instrument not photocopied. (1985)
Statute text
A. County clerks shall receive for recording the following fees when the instrument is not photocopied:

standard form of deeds $1.75
nonstandard form of deeds 2.00
standard form of mortgage deeds 2.00
nonstandard form of mortgage deeds 2.25
standard form of amortization mortgage, long form 2.75
standard form of amortization mortgage, short form 2.25
nonstandard form of amortization mortgage, long form 3.25
nonstandard form of amortization mortgage, short form 2.75
standard form assignment of mortgage 1.50

nonstandard form assignment of mortgage 1.75
standard form oil and gas mining leases 1.75
nonstandard form oil and gas mining leases 2.00
standard form assignment of oil and gas mining leases 1.50
nonstandard form assignment of oil and gas mining leases 1.75
standard form release of oil and gas lease 1.25
nonstandard form release of oil and gas lease 1.50
for release of each recorded mortgage or deed of trust 1.00
deed of trust 2.25
bill of sale 1.00
affidavits 1.00
notary bond and oath 2.00
notary commission 2.00

filing chattel mortgages or conditional sale contracts with or without assignments ..... .50
filing separate assignment of chattel mortgage conditional sale contract ..... .25
for release of each filed chattel mortgage conditional sale contract ..... .25
official bonds 2.50
notice of mining location or proof of labor 1.25
abstractor's bond 2.25
abstractor's continuation certificate 1.25
mechanic's lien 1.75
issuing transcript of judgment ..... .75
recording transcript of judgment 1.25
tax sale certificate or an assignment of the certificate 1.25
redemption of tax sale certificate 1.25
patents 1.75

B. For each instrument recorded, the recording fee for which is not fixed in Subsection A of this section, and when the instrument is not photocopied, the recording fee shall be one dollar seventy-five cents ($1.75) for the first seven hundred words or less and twenty-five cents ($.25) for each additional hundred words or fraction thereof.

History

History: Laws 1939, ch. 179, § 2; 1941 Comp., § 13-110; Laws 1941, ch. 22, § 1; 1953 Comp., § 71-1-10; Laws 1953, ch. 51, § 1; 1955, ch. 213, § 1; 1957, ch. 95, § 1; 1959, ch. 253, § 2; 1977, ch. 179, § 5; 1979, ch. 185, § 1; 1980, ch. 48, § 1; 1985, ch. 122, § 1.

Annotations

Cross references. - For payment of fees before filing or recording, see 14-8-15 NMSA 1978.

Strictly construed. - It is generally recognized that statutes authorizing clerks to collect fees for their services are strictly construed. 1961-62 Op. Att'y Gen. No. 62-33.

County clerk is not under any legal duty to conduct searches at request of private persons of records filed in such office pursuant to the Uniform Commercial Code, Chapter 55 NMSA 1978, and no statutory fee is provided for such service. 1961-62 Op. Att'y Gen. No. 62-20.

This section and 14-8-13 NMSA 1978 relate to specifically enumerated fees which county clerks are legally entitled to charge, but such statutes do not provide for conducting searches of county records upon request of an individual for possible liens or encumbrances under the name of any debtor. 1961-62 Op. Att'y Gen. No. 62-20.

Fee for recording articles of incorporation determined by section. - Section 76-12-8 NMSA 1978 and this section are not in conflict. Section 76-12-8 NMSA 1978 demands that the articles of incorporation be recorded and filed. That section then sets a filing fee, but it is silent upon the fees to be charged for the recording of the articles of incorporation by the county clerk. To determine the correct recording fees one must turn to this section. 1966 Op. Att'y Gen. No. 66-132.

Filing or recording bill of sale not required. - There is no statute which requires the filing or recording of a bill of sale, although such an instrument is entitled to be recorded if in proper form. Garrison Gen. Tire Serv., Inc. v. Montgomery, 75 N.M. 321, 404 P.2d 143 (1965).

Releases of tax warrants issued by unemployment compensation commission under 51-1-36 NMSA 1978 are not subject to filing fee when filed by the commission. 1941-42 Op. Att'y Gen. No. 3715.

Short forms adopted by legislature are nonstandard forms until such time as they have been adopted by the state comptroller (now state auditor) and approved by the attorney general. 1947-48 Op. Att'y Gen. No. 5030.

Where federal form is not same as standard form of oil and gas lease, the charge for the nonstandard form is applicable thereto, plus a charge for each 100 words in excess of the standard form. 1947-48 Op. Att'y Gen. No. 4989.

Where county clerk must do more than fill in blanks in his printed recording book, the deed is not in standard form and the charge for recording nonstandard forms becomes applicable. 1941-42 Op. Att'y Gen. No. 4195.

Multiple releases. - The $1.00 fee for recording the release of a recorded mortgage will not take care of releasing several mortgages even though all the releases are effected by the same mortgagee by means of one release. 1943-44 Op. Att'y Gen. No. 4434.

It was not the intent of the legislature to require a county clerk to record several releases of oil and gas leases for a single fee merely because they are all placed on one form, but the clerk may charge a fee for each lease released. 1953-54 Op. Att'y Gen. No. 5808.

Recording of assignment of mortgage is necessary to protect assignee whose rights in the mortgage would otherwise be void against a subsequent purchaser. 1980 Op. Att'y Gen. No. 80-12.

Recording of assignment of oil or gas lease is necessary under New Mexico law in order to be effective against subsequent assignees or purchasers. 1980 Op. Att'y Gen. No. 80-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws §§ 47, 80.

76 C.J.S. Records § 19 et seq.

14-8-12.1. Temporary provision; validation. (1980)

Statute text

Any instrument received for recording after June 16, 1977 and before the effective date of this act and which would have been validly filed but for the provisions of Laws 1979, Chapter 185, Section 1, Subsection D or Laws 1977, Chapter 179, Section 5, Subsection D shall be conclusively presumed to have been validly filed on the date received for recording.

History

History: Laws 1980, ch. 48, § 2.

Annotations

Cross references. - For effect of filing for record, see 14-9-4 NMSA 1978.

"Effective date of this act". - The phrase "effective date of the act" means February 28, 1980, Chapter 48.

Laws 1979, ch. 185, § 1, Subsection D, and Laws 1977, ch. 179, § 5, Subsection D, both referred to in this section, both amended 14-8-12D NMSA 1978, which was deleted by Laws 1985, ch. 122, § 1.

14-8-12.2. Recording fees; when instrument is photocopied. (1994)

Statute text
A. For each instrument recorded and when the instrument is photocopied, the county clerk shall charge a recording fee of five dollars ($5.00) for the first page and two dollars ($2.00) for each additional page or portion thereof of the same instrument.

B. For each instrument recorded and when the instrument is photocopied, the county clerk may charge, in addition to any other fees authorized by law, including the fee provided in Subsection A of this section, an equipment recording fee. The equipment recording fee shall not exceed three dollars ($3.00) for each instrument recorded, except that in class A counties the equipment recording fee shall not exceed two dollars ($2.00).
C. Amounts collected from the equipment recording fee shall be deposited into a county clerk recording and filing fund, which shall be established by the county. Money in the county clerk recording and filing fund shall be expended only to rent, purchase, lease or lease-purchase equipment associated with recording, filing, maintaining or reproducing documents in the county clerk's office and for staff training on office procedures and equipment.
D. The equipment recording fee and expenditures from the county clerk recording and filing fund shall be determined annually by the county clerk and approved by the board of county commissioners.
History
History: 1978 Comp., § 14-8-12.2, enacted by Laws 1985, ch. 122, § 2; 1987, ch. 288, § 1; 1994, ch. 28, § 1; 1995, ch. 26, § 1.
Annotations
The 1987 amendment, effective June 19, 1987, increased the fees from three dollars and one dollar to five dollars and two dollars respectively, and added "of the same instrument" at the end of the section.
The 1994 amendment, effective May 18, 1994, designated the previously undesignated language as Subsection A, added Subsections B to D and made minor stylistic changes.
The 1995 amendment, effective June 16, 1995, in the second sentence of Subsection C, inserted "rent" and "lease or lease-purchase" and added the language beginning "and for staff" at the end of the sentence.
14-8-12.3. Recording fee; assignments or releases of interest in property. (1987)
Statute text
If an assignment or release assigns or releases an interest in property by reference to:
A. more than one deed, mortgage, lease or other instrument which created the interest; or
B. an instrument which describes more than one deed, mortgage, lease or other instrument as creating the interests in property;
there shall be an additional recording fee of five dollars ($5.00) for each such reference.
History
History: 1978 Comp., § 14-8-12.3, enacted by Laws 1985, ch. 122, § 3; 1987, ch. 288, § 2.
Annotations
The 1987 amendment, effective June 19, 1987, increased the fee from three dollars to five dollars.
"Assignment". - An assignment may be properly defined as an intentional transfer of certain defined property interests from one party to another. 1979 Op. Att'y Gen. No. 79-39.
Fee payable for each recording. - Where a release of a mortgage must be recorded more than once because it refers to more than one parcel, the $3.00 fee must be paid for each time it is recorded. 1980 Op. Att'y Gen. No. 80-12.
14-8-12.4. Recording fee; more than two acknowledgments; more than two hundred words; when number of words is in excess of standard form. (1985)
Statute text
For each instrument recorded having more than two acknowledgments, an additional fee of fifty cents ($.50) shall be charged by the county clerk for each additional acknowledgment; and for

each instrument containing more than two hundred words in the description of the property contained in the instrument, an additional charge shall be made of twenty-five cents ($.25) for each additional one hundred words. This additional charge shall not be made in cases when the instrument is photocopied or when the recordation of the instrument is determined by the number of words contained in the instrument and not by a flat fee fixed in this article. In all cases where standard forms are prescribed and where nonstandard forms of instruments for which a flat fee is fixed are recorded, a charge of twenty-five cents ($.25) shall be made for each additional one hundred words or portion thereof in excess of the length of the standard form prescribed, except when the instrument is photocopied.

History

History: 1978 Comp., § 14-8-12.4, enacted by Laws 1985, ch. 122, § 4.

14-8-13. [Fees; copying records; issuing licenses; acknowledgments.]

Statute text

The county clerk shall be allowed the following fees: for recording letters testamentary or of administration, one dollar [($1.00)]; for filing the bond of the executor or administrator, fifty cents [($.50)]; for order appointing guardian or curator, twelve and one-half cents [($.125)]; for filing and preserving bond of guardian or curator, fifty cents [($.50)]; for every order of publication, twenty-five cents [($.25)]; for every order relating to executors, administrators or guardians, not otherwise provided for, twelve and one-half cents [($.125)]; for copying any order, record or paper, for every one hundred words, ten cents [($.10)]; for entering any judgment and verdict, twelve and one-half cents [($.125)]; for proof of every will and codicil taken by the probate judge, twenty-five cents [($.25)]; for every certificate and seal, twenty-five cents [($.25)]; for issuing every subpoena, twenty-five cents [($.25)]; for administering every oath, three cents [($.03)]; for keeping abstracts of demands, for each defendant, three cents [($.03)]; for certifying the amount, date and classes of any demand, without seal, five cents [($.05)]; for entering every motion or rule, five cents [($.05)]; for swearing and entering a jury, twenty-five cents [($.25)]; for entering every trial, five cents [($.05)]; for a commission to take depositions, twenty-five cents [($.25)]; for every execution, fifty cents [($.50)]; for every continuance of a cause, five cents [($.05)]; for entering an appeal, twelve and one-half cents [($.125)]; for every writ to summon a jury, twelve and one-half cents [($.125)]; for every order to distribute effects among heirs, etc., twelve and one-half cents [($.125)]; for every settlement of executor, administrator or guardian, whether annual or final, twenty-five cents [($.25)]; for every order appointing road overseers, twenty-five cents [($.25)]; for filing and preserving constable's bond, to be paid for by the constable, twenty-five cents [($.25)]; for all services in filing, taking and safekeeping the collectors' bonds for territorial taxes, to be paid by the territory, one dollar [($1.00)]; for like services for collectors' bonds for county taxes, to be paid by the territory and county, each for its own, for every one hundred words, ten cents [($.10)]; for issuing any license, to be paid for by the applicant, fifty cents [($.50)]; for taking, filing and safekeeping of every other bond not otherwise provided for, fifty cents [($.50)]; for issuing each writ, and receiving, filing and docketing the return, fifty cents [($.50)]; for taking every acknowledgment to a deed or writing, twenty-five cents [($.25.)].

History

History: Kearny Code, Fees, § 2; C.L. 1865, ch. 46, § 2; C.L. 1884, § 1251; C.L. 1897, § 1768; Code 1915, § 1240; C.S. 1929, § 33-4306; 1941 Comp., § 13-111; 1953 Comp., § 71-1-11.

Annotations

Cross references. - For payment of fees before filing or recording, see 14-8-15 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

Compiler's notes. - Many of the provisions in this section appear to be superseded by other statutes. See 14-8-12 and 34-7-14 to 34-7-16 NMSA 1978.

The provision applicable to certificate and seal conflicts with 14-8-10 NMSA 1978. Both sections were reenacted in the 1865 Code and became effective the same day. See note below from 1967 Op. Att'y Gen. No. 67-53.

Prior to statehood, this section referred to the probate clerk who was also ex-officio recorder. See compiler's note to 14-8-1 NMSA 1978.

Section held determinative of proper charges. - Where probate clerk died in 1906 while in process of making transcripts of property records of old county for use of new county, the compensation to which his estate was entitled was fixed by this section, and not by the subsequently enacted Laws 1907, ch. 28 (4-33-16 NMSA 1978), which imposed additional duties to be done which were not done by the decedent. Summers v. Board of County Comm'rs, 15 N.M. 376, 110 P. 509 (1910).

Not controlling as to fee for certificate and seal. - Section 14-8-10 NMSA 1978 is controlling over this section, and the fee which it sets out for each certificate and seal to documents recorded is the proper fee to be charged by county clerks. 1967 Op. Att'y Gen. No. 67-53.

County clerk is not under any legal duty to conduct searches at request of private persons of records filed in such office pursuant to the Uniform Commercial Code, Chapter 55 NMSA 1978, and no statutory fee is provided for such service. 1961-62 Op. Att'y Gen. No. 62-20.

Section 14-8-12 NMSA 1978 and this section relate to specifically enumerated fees which county clerks are legally entitled to charge, but such statutes do not provide for conducting searches of county records upon request of an individual for possible liens or encumbrances under the name of any debtor. 1961-62 Op. Att'y Gen. No. 62-20.

No charge for comparing registration lists. - No county clerk has any right to charge for comparing registration lists during his office hours. 1935-36 Op. Att'y Gen. 35.

14-8-14. [Searching records; fees.]

Statute text

County clerks shall be entitled to receive as fees for searching their records and certifying the result, five cents [($.05)] for each year for each name searched against for deeds, and the same for mortgages, and twenty-five cents [($.25)] for a search for judgments or for mechanic's lien.

History

History: Laws 1886-1887, ch. 10, § 6; C.L. 1897, § 3958; Code 1915, § 4785; C.S. 1929, § 118-107; 1941 Comp., § 13-112; 1953 Comp., § 71-1-12.

Annotations

Cross references. - For delivery of certified copies by county clerk, see 4-40-5 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

Compiler's notes. - The 1915 Code compilers substituted the words "county clerks" for the words "probate clerks." See compiler's note to 14-8-1 NMSA 1978.

Certificates of nonencumbrance as to state lands. - For each certificate of nonencumbrance, required by commissioner of public lands, as to state lands, the county clerk was entitled to a fee of 25 cents, and five cents for each year for which search was made. 1915-16 Op. Att'y Gen. 49.

14-8-15. [Payment of fees.] (1909)

Statute text

No county clerk of any county shall receive any instrument of writing for filing or record unless his legal fees for such filing and recording shall have first been paid.

History

History: Laws 1901, ch. 62, § 19; 1909, ch. 49, § 1; Code 1915, § 4797; C.S. 1929, § 118-121; 1941 Comp., § 13-113; 1953 Comp., § 71-1-13.

Annotations

Cross references. - For deduction from salary for failure to collect fees to be paid in advance, see 4-44-29 NMSA 1978.

Compiler's notes. - As originally enacted, this section read: "No clerk shall be compelled to receive any instrument of writing for filing or record until his legal fees for such filing and record have first been paid." Under the 1909 amendment, the first words of the section were "No probate clerk and ex-officio recorder of any county," but these were changed by the compilers of the 1915 Code. See compiler's note to 14-8-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws § 80. 76 C.J.S. Records § 19 et seq.

14-8-16. Filings of legal descriptions and plats of real property authorized; recording; fees. (1994)

Statute text

A. Any person owning real property that is subject to property taxation under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978] may file for record in the office of the county clerk of the county where the real property is located a legal description or a plat of the real property. To be eligible for recording, the legal description or plat shall be certified by a professional surveyor licensed in the state.

B. The United States, the state or its political subdivisions and any agency, department or instrumentality of the United States, the state or its political subdivisions may file for record in the office of the county clerk of the county where the real property is located a legal description or a plat of real property. To be eligible for recording, the legal description or plat shall be certified by a professional surveyor licensed in the state and shall show the governmental agency, department or political subdivision under whose supervision and direction the description or plat was prepared.

C. The county clerk shall number descriptions filed under this section consecutively and shall number plats filed under this section consecutively. Immediately upon receiving a description or plat for filing, the county clerk shall note on the instrument the filing number and the time of filing and shall make proper entries in his reception book and in his index to general real estate records.

D. The county clerk shall record descriptions and plats filed under this section in the same manner as other similar instruments affecting real property are recorded. The county clerk shall charge a fee of two dollars fifty cents ($2.50) for filing and recording each description or plat. If the county clerk uses a post binder with transparent protective pages for the protection of the plats, he shall charge a fee of five dollars ($5.00) for filing and recording each unit of a plat that is eighteen inches by twenty-four inches or part thereof.

E. For filing legal descriptions or plats of real property, the county clerk may charge, in addition to any other fees authorized by law, including the fee provided for in Subsection D of this section, an equipment recording fee. The equipment recording fee shall not exceed three dollars ($3.00) for each instrument or plat recorded, except that in class A counties the equipment recording fee shall not exceed two dollars ($2.00).

F. Amounts collected from the equipment recording fee shall be deposited into a county clerk recording and filing fund, which shall be established by the county. Money in the county clerk recording and filing fund shall be expended only to rent, purchase, lease or lease-purchase equipment associated with recording, filing, maintaining or reproducing documents in the county clerk's office, and for staff training on office procedures and equipment.

G. The equipment recording fee and expenditures from the county clerk recording and filing fund shall be determined annually by the county clerk and approved by the board of county commissioners.

H. All plats to be recorded under this section shall be filed in duplicate with the county clerk. One copy shall be recorded by the county clerk, and one copy shall be delivered by the county clerk to the county assessor.

History

History: 1953 Comp., § 71-1-14, enacted by Laws 1973, ch. 258, § 150; 1989, ch. 106, § 1; 1994, ch. 28, § 2; 1995, ch. 26, § 2.

Annotations

The 1989 amendment, effective June 16, 1989, substituted "certified by a professional surveyor licensed in the state" for "certified as being correct by a professional engineer or land surveyor licensed in the state and the certification must be properly acknowledged" in the second sentence of Subsections A and B.

The 1994 amendment, effective May 18, 1994, substituted "shall" for "must" throughout the second sentences in Subsections A and B, inserted Subsections E to G, and redesignated former Subsection E as Subsection H.

The 1995 amendment, effective June 16, 1995, in the second sentence of Subsection F, inserted "rent" and "lease or lease-purchase" and added the language beginning "and for staff" at the end of the sentence.

ARTICLE 9

RECORDS AFFECTING REAL PROPERTY

Section

14-9-1. Instruments affecting real estate; recording.
14-9-2. Constructive notice of contents.
14-9-3. Unrecorded instruments; effect.
14-9-4. Filing for record; effect; reception book.
14-9-5. Repealed.
14-9-6. Wills not affected.
14-9-7. Conveyances to state and public corporations; recording; filing in lieu of recording; maximum fee.
14-9-8. Lost patent; recording certified copy; effect.
14-9-9. Federal court judgment; county for filing; lien against realty.

14-9-1. Instruments affecting real estate; recording. (1991)

Statute text

All deeds, mortgages, leases of an initial term plus option terms in excess of five years, or memoranda of the material terms of such leases, assignments or amendments to such leases, leasehold mortgages, United States patents and other writings affecting the title to real estate shall be recorded in the office of the county clerk of the county or counties in which the real estate affected thereby is situated. Leases of any term or memoranda of the material terms thereof, assignments or amendments thereto may be recorded in the manner provided in this section. As used in this section, "memoranda of the material terms of a lease" means a memorandum containing the names and mailing addresses of all lessors, lessees or assignees; if known, a description of the real property subject to the lease; and the terms of the lease, including the initial term and the term or terms of all renewal options, if any.

History

History: Laws 1886-1887, ch. 10, § 1; C.L. 1897, § 3953; Code 1915, § 4786; C.S. 1929, § 118-108; 1941 Comp., § 13-201; 1953 Comp., § 71-2-1; Laws 1991, ch. 234, § 1.

Annotations

Cross references. - For filing municipal assessment liens, see 3-36-1 NMSA 1978.

For notice of possession of public land of United States, see 19-3-1 NMSA 1978.

For townsite patents, see 19-4-1 to 19-4-3 NMSA 1978.

For recording assignment of mortgages, see 48-7-2 NMSA 1978.

For record of survey requirements, see 61-23-28.2 NMSA 1978.

For filing and recording of changes of ownership in water rights, see 72-1-2.1.

The 1991 amendment, effective April 4, 1991, added the catchline; inserted "leases of an initial term plus option terms in excess of five years, or memoranda of the material terms of such leases,

assignments or amendments to such leases, leasehold mortgages" in the first sentence; and added the second sentence.

Validating clauses. - Laws 1991, ch. 234, § 4 defines "leasehold" to mean an estate in real estate or real property held under a lease and validates as correct and legally effective filings or recordings to give constructive notice any actions taken prior to April 4, 1991 to file or record leases, memoranda, assignments or amendments thereto, leasehold mortgages or other writings affecting leaseholds or any interests in leaseholds in accordance with legal requirements for the filing or recording of writings affecting the title to real estate or real property.

Purpose. - Sections 14-9-1 and 14-9-3 NMSA 1978 are not intended to protect creditors of the owners of property, but to impart information to those dealing with the property respecting its transfer and encumbrances. First Nat'l Bank v. Haverkampf, 16 N.M. 497, 121 P. 31 (1911), aff'd, 235 U.S. 689, 35 S. Ct. 204, 59 L. Ed. 426 (1914); Ilfeld v. de Baca, 13 N.M. 32, 79 P. 723 (1905), rev'd, 14 N.M. 65, 89 P. 244 (1907) (decided prior to 1923 amendment of 14-9-3 NMSA 1978).

Function of recording statutes. - In loans of money secured by property, recording statutes provide for notice to other potential lenders and indicate the upper limits of financing. New Mexico Bank & Trust Co. v. Lucas Bros. 92 N.M. 2, 582 P.2d 379 (1978).

Because potential lenders rely upon recorded mortgages to determine whether to make other loans, there must be certainty as to the extent to which a mortgage encumbers property. New Mexico Bank & Trust Co. v. Lucas Bros. 92 N.M. 2, 582 P.2d 379 (1978) (decided on facts which occurred prior to passage of 48-7-9 NMSA 1978).

No time requirement for recording instruments. - There is no requirement that an instrument be recorded within a particular period of time; the order in which deeds appear on the record is not important in a notice jurisdiction. Angle v. Slayton, 102 N.M. 521, 697 P.2d 940 (1985).

Provisions applicable to Mexican land grants. - This article applies to Mexican land grants. Yeast v. Pru, 292 F. 598 (D.N.M. 1923).

Provisions applicable to mortgages. - Mortgages affecting real estate are governed by this section. Shafer v. McCulloh, 38 N.M. 179, 29 P.2d 486 (1934).

Provisions not applicable to assignments of mortgages. - Sections 14-9-1 to 14-9-3 NMSA 1978 do not require the recordation of an assignment of a mortgage securing the payment of a negotiable promissory note, to protect the holder from payments made by the mortgagor, or subsequent purchaser, to the original mortgagee. Hayden v. Speakman, 20 N.M. 513, 150 P. 292 (1914).

The assignment of an unrecorded land contract, which assignment was neither acknowledged nor proven in any form to entitle it to be recorded, is not such an instrument as this section requires to be placed of record. Early Times Distillery Co. v. Zeiger, 11 N.M. 221, 67 P. 734 (1902); but see McBee v. O'Connell, 16 N.M. 469, 120 P. 734 (1911).

Executory contracts entitled to record. - An executory contract of sale of real estate, when duly executed and acknowledged, is a writing entitled to record. McBee v. O'Connell, 16 N.M. 469, 120 P. 734 (1911).

Applicability to revocable trusts. - The protection afforded by the New Mexico recording acts is inapplicable to a revocable trust that does not affect the title to the original property. Withers v. Board of County Comm'rs, 96 N.M. 71, 628 P.2d 316 (Ct. App. 1981).

Seller under real estate contract holds perfected interest in property by virtue of recording his interest pursuant to this article. Connelly v. Wertz, 115 N.M. 803, 858 P.2d 1282 (Ct. App.), overruled on other grounds, Southwest Land Inv., Inc. v. Hubbart, 116 N.M. 742, 867 P.2d 412 (1993).

Ordinary care exercised by purchaser. - Purchaser exercised the ordinary care expected of a purchaser of a federal oil and gas lease where careful investigation of the records showed record title in the offeror, the price was low, but not unreasonably so in view of the short remaining lease term and the highly speculative nature of the investment, and purchaser was a bona fide

purchaser, without actual or implied knowledge of any facts which would have put him on notice of an unrecorded conveyance. O'Kane v. Walker, 561 F.2d 207 (10th Cir. 1977)See also catchline, "Test whether one had implied knowledge," in notes to 14-9-3 NMSA 1978.

Verbal consent to assignment. - A party's verbal consent to an assignment of an interest in a real estate contract is not a substitute for perfection of that interest by recording. Mazer v. Jones, 184 Bankr. 377 (Bankr. D.N.M. 1995).

Law reviews. - For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M. L. Rev. 203 (1981).

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws §§ 1, 54 to 68, 73.

Covenant or easement affecting another parcel owned by grantor, record of deed or contract for conveyance of one parcel with, as constructive notice to subsequent purchaser or encumbrance of second parcel, 16 A.L.R. 1013.

Rights as between purchaser of timber under recorded instrument and subsequent vendee of land, 18 A.L.R. 1162.

Effect of failure to record executory contracts for sale of real estate, 26 A.L.R. 1552.

Grantee or mortgagee by quitclaim deed or mortgage in quitclaim form as within protection of recording laws, 59 A.L.R. 632.

Effect of actual notice of unrecorded instrument to purchaser from one without notice, 63 A.L.R. 1367.

Recovery of tax or assessment paid to procure recording of deed, 64 A.L.R. 117, 84 A.L.R. 294.

Right of one claiming through heir, devisee, or personal representative to protection against unrecorded conveyance or mortgagor by ancestor or testator, 65 A.L.R. 360.

Necessity of recording tax deed to protect title as against interest derived from former owner, 65 A.L.R. 1015.

Alteration in deed or mortgage with consent of parties thereto after acknowledgment or attestation as affecting notice from record thereof, 67 A.L.R. 366.

Right to compensation for improvements as affected by constructive notice by record of true title or interest, 68 A.L.R. 288, 82 A.L.R. 921.

Subrogation to prior lien of one who advances money to discharge it and takes new mortgage as affected by recording of intervening lien, 70 A.L.R. 1407.

Assignment of future rents as within recording laws, 75 A.L.R. 270.

Necessity of recording extension of mortgage or deed of trust by subsequent agreement to cover additional indebtedness, 76 A.L.R. 589.

Registration as notice to creditor of fraudulent conveyance, which will start running of limitation, 76 A.L.R. 869, 100 A.L.R.2d 1094.

Bankruptcy as invalidating, as against all creditors, instrument executed by bankrupt which under state law is valid as to creditors becoming such after record but invalid as to creditors prior to record, 76 A.L.R. 1200.

Title lost by failure to record as cloud on title, 78 A.L.R. 116.

Rights of vendee under executory land contract not recorded as against subsequent deed or mortgage by vendor, 87 A.L.R. 1515.

Right of seller of fixtures retaining title thereto, or a lien thereon, as against prior mortgagee of realty as affected by record of the mortgage, 88 A.L.R. 1335, 111 A.L.R. 362, 141 A.L.R. 1283.

Recording laws as applied to assignment of mortgages on real estate, 89 A.L.R. 171, 104 A.L.R. 1301.

Right of executor or administrator of insolvent estate to take advantage of failure to record or file or refile conveyance or mortgage executed by his decedent, 91 A.L.R. 299.

Who may take advantage of failure to renew real estate mortgage as provided by statute, 97 A.L.R. 739.

Nonpayment of all or part of consideration at time of receiving notice, actual or constructive, of a prior instrument, as affecting right of one otherwise protected by recording law against prior unrecorded deed or mortgage, 109 A.L.R. 163.
Validity of statute requiring recordation of tax certificate within designated time, 111 A.L.R. 258.
Recording of life tenant's deed purporting to convey fee as rendering vendee's possession adverse to remainderman during life estate, 112 A.L.R. 1047.
Power of attorney under which deed or mortgage is executed, as instrument entitled to record, 114 A.L.R. 660.
Fraudulent misrepresentation or concealment, public records as constructive notice of, so as to start running of statute of limitations against action for fraud, 152 A.L.R. 461.
Restrictions in lessor's record title as to use of premises as affecting rights between lessee and lessor, 165 A.L.R. 1178.
Purchase-money mortgage as within provision of statute defeating or postponing lien of unrecorded or unfiled mortgage, 168 A.L.R. 1164.
Statutes precluding enforcement of mortgage unless holder complies with conditions respecting recording of amount remaining unpaid, 174 A.L.R. 652.
Record of instrument which comprises or includes an interest or right that is not a proper subject of record, 3 A.L.R.2d 577.
Omission from deed of restrictive covenant imposed by general plan of subdivision, 4 A.L.R.2d 1364.
Agreement between real estate owners restricting use of property as within contemplation of recording laws, 4 A.L.R.2d 1419.
Validity and construction of regulations as to subdivision maps or plats, 11 A.L.R.2d 524.
Relative rights to real property as between purchasers from or through decedent's heirs and devisees under will subsequently sought to be established, 22 A.L.R.2d 1107.
Personal covenant in recorded deed as enforceable against grantee's lessee or successor, 23 A.L.R.2d 520.
Effect of recording instrument on determination of its character as a will or deed, 31 A.L.R.2d 532.
Adverse possession by one claiming under or through deed by cotenant as affected by record of deed, 32 A.L.R.2d 1214.
Necessity that mortgage covering oil and gas lease be recorded as real estate mortgage, and/or filed or recorded as chattel mortgage, 34 A.L.R.2d 902.
What acts, claims, circumstances, instruments, color of title, judgment, or thing of record will ground adverse possession in a life tenant as against remaindermen or reversioners, 58 A.L.R.2d 299.
Record of instrument without sufficient acknowledgment as notice, 59 A.L.R.2d 1299.
Solid mineral royalty as real or personal property, 68 A.L.R.2d 728.
Priority as between mechanic's lien and purchase-money mortgage as affected by recording, 73 A.L.R.2d 1407.
Record of deed to cotenant as notice to other cotenants of adverse character of grantee's possession, 82 A.L.R.2d 5.
Trustee's duty to record mortgage securing bondholders, 90 A.L.R.2d 501.
Construction and effect of "marketable record title" statutes, 31 A.L.R.4th 11.
Oil and gas royalty as real or personal property, 56 A.L.R.4th 539.
26 C.J.S. Deeds § 73; 59 C.J.S. Mortgages § 201.
14-9-2. [Constructive notice of contents.]
Statute text
Such records shall be notice to all the world of the existence and contents of the instruments so recorded from the time of recording.
History

History: Laws 1886-1887, ch. 10, § 2; C.L. 1897, § 3954; Code 1915, § 4787; C.S. 1929, § 118-109; 1941 Comp., § 13-202; 1953 Comp., § 71-2-2.

Annotations

Cross references. - For recording assignment of royalties, see 70-1-1, 70-1-2 NMSA 1978.

No time requirement for recording instruments. - There is no requirement that an instrument be recorded within a particular period of time; the order in which deeds appear on the record is not important in a notice jurisdiction. Angle v. Slayton, 102 N.M. 521, 697 P.2d 940 (1985).

"All the world" means those bound to search record. - "All the world" has been limited to mean those persons who are bound to search the record, and it is to such persons only that the law imputes constructive notice; subsequent purchasers are charged with such notice. Angle v. Slayton, 102 N.M. 521, 697 P.2d 940 (1985).

Construed in pari materia. - This section must be considered with 14-9-3 NMSA 1978, with which it is in pari materia. Romero v. Sanchez, 83 N.M. 358, 492 P.2d 140 (1971).

Necessity of notice. - To bind a purchaser of a servient estate by a servitude charged thereon, he must have notice thereof, either actual or constructive, as in case of other encumbrances upon land. Southern Union Gas Co. v. Cantrell, 56 N.M. 184, 241 P.2d 1209 (1952).

Service by publication against "unknown claimants of interest" in quiet title action does not affect the title of a person whose deed to that property is on record in the deed records of the county in which the real estate in question is located. Houchen v. Hubbell, 80 N.M. 764, 461 P.2d 413 (1969).

Scope of notice. - Where information of a specific claim or right is given to a person or to the world by recordation of an instrument manifesting such claim or right, the information contained therein is operative only in respect to the particular facts communicated thereby, and it will not serve to put the parties charged with such notice upon inquiry as to any other or different right. Zumwalt v. Goodwin, 133 F.2d 984 (10th Cir. 1943).

Constructive notice to laborers. - Claimants had constructive notice that title to the real estate upon which they allegedly performed labor had been previously conveyed to the grantee, where two deeds given to the grantee were both filed and recorded. Garcia v. Garcia, 105 N.M. 472, 734 P.2d 250 (Ct. App. 1987).

Fraud. - The recording of a deed must be accompanied by other circumstances sufficient to put a reasonable person upon inquiry in order for the recording to act as constructive notice of fraud. Romero v. Sanchez, 83 N.M. 358, 492 P.2d 140 (1971).

Record of instrument is constructive notice to subsequent purchasers and encumbrancers only and does not affect prior parties. Romero v. Sanchez, 83 N.M. 358, 492 P.2d 140 (1971).

Person who files and records leases long after others sued to foreclose vendor's lien for balance of the purchase price and filed lis pendens notice in same county clerk's office is deemed to have notice that his interest was attacked in the action, and his interest is inferior to the lien of the vendor. Logan v. Emro Chem. Corp. 48 N.M. 368, 151 P.2d 329 (1944).

Date of recording tax sale certificate does not affect period of redemption. Hiltscher v. Jones, 23 N.M. 674, 170 P. 884 (1917), appeal dismissed, 251 U.S. 545, 40 S. Ct. 218, 64 L. Ed. 407 (1920).

Effect of recording agreement. - Purchaser's written agreement to execute a second mortgage on property when buildings were constructed on the land, or within one year from date of sale, when filed for record, constituted constructive notice to all the world of its existence and contents. Zumwalt v. Goodwin, 133 F.2d 984 (10th Cir. 1943).

An agreement to give second mortgage which was recorded cannot be treated as notice of a vendor's lien. Zumwalt v. Goodwin, 133 F.2d 984 (10th Cir. 1943).

Vendor's recordation of agreement with buyer of vacant land that when buildings were erected or in one year after date of sale buyer was to give vendor a second mortgage on the property did not give constructive notice to a surety on the buyer's note of the vendor's intention to reserve a

vendor's lien, and a mortgage executed to the surety to secure his signature to a renewal note had priority over the vendor's lien. Zumwalt v. Goodwin, 133 F.2d 984 (10th Cir. 1943).
Recorded deed of trust was superior to the unrecorded interest of an investor who admitted he had actual notice of the recorded interest, and the existing priorities were not affected by the appointment of a receiver. Kuntsman v. Guaranteed Equities, Inc. 105 N.M. 49, 728 P.2d 459 (1986).
Recording of short form memorandum of agreement gave notice that defendant was claiming some right to real estate under this section. Bingaman v. Cook, 79 N.M. 627, 447 P.2d 507 (1968).
Reference in contract to improvement agreement. - An unrecorded improvement agreement, referred to in a recorded contract of sale, is in the chain of title. Camino Real Enters., Inc. v. Ortega, 107 N.M. 387, 758 P.2d 801 (1988).
Recorded chattel mortgage of crops to be raised is constructive notice of the existence and contents of the mortgage, even though the land is generally but not particularly described, where description could be aided by reasonable inquiry. Security State Bank v. Clovis Mill & Elevator Co. 41 N.M. 341, 68 P.2d 918 (1937).
Who bound to search. - Those who, by the terms of the recording laws, are charged with constructive notice of the record of an instrument affecting land are, therefore, those who are bound to search the records for that particular instrument. Romero v. Sanchez, 83 N.M. 358, 492 P.2d 140 (1971).
Reliance on record. - An investigator may rely upon the truth of recitals contained in the record when they are specific. Smith & Ricker v. Hill Bros. 17 N.M. 415, 134 P. 243 (1913).
Innocent purchaser for value. - Plaintiff was an innocent purchaser for value, under 14-9-1 to 14-9-3 NMSA 1978, of oil and gas lease interests since the records at the federal land office did not constitute constructive notice or prior assignment which plaintiff had no knowledge of, and the assignment was not recorded in the appropriate county clerk's office, as required by 70-1-1 and 70-1-2 NMSA 1978. Bolack v. Underwood, 340 F.2d 816 (10th Cir. 1965).
Estoppel. - Where defendant and her husband had entered into a property settlement agreement which provided that after-acquired property would belong exclusively to the acquiring party and such recorded agreement was later repudiated by defendant in a recorded affidavit, but later ratified and confirmed in another recorded affidavit, plaintiffs, who had purchased property from husband, were innocent purchasers for value and entitled to rely on the record, and defendant was estopped by her conduct from asserting the invalidity of the property settlement. Allison v. Curtis, 62 N.M. 387, 310 P.2d 1042 (1957).
Jury question. - If, considering all the surrounding facts and circumstances, a reasonably prudent person in the exercise of ordinary diligence would have made inquiry as to the state of the record, he is chargeable with knowledge that such inquiry would have revealed from the time that it ought to have been made. This raises a factual issue for resolution by the trier of the facts. Romero v. Sanchez, 83 N.M. 358, 492 P.2d 140 (1971).
Am. Jur. 2d, A.L.R. and C.J.S. references. - 28 Am. Jur. 2d Estoppel and Waiver §§ 90, 96; 66 Am. Jur. 2d Records and Recording Laws §§ 88, 102 to 155; 77 Am. Jur. 2d Vendor and Purchaser §§ 663 to 669.
14-9-3. Unrecorded instruments; effect. (1990)
Statute text
No deed, mortgage or other instrument in writing not recorded in accordance with Section 14-9-1 NMSA 1978 shall affect the title or rights to, in any real estate, of any purchaser, mortgagee in good faith or judgment lien creditor, without knowledge of the existence of such unrecorded instruments. Possession alone based on an unrecorded executory real estate contract shall not be construed against any subsequent purchaser, mortgagee in good faith or judgment lien creditor either to impute knowledge of or to impose the duty to inquire about the possession or the provisions of the instruments.

History

History: Laws 1886-1887, ch. 10, § 3; C.L. 1897, § 3955; Code 1915, § 4788; Laws 1923, ch. 11, § 1; C.S. 1929, § 118-110; 1941 Comp., § 13-203; 1953 Comp., § 71-2-3; Laws 1990, ch. 72, § 1.

Annotations

The 1990 amendment, effective May 16, 1990, substituted "Section 14-9-1 NMSA 1978" for "Section 4786" in the first sentence and added the second sentence.

Purpose. - Sections 14-9-1 and 14-9-3 NMSA 1978 are not intended to protect creditors of the owners of property, but to impart information to those dealing with the property respecting its transfer and encumbrances. First Nat'l Bank v. Haverkampf, 16 N.M. 497, 121 P. 31 (1911), aff'd, 235 U.S. 689, 35 S. Ct. 204, 59 L. Ed. 426 (1914); Ilfeld v. de Baca, 13 N.M. 32, 79 P. 723 (1905), rev'd, 14 N.M. 65, 89 P. 244 (1907) (decided prior to 1923 amendment of 14-9-3 NMSA 1978).

Prior to the amendment of 1923, the recording laws were for the protection of purchasers and mortgagees only. Wells v. Dice, 33 N.M. 647, 275 P. 90 (1929).

An unrecorded conveyance protected only subsequent purchasers and mortgagees in good faith and without notice, but did not protect attachment creditors. Chetham-Strode v. Blake, 19 N.M. 335, 142 P. 1130 (1914).

The object of the recording statute is to prevent injustice by protecting those who, without knowledge of infirmities in the title, invest money in property or mortgage loans and those who have acquired judgment liens without such knowledge. Arias v. Springer, 42 N.M. 350, 78 P.2d 153 (1938) .

Applicability. - This section is applicable only in situations where two deeds purport to convey the same property. Grammer v. New Mexico Credit Corp. 62 N.M. 243, 308 P.2d 573 (1957).

Where land conveyed by unrecorded deed was within larger tract subsequently conveyed by grantor to another and was not specifically excepted from operation of later deed, both deeds purported to convey same land and this section was applicable, and later grantee did not have constructive notice of unrecorded deed. Grammer v. New Mexico Credit Corp. 62 N.M. 243, 308 P.2d 573 (1957).

In order to avail himself of the protection of this section, a party must be a purchaser, mortgagee in good faith, or a judgment lien creditor of the land in question. Withers v. Board of County Comm'rs, 96 N.M. 71, 628 P.2d 316 (Ct. App. 1981).

This section applies to tax deeds. Cano v. Lovato, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

Inapplicability to tax liens. - A tax lien is not within the class of written instruments governed by this section. Cano v. Lovato, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

Construed in pari materia. - Section 14-9-2 NMSA 1978 must be considered with this section with which it is in pari materia. Romero v. Sanchez, 83 N.M. 358, 492 P.2d 140 (1971).

Applicability to revocable trusts. - The protection afforded by the New Mexico recording acts is inapplicable to a revocable trust that does not affect the title to the original property. Withers v. Board of County Comm'rs, 96 N.M. 71, 628 P.2d 316 (Ct. App. 1981).

Word "purchaser" has two well defined meanings, the common and popular meaning being that he is one who obtains title to real estate in consideration of the payment of money or its equivalent, and the other being technical and including all persons who acquire real estate otherwise than by descent, which includes acquisition by devise, and the word is used in the recording statute in its popular sense. Arias v. Springer, 42 N.M. 350, 78 P.2d 153 (1938); Withers v. Board of County Comm'rs, 96 N.M. 71, 628 P.2d 316 (Ct. App. 1981).

Because persons who have not given consideration in exchange for the title to property cannot invoke the recording statute, summary judgment in an action involving defendant's claim of title to property pursuant to the recording statute was in error where plaintiff raised the factual issue of whether the defendant acquired the property by gift. Valencia v. Lundgren, 2000-NMCA-045, 129 N.M. 57, 1 P.3d 975.

Where grantor delivered deed to third party with instructions to retain the same in her possession until grantor died, and then to deliver it to grantee, and imposed no conditions, retained no right to recall the deed and exercised no control over it thereafter, grantor's residuary legatee and devisee was not a purchaser within meaning of recording statute, and could not claim title as against the deed, though unrecorded. Arias v. Springer, 42 N.M. 350, 78 P.2d 153 (1938).
"Knowledge" does not necessarily mean "actual knowledge," but means knowledge of such circumstances as would ordinarily lead to a knowledge of the actual facts. In its broadest interpretation, it means constructive notice. Recitals in a quitclaim deed of existence of agreements, rights of redemption and mortgages charged the grantee with notice of an unrecorded warranty deed. Taylor v. Hanchett Oil Co. 37 N.M. 606, 27 P.2d 59 (1933).
Test whether one had implied knowledge is whether he exercised the ordinary care of a purchaser of a federal oil and gas lease. O'Kane v. Walker, 561 F.2d 207 (10th Cir. 1977).
Purchaser exercised the ordinary care expected of a purchaser of a federal oil and gas lease where careful investigation of the records showed record title in the offeror, the price was low, but not unreasonably so in view of the short remaining lease term and the highly speculative nature of the investment, and purchaser was a bona fide purchaser, without actual or implied knowledge of any facts which would have put him on notice of an unrecorded conveyance. O'Kane v. Walker, 561 F.2d 207 (10th Cir. 1977).
Intermittent or occasional use of land is insufficient to operate as notice to a purchaser. Ortiz v. Jacquez, 77 N.M. 155, 420 P.2d 305 (1966).
Constructive notice. - A lien on real estate resulting from a recorded transcript of judgment does not have priority over the interest of purchasers under an earlier executed but unrecorded contract, where the lienholder has constructive notice of the purchasers' interest through the purchasers' actual possession of the property. Citizens Bank v. Hodges, 107 N.M. 329, 757 P.2d 799 (Ct. App. 1988).
Actual notice. - Where a mortgagor entered into an executory contract to sell his land nearly six years prior to his execution of the mortgage, so that the only interest he still owned in such real estate involved a possibility of a reverter to him in the event of a default in payment of the real estate contract, the mortgagee's bank had actual notice of the facts and did not assign to the bank any interest in the unpaid balance of the real estate contract, the trial court properly concluded, as a matter of law, that the only lien the bank acquired was on the possible reversionary interest, and accordingly, since the mortgage did not "attach to" the real property, the trial court correctly concluded that the bank was not entitled to foreclose the mortgage. First Nat'l Bank v. Luce, 87 N.M. 94, 529 P.2d 760 (1974).
Any conflict between 40-3-13 NMSA 1978 and this section should be resolved in favor of this section which protects the rights of innocent purchasers for value without notice of unrecorded instruments. Jeffers v. Martinez, 93 N.M. 508, 601 P.2d 1204 (1979).
Reformation of deed not to affect rights of innocent purchaser. - Because there was no evidence that a judgment lienholder had any notice of a claimed mistake in a deed until she attempted to execute her judgment, the court was correct in ruling that any reformation of the deed was not effective against her rights. Ruybalid v. Segura, 107 N.M. 660, 763 P.2d 369 (Ct. App. 1988).
Equitable principles require that innocent purchaser should prevail over one who negligently fails to record a deed upon which he seeks to rely. Jeffers v. Martinez, 93 N.M. 508, 601 P.2d 1204 (1979).
Section does not require deeds to be acknowledged. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).
Acknowledgment is not essential to validity of deed of conveyance as between its parties. Kitchen v. Canavan, 36 N.M. 273, 13 P.2d 877 (1932).
Acknowledgment of assignment on back of executory contract for sale of real estate, to which the assignment refers for particular description, is not an acknowledgment of the contract, and although the contract was copied into the record, that did not make it of record, nor constructive

notice to a subsequent purchaser having no actual knowledge of it. McBee v. O'Connell, 16 N.M. 469, 120 P. 734 (1911).

Verbal consent to assignment. - A party's verbal consent to an assignment of an interest in a real estate contract is not a substitute for perfection of that interest by recording. Mazer v. Jones, 184 Bankr. 377 (Bankr. D.N.M. 1995).

Priority of recorded judgment lien. - Although it has been held that the 1923 amendment of this section did not affect the priority of an unrecorded mortgage over a recorded judgment lien, yet as between them taking effect simultaneously, since the law of 1923 took effect, the recorded judgment lien has priority. Fulghum v. Madrid, 33 N.M. 303, 265 P. 454 (1927).

Rights of a judgment lien creditor were held fixed by condition of affairs as they existed at time of inception of his lien. They were not affected by a subsequent conveyance which debtor could not have been coerced by courts to make. Sylvanus v. Pruett, 36 N.M. 112, 9 P.2d 142 (1932).

Judgment lien was held superior to alleged mortgage lien claimed under altered warranty deed by party whose name had been inserted as grantee therein. Scheer v. Stolz, 41 N.M. 585, 72 P.2d 606 (1937).

Failure to record mortgage promptly does not constitute a fraud in law as to subsequent creditors. First Nat'l Bank v. Haverkampf, 16 N.M. 497, 121 P. 31 (1911), aff'd, 235 U.S. 689, 35 S. Ct. 204, 59 L. Ed. 426 (1914).

Unrecorded chattel mortgage. - A chattel mortgage is good between the parties and against purchasers with notice although unrecorded. Kitchen v. Schuster, 14 N.M. 164, 89 P. 261 (1907).

Effect of failure to record. - A deed of land, though not recorded, is good between grantor and grantee, and divests the title of the former, so that it does not pass to a subsequent grantee, or mortgagee, who takes only the estate which belongs to the grantor at the time. Ames v. Robert, 17 N.M. 609, 131 P. 994 (1913).

In suit to quiet title, where plaintiff and defendant both derive their titles from the same grantor, and defendant purchased in good faith, for value and had no knowledge of the outstanding unrecorded deed of his grantor to plaintiff's grantor, defendant had the better title, notwithstanding the fact that he took a quitclaim deed. Mabie-Lowrey Hdwe. Co. v. Ross, 26 N.M. 51, 189 P. 42 (1920).

Prescriptive title cannot be obtained by adverse user based on a written, but unrecorded, grant. Southern Union Gas Co. v. Cantrell, 56 N.M. 184, 241 P.2d 1209 (1952).

Where gas company acquired easement for right-of-way by written instrument which was not recorded and the easement was not visible or open, a third-party purchaser, without knowledge of the easement, was not bound thereby, since gas company did not have prescriptive easement in the land. Southern Union Gas Co. v. Cantrell, 56 N.M. 184, 241 P.2d 1209 (1952).

Oral agreement. - If one is a bona fide purchaser for value without notice of another's claimed interest, then the oral agreement would be of no effect as to him even if it be treated as an enforceable agreement as between the other person and the vendor. Ortiz v. Jacquez, 77 N.M. 155, 420 P.2d 305 (1966).

Requirement tax deeds to be recorded not applicable. - Where a deed issued by state tax commission to an individual conveyed land which had previously been conveyed by the county treasurer to the state in pursuance of a tax sale to the state, the deed from the tax commission is not a tax deed and the requirement that tax deeds must be recorded within a year after their issuance is not applicable thereto. Hargrove v. Lucas, 56 N.M. 323, 243 P.2d 623 (1952).

Law reviews. - For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

For 1986-88 survey of New Mexico law of real property, 19 N.M.L. Rev. 751 (1990).

For article, "Legislature Tampers With Recording Act," see 20 N.M.L. Rev. 235 (1990).

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws §§ 156 to 193.

Rights as between purchaser of timber and subsequent vendee of land, 18 A.L.R.2d 1150.
Relative rights to real property as between purchasers from or through decedent's heirs and devisees under will subsequently sought to be established, 22 A.L.R.2d 1107.
Relative rights in real property as between purchasers from or through decedent's heirs or devisees and unknown surviving spouse, 39 A.L.R.2d 1082.

14-9-4. Filing for record; effect; reception book. (1939)

Statute text

The time of the recording of an instrument shall be the time of its deposit in the office of the county clerk and his entry thereof in the reception book as herein provided. It shall be the duty of every county clerk immediately on the receipt for record of any deed, mortgage or other writing affecting the title to real estate, to enter the same by the name of the grantor, mortgagor or other persons [person] whose title is affected thereby, in a proper book, arranged in alphabetical or numerical order, to be known as the reception book, together with the date, hour and minute of such record. Any county clerk failing to make such entry immediately, shall be punished by a fine of one hundred dollars [($100)], and shall also be liable for damages to any person injured by such neglect, to the extent of such injury.

History

History: Laws 1886-1887, ch. 10, § 4; C.L. 1897, § 3956; Laws 1899, ch. 22, § 1; 1913, ch. 84, § 1; Code 1915, § 4789; C.S. 1929, § 118-111; Laws 1939, ch. 179, § 3; 1941 Comp., § 13-204; 1953 Comp., § 71-2-4.

Annotations

Compiler's notes. - The 1915 Code compilers substituted the words "county clerk" for the words "probate clerk."

14-9-5. Repealed. (1987)

Annotations

Repeals. - Laws 1987, ch. 218, § 1 repeals 14-9-5 NMSA 1978, as enacted by Laws 1886-1887, ch. 10, § 5, relating to deed and mortgage records, effective June 19, 1987. For provisions of former section, see 1978 Original Pamphlet.

14-9-6. [Wills not affected.]

Statute text

None of the provisions of this chapter shall be so construed as to extend to last wills and testaments.

History

History: Laws 1851-1852, p. 376; C.L. 1865, ch. 44, § 23; C.L. 1884, § 2770; C.L. 1897, § 3967; Code 1915, § 4794; C.S. 1929, § 118-118; 1941 Comp., § 13-208; 1953 Comp., § 71-2-8.

Annotations

Meaning of "this chapter". - The words "this chapter" were substituted for the words "this act" by the 1915 Code compilers and refer to chapter 97 of the 1915 Code, including §§ 4779 to 4803 thereof, compiled herein as 14-8-1, 14-8-2, 14-8-4 to 14-8-6, 14-8-9, 14-8-10, 14-8-14, 14-8-15, 14-9-1 to 14-9-6, 14-9-8, and 14-10-1 to 14-10-5 NMSA 1978.

14-9-7. Conveyances to state and public corporations; recording; filing in lieu of recording; maximum fee. (1987)

Statute text

A. The state, the public boards and commissions thereof, municipalities, districts and subdivisions of the state, including conservancy and irrigation districts, shall be entitled to have instruments affecting real estate which have been made to them as grantees or vendees, including rights-of-way for roads, easements or other instruments affecting real estate, to be duly recorded in the offices of the county clerks and ex officio recorders of the various counties in which the real estate is situated.

B. The state, the public boards or commissions thereof, municipalities, districts or subdivisions of the state, including conservancy and irrigation districts, may file the original instruments

affecting such real estate with the county clerk and ex officio recorder in the county where the property is situated, and such filings shall be properly indexed by the county clerk and ex officio recorder in the county, and such filings shall have the full legal effect of recording and be legal notice of the rights of the public entities or districts in and to said rights-of-way, easements or other interests conveyed or granted by the instruments affecting the real estate.
C. The county clerks and ex officio recorders shall be paid the statutory recording fee for each instrument recorded or filed and indexed under the terms of this section.
History
History: Laws 1931, ch. 137, § 1; 1941 Comp., § 13-209; 1953 Comp., § 71-2-9; Laws 1961, ch. 77, § 1; 1987, ch. 233, § 1.
Annotations
The 1987 amendment, effective June 19, 1987, in Subsection C, substituted "the statutory recording fee" for "one dollar or one-half the statutory recording fee whichever is greater" and made minor language changes throughout the section.
Highway grants held properly filed. - Grants to the state highway and transportation department were properly filed with the full legal effect of a recording, even though the county clerk did not enter in the index book page numbers for the filings or otherwise record the grants as the clerk does for real estate transactions where the recording party is someone other than the state. Lone Butte Corp. v. State, 112 N.M. 483, 816 P.2d 1105 (1991).
Section requires county clerks to accept for filing easements for right-of-way for state highway purposes. 1935-36 Op. Att'y Gen. 82.
Warrants of employment security commission are not instruments made to commission as grantee or vendee. They are instruments made by the commission as claimant of a lien. This section does not apply to warrants of the employment security commission. 1961-62 Op. Att'y Gen. No. 61-51.
14-9-8. [Lost patent; recording certified copy; effect.] (1909)
Statute text
Any person or persons who have acquired and hold any real estate by purchase or otherwise, and have lost or are unable to procure the original patent issued by the United States for such real estate, and such patent never having been recorded in the office of the county clerk of the county wherein such real estate is situated, may procure a certified copy of such patent from the recorder of the general land office of the United States, and have the same recorded in the same manner as the original patent therefor might have been recorded. And the record of such certified copy of the patent issued for such lands shall have the same force and effect as if the original patent therefor had been recorded.
History
History: Laws 1909, ch. 18, § 1; Code 1915, § 4796; C.S. 1929, § 118-120; 1941 Comp., § 13-210; 1953 Comp., § 71-2-10.
14-9-9. [Federal court judgment; county for filing; lien against realty.] (1923)
Statute text
A transcript of any money judgment obtained in the United States district court for the district of New Mexico, may be filed in the office of the county clerk of any county, wherein the judgment debtor or debtors have property, and when so filed and entered in the judgment lien record of said county shall be a lien against the real estate of such judgment debtor or debtors within said county from the date of such filing and entry in such judgment lien record.
History
History: Laws 1923, ch. 123, § 1; C.S. 1929, § 76-112; 1941 Comp., § 13-211; 1953 Comp., § 71-2-11.
Annotations
Only transcript of judgment docket, not of judgment, to be filed. - The legislature meant a transcript of the judgment docket should be filed in the office of the county clerk, to be recorded by him in the judgment docket record in his office. It did not intend that a transcript of the

judgment rendered by the United States district court should be filed. Scott v. United States, 54 N.M. 34, 213 P.2d 216 (1949).

ARTICLE 10
INDEX OF RECORDS
Section
14-10-1. Authority for index.
14-10-2. Index books; alphabetical and reverse order arrangement.
14-10-3. Form of index.
14-10-4. Description of lands.
14-10-5. Standard form; use required.

14-10-1. [Authority for index.] (1903)
Statute text
That whenever, in the opinion of the board of county commissioners of any county in the state, it is necessary for the convenience of the public and the better preservation of titles to real property, to have a complete and accurate index made of all instruments of record affecting real property, they are hereby authorized to have such index made by the county clerk of said county.
History
History: Laws 1903, ch. 87, § 1; Code 1915, § 4798; C.S. 1929, § 118-122; 1941 Comp., § 13-301; 1953 Comp., § 71-3-1.
Annotations
Private individual not authorized to make index. - Under this section, county commissioners are not authorized to employ a private individual to make the index. Fancher v. Board of Comm'rs, 28 N.M. 179, 210 P. 237 (1921).
Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws §§ 89 to 96.
76 C.J.S. Records § 9 et seq.

14-10-2. [Index books; alphabetical and reverse order arrangement.] (1903)
Statute text
For the purpose of the index mentioned in the preceding section [14-10-1 NMSA 1978] there shall be provided index books, and all instruments affecting title to real estate shall be indexed in their regular order alphabetically arranged, as well as in their reverse order in the same manner.
History
History: Laws 1903, ch. 87, § 2; Code 1915, § 4799; C.S. 1929, § 118-123; 1941 Comp., § 13-302; 1953 Comp., § 71-3-2.
Annotations
Am. Jur. 2d, A.L.R. and C.J.S. references. - Failure to properly index conveyance or mortgage of realty as affecting constructive notice, 63 A.L.R. 1057.
76 C.J.S. Records § 9 et seq.

14-10-3. [Form of index.] (1903)
Statute text
The said index shall be ruled and headed in the manner and form substantially as shown on the following form:
DOUBLE CLICK TO VIEW FORM

History
History: Laws 1903, ch. 87, § 3; Code 1915, § 4800; C.S. 1929, § 118-124; 1941 Comp., § 13-303; 1953 Comp., § 71-3-3.

14-10-4. [Description of lands.] (1903)
Statute text

All town property or lands shall be entered and described in the said index in the manner indicated, according to numbers, metes or bounds: but, provided, that where this is impossible from the nature of the description then the tract or tracts may be described by some appropriate title, or the owner's name.

History

History: Laws 1903, ch. 87, § 4; Code 1915, § 4801; C.S. 1929, § 118-125; 1941 Comp., § 13-304; 1953 Comp., § 71-3-4.

Annotations

Cross references. - For record of survey requirements, see Section 61-23-28.2 NMSA 1978.

14-10-5. [Standard form; use required.] (1903)

Statute text

The form of index provided in the two preceding sections [14-10-3, 14-10-4 NMSA 1978] shall be the standard form of index and shall be used throughout the state.

History

History: Laws 1903, ch. 87, § 5; Code 1915, § 4802; C.S. 1929, § 118-126; 1941 Comp., § 13-305; 1953 Comp., § 71-3-5.

ARTICLE 11

PUBLICATION OF NOTICE

Section

14-11-1. "Legal notices and advertisements" defined.
14-11-2. Requirement for publication of legal notice or advertisement.
14-11-3. Frequency of newspaper's publication; effect.
14-11-4. Proof of publication.
14-11-5. Affidavit of proof; contents.
14-11-6. Filing affidavit of publication; evidential value.
14-11-7. Rates for legal notice or advertisement; costs.
14-11-8. Violation of legal publication law; penalty.
14-11-9. Legal publications by county, municipality or school district; payment.
14-11-10. Litigation; publication of notice; posting.
14-11-10.1. Legal notices; simple description also required.
14-11-11. County and municipal boards and officers; publication of proceedings; language requirements.
14-11-12. Publication in lieu of posting.
14-11-13. Official Spanish newspapers.

14-11-1. "Legal notices and advertisements" defined. (1937)

Statute text

Any notice or other written matter whatsoever required to be published in a newspaper by any law of this state, or by the order of any court of record of this state, shall be deemed and held to be a legal notice or advertisement within the meaning of this act [14-11-1 to 14-11-4, 14-11-7, 14-11-8 NMSA 1978].

History

History: Laws 1937, ch. 167, § 1; 1941 Comp., § 12-201; 1953 Comp., § 10-2-1.

Annotations

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notice § 23.

Validity of legislation relating to publication of legal notices, 26 A.L.R.2d 655.

66 C.J.S. Notice § 2.

14-11-2. Requirement for publication of legal notice or advertisement. (1999)

Statute text

Any and every legal notice or advertisement shall be published in a daily, tri-weekly, a semi-weekly or a weekly newspaper of general circulation that can be obtained by single copy and that

is entered under the second class postage privilege in the county in which the notice or advertisement is required to be published; which newspaper, if published tri-weekly, semi-weekly or weekly, shall have been so published in the county continuously and uninterruptedly during the period of at least twenty-six consecutive weeks next prior to the first issue thereof containing any such notice or advertisement, and which newspaper, if published daily, shall have been so published in the county uninterruptedly and continuously during the period of at least six months next prior to the first issue thereof containing any such notice or advertisement; provided that the mere change in the name of any newspaper or the removal of the principal business office or seat of publication of any newspaper from one place to another in the same county shall not break or affect the continuity in the publication of any such newspaper if the newspaper is in fact continuously and uninterruptedly printed and published within the county as provided in this section; provided further that a newspaper shall not lose its rights as a legal publication if it fails to publish one or more of its issues by reason of fire, flood, accident, transportation embargo or tie-up or other casualty beyond the control of the publisher; provided further that any legal notice which fails of publication for the required number of insertions by reasons beyond the control of the publisher shall not be declared illegal if the publication has been made in one issue of the publication; and provided further that if in any county in this state there has not been published any newspaper for the prescribed period at the time when any such notice or advertisement is required to be published, the notice or advertisement may be published in any newspaper having a general circulation or published and printed in whole or in part in that county and that can be obtained by single copy in that county.

History

History: Laws 1937, ch. 167, § 2; 1941 Comp., § 12-202; 1953 Comp., § 10-2-2; 1999, ch. 63, § 1.

Annotations

The 1999 amendment, effective June 18, 1999, added the section heading; deleted "only" following "be published", deleted "paid" preceding "circulation" in two places; inserted "can be purchased by single copy and that"; added "and that can be obtained by single copy in that county"; and made minor stylistic changes.

Purpose of section is to give the public the opportunity to read the legal publication. This is the mandatory portion of this section, and the provision for the second-class mailing privilege is of relatively small importance in relation to the general object intended by the statute and is merely directory. State ex rel. Sun. Co. v. Vigil, 74 N.M. 766, 398 P.2d 987 (1965); 1981 Op. Att'y Gen. No. 81-13.

The primary purpose of this section is to give notice to the citizens, with provisions relating to publication, printing and mailing privileges referring merely to the method of carrying out the intent of the statute, i.e., notice. State ex rel. Sun Co. v. Vigil, 74 N.M. 766, 398 P.2d 987 (1965).

Legislative intent. - It was the intention of the legislature that legal notices be published in newspapers located within the county. 1963-64 Op. Att'y Gen. No. 64-12.

Only publishing required. - In order for a newspaper to be "legal" for publication of notices, it does not have to be both published and printed within the county, but only published within the county. 1963-64 Op. Att'y Gen. No. 64-12.

A newspaper may be published within a county and thus be a legal newspaper though its actual printing is done outside the county. 1947-48 Op. Att'y Gen. No. 5146.

Word "published" in this section is not synonymous with the word "printed." State ex rel. Sun Co. v. Vigil, 74 N.M. 766, 398 P.2d 987 (1965).

The proper and correct meaning of the word "published" is that the notice must be inserted for the required time in a newspaper that will make the matter thereof a public matter or known to the people in the place affected. State ex rel. Sun Co. v. Vigil, 74 N.M. 766, 398 P.2d 987 (1965).

A newspaper published in Window Rock, Arizona, and mailed to subscribers in San Juan and McKinley counties in New Mexico, is not "published" in these counties for purposes of this

section even though it is the chief newspaper within the Navajo tribe. 1963-64 Op. Att'y Gen. No. 64-12.
"Publication" contemplates that the paper issue to its subscribers from the county. 1963-64 Op. Att'y Gen. No. 64-12.
Any means which would give notice to the public of any matter desired to be brought to their knowledge would be classed as publication. State ex rel. Sun Co. v. Vigil, 74 N.M. 766, 398 P.2d 987 (1965).
Publication and printing distinguished. - Publication means to make known, a notification to the public at large, either by words, writing or printing. Printing means the impress of letters or characters upon paper or upon other substance. State ex rel. Sun Co. v. Vigil, 74 N.M. 766, 398 P.2d 987 (1965).
Printing implies the mechanical art by which type is imprinted upon the paper, whereas publishing means the conveying of knowledge of notices. State ex rel. Sun Co. v. Vigil, 74 N.M. 766, 398 P.2d 987 (1965).
Requirement of second-class postal privilege. - Among other requirements for a legal newspaper is that the newspaper must be entered under the second-class postal privilege in the county in which said notice or advertisement is required to be published. 1959-60 Op. Att'y Gen. No. 60-46.
The provision relating to second-class mailing privilege is merely directory and the absence of the privilege will not defeat legal publication. 1981 Op. Att'y Gen. No. 81-13.
Use of newspaper having general paid circulation, etc. - Only where no newspaper is published within the county meeting the requirements of this section may items be published in any newspaper having a general paid circulation and/or printed in whole or in part in said county. 1963-64 Op. Att'y Gen. No. 64-12.
Publication in New Mexico register. - A notice published in the New Mexico register would not fulfill the requirements for legal publication under 14-11-1 to 14-11-8 NMSA 1978 because the register is not a newspaper of general paid circulation. 1993 Op. Att'y Gen. No. 93-2.
Law reviews. - For article, "Approaching Statutory Interpretation in New Mexico," see 8 Nat. Resources J. 689 (1968).
Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Newspapers, Periodicals, and Press Associations §§ 33 to 38, 42, 43, 45, 46, 48, 49.
Rights and duties of parties to conditional sales contract as to resale of repossessed property, 49 A.L.R.2d 15.
Application of requirement that newspaper be locally published for official notice publication, 85 A.L.R.4th 581.
66 C.J.S. Newspapers § 3.
14-11-3. [Frequency of newspaper's publication; effect.] (1937)
Statute text
Except as otherwise provided by law in express terms or by necessary implication, daily, weekly, semiweekly and triweekly newspapers shall all be equally competent as media for the publication of all legal notices and advertisements.
History
History: Laws 1937, ch. 167, § 4; 1941 Comp., § 12-203; 1953 Comp., § 10-2-3.
14-11-4. Proof of publication. (1937)
Statute text
Proof of the publication of any such legal notice or advertisement may be made by the affidavit of the printer, business manager, editor, publisher or proprietor of the newspaper in which the publication is made, or by any other competent person who has personal knowledge of the essential facts, which affidavit, in addition to the other matters required by law to be set forth therein, shall state that such notice or advertisement was published in a newspaper duly qualified

for that purpose within the meaning of this act [14-11-1 to 14-11-4, 14-11-7, 14-11-8 NMSA 1978], and that payment therefor has been made or assessed as court costs.

History

History: Laws 1937, ch. 167, § 3; 1941 Comp., § 12-204; 1953 Comp., § 10-2-4.

Annotations

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Newspapers, Periodicals, and Press Associations § 54.

66 C.J.S. Newspapers § 19.

14-11-5. [Affidavit of proof; contents.] (1931)

Statute text

Proof of the publication of any notice required by law to be published shall be made by the publisher, editor or business manager of the newspaper in which said notice is published, making an affidavit, which affidavit shall recite the name of the newspaper in which said notice is published and the date or dates upon which said publication is made; there shall also be attached to said affidavit a copy of the notice as published, which copy when so attached to said affidavit shall be taken and considered as part of the affidavit of publication.

History

History: Laws 1931, ch. 120, § 1; 1941 Comp., § 12-205; 1953 Comp., § 10-2-5.

Annotations

Compiler's notes. - The initial language of this section may be superseded by Laws 1937, ch. 167, § 3. See 14-11-4 NMSA 1978.

14-11-6. [Filing affidavit of publication; evidential value.] (1931)

Statute text

Any officer, board, commission or party to any legal proceeding required to publish any notice required by law shall obtain and file in his or its office, or with the clerk of the court in which any suit or legal proceeding is pending, as the case may require, the affidavit of publication referred to in Section one [14-11-5 NMSA 1978] hereof. Such affidavit so filed shall be prima facie evidence of the facts therein stated as to such publication.

History

History: Laws 1931, ch. 120, § 2; 1941 Comp., § 12-206; 1953 Comp., § 10-2-6.

14-11-7. Rates for legal notice or advertisement; costs. (1991)

Statute text

For publication of all legal notices or advertisements that a governmental entity is required by law or the order of any court of record in this state to publish in newspapers, the publishers shall be paid a reasonable rate, to be set by rule or regulation of the secretary of general services. Changes in economic conditions within the newspaper industry, the general economy and inflation shall be considered in determining a reasonable rate.

The clerk of any court in the state or any public trustee, county treasurer or other public officer required by law to publish legal notices or advertisements shall tax the cost of publishing notices or advertisements, as prescribed in this section, as part of the costs of the cause or proceeding and shall collect for publication before the cause or proceeding is closed and shall remit to the publisher the proper cost of the legal notices or advertisements.

History

History: Laws 1937, ch. 167, § 5; 1941 Comp., § 12-207; Laws 1947, ch. 188, § 1; 1953 Comp., § 10-2-7; Laws 1957, ch. 103, § 1; 1965, ch. 62, § 1; 1975, ch. 238, § 1; 1980, ch. 149, § 1; 1981, ch. 202, § 1; 1991, ch. 207, § 1; 1993, ch. 35, § 1.

Annotations

The 1991 amendment, effective June 14, 1991, amended the section to restrict its scope to legal advertisements and notices of governmental entities.

The 1993 amendment, effective June 18, 1993, substituted the language beginning "paid a reasonable rate" at the end of the first paragraph for provisions specifing the rates allowed to be charged.

Generally. - A newspaper was permitted a maximum charge of 12 cents a column line for the first publication whether this was the only publication or merely the first in a series of publications, and, of course, a charge of 10 cents a line after the first publication, whether there be one or more such subsequent publications. 1957-58 Op. Att'y Gen. No. 58-4.

Under Laws 1909, ch. 79 (now repealed), no printer was compelled to charge rate fixed in the statute, but was only prohibited from charging a higher rate, and county commissioners and corporate authorities could bargain for publication at lower rates. 1909-12 Op. Att'y Gen. 16.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Newspapers, Periodicals, and Press Associations § 60.

20 C.J.S. Costs § 94 et seq.; 66 C.J.S. Newspapers § 20.

14-11-8. [Violation of legal publication law; penalty.] (1937)

Statute text

Violation of any of the foregoing provisions [14-11-1 to 14-11-4, 14-11-7 NMSA 1978] shall be deemed a misdemeanor and upon conviction thereof, such violator or violators shall be punished by a fine of not less than $100, nor more than $500.

History

History: Laws 1937, ch. 167, § 6; 1941 Comp., § 12-208; 1953 Comp., § 10-2-8.

Annotations

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 C.J.S. Newspapers § 22.

14-11-9. [Legal publications by county, municipality or school district; payment.] (1912)

Statute text

All publications required to be made by any county or incorporated city, town or village, or by any board of education or school directors, or by any officer thereof, shall be paid for out of the general fund of such county, city, town or village. Provided: that the cost of such publications pertaining to school matters shall be paid out of school funds.

History

History: Laws 1912, ch. 49, § 10; Code 1915, § 4652; C.S. 1929, § 113-108; 1941 Comp., § 12-209; 1953 Comp., § 10-2-9.

Annotations

Cross references. - For publication of municipal and school board expenditures, see 10-17-3 NMSA 1978.

14-11-10. Litigation; publication of notice; posting. (1978)

Statute text

Except as provided in the Probate Code [45-1-101 NMSA 1978], all legal notices in connection with suits in the district courts, including notices of sale of property under any writ of execution, judgment, decree or other process issued out of the district court, and any notice of sale of personal property by virtue of any security interest, except as provided by the Uniform Commercial Code [Chapter 55 NMSA 1978], where the amount involved, including interest and costs, exceeds three hundred dollars ($300), shall be published in the English language in some newspaper of general circulation published in the county where such publication is required to be made, once each week for four consecutive weeks. If such publication shall be the notice of the pendency of a suit in the district court, the last insertion shall be at least twenty days before the date on or before which the defendant is notified to appear. In all other cases, the last insertion shall be at least three days before the date fixed in such notice for the taking of the action concerning which the publication is made. In case there be no newspaper published in the county where such publication is required, then publication shall be made by posting notice in at least six conspicuous places within the county for and during the period of time specified in the case of newspaper publications.

History

History: Laws 1931, ch. 150, § 1; 1937, ch. 113, § 1; 1941 Comp., § 12-210; 1953 Comp., § 10-2-10; Laws 1961, ch. 96, § 11-101; 1978, ch. 159, § 1.

Annotations

Generally. - Where the value of the property exceeds $300, agent must publish in the county where the sale is to be made once each week for four consecutive weeks. And the last publication must be at least three days before the sale. The sale must be conducted between the hours of 9:00 in the morning and the setting of the sun on the same day, and the time and place where the sale is to be made and a full description of the property shall be contained in that notice. 1955-56 Op. Att'y Gen. No. 6518.

Former requirements. - Section 4647, 1915 Code (similar to this section) did not require that four full weeks elapse between the first insertion of the notice in the newspaper and the day of sale, but the sale could be had any time not less than three days after the fourth and last insertion. Dewitz v. Joyce-Pruitt Co. 20 N.M. 572, 151 P. 237 (1915).

Laws 1899, ch. 22, § 15 (now repealed), was complied with by publication of notice of sale on same day of the week for four consecutive weeks when the last publication was more than 30 days prior to the date of sale. De Graftenreid v. Casaus, 26 N.M. 216, 190 P. 728 (1920).

Law reviews. - For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

For article, "The Use of Revocable Inter Vivos Trusts in Estate Planning," see 1 N.M. L. Rev. 143 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Service of process upon dissolved domestic corporation in absence of express statutory direction, 75 A.L.R.2d 1399.

What is "public place" within requirements as to posting of notices, 90 A.L.R.2d 1210.

7 C.J.S. Attachment § 280; 33 C.J.S. Executions § 211; 33 C.J.S. Executors and Administrators § 70; 34 C.J.S. Executors and Administrators §§ 411, 904; 39 C.J.S. Guardian and Ward § 154; 50 C.J.S. Judicial Sales § 10; 79 C.J.S. Secured Transactions § 34 et seq.

14-11-10.1. Legal notices; simple description also required. (1987)

Statute text

In order to allow the general public to determine the location of real property being described in a legal notice, all legal notices containing a legal description of real property shall also contain a simple description of the real property in commonly used terms sufficient to indicate its location in relation to roads, towns, streets, neighborhoods, or other fixed objects.

History

History: 1978 Comp., § 14-11-10.1, enacted by Laws 1987, ch. 28, § 1.

Annotations

Am. Jur. 2d, A.L.R. and C.J.S. references. - 12 Am. Jur. 2d Boundaries §§ 6 to 9.

11 C.J.S. Boundaries § 23 et seq.

14-11-11. [County and municipal boards and officers; publication of proceedings; language requirements.] (1923)

Statute text

All publications of proceedings of boards of county commissioners, city and town councils, boards of trustees, boards of education or school directors and of all other officers of any county, municipality, district or other subdivision of the state, which are required by law to be made shall be published once only. In all counties, cities or towns, in which the publication [population] is not less than seventy-five percent English speaking, the publication of such notices in English shall be sufficient; that in all counties, cities and towns, in which the population is not less than seventy-five percent Spanish speaking, the publication of such notices in the Spanish language shall be sufficient; that in all counties, cities and towns, in which the publication [population] using either language is between twenty-five percent and seventy-five percent of the whole, such notices shall be published in both English and Spanish, provided, there be legal newspapers

published in both languages in the county, city or town, by different publishers, otherwise, publication in either language shall be sufficient. And, provided further, that in case of question, or disagreement, as to the percentage of the population of any county, city or town, using either language, the district judge of the judicial district of which such county, city or town, is a part, shall determine such percentage upon such information as he may have, without special investigation in the matter, and his opinion and determination thereon shall be conclusive.

History

History: Laws 1912, ch. 49, § 6; Code 1915, § 4648; Laws 1919, ch. 72, § 1; 1923, ch. 148, § 1431; C.S. 1929, § 113-104; 1941 Comp., § 12-212; 1953 Comp., § 10-2-11.

Annotations

Bracketed material. - The bracketed words "population" in this section were inserted by the compiler. They were not enacted by the legislature and are not a part of the law.

Proceedings of boards of education or school directors. - That part of this section which concerns the publication of school board proceedings was repealed by Laws 1923, ch. 148, § 1431. But see N.M. Const., art. IV, § 18, requiring that each section revised, amended or extended be set out in full.

Generally. - This section merely limits the publication of the proceedings of the county commissioners in English to one publication, and in counties where a newspaper of general circulation is published, and 30 percent of the reading matter is in Spanish, the proceedings may be published also in Spanish. This is also true of delinquent tax lists. 1912-13 Op. Att'y Gen. 120, 122.

Publication in weekly newspaper. - Publication of minutes of city council in a weekly newspaper was legal although there was a daily newspaper published in the city. 1909-12 Op. Att'y Gen. 131.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 C.J.S. Counties §§ 73, 74; 62 C.J.S. Municipal Corporations § 409; 78 C.J.S. Schools and School Districts §§ 153, 154.

14-11-12. [Publication in lieu of posting.] (1891)

Statute text

All legal process against nonresidents, unknown or absent parties, notices of sale of real estate under foreclosure of mortgages or executions, trespass warnings and other documents, the publication of which is required by law to be made by posting written or printed notices in public places, may be published instead of being pasted up, in English and Spanish, in some newspaper published in the county, if there be one, if not, then in some newspaper published in some other county of the state for the same length of time it may be required to be posted, and when so published it shall not be necessary to post such notices in public places: provided, that the person who may have to pay for such publication shall have the right to designate the newspaper in which the same may be published: and provided, further, that no newspaper shall be allowed to charge more than the price fixed by law to be charged for legal advertisements.

History

History: Laws 1891, ch. 46, § 1; C.L. 1897, § 3114a; Code 1915, § 2197; C.S. 1929, § 46-108; 1941 Comp., § 12-213; 1953 Comp., § 10-2-12.

Annotations

Compiler's notes. - This section may be superseded for the most part by 14-11-10 NMSA 1978, but trespass notices, at least, are probably still subject to its provisions.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notice § 38.

66 C.J.S. Notice § 18.

14-11-13. Official Spanish newspapers. (1967)

Statute text

For the purpose of publishing legal notices in Spanish as required by law for any agencies of the state, the Santa Rosa News published at Santa Rosa, the New Mexican and the Santa Fe News, both published at Santa Fe, El Hispano published at Albuquerque, the Alpha News published at

Las Vegas, the Rio Grande Sun published at Espanola and the Taos News published at Taos are recognized as official Spanish language newspapers of this state.

History

History: 1953 Comp., § 10-2-13, enacted by Laws 1965, ch. 254, § 1; 1967, ch. 114, § 1.

ARTICLE 12

NOTARIES PUBLIC

Section

14-12-1. Notaries; powers and duties.
14-12-2. Notaries; qualifications.
14-12-3. Notaries; application.
14-12-4. Notaries; appointment; term.
14-12-5. Notaries; seal or stamp.
14-12-6. Notarial seal.
14-12-7. Notaries; certification.
14-12-8. Notaries; action on bond.
14-12-9. Notaries; reappointment.
14-12-10. Protesting bills and notes; notice.
14-12-11. Service of notice of protest.
14-12-12. Recording protest notices; use as evidence.
14-12-13. Notaries; removal from office.
14-12-14. Notaries; change of address.
14-12-15. Notaries; change of name.
14-12-16. Endorsing expiration date of commission.
14-12-17. Disqualified notary exercising powers; penalty.
14-12-18. False certificate; authenticating documents in absence of proper party; penalty.
14-12-19. Fees.
14-12-20. Notary affiliated with bank or corporation; power restricted.

14-12-1. Notaries; powers and duties. (1969)

Statute text

The office of "notary public" is established. At any place within the state, a notary public may:

A. administer oaths;

B. take and certify acknowledgments of instruments in writing;

C. take and certify depositions;

D. make declarations and protests; and

E. perform other duties as provided by law.

History

History: 1953 Comp., § 35-1-1, enacted by Laws 1969, ch. 168, § 1.

Annotations

Cross references. - For acknowledgments and oaths generally, see 14-13-1 to 14-13-23 and 14-14-1 to 14-14-11 NMSA 1978.

Compiler's notes. - Laws 1969, ch. 168, § 12, repealed former 35-1-1 to 35-1-8, 1953 Comp. (Laws 1909, ch. 55, §§ 1 to 7, 23; Code 1915, §§ 3924 to 3931; C.S. 1929, §§ 94-101 to 94-108; 1941 Comp., §§ 11-101 to 11-108; Laws 1961, ch. 56, § 1; 1961, ch. 107, § 1). New 35-1-1 to 35-1-8, 1953 Comp., were enacted by Laws 1969, ch. 168, §§ 1 to 8. See also compiler's note to 14-12-13 NMSA 1978.

Generally. - Laws 1909, ch. 55 (35-1-1 to 35-1-23, 1953 Comp.), in terms, repealed §§ 2617 to 2627, 1897 Comp., which authorized the appointment of notaries and, in part, prescribed their duties and obligations, but did not terminate the official existence of notaries. 1909-12 Op. Att'y Gen. 38.

New notary public law created. - With some exceptions, the 1969 act created an entirely new notary public law. 1969 Op. Att'y Gen. No. 69-79.
Authority "anywhere in the state". - This section reflects the clear intent of the legislature to provide for the appointment of notaries public in each county of the state. Other sections of the act provide that the bond of the notaries shall be filed with the secretary of state, but also provide that through the recording of the commissions, seals, signatures and bonds, each county clerk shall have a record of qualified notaries resident in his county. Certainly there is nothing which abrogates the unequivocal language in this section that each notary shall have authority "anywhere in the state" to perform his duties. 1953-54 Op. Att'y Gen. No. 5659.
Notary public may use his seal and perform official acts in any county in the state. 1912-13 Op. Att'y Gen. 35.
A notary public may use his seal and take acknowledgments and administer oaths in any county of the state. However, in moving from one county to another, he must cause his bond, commission and oath of office to be filed with the county recorder. 1912-13 Op. Att'y Gen. 35; 1915-16 Op. Att'y Gen. 209; 1937-38 Op. Att'y Gen. 70; 1939-40 Op. Att'y Gen. 53. See 14-12-14 NMSA 1978.
Notary public may administer oath in another county. - A notary public appointed in one county is authorized to administer an oath for verification of felony information in another county in this state. State v. Parker, 34 N.M. 486, 285 P. 490 (1930).
Notary public may take acknowledgments. - A notary public may take acknowledgments in other counties than that of his residence, if his bond, commission and oath of office are filed there. 1919-20 Op. Att'y Gen. 84; 1937-38 Op. Att'y Gen. 70.
Taking of acknowledgments. - The duties performed by an officer in taking an acknowledgment in this state are ministerial in character rather than judicial. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).
The blank space before the wording "County of . . . ." which is to be filed by a notary should contain the name of the county where he is taking the acknowledgment and not the name of the county where his commission as a notary is recorded. 1955-56 Op. Att'y Gen. No. 6228.
A certificate of acknowledgment duly executed as required by law is prima facie evidence of execution of the instrument it acknowledges, and should be impeached only by clear and convincing evidence. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).
Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public §§ 12, 13, 27 to 30, 33 to 38.
Power of notary to take affidavit as basis for warrant of arrest, 16 A.L.R. 924.
Liability of notary drawing invalid will to beneficiary named therein, 65 A.L.R.2d 1363.
Measure of damages for false or incomplete certificate by notary public, 13 A.L.R.3d 1039.
Liability of notary public or his bond for negligence in performance of duties, 44 A.L.R.3d 555.
66 C.J.S. Notaries § 6.
14-12-2. Notaries; qualifications. (1981)
Statute text
Each notary public shall:
A. be a resident of New Mexico;
B. be at least eighteen years of age;
C. be able to read and write the English language;
D. not have been convicted of a felony; and
E. not have had a notary public commission revoked during the past five years.
History
History: 1953 Comp., § 35-1-2, enacted by Laws 1969, ch. 168, § 2; 1981, ch. 214, § 1.
Annotations
Cross references. - For right of women to hold office of notary public, see N.M. Const., art. XX, § 11.

No citizenship requirement. - There is no longer an express citizenship requirement in the New Mexico notary statutes, and any attempt to impose a citizenship requirement would be unconstitutional. 1989 Op. Att'y Gen. No. 89-16.
Residency. - There is no requirement that a person be a New Mexico resident for any particular time before qualifying as a notary public. 1989 Op. Att'y Gen. No. 89-16.
For the purpose of the notary statutes, residency constitutes the fact of an abode in New Mexico coupled with the intent of remaining in the state for at least an indefinite period of time. 1989 Op. Att'y Gen. No. 89-16.
Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 C.J.S. Notaries § 2.
14-12-3. Notaries; application. (1981)
Statute text
Each applicant for appointment as a notary public shall submit to the secretary of state:
A. an application for appointment on a form prescribed by the secretary of state which includes a statement of the applicant's qualification and contains evidence of his good moral character as shown by signatures of two citizens of this state;
B. the oath prescribed by the constitution for state officers and an official bond to the state, with two sureties, in the amount of five hundred dollars ($500) conditioned for the faithful discharge of duties as a notary public;
C. an application which is made by and signed by the applicant using his surname and one given name, plus an initial or additional name, if he so desires, or surname and at least two initials; and
D. an application fee in the amount of ten dollars ($10.00).
History
History: 1953 Comp., § 35-1-3, enacted by Laws 1969, ch. 168, § 3; 1981, ch. 214, § 2.
Annotations
Recording fees. - In the absence of a specific fee for recording the oath and bond, resort must be had to 14-8-13 NMSA 1978, where the fee for copying any record, order or paper is set forth. 1914 Op. Att'y Gen. 52; 1935-36 Op. Att'y Gen. 35.
Acceptance of certified photostatic reproduction of bond recorded in county clerk's office. - In such instances wherein the applicant may have recorded the bond required by statute with the county clerk of the county wherein he resides, but has failed to forward the bond to the office of the secretary of state for filing, because such original bond has been lost, then, in such event, the secretary of state may accept, for filing in the office of secretary of state, a certified photostatic reproduction of such bond recorded in the office of the county clerk. 1961-62 Op. Att'y Gen. No. 62-18.
14-12-4. Notaries; appointment; term. (1969)
Statute text
Upon receipt of the completed application for appointment and the application fee, and upon approval of the applicant's bond, the secretary of state shall notify the governor who shall appoint the applicant as a notary public for a term of four years from the date of appointment unless sooner removed by the governor. The secretary of state shall issue a commission to each notary public appointed by the governor.
History
History: 1953 Comp., § 35-1-4, enacted by Laws 1969, ch. 168, § 4.
Annotations
Date of commission. - A notary's commission dates from the time of appointment and not from the date of qualification. 1945-46 Op. Att'y Gen. No. 4757.
Signing of renewal applications when appointment begins following year. - As the initial appointment is merely one step in the process of becoming a notary and, further, does not become effective until certain other acts are fulfilled, the present governor may sign notary public renewal applications even though the term of appointment begins next year. 1957-58 Op. Att'y Gen. No. 58-240.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public §§ 5, 6, 10, 11.
66 C.J.S. Notaries §§ 3, 4.

14-12-5. Notaries; seal or stamp. (1979)

Statute text

Each notary shall provide himself with a notarial seal or stamp containing his name and the words "NOTARY PUBLIC - STATE OF NEW MEXICO," and shall authenticate his official acts and acknowledgments with the seal or stamp.

History

History: 1953 Comp., § 35-1-5, enacted by Laws 1969, ch. 168, § 5; 1979, ch. 272, § 1.

Annotations

Seal containing name of county in addition to state. - See same catchline in notes to 14-12-6 NMSA 1978.

Indentation, rather than imprinting, required. - See same catchline in notes to 14-12-6 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public §§ 42, 46 to 49, 51 to 57.

Necessity and sufficiency of officer's jurat or certificate as to oath, 1 A.L.R. 1568, 116 A.L.R. 587.

What amounts to notary's seal, 7 A.L.R. 1663.

66 C.J.S. Notaries § 8.

14-12-6. Notarial seal. (1979)

Statute text

Each notary shall authenticate his official acts and acknowledgments with a notarial seal or stamp which, if a seal, shall contain his name and the words "NOTARY PUBLIC - STATE OF NEW MEXICO," and which if a stamp, shall be in substantially the following form:

"SEAL
STATE OF
NEW MEXICO

OFFICIAL SEAL
.....
(name of notary printed)
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires ..... "
(date)

History

History: 1953 Comp., § 35-1-5.1, enacted by Laws 1977, ch. 106, § 1; 1979, ch. 272, § 2.

Annotations

Seal containing name of county in addition to state. - A notary public reappointed to that office after June 20, 1969, may continue to use his notary seal for official acts even if the seal contains the name of a New Mexico county in addition to the words New Mexico or abbreviation thereof. 1969 Op. Att'y Gen. No. 69-79.

Indentation, rather than imprinting, required. - The notary's seal must be one which indents the words required by the statute upon the paper, and it is not permissible to use one which merely imprints, though clearly, the same words. 1949-50 Op. Att'y Gen. No. 5304.

14-12-7. Notaries; certification. (1969)

Statute text

Upon request, the secretary of state shall certify to official acts of a notary public.

History

History: 1953 Comp., § 35-1-6, enacted by Laws 1969, ch. 168, § 6.

14-12-8. Notaries; action on bond. (1969)
Statute text
Any person damaged by an unlawful act, negligence or misconduct of a notary public in his official capacity may bring a civil action on the notary public's official bond.
History
History: 1953 Comp., § 35-1-7, enacted by Laws 1969, ch. 168, § 7.
Annotations
Filing of bond and oath as condition precedent. - The filing of a notary's bond and oath with the secretary of state is a condition precedent to the lawful and valid exercise of the duties of a notary public. 1961-62 Op. Att'y Gen. No. 62-18.
Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public §§ 74 to 76.
Liability of notary drawing invalid will to beneficiary named therein, 65 A.L.R.2d 1363.
Measure of damages for false or incomplete certificate by notary public, 13 A.L.R.3d 1039.
Liability of notary public or his bond for negligence in performance of duties, 44 A.L.R.3d 555.
Liability of notary public or his bond for wilful or deliberate misconduct in performance of duties, 44 A.L.R.3d 1243.
66 C.J.S. Notaries § 12.
14-12-9. Notaries; reappointment. (1969)
Statute text
At least thirty days before expiration of each notary public term, the secretary of state shall mail a notice of the expiration to the notary public's address of record. A notary public may be reappointed upon making application in the same manner as required for an original application.
History
History: 1953 Comp., § 35-1-8, enacted by Laws 1969, ch. 168, § 8.
14-12-10. [Protesting bills and notes; notice.] (1909)
Statute text
Each notary public when any bill of exchange, promissory note or other written instrument shall be by such notary protested for nonacceptance or nonpayment shall give notice in writing thereof to the maker and to each and every endorser of such bill of exchange, and to the maker of each security, or the endorsers of any promissory note or other written instrument, immediately after such protest shall have been made.
History
History: Laws 1909, ch. 55, § 8; Code 1915, § 3935; C.S. 1929, § 94-112; 1941 Comp., § 11-109; 1953 Comp., § 35-1-9.
Annotations
Cross references. - For civil and criminal liability for false certificate as to protest, see 56-5-4 NMSA 1978.
Am. Jur. 2d, A.L.R. and C.J.S. references. - 11 Am. Jur. 2d Bills and Notes § 797.
Validity and effect of agreement to give bank all, or part of fees of notary for protesting paper, 25 A.L.R. 170.
10 C.J.S. Bills and Notes § 211.
14-12-11. [Service of notice of protest.] (1909)
Statute text
Each notary public may serve notice personally upon each person protested against by delivering to such person a notice in writing, or he may make such service by placing such notice in a sealed envelope with sufficient postage thereon addressed to the person to be charged, at his last place of residence, according to the best information that the person giving the notice may obtain, and by depositing such envelope containing such notice in the United States mail or post office.
History
History: Laws 1909, ch. 55, § 9; Code 1915, § 3936; C.S. 1929, § 94-113; 1941 Comp., § 11-110; 1953 Comp., § 35-1-10.

14-12-12. [Recording protest notices; use as evidence.] (1909)
Statute text
Each notary public shall keep record of all protest notices and of the time and manner in which the same were served and of the names of all persons to whom the same were directed. Also the description and the amount of the instrument protested, which record, or a copy thereof certified by the notary public under seal, shall at all times be competent evidence to prove such notice in any court of this state.
History
History: Laws 1909, ch. 55, § 10; Code 1915, § 3937; C.S. 1929, § 94-114; 1941 Comp., § 11-111; 1953 Comp., § 35-1-11.
Annotations
Am. Jur. 2d, A.L.R. and C.J.S. references. - 11 Am. Jur. 2d Bills and Notes § 798; 12 Am. Jur. 2d Bills and Notes § 1237.
14-12-13. Notaries; removal from office. (1981)
Statute text
A. The governor may revoke the commission of any notary public who:
(1) submits an application for appointment as a notary public which contains a false statement;
(2) is or has been convicted of any felony or of a misdemeanor arising out of a notarial act performed by him;
(3) engages in the unauthorized practice of law;
(4) ceases to be a New Mexico resident; or
(5) commits a malfeasance in office.
B. A notary's commission may be revoked under the provisions of this section only if action is taken subject to the rights of the notary public to notice, hearing, adjudication and appeal.
History
History: 1953 Comp., § 35-1-12, enacted by Laws 1969, ch. 168, § 9; 1981, ch. 214, § 3.
Annotations
Compiler's notes. - Laws 1969, ch. 168, § 12, repealed former 35-1-12 to 35-1-14, 1953 Comp. (Laws 1909, ch. 55, §§ 11 to 13; Code 1915, §§ 3938 to 3940; C.S. 1929, §§ 94-115 to 94-117; 1941 Comp., §§ 11-112 to 11-114). New 35-1-12 to 35-1-14, 1953 Comp., were enacted by Laws 1969, ch. 168, §§ 9 to 11. See also compiler's notes to 14-12-1 NMSA 1978.
Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public § 26.
66 C.J.S. Notaries § 4.
14-12-14. Notaries; change of address. (1969)
Statute text
Each notary public shall promptly notify the secretary of state of any change of his mailing address.
History
History: 1953 Comp., § 35-1-13, enacted by Laws 1969, ch. 168, § 10.
Annotations
Effect of changing residence. - A notary public who qualifies in one county of New Mexico can administer oaths, certify to acknowledgments and perform any other duties required of him by law anywhere in the state of New Mexico; however, should he change residence from the county in which he qualified, he must, before performing any official act in the county to which he has moved, have his bond, commission and oath of office filed in the office of the county recorder. 1951-52 Op. Att'y Gen. No. 5538.
14-12-15. Notaries; change of name. (1969)
Statute text
Upon any change of his name, a notary public shall promptly make application to the secretary of state for issuance of a corrected commission. The application shall be on a form prescribed by the secretary of state. Upon receipt of the completed application, the secretary of state shall issue a

corrected commission showing the notary public's new name. The corrected commission expires on the same date as the original certificate it replaces.

History

History: 1953 Comp., § 35-1-14, enacted by Laws 1969, ch. 168, § 11.

Annotations

Commission of female notary who marries. - No provision was made for amending a commission of a female notary who has married and changed her name, but she could continue to act under her current commission until its expiration. 1921-22 Op. Att'y Gen. 51.

14-12-16. [Endorsing expiration date of commission.] (1909)

Statute text

Every notary public certifying to any acknowledgment, oath or other matter shall, immediately opposite or following his signature to the jurat or certificate of acknowledgment, endorse the date of the expiration of such commission; such endorsement may be legibly written, stamped or printed upon the instrument, but must be disconnected from the seal and shall be substantially in the following form:

"My commission expires (stating date of expiration of commission)."

History

History: Laws 1909, ch. 55, § 18; Code 1915, § 3945; C.S. 1929, § 94-122; 1941 Comp., § 11-119; 1953 Comp., § 35-1-19.

14-12-17. [Disqualified notary exercising powers; penalty.] (1909)

Statute text

Any notary public who exercises the duties of his office with the knowledge that his commission has expired or that he is otherwise disqualified, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of one hundred dollars [($100)] and shall be removed from office by the governor.

History

History: Laws 1909, ch. 55, § 20; Code 1915, § 3947; C.S. 1929, § 94-124; 1941 Comp., § 11-121; 1953 Comp., § 35-1-21.

Annotations

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

14-12-18. [False certificate; authenticating documents in absence of proper party; penalty.] (1909)

Statute text

If any notary public, or any other officer authorized by law to make or give any certificate or other writing shall make or deliver as true any certificate or writing containing statements which he knows to be false, or appends his official signature to acknowledgments or other documents when the parties executing same have not appeared in person before him shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding two hundred dollars [($200)], or by imprisonment for a period not exceeding three months, or both such fine and imprisonment.

History

History: Laws 1909, ch. 55, § 21; Code 1915, § 3948; C.S. 1929, § 94-125; 1941 Comp., § 11-122; 1953 Comp., § 35-1-22.

Annotations

Cross references. - For criminal and civil liability as to false certificate of protest, see 56-5-4 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

Presence required for acknowledgment. - A notary is not authorized to take an acknowledgment of a person not present before him. 1921-22 Op. Att'y Gen. 47.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public § 73.
Measure of damages for false or incomplete certificate by notary public, 13 A.L.R.3d 1039.
Liability of notary public or his bond for negligence in performance of duties, 44 A.L.R.3d 555.
66 C.J.S. Notaries § 13.

14-12-19. Fees. (1973)

Statute text

A. Every notary public in this state shall be entitled to collect the following fees for his services:

(1) for each act of protest and certificate thereof $2.00

(2) for each notice of protest prepared and mailed to the parties in interest ..... .25

(3) for any certificate under seal 1.00

(4) for each acknowledgment to deed or other document 1.00

(5) for administering or certifying to any oath 1.00

B. Whenever a notary shall be authorized by proper process to take testimony or depositions and report the same to the proper authority without making findings of fact or law, such notary public shall be entitled to collect the following fees for his services:

(1) for noting each meeting to take testimony $1.00

(2) for noting each adjournment from one day to another 1.00

(3) for swearing each witness ..... .25

(4) for certifying and transmitting the record 1.50

(5) for transcribing or reducing to writing testimony, per folio of one hundred words, original ..... .15

(6) for each additional copy of same, per folio ..... .05

And every notary in addition to collecting fees when called from his office shall be entitled to ten cents ($.10) per mile.

History

History: Laws 1909, ch. 55, § 22; 1913, ch. 47, § 1; Code 1915, § 3949; C.S. 1929, § 94-126; 1941 Comp., § 11-123; Laws 1947, ch. 137, § 1; 1953 Comp., § 35-1-23; Laws 1973, ch. 188, § 1.

Annotations

Right to mileage. - A notary public is not entitled to any greater fee when called from his office to take an acknowledgment, but he is entitled to the mileage allowed by the section. 1921-22 Op. Att'y Gen. 27.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public §§ 23, 24. 66 C.J.S. Notaries § 14.

14-12-20. [Notary affiliated with bank or corporation; power restricted.] (1921)

Statute text

It shall be lawful for any notary public who is a stockholder, director, officer or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee or agent of such corporation or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer or employee, where such notary is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument.

History

History: Laws 1921, ch. 82, § 1; C.S. 1929, § 94-127; 1941 Comp., § 11-124; 1953 Comp., § 35-1-24.

Annotations

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public § 13.

ARTICLE 13

ACKNOWLEDGMENTS AND OATHS

Section

14-13-1. Administration of oath.
14-13-2. Administration of affirmation in lieu of oath.
14-13-3. Oaths; power to administer.
14-13-4 to 14-13-10. Repealed.
14-13-11. Wage and salary assignments.
14-13-12. Instrument needs no acknowledgment in absence of statutory requirement.
14-13-13. Validation of former acknowledgments; 1951 act.
14-13-14. Validation of former acknowledgments; 1957 act.
14-13-15. Validation of former acknowledgments; 1965 act.
14-13-16. Validation of former acknowledgments; 1967 act.
14-13-17. Validation of former acknowledgments; 1971 act.
14-13-18. Validation of former acknowledgments; 1975 act.
14-13-19 to 14-13-23. Repealed.
14-13-24. Validation of certain prior acknowledgments.
14-13-25. Validation of certain prior acknowledgments.

14-13-1. [Administration of oath.] (1893)

Statute text

Whenever any person shall be required to take an oath before he enters upon the discharge of any office, place or business, or on any lawful occasion, any person administering the oath shall do so in the following form, viz: the person swearing shall, with his right hand uplifted, follow the

words required in the oath as administered, beginning: I do solemnly swear, and closing: so help me God.

History

History: Laws 1893, ch. 42, § 1; C.L. 1897, § 2559; Code 1915, § 3933; C.S. 1929, § 94-110; 1941 Comp., § 46-101; 1953 Comp., § 43-1-1.

Annotations

Cross references. - For Uniform Laws on Notarial Acts, see 14-14-1 to 14-14-11 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Oath and Affirmation §§ 11 to 19, 21 to 24.

Acknowledgment or oath over telephone, 12 A.L.R. 538, 58 A.L.R. 604.

67 C.J.S. Oaths and Affirmations §§ 5, 6.

14-13-2. [Administration of affirmation in lieu of oath.] (1893)

Statute text

Whenever any person is required to take or subscribe an oath and shall have conscientious scruples against taking the same, he shall be permitted, instead of such oath, to make a solemn affirmation, with uplifted right hand, in the following form, viz: you do solemnly, sincerely and truly declare and affirm, and close with: and this I do under the pains and penalties of perjury, which affirmation shall be equally valid as if such person had taken an oath in the usual form; and every person guilty of falsely, willfully or corruptly declaring as aforesaid, shall be liable to punishment for the same as for perjury.

History

History: Laws 1893, ch. 42, § 2; C.L. 1897, § 2560; Code 1915, § 3934; C.S. 1929, § 94-111; 1941 Comp., § 46-102; 1953 Comp., § 43-1-2.

Annotations

Cross references. - For Uniform Laws on Notarial Acts, see 14-14-1 to 14-14-11 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Oath and Affirmation §§ 11, 14, 15, 17 to 19, 22 to 24.

67 C.J.S. Oaths and Affirmations § 6.

14-13-3. Oaths; power to administer. (1977)

Statute text

The secretary of state of New Mexico, county clerks, clerks of probate courts, clerks of district courts, clerks of magistrate courts if the magistrate court has a seal, and all duly commissioned and acting notaries public, are hereby authorized and empowered to administer oaths and affirmations in all cases where magistrates and other officers within the state authorized to administer oaths may do so, under existing laws, and with like effect.

History

History: Laws 1882, ch. 28, § 1; C.L. 1884, § 1742; C.L. 1897, § 2558; Code 1915, § 3932; Laws 1929, ch. 78, § 1; C.S. 1929, § 94-109; 1941 Comp., § 46-103; 1953 Comp., § 43-1-3; Laws 1977, ch. 98, § 1.

Annotations

Cross references. - For notarial acts in this state, see 14-14-3 NMSA 1978.

For administering of oaths by chairman of board of county commissioners, see 4-38-11 NMSA 1978.

Section authorizes verification of information for murder before a notary public. State v. Parker, 34 N.M. 486, 285 P. 490 (1930).

Section authorizes verification of affidavit in attachment. - This section includes verification by notary of affidavit in proceeding by attachment made by plaintiff's agent. Robinson v. Hesser, 4 N.M. (Gild.) 282, 13 P. 204 (1887).

Administration over telephone. - Generally, a court reporter may not administer oaths over the telephone. Rule 1-030B(7) does not change the general rule, and the court reporter must

administer the oath and take the deposition in the witness' presence. 1988 Op. Att'y Gen. No. 88-81.
Law reviews. - For article, "Attachment in New Mexico - Part I," see 1 Nat. Resources J. 303 (1961).
Am. Jur. 2d, A.L.R. and C.J.S. references. - Qualification of stockholder of a corporation or member of association to take acknowledgment of, or attest as notary an instrument to which corporation or association is a party, 51 A.L.R. 1529.
Joining in instrument as ratification of or estoppel as to prior ineffective instrument affecting real property, 7 A.L.R.2d 294.
Relationship of attorney to person taking oath or making acknowledgment, as disqualifying official empowered to administer oaths or take acknowledgments, 21 A.L.R.3d 483.
Liability of notary public or his bond for negligence in performance of duties, 44 A.L.R.3d 555.
67 C.J.S. Oaths and Affirmations § 4.
14-13-4 to 14-13-10. Repealed. (1993)
Annotations
Repeals. - Laws 1993, ch. 281, § 12 repeals 14-13-4 through 14-13-10 NMSA 1978, as amended or enacted by Laws 1929, ch. 13, § 1, Laws 1901, ch. 62, § 15, Laws 1939, ch. 124, § 1, Laws 1945, ch. 4, § 1, Laws 1851-1852, p. 374, Laws 1889, ch, 46, § 1, and Laws 1939, ch. 124, § 2, relating to acknowledgments, effective July 1, 1993. For provisions of former sections, see 1988 Replacement Pamphlet. For present comparable provisions, see 14-14-1 NMSA 1978 et seq.
14-13-11. Wage and salary assignments. (1971)
Statute text
A. All assignments of wages or salaries due or to become due to any person, in order to be valid, shall be acknowledged by the party making the assignment before a notary public or other officer authorized to take acknowledgments. The assignment shall be recorded in the office of the county clerk of the county in which the money is to be paid and a copy served upon the employer or person who is to make payment.
B. Any assignment of wages or salary is void if it provides for an assignment of more than twenty-five percent of the assignor's disposable earnings for any pay period. As used in this section, "disposable earnings" means that part of the assignor's wage or salary remaining after deducting the amounts which are required by law to be withheld.
History
History: Laws 1929, ch. 128, § 1; C.S. 1929, § 8-101; 1941 Comp., § 46-111; 1953 Comp., § 43-1-12; Laws 1971, ch. 172, § 1.
Annotations
Cross references. - For exemption of disposable wages from garnishment, see 35-12-7 NMSA 1978.
For assignment of wages to director of labor and industrial division of labor department, see 50-4-11 NMSA 1978.
For Uniform Commercial Code exclusion for wage assignments, see 55-9-104 NMSA 1978.
Withholding of funds from monthly salary checks already earned is legal and valid if made in statutory form. 1959-60 Op. Att'y Gen. No. 60-33.
Am. Jur. 2d, A.L.R. and C.J.S. references. - 6 Am. Jur. 2d Assignments for Benefit of Creditors § 29.
6A C.J.S. Assignments §§ 51, 52.
14-13-12. [Instrument needs no acknowledgment in absence of statutory requirement.] (1901)
Statute text
An acknowledgment of an instrument of writing shall not be necessary to its execution unless expressly so provided by statute.
History

History: Laws 1901, ch. 62, § 17; Code 1915, § 1; C.S. 1929, § 1-101; 1941 Comp., § 46-112; 1953 Comp., § 43-1-13.

Annotations

Cross references. - For provision that acknowledgment is necessary for recording of instruments, see 14-8-4 NMSA 1978.

For oil and gas leases on state lands to be acknowledged, see 19-10-32 NMSA 1978.

For voluntary assignments for benefit of creditors to be acknowledged, see 56-9-10 NMSA 1978.

For articles of incorporation of waterworks companies to be acknowledged, see 62-2-1 NMSA 1978.

For articles of incorporation of rural electric cooperatives to be acknowledged, see 62-15-6 NMSA 1978.

For bill of sale of animals to be acknowledged, see 77-9-21 to 77-9-24 NMSA 1978.

For provisions relating to herd law districts, see 77-12-3 NMSA 1978.

Acknowledgment not part of instrument. - Although an acknowledgment is required before an instrument may be filed, in the absence of a statute so providing, an acknowledgment is not a part of an instrument, and is not necessary to its validity. Garrett Bldg. Centers, Inc. v. Hale, 95 N.M. 450, 623 P.2d 570 (1981).

Deeds are required to be acknowledged for recordation and to protect the grantee against subsequent purchasers in good faith and without notice. New Mexico Properties, Inc. v. Lennox Indus., Inc. 95 N.M. 64, 618 P.2d 1228 (1980).

Deeds are not required to be acknowledged, except for recordation, and for the protection of the grantee against subsequent purchasers in good faith and without notice. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).

Acknowledgment is not essential to validity of deed of conveyance as between its parties. Kitchen v. Canavan, 36 N.M. 273, 13 P.2d 877 (1932).

Absence of valid acknowledgment does not render instrument void. Vorenberg v. Bosserman, 17 N.M. 433, 130 P. 438 (1913).

Absence of acknowledgment does not affect conveyance between parties. - Absence of an acknowledgment to a deed or instrument of conveyance does not affect its validity or render it void as between parties. New Mexico Properties, Inc. v. Lennox Indus., Inc. 95 N.M. 64, 618 P.2d 1228 (1980).

Valid materialmen's lien does not affect conveyance between parties. - A valid materialmen's lien which lacked an acknowledgment, but had been filed and recorded, was valid and binding as between the parties to an action on the lien. Garrett Bldg. Centers, Inc. v. Hale, 95 N.M. 450, 623 P.2d 570 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1A C.J.S. Acknowledgments § 7.

14-13-13. [Validation of former acknowledgments; 1951 act.] (1951)

Statute text

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof had been in the form prescribed by law.

History
History: 1941 Comp., § 46-114, enacted by Laws 1951, ch. 14, § 1; 1953 Comp., § 43-1-14.
Annotations
Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.
Prior validating acts. - Laws 1873-1874, ch. 14, § 3; C.L. 1884, § 2773; C.L. 1897, § 3969; Code 1915, § 2; C.S. 1929, § 1-102.
Laws 1882, ch. 27, § 1; C.L. 1884, § 2741; C.L. 1897, § 3931; Code 1915, § 3; C.S. 1929, § 1-103.
Laws 1913, ch. 13, § 1; Code 1915, § 4; C.S. 1929, § 1-104.
Laws 1921, ch. 164, §§ 1, 2; C.S. 1929, §§ 1-105, 1-106.
Laws 1929, ch. 59, § 1; C.S. 1929, § 1-107.
Laws 1933, ch. 17, § 1.
Laws 1939, ch. 41, § 1; 1941 Comp., § 46-113.
Laws 1947, ch. 195, § 1.
Generally. - The act of 1874 curing defective acknowledgment did not supply the want nor obviate the necessity of an acknowledgment as between the parties thereto. Armijo v. New Mexico Town Co. 3 N.M. (Gild.) 427, 5 P. 709 (1885).
Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments § 78.
1A C.J.S. Acknowledgments §§ 83, 84.
14-13-14. [Validation of former acknowledgments; 1957 act.] (1957)
Statute text
All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.
History
History: 1953 Comp., § 43-1-14.1, enacted by Laws 1957, ch. 110, § 1.
Annotations
Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.
Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments § 78.
1A C.J.S. Acknowledgments §§ 83, 84.
14-13-15. [Validation of former acknowledgments; 1965 act.] (1965)
Statute text
All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the

instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History

History: 1953 Comp., § 43-1-14.2, enacted by Laws 1965, ch. 186, § 1.

Annotations

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

Prior validating acts. - See 14-13-13, 14-13-14 NMSA 1978 and notes to 14-13-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments § 78.

1A C.J.S. Acknowledgments §§ 83, 84.

14-13-16. Validation of former acknowledgments; 1967 act. (1967)

Statute text

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History

History: 1953 Comp., § 43-1-14.3, enacted by Laws 1967, ch. 80, § 1.

Annotations

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

Prior validating acts. - See 14-13-13, 14-13-14, 14-13-15 NMSA 1978 and notes to 14-13-13 NMSA 1978.

14-13-17. Validation of former acknowledgments; 1971 act. (1971)

Statute text

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History
History: 1953 Comp., § 43-1-14.4, enacted by Laws 1971, ch. 165, § 1.
Annotations
Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.
Prior validating acts. - See 14-13-13, 14-13-14, 14-13-15, 14-13-16 NMSA 1978 and notes to 14-13-13 NMSA 1978.
14-13-18. Validation of former acknowledgments; 1975 act. (1975)
Statute text
All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.
History
History: 1953 Comp., § 43-1-14.5, enacted by Laws 1975, ch. 198, § 1.
Annotations
Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.
Prior validating acts. - See 14-13-13, 14-13-14, 14-13-15, 14-13-16, 14-13-17 NMSA 1978 and notes to 14-13-13 NMSA 1978.
Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments § 78.
1A C.J.S. Acknowledgments §§ 83, 84.
14-13-19 to 14-13-23. Repealed. (1993)
Annotations
Repeals. - Laws 1993, ch. 281, § 12 repeals 14-13-19 through 14-14-23 NMSA 1978, as enacted or amended by Laws 1955, ch. 82, §§ 1, 2, and 4, and Laws 1981, ch. 212, §§ 1 and 2, relating to short forms of acknowledgment, effective July 1, 1993. For provisions of former section, see 1988 Replacement Pamphlet. For present comparable provisions, see 14-14-8 NMSA 1978.
14-13-24. [Validation of certain prior acknowledgments.] (1981)
Statute text
All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by either the laws of the jurisdiction where taken or the laws of this state to take such acknowledgments, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding the form of the certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledment [acknowledgment] was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the

office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.
History
History: Laws 1981, ch. 212, § 3.
Annotations
Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.
Prior validating acts. - See 14-13-13, 14-13-14, 14-13-15, 14-13-16, 14-13-17, 14-13-18 NMSA 1978 and notes to 14-13-13 NMSA 1978.
Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments § 78.
1A C.J.S. Acknowledgments §§ 83, 84.
14-13-25. Validation of certain prior acknowledgments. (1991)
Statute text
All acknowledgments taken outside the state before any officer authorized by either the laws of the jurisdiction where taken or the laws of this state to take such acknowledgments, and all acknowledgments taken within this state before any officer authorized by law to take acknowledgments, that have been filed and are of record in the appropriate office as provided by law for a period of ten years or more without challenge to the form or content of the acknowledgment, are considered valid, notwithstanding the form of the certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom the acknowledgment was taken or the failure to show that the seal of the officer was affixed to the instrument acknowledged, and notwithstanding the failure of the acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978 if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though the certificate of acknowledgment and the record thereof had been in the form prescribed by law.
History
History: Laws 1991, ch. 92, § 1.
Annotations
Cross references. - For acknowledgment necessary for recording, decrees, and exceptions, see 14-8-4.

ARTICLE 14
UNIFORM LAW ON NOTARIAL ACTS
Section
14-14-1. Definitions.
14-14-2. Notarial acts.
14-14-3. Notarial acts in this state.
14-14-4. Notarial acts in other jurisdictions of the United States.
14-14-5. Notarial acts under federal authority.
14-14-6. Foreign notarial acts.
14-14-7. Certificate of notarial acts.
14-14-8. Certificates of notarial acts; short forms.
14-14-9. Notarial acts affected by the uniform law on notarial acts.
14-14-10. Uniformity of application and construction.
14-14-11. Short title.
14-14-1. Definitions. (1993)
Statute text
As used in the Uniform Law on Notarial Acts [14-14-1 to 14-14-11 NMSA 1978]:

A. "notarial act" means any act that a notary public of this state is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument;
B. "acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein;
C. "verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation;
D. "in a representative capacity" means:
(1) for and on behalf of a corporation, partnership, trust or other entity, as an authorized officer, agent, partner, trustee or other representative;
(2) as a public officer, personal representative, guardian or other representative, in the capacity recited in the instrument;
(3) as an attorney in fact for a principal; or
(4) in any other capacity as an authorized representative of another; and
E. "notarial officer" means a notary public or other officer authorized to perform notarial acts.
History
History: Laws 1993, ch. 281, § 1.
Annotations
Cross references. - For administration of oath, see 14-13-1 NMSA 1978.
For administration of affirmation in lieu of oath, see 14-13-2 NMSA 1978.
For form of oath to jurors on voir dire in civil cases, see UJI 13-102.
For form of oath to jurors on voir dire in criminal cases, see UJI 14-122.
For form of oath to impaneled jurors in criminal cases, see UJI 14-123.
Law reviews. - For article, "Attachment in New Mexico - Part I," see 1 Nat. Resources J. 303 (1961).
Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments § 4; 23 Am. Jur. 2d Deeds § 106.
1A C.J.S. Acknowledgments §§ 33, 37 and 38.
14-14-2. Notarial acts. (1993)
Statute text
A. In taking an acknowledgment, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.
B. In taking a verification upon oath or affirmation, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.
C. In witnessing or attesting a signature the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.
D. In certifying or attesting a copy of a document or other item, the notarial officer shall determine that the proffered copy is a full, true and accurate transcription or reproduction of the one that was copied.
E. In making or noting a protest of a negotiable instrument the notarial officer shall determine the matters set forth in Section 55-3-505 NMSA 1978.
F. A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is:
(1) personally known to the notarial officer;

(2) identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or
(3) identified on the basis of identification documents.
History
History: Laws 1993, ch. 281, § 2.
14-14-3. Notarial acts in this state. (1993)
Statute text
A. A notarial act may be performed within this state by the following persons:
(1) a notary public of this state;
(2) a judge, clerk or deputy clerk of any court of this state; or
(3) a person authorized by the law of this state to administer oaths.
B. Notarial acts performed within this state under federal authority as provided in Section 5 [14-14-5 NMSA 1978] of the Uniform Law on Notarial Acts have the same effect as if performed by a notarial officer of this state.
C. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.
History
History: Laws 1993, ch. 281, § 3.
Annotations
Cross references. - For power to administer oath, see 14-13-3 NMSA 1978.
14-14-4. Notarial acts in other jurisdictions of the United States. (1993)
Statute text
A. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if performed in another state, commonwealth, territory, district or possession of the United States by any of the following persons:
(1) a notary public of that jurisdiction;
(2) a judge, clerk or deputy clerk of a court of that jurisdiction; or
(3) any other person authorized by the law of that jurisdiction to perform notarial acts.
B. Notarial acts performed in other jurisdictions of the United States under federal authority as provided in Section 5 [14-14-5 NMSA 1978] of the Uniform Law on Notarial Acts have the same effect as if performed by a notarial officer of this state.
C. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.
D. The signature and indicated title of an officer listed in Paragraph (1) or (2) of Subsection A of this section conclusively establish the authority of a holder of that title to perform a notarial act.
History
History: Laws 1993, ch. 281, § 4.
14-14-5. Notarial acts under federal authority. (1993)
Statute text
A. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed anywhere by any of the following persons under authority granted by the law of the United States:
(1) a judge, clerk or deputy clerk of a court;
(2) a commissioned officer on active duty in the military service of the United States;
(3) an officer of the foreign service or consular officer of the United States; or
(4) any other person authorized by federal law to perform notarial acts.
B. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.
C. The signature and indicated title of an officer listed in Paragraph (1), (2) or (3) of Subsection A of this section conclusively establish the authority of a holder of that title to perform a notarial act.

History
History: Laws 1993, ch. 281, § 5.
14-14-6. Foreign notarial acts. (1993)
Statute text
A. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:
(1) a notary public or notary;
(2) a judge, clerk or deputy clerk of a court of record; or
(3) any other person authorized by the law of that jurisdiction to perform notarial acts.
B. An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.
C. A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of that nation stationed in the United States conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.
D. An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.
E. An official stamp or seal of an officer listed in Paragraph (1) or (2) of Subsection A of this section is prima facie evidence that a person with the indicated title has authority to perform notarial acts.
F. If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.
History
History: Laws 1993, ch. 281, § 6.
14-14-7. Certificate of notarial acts. (1993)
Statute text
A. A notarial act shall be evidenced by a certificate signed and dated by a notarial officer. The certificate shall include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate shall also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it shall also include the officer's rank.
B. A certificate of a notarial act is sufficient if it meets the requirements of Subsection A of this section and it:
(1) is in the short form set forth in Section 8 [14-14-8 NMSA 1978] of the Uniform Law on Notarial Acts;
(2) is in a form otherwise prescribed by the law of this state;
(3) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or
(4) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.
C. By executing a certificate of a notarial act, the notarial officer certifies that he has made the determinations required by Section 2 [14-14-2 NMSA 1978] of the Uniform Law on Notarial Acts.
History
History: Laws 1993, ch. 281, § 7.

Annotations

Cross references. - For provisions relating to conveyances generally, see 47-1-1 NMSA 1978 et seq.

Acknowledgment not part of instrument. - Although an acknowledgment is required before an instrument may be filed, in the absence of a statute so providing, an acknowledgment is not a part of an instrument and is not necessary to its validity. Garrett Bldg. Centers, Inc. v. Hale, 95 N.M. 450, 623 P.2d 570 (1981).

Recorded and filed lien, lacking acknowledgment, valid and binding. - A valid materialmen's lien which lacked an acknowledgment, but had been filed and recorded, was valid and binding as between the parties to an action on the lien. Garrett Bldg. Centers, Inc. v. Hale, 95 N.M. 450, 623 P.2d 570 (1981).

Sufficiency of acknowledgment. - Substantial compliance with this section in regard to acknowledgment is sufficient. Byers Bros. & Co. Live Stock Comm'n Corp. v. McKenzie, 30 N.M. 487, 239 P. 525 (1925).

The acknowledgment of a member of a copartnership was sufficient where form used expressed fact of acknowledgment being made, and also that the person making it was known to the official making the acknowledgment. Byers Bros. & Co. Live Stock Comm'n Corp. v. McKenzie, 30 N.M. 487, 239 P. 525 (1925).

Substantial compliance. - Mortgagee substantially complied with the requirements for acknowledgment of a mortgage where the mortgage showed the name of the corporation appearing just above the form of acknowledgment and the only information not appearing was the state of incorporation of the acknowledging corporation. Security Fed. Sav. & Loan Ass'n v. Commercial Inv., Ltd. 92 Bankr. 488 (Bankr. D.N.M. 1988).

Insufficient compliance. - An acknowledgment in the following form: "This mortgage was acknowledged before me by O.G. Keysor, this 11th day of April, 1911," was invalid. It was not a substantial compliance with the statutory requirements. Vorenberg v. Bosserman, 17 N.M. 433, 130 P. 438 (1913).

Where there was no recital that the mortgagor acknowledged that he executed the instrument, or that the person who appeared before the notary was the person described in and who executed the instrument, the acknowledgment was insufficient. Vorenberg v. Bosserman, 17 N.M. 433, 130 P. 438 (1913).

Where claim of mechanic's lien filed by plumbing company was signed in the name of the company by a partner, an acknowledgment to the claim in the form provided was an insufficient compliance with the requirements of verification under 48-2-6 NMSA 1978 where there was a total absence of any words confirming correctness, truth or authenticity by affidavit, oath, deposition or otherwise. Home Plumbing & Contracting Co. v. Pruitt, 70 N.M. 182, 372 P.2d 378 (1962).

Limitation on acknowledgment to mechanic's lien. - Acknowledgment to a mechanic's lien in the form provided by this section insufficient to comply with the verification requirement of 48-2-6 NMSA 1978. New Mexico Properties, Inc. v. Lennox Indus., Inc. 95 N.M. 64, 618 P.2d 1228 (1980).

Law reviews. - For article, "Attachment in New Mexico - Part I," see 1 Nat. Resources J. 303 (1961).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments § 26; 23 Am. Jur. 2d Deeds § 106.

Necessity and sufficiency of officer's jurat or certificate as to oath, 1 A.L.R. 1568, 116 A.L.R. 587.

Proof of identity upon which officer certifying to an acknowledgment is justified in acting, 10 A.L.R. 871.

Formal acknowledgment of instrument by one whose name is signed thereto by another as an adoption of the signature, 57 A.L.R. 525.

Option in lease for extension of term or for a new lease as creating necessity for acknowledgment, 161 A.L.R. 1094.
Sufficiency of certificate of acknowledgment, 25 A.L.R.2d 1124.
1A C.J.S. Acknowledgments §§ 6, 69, 71.
14-14-8. Certificates of notarial acts; short forms. (1993)
Statute text
The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by Subsection A of Section 7 [14-14-7 NMSA 1978] of the Uniform Law on Notarial Acts:

A. for an acknowledgment in an individual capacity:

State of _____
(County) of _____
This instrument was acknowledged before me on (date) by (name(s) of person(s))
(Signature of notarial officer)
(Seal, if any) Title (and Rank)
[My commission expires: _____];

B. for an acknowledgment in a representative capacity:
State of _____
(County) of _____
This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed.)
(Signature of notarial officer)
(Seal, if any) Title (and Rank)
[My commission expires: _____];

C. for a verification upon oath or affirmation:
State of _____
(County) of _____
Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).
(Signature of notarial officer)
(Seal, if any) Title (and Rank)
[My commission expires: _____];

D. for witnessing or attesting a signature:
State of _____
(County) of _____
Signed or attested before me on date by names(s) of person(s)).
(Signature of notarial officer)
(Seal, if any) Title (and Rank)
[My commission expires: _____];
and

E. for attestation of a copy of a document:
State of _____
(County) of _____

I certify that this is a true and correct copy of a document in the possession of _____. Dated _____

(Signature of notarial officer)

(Seal, if any) Title (and Rank)

[My commission expires: _____].

History

History: Laws 1993, ch. 281, § 8.

14-14-9. Notarial acts affected by the uniform law on notarial acts. (1993)

Statute text

The Uniform Law on Notarial Acts [14-14-1 to 14-14-11 NMSA 1978] applies to notarial acts performed on or after its effective date.

History

History: Laws 1993, ch. 281, § 9.

14-14-10. Uniformity of application and construction. (1993)

Statute text

The Uniform Law on Notarial Acts [14-14-1 to 14-14-11 NMSA 1978] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to its subject among states enacting it.

History

History: Laws 1993, ch. 281, § 10.

14-14-11. Short title. (1993)

Statute text

This act [14-14-1 to 14-14-11 NMSA 1978] may be cited as the "Uniform Law on Notarial Acts".

History

History: Laws 1993, ch. 281, § 11.

ARTICLE 15

ELECTRONIC AUTHENTICATION OF DOCUMENTS

Section

14-15-1. Short title.
14-15-2. Purpose.
14-15-3. Definitions.
14-15-4. Repealed.
14-15-5. Rules.
14-15-6. Contracting services.

14-15-1. Short title. (1996)

Statute text

This act [14-15-1 to 14-15-6 NMSA 1978] may be cited as the "Electronic Authentication of Documents Act".

History

History: Laws 1996, ch. 11, § 1.

Annotations

Cross references. - For electronic authentication as substitution for a signature on any document, see 14-3-15.2 NMSA 1978.

Effective dates. - Laws 1996, ch. 11, § 8, makes the Electronic Authentication of Documents Act effective July 1, 1996.

14-15-2. Purpose. (1996)

Statute text

The purpose of the Electronic Authentication of Documents Act [14-15-1 to 14-15-6 NMSA 1978] is to:

A. provide a centralized technical approach to authenticating electronic documents;

B. promote electronic commerce by eliminating barriers resulting from uncertainties over signature requirements and promoting the development of the legal and business infrastructure necessary to implement secure electronic commerce;
C. facilitate electronic filing of documents with government agencies and promote efficient delivery of government services by means of reliable, secure electronic records and document transactions;
D. establish a coherent approach to rules and standards regarding the authentication of electronic records; and
E. promote technological neutrality in electronic authentication.
History
History: Laws 1996, ch. 11, § 2; 1999, ch. 32, § 1; 2001, ch. 69, § 1.
Annotations
The 1999 amendment, effective June 18, 1999, inserted "sector" in Subsection A; in Subsection B inserted "electronic" and added the language beginning "by eliminating" to the end; substituted the language beginning "filing of documents" through "electronic records" for "information" in Subsection C; and added Subsection D.
The 2001 amendment, effective July 1, 2001, rewrote Subsection A, which formerly read "proved a centralized public sector electronic registry for authenticating electronic documents by means of a public and private key system"; in Subsection D, deleted "and integrity" following "authentication" and deleted "that can serve as a model to be adopted by other states and help to promote uniformity among the various states" following "electronic records"; and added Subsection E.
Effective dates. - Laws 1996, ch. 11, § 8, makes the Electronic Authentication of Documents Act effective July 1, 1996.
14-15-3. Definitions. (1996)
Statute text
As used in the Electronic Authentication of Documents Act [14-15-1 to 14-15-6 NMSA 1978]:
A. "authenticate" means to ascertain the identity of the originator, verify the integrity of the electronic data and establish a link between the data and the originator;
B. "document" means an identifiable collection of words, letters or graphical knowledge representations, regardless of the mode of representation. "Document" includes correspondence, agreements, invoices, reports, certifications, maps, drawings and images in both electronic and hard copy formats;
C. "electronic authentication" means the electronic signing of a document that establishes a verifiable link between the originator of a document and the document by means of optical, electrical, digital, magnetic, electromagnetic, wireless, telephonic, biological, a public key and private key system or other technology providing similar capabilities;
D. "office" means the information technology management office;
E. "originator" means the person who signs a document electronically;
F. "person" means an individual or entity, including:
(1) an estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture or syndicate; and
(2) any federal, state or local governmental unit or subdivision or any agency, department or instrumentality thereof;
G. "signed" or "signature" means a symbol executed or adopted or a security procedure employed or adopted using electronic means or otherwise, by or on behalf of a person with the intent to authenticate a record; and
H. "technological neutrality" means the methods selected to carry out electronic authentication that do not require or accord greater legal status or effect to the implementation or application of a specific technology or technical specification for performing the functions of creating, storing,

generating, receiving, communicating or authenticating electronic records or electronic signatures.

History

History: Laws 1996, ch. 11, § 3; 1999, ch. 32, § 2; 2001, ch. 69, § 2.

Annotations

The 1999 amendment, effective June 18, 1999, added Subsections C, D, and H; redesignated former Subsections C to E, F to K, and M to O as Subsections E to G, I to N, and O to Q, respectively; inserted "in a public and private key system" following "means" in Subsection G; substituted "a digital signature" for "an electronic authentication" at the end of Subsections L and M; substituted "message digest function" for "secure hash code" at the end of Subsection N(2); deleted former Subsection L, which defined "record abstraction"; substituted the language beginning "a system for" to the end for "a database or other electronic structure that binds a person's name or other identity to a public key" in Subsection O; deleted former Subsection P, which defined "secure hash code"; deleted former Subsection Q, which defined "sign" or "signing"; and made minor stylistic changes.

The 2001 amendment, effective July 1, 2001, deleted former Subsections A, C, D, G, H, L, M, N, O, P and Q, which contained definitions for "archival listing", "certificate", "digital signature", "key pair", "message digest function", "private key", "public key", "public and private key system", "register", "revocation" and "secretary", respectively, and renumbered the remaining subsections accordingly; in Subsection C, inserted "optical, electrical, digital, magnetic, electromagnetic, wireless telephonic, biological" and "or other technology providing similar capabilities"; substituted "information technology management office" for "office of electronic documentation" in Subsection D; and added Subsection H.

Effective dates. - Laws 1996, ch. 11, § 8, makes the Electronic Authentication of Documents Act effective July 1, 1996.

14-15-4. Repealed. (1996)

Annotations

Repeals. - Laws 2001, ch. 69, § 5 repeals 14-15-4 NMSA 1978, as enacted by Laws 1996, ch. 11, § 4, regarding the office of electronic documentation, effective July 1, 2001. For provisions of former section, see 1999 Cumulative Supplement.

14-15-5. Rules. (1996)

Statute text

A. The information technology commission shall adopt rules and standards to accomplish the purposes of the Electronic Authentication of Documents Act [14-15-1 to 14-15-6 NMSA 1978].

B. The rules shall address circumstances under which standards other than adopted standards may be used.

History

History: Laws 1996, ch. 11, § 5; 2001, ch. 69, § 3.

Annotations

The 2001 amendment, effective July 1, 2001, rewrote the section, which formerly authorized the secretary of state to issue regulations to accomplish the purposes of the act.

Effective dates. - Laws 1996, ch. 11, § 8, makes the Electronic Authentication of Documents Act effective July 1, 1996.

14-15-6. Contracting services. (1996)

Statute text

The office may contract with a private, public or quasi-public organization for the provision of services under the Electronic Authentication of Documents Act [14-15-1 to 14-15-6 NMSA 1978]. A contract for services shall comply with rules adopted pursuant to the Electronic Authentication of Documents Act and the provisions of the Public Records Act [Chapter 14, Article 3 NMSA 1978] and the Procurement Code [13-1-28 NMSA 1978].

History

History: Laws 1996, ch. 11, § 6; 2001, ch. 69, § 4.
Annotations
The 2001 amendment, effective July 1, 2001, substituted "office" for "secretary" and substituted "rules" for "regulations".
Effective dates. - Laws 1996, ch. 11, § 8, makes the Electronic Authentication of Documents Act effective July 1, 1996.

ARTICLE 16
UNIFORM ELECTRONIC TRANSACTIONS
Section
14-16-1. Short title.
14-16-2. Definitions.
14-16-3. Scope.
14-16-4. Prospective application.
14-16-5. Use of electronic records and electronic signatures; variation by agreement.
14-16-6. Construction and application.
14-16-7. Legal recognition of electronic records, electronic signatures and electronic contracts.
14-16-8. Provision of information in writing; presentation of records.
14-16-9. Attribution and effect of electronic record and electronic signature.
14-16-10. Effect of change or error.
14-16-11. Notarization and acknowledgment.
14-16-12. Retention of electronic records; originals.
14-16-13. Admissibility in evidence.
14-16-14. Automated transaction.
14-16-15. Time and place of sending and receipt.
14-16-16. Transferable records.
14-16-17. Creation and retention of electronic records and conversion of written records by governmental agencies.
14-16-18. Acceptance and distribution of electronic records by governmental agencies.
14-16-19. Interoperability.

14-16-1. Short title. (2001)
Statute text
This act [14-16-1 to 14-16-19 NMSA 1978] may be cited as the "Uniform Electronic Transactions Act".
History
History: Laws 2001, ch. 131, § 1.
Annotations
Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-2. Definitions. (2001)
Statute text
As used in the Uniform Electronic Transactions Act [14-16-1 to 14-16-19 NMSA 1978]:
(1) "agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules and procedures given the effect of agreements under laws otherwise applicable to a particular transaction;
(2) "automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction;
(3) "computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result;

(4) "contract" means the total legal obligation resulting from the parties' agreement as affected by the Uniform Electronic Transactions Act [14-16-1 to 14-16-19 NMSA 1978] and other applicable law;
(5) "electronic" means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;
(6) "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual;
(7) "electronic record" means a record created, generated, sent, communicated, received or stored by electronic means;
(8) "electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;
(9) "governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state;
(10) "information" means data, text, images, sounds, codes, computer programs, software, databases or the like;
(11) "information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information;
(12) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity;
(13) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form;
(14) "security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment procedures;
(15) "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe, an Indian band or an Alaskan native village, which is recognized by federal law or formally acknowledged by a state; and
(16) "transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial affairs or governmental affairs.
History
History: Laws 2001, ch. 131, § 2.
Annotations
Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.
14-16-3. Scope. (2001)
Statute text
(a) Except as otherwise provided in Subsection (b), the Uniform Electronic Transactions Act [14-16-1 to 14-16-19 NMSA 1978] applies to electronic records and electronic signatures relating to a transaction.
(b) The Uniform Electronic Transactions Act does not apply to:
(1) a transaction to the extent it is governed by:
(i) a law governing the creation and execution of wills, codicils or testamentary trusts;
(ii) the Uniform Commercial Code [Chapter 55 NMSA 1978], other than Sections 55-1-107 and 55-1-206 NMSA 1978 and Chapter 55, Articles 2 and 2A NMSA 1978;
(iii) the Uniform Anatomical Gift Act [Chapter 24, Article 6A NMSA 1978];

(iv) the Uniform Health-Care Decisions Act [24-7A-1 to 24-7A-17 NMSA 1978]; or
(v) a statute, regulation or other rule of law that governs adoption, divorce or other family law matters;
(2) a notice concerning:
(i) the cancellation or termination of utility services, including water, heat or power services;
(ii) default, acceleration, repossession, foreclosure, eviction or the right to cure, under a credit agreement secured by or a rental agreement for a primary residence of an individual; or
(iii) the cancellation or termination of health insurance benefits or life insurance benefits, but not including annuities.
(c) The Uniform Electronic Transactions Act [14-16-1 to 14-16-19 NMSA 1978] applies to an electronic record or electronic signature otherwise excluded from the application of that act under Subsection (b) to the extent it is governed by a law other than those specified in Subsection (b).
(d) A transaction subject to the Uniform Electronic Transactions Act is also subject to other applicable substantive law.
History
History: Laws 2001, ch. 131, § 3.
Annotations
Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.
14-16-4. Prospective application. (2001)
Statute text
The Uniform Electronic Transactions Act [14-16-1 to 14-16-19 NMSA 1978] applies to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after the effective date of that act.
History
History: Laws 2001, ch. 131, § 4.
Annotations
Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.
14-16-5. Use of electronic records and electronic signatures; variation by agreement. (2001)
Statute text
(a) The Uniform Electronic Transactions Act [14-16-1 to 14-16-19 NMSA 1978] does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.
(b) The Uniform Electronic Transactions Act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.
(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.
(d) Except as otherwise provided in the Uniform Electronic Transactions Act [14-16-1 to 14-16-19 NMSA 1978], the effect of any of its provisions may be varied by agreement. The presence in certain provisions of the Uniform Electronic Transactions Act of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.
(e) Whether an electronic record or electronic signature has legal consequences is determined by the Uniform Electronic Transactions Act and other applicable law.
History
History: Laws 2001, ch. 131, § 5.
Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-6. Construction and application. (2001)

Statute text

The Uniform Electronic Transactions Act [14-16-1 to 14-16-19 NMSA 1978] must be construed and applied:

(1) to facilitate electronic transactions consistent with other applicable law;

(2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) to effectuate its general purpose to make uniform the law with respect to the subject of the Uniform Electronic Transactions Act among states enacting it.

History

History: Laws 2001, ch. 131, § 6.

Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-7. Legal recognition of electronic records, electronic signatures and electronic contracts. (2001)

Statute text

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

History

History: Laws 2001, ch. 131, § 7.

Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-8. Provision of information in writing; presentation of records. (2001)

Statute text

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than the Uniform Electronic Transactions Act [14-16-1 to 14-16-19 NMSA 1978] requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) The record must be posted or displayed in the manner specified in the other law.

(2) Except as otherwise provided in Subsection (d)(2), the record must be sent, communicated or transmitted by the method specified in the other law.

(3) The record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(1) to the extent a law other than the Uniform Electronic Transactions Act [14-16-1 to 14-16-19 NMSA 1978] requires information to be provided, sent or delivered in writing but permits that

requirement to be varied by agreement, the requirement under Subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and (2) a requirement under a law other than the Uniform Electronic Transactions Act to send, communicate or transmit a record by first-class mail, postage prepaid or regular United States mail, may be varied by agreement to the extent permitted by the other law.

History

History: Laws 2001, ch. 131, § 8.

Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-9. Attribution and effect of electronic record and electronic signature. (2001)

Statute text

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under Subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution or adoption, including the parties' agreement, if any, and otherwise as provided by law.

History

History: Laws 2001, ch. 131, § 9.

Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-10. Effect of change or error. (2001)

Statute text

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither Paragraph (1) nor Paragraph (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Paragraphs (2) and (3) may not be varied by agreement.

History

History: Laws 2001, ch. 131, § 10.

Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-11. Notarization and acknowledgment. (2001)

Statute text

If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

History

History: Laws 2001, ch. 131, § 11.

Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-12. Retention of electronic records; originals. (2001)

Statute text

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains accessible for later reference.

(b) A requirement to retain a record in accordance with Subsection (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated or received.

(c) A person may satisfy Subsection (a) by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with Subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with Subsection (a).

(f) A record retained as an electronic record in accordance with Subsection (a) satisfies a law requiring a person to retain a record for evidentiary, audit or like purposes, unless a law enacted after the effective date of the Uniform Electronic Transactions Act [14-16-1 to 14-16-19 NMSA 1978] specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

History

History: Laws 2001, ch. 131, § 12.

Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-13. Admissibility in evidence. (2001)

Statute text

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

History

History: Laws 2001, ch. 131, § 13.

Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-14. Automated transaction. (2001)
Statute text
In an automated transaction, the following rules apply:
(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.
(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.
(3) The terms of the contract are determined by the substantive law applicable to it.
History
History: Laws 2001, ch. 131, § 14.
Annotations
Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.
14-16-15. Time and place of sending and receipt. (2001)
Statute text
(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:
(1) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;
(2) is in a form capable of being processed by that system; and
(3) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.
(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:
(1) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and
(2) it is in a form capable of being processed by that system.
(c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under Subsection (d).
(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:
(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.
(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.
(e) An electronic record is received under Subsection (b) even if no individual is aware of its receipt.
(f) Receipt of an electronic acknowledgment from an information processing system described in Subsection (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.
(g) If a person is aware that an electronic record purportedly sent under Subsection (a), or purportedly received under Subsection (b), was not actually sent or received, the legal effect of

the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

History

History: Laws 2001, ch. 131, § 15.

Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-16. Transferable records. (2001)

Statute text

(a) As used in this section, "transferable record" means an electronic record that:

(1) would be a note under Chapter 55, Article 3 NMSA 1978 or a document under Chapter 55, Article 7 NMSA 1978 if the electronic record were in writing; and

(2) the issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies Subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored and assigned in such a manner that:

(1) a single authoritative copy of the transferable record exists which is unique, identifiable and, except as otherwise provided in Paragraphs (4), (5) and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Section 55-1-201 NMSA 1978, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code [Chapter 55 NMSA 1978], including, if the applicable statutory requirements under Sections 55-3-302, 55-7-501 or 55-9-308 NMSA 1978 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

History

History: Laws 2001, ch. 131, § 16.

Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-17. Creation and retention of electronic records and conversion of written records by governmental agencies. (2001)

Statute text

Each governmental agency of this state shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

History

History: Laws 2001, ch. 131, § 17.

Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-18. Acceptance and distribution of electronic records by governmental agencies. (2001)

Statute text

(a) Except as otherwise provided in Section 12(f) [Subsection (f) of 14-16-12 NMSA 1978], each governmental agency of this state shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use and rely upon electronic records and electronic signatures.

(b) To the extent that a governmental agency uses electronic records and electronic signatures under Subsection (a), the governmental agency, giving due consideration to security, may specify:

(1) the manner and format in which the electronic records must be created, generated, sent, communicated, received and stored and the systems established for those purposes;

(2) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(3) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality and auditability of electronic records; and

(4) any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in Section 12(f) [Subsection (f) of 14-16-12 NMSA 1978], the Uniform Electronic Transactions Act [14-16-1 to 14-16-19 NMSA 1978] does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

History

History: Laws 2001, ch. 131, § 18.

Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

14-16-19. Interoperability. (2001)

Statute text

The governmental agency of this state which adopts standards pursuant to Section 18 [14-16-18 NMSA 1978] may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

History

History: Laws 2001, ch. 131, § 19.

Annotations

Effective dates. - Laws 2001, ch. 131, § 21 makes the Uniform Electronic Transactions Act effective July 1, 2001.

Severability clauses. - Laws 2001, ch. 131, § 20 provides that if any provision of the Uniform Electronic Transactions Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.