

GOVERNMENT CODE
CHAPTER 406. NOTARY PUBLIC; COMMISSIONER OF DEEDS
SUBCHAPTER A. NOTARY PUBLIC

Sec. 406.001. APPOINTMENTS. The secretary of state may appoint a notary public at any time.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.002. TERM. The term of a notary public expires four years after the date the notary public qualifies.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.003. JURISDICTION. A notary public has statewide jurisdiction.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.004. ELIGIBILITY. Each person appointed and commissioned as a notary public shall be at least 18 years of age and a resident of the State of Texas and must not have been convicted of a felony or crime involving moral turpitude.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 1, eff. Jan. 1, 1996.

Sec. 406.005. APPOINTMENT PROCEDURE--STATEMENT. (a) Each person to be appointed a notary public shall submit an application to the secretary of state on a form prescribed by the secretary of state. The application must satisfy the secretary of state that the applicant is qualified. The application must state:

(1) the applicant's name to be used in acting as a notary public;

(2) the applicant's post office address;

(3) the applicant's county of residence;

(4) the applicant's date of birth;

(5) the applicant's driver's license number or the number of other official state-issued identification; and

(6) the applicant's social security number.

(b) The applicant shall also execute the statement of officers as required by Section 1, Article XVI, Texas Constitution.

(c) Repealed by Acts 2003, 78th Leg., ch. 1211, Sec. 1.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 2, eff. Jan. 1, 1996; Acts 2003, 78th Leg., ch. 1211, Sec. 1, eff. Sept. 1, 2003.

Sec. 406.006. QUALIFICATION. An individual qualifies by:

(1) properly completing the application form;

(2) executing the statement;

(3) providing the bond, if required;

(4) paying the required filing fees; and

(5) meeting the eligibility requirements.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1989, 71st Leg., ch. 406, Sec. 1, eff. Sept. 1, 1989; Acts

1995, 74th Leg., ch. 719, Sec. 3, eff. Jan. 1, 1996; Acts 2003, 78th

Leg., ch. 285, Sec. 14, eff. Sept. 1, 2003.

Sec. 406.007. FEES PAID TO SECRETARY OF STATE. (a) The applicant must submit to the secretary of state:

(1) a fee of \$10 for approving and filing the bond of the notary public, if required; and

(2) a fee of \$1 to be appropriated to and used by the secretary of state only for hiring an investigator and for preparing and distributing the materials required to be distributed under Section 406.008.

(b) The secretary of state shall charge for use of the state a fee of \$10 for a notary public commission. The applicant must pay the fee in advance to the secretary of state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1989, 71st Leg., ch. 4, Sec. 2.14(a), eff. Sept. 1, 1989;

Acts 2003, 78th Leg., ch. 285, Sec. 15, eff. Sept. 1, 2003.

Sec. 406.008. COMMISSION; NOTARY MATERIALS.

(a) Immediately after the qualification of a notary public, the secretary of state shall send notice of appointment along with a commission to the notary public. The commission is effective as of the date of qualification.

(b) When the commission is issued, the secretary of state shall supply the notary public with:

(1) materials outlining the powers and duties of the office;

(2) a list of prohibited acts; and

(3) sample forms for an acknowledgment, jurat, and verification and for the administering of an oath, protest, and deposition.

(c) Repealed by Acts 1995, 74th Leg., ch. 719, Sec. 10, eff.

Jan. 1, 1996.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 4, 10, eff. Jan. 1, 1996.

Sec. 406.009. REJECTION OF APPOINTMENT; SUSPENSION OR REVOCATION OF COMMISSION. (a) The secretary of state may, for good cause, reject an application or suspend or revoke the commission of a notary public.

(b) An action by the secretary of state under this section is subject to the rights of notice, hearing, adjudication, and appeal.

(c) An appeal under this section is to the district court of Travis County. The secretary of state has the burden of proof, and the trial is conducted de novo.

(d) In this section, "good cause" includes:

(1) a final conviction for a crime involving moral turpitude;

(2) a false statement knowingly made in an application;

(3) the failure to comply with Section 406.017;

(4) a final conviction for a violation of a law concerning the regulation of the conduct of notaries public in this or another state;

(5) the imposition on the notary public of an administrative, criminal, or civil penalty for a violation of a law or rule prescribing the duties of a notary public; or

(6) performing any notarization when the person for whom the notarization is performed did not personally appear before the notary at the time the notarization is executed.

(e) The dismissal and discharge of proceedings under either the misdemeanor adult probation and supervision law or the adult probation, parole, and mandatory supervision law shall not be considered a conviction for the purposes of determining good cause. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.15(a), eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 719, Sec. 5, 6, eff. Jan. 1, 1996.

Sec. 406.010. BOND; OATH. (a) Each person to be appointed a notary public shall, before entering the official duties of office, execute a bond in the amount of \$10,000 with a solvent surety company authorized to do business in this state as a surety. The bond must be approved by the secretary of state, payable to the governor, and conditioned on the faithful performance of the duties of office. The secretary of state has the authority to accept an electronic filing of the notary public bond if an agreement has been made with the surety company.

(b) The notary bond shall be deposited in the office of the secretary of state, is not void on first recovery, and may be sued on in the name of the injured party from time to time until the whole amount of the bond is recovered.

(c) A notary public, before entering on the duties of office, shall take the official oath required by Section 1, Article XVI, Texas Constitution.

(d) The oath shall be signed and sworn to or affirmed by the notary public in the presence of a notary public or other person authorized to administer oaths in this state. A notary public cannot execute his or her own oath of office.

(e) The secretary of state shall provide an oath of office form along with the commission and educational materials.

(f) Subsections (a) and (b) do not apply to a person whose services as a notary public are performed primarily as a state officer or employee.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 7, eff. Jan. 1, 1996; Acts 2003, 78th Leg., ch. 285, Sec. 16, eff. Sept. 1, 2003.

Sec. 406.011. REAPPOINTMENT. (a) Not earlier than 90 days prior to the expiration date of the notary's term, a notary public may apply for reappointment on submission of a new application to the secretary of state.

(b) A notary public who is not reappointed on or before the expiration date of the term the notary public is serving will be appointed for a new term expiring four years from the date of qualification.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 719, Sec. 8, eff. Jan. 1, 1996.

Sec. 406.012. INSPECTION OF RECORDS. All records concerning the appointment and qualification of the notary public

shall be kept in the office of the secretary of state. The records are public information.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.16(a), eff. Sept. 1, 1989.

Sec. 406.013. SEAL. (a) A notary public shall provide a seal of office that clearly shows, when embossed, stamped, or printed on a document, the words "Notary Public, State of Texas" around a star of five points, the notary public's name, and the date the notary public's commission expires. The notary public shall authenticate all official acts with the seal of office.

(b) The seal may be a circular form not more than two inches in diameter or a rectangular form not more than one inch in width and 2-1/2 inches in length. The seal must have a serrated or milled edge border.

(c) The seal must be affixed by a seal press or stamp that embosses or prints a seal that legibly reproduces the required elements of the seal under photographic methods. An indelible ink pad must be used for affixing by a stamp the impression of a seal on an instrument to authenticate the notary public's official act.

(d) Subsection (c) does not apply to an electronically transmitted authenticated document, except that an electronically transmitted authenticated document must legibly reproduce the required elements of the seal.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.71(d), eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 95, Sec. 2, eff. May 11, 2001.

Sec. 406.014. NOTARY RECORDS. (a) A notary public other than a court clerk notarizing instruments for the court shall keep in a book a record of:

- (1) the date of each instrument notarized;
- (2) the date of the notarization;
- (3) the name of the signer, grantor, or maker;
- (4) the signer's, grantor's, or maker's residence or alleged residence;

- (5) whether the signer, grantor, or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and residence or alleged residence of the individual introducing the signer, grantor, or maker;

- (6) if the instrument is proved by a witness, the residence of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the witness;

- (7) the name and residence of the grantee;

- (8) if land is conveyed or charged by the instrument, the name of the original grantee and the county where the land is located; and

- (9) a brief description of the instrument.

(b) Entries in the notary's book are public information.

(c) A notary public shall, on payment of all fees, provide a certified copy of any record in the notary public's office to any person requesting the copy.

(d) A notary public who administers an oath pursuant to Article 45.019, Code of Criminal Procedure, is exempt from the requirement in Subsection (a) of recording that oath.

(e) A notary public may maintain the records required by Subsection (a) electronically in a computer or other storage device.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.17(a), eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 406, Sec. 2, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 451, Sec. 1, eff. June 14, 1989; Acts 1999, 76th Leg., ch. 1545, Sec. 71, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 103, Sec. 1, eff. September 1, 2005.

Sec. 406.015. COPIES CERTIFIED BY COUNTY CLERK. (a) A copy of a record, declaration, protest, or other official act of a notary public may be certified by the county clerk with whom the instrument is deposited.

(b) A copy of an instrument certified by the county clerk under Subsection (a) has the same authority as if certified by the notary public by whom the record, declaration, protest, or other official act was originally made.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.016. AUTHORITY. (a) A notary public has the same authority as the county clerk to:

- (1) take acknowledgments or proofs of written instruments;
- (2) protest instruments permitted by law to be protested;
- (3) administer oaths;
- (4) take depositions; and
- (5) certify copies of documents not recordable in the public records.

(b) A notary public shall sign an instrument in Subsection (a) in the name under which the notary public is commissioned.

(c) A notary public may not issue an identification card.

(d) A notary public not licensed to practice law in this state may not give legal advice or accept fees for legal advice.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.0165. SIGNING DOCUMENT FOR INDIVIDUAL WITH DISABILITY. (a) A notary may sign the name of an individual who is physically unable to sign or make a mark on a document presented for notarization if directed to do so by that individual, in the presence of a witness who has no legal or equitable interest in any real or personal property that is the subject of, or is affected by, the document being signed. The notary shall require identification of the witness in the same manner as from an acknowledging person under Section 121.005, Civil Practice and Remedies Code.

(b) A notary who signs a document under this section shall write, beneath the signature, the following or a substantially similar sentence:

"Signature affixed by notary in the presence of (name of witness), a disinterested witness, under Section 406.0165, Government Code."

(c) A signature made under this section is effective as the signature of the individual on whose behalf the signature was made for any purpose. A subsequent bona fide purchaser for value may rely on the signature of the notary as evidence of the individual's consent to execution of the document.

(d) In this section, "disability" means a physical impairment that impedes the ability to sign or make a mark on a document.

Added by Acts 1997, 75th Leg., ch. 1218, Sec. 1, eff. Sept. 1, 1997.

Sec. 406.017. REPRESENTATION AS ATTORNEY. (a) A person commits an offense if the person is a notary public and the person:

(1) states or implies that the person is an attorney licensed to practice law in this state;

(2) solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters;

(3) solicits or accepts compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or the United States;

(4) uses the phrase "notario" or "notario publico" to advertise the services of a notary public, whether by signs, pamphlets, stationery, or other written communication or by radio or television; or

(5) advertises the services of a notary public in a language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, if the person does not post or otherwise include with the advertisement a notice that complies with Subsection (b).

(b) The notice required by Subsection (a)(5) must state that the notary public is not an attorney and must be in English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice must include the fees that a notary public may charge and the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

(c) It is an exception to prosecution under this section that, at the time of the conduct charged, the person is licensed to practice law in this state and in good standing with the State Bar of Texas.

(d) Except as provided by Subsection (e) of this section, an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

(f) Failure to comply with this section is, in addition to a violation of any other applicable law of this state, a deceptive trade practice actionable under Chapter 17, Business & Commerce Code.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 566, Sec. 1, eff. Sept. 1, 2001.

Sec. 406.018. REMOVAL FROM OFFICE. (a) A notary public guilty of wilful neglect of duty or malfeasance in office may be removed from office in the manner provided by law.

(b) A notary public indicted for and convicted of a wilful neglect of duty or official misconduct shall be removed from office. The court shall include the order for removal as part of its judgment.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.019. CHANGE OF ADDRESS. A notary public shall notify the secretary of state of a change of the notary public's address not later than the 10th day after the date on which the change is made.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.020. REMOVAL FROM STATE. A notary public who removes his residence from this state vacates the office.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.021. REMOVAL FROM PRECINCT. An ex officio notary public who moves permanently from the notary public's precinct vacates the office.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.022. EFFECT OF VACANCY. If the office of a notary public becomes vacant due to resignation, removal, or death, the county clerk of the county in which the notary public resides shall obtain the record books and public papers belonging to the office of the notary public and deposit them in the county clerk's office.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 406, Sec. 3, eff. Sept. 1, 1989.

Sec. 406.023. ADMINISTRATION AND ENFORCEMENT. (a) The secretary of state shall adopt rules necessary for the administration and enforcement of this subchapter. The rules must be consistent with the provisions of this subchapter.

(b) The secretary of state may employ an investigator to aid in the enforcement of this subchapter.

(c) The secretary of state may provide for the appointment of county clerks as deputy custodians for the limited authentication of notary public records deposited in the clerks' offices.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.024. FEES CHARGED BY NOTARY PUBLIC. (a) A notary public or its employer may charge the following fees:

(1) for protesting a bill or note for nonacceptance or nonpayment, register and seal, a fee of \$4;

(2) for each notice of protest, a fee of \$1;

(3) for protesting in all other cases, a fee of \$4;

(4) for certificate and seal to a protest, a fee of \$4;

(5) for taking the acknowledgment or proof of a deed or other instrument in writing, for registration, including certificate and seal, a fee of \$6 for the first signature and \$1 for each additional signature;

(6) for administering an oath or affirmation with certificate and seal, a fee of \$6;

(7) for a certificate under seal not otherwise provided for, a fee of \$6;

(8) for a copy of a record or paper in the notary public's office, a fee of 50 cents for each page;

(9) for taking the deposition of a witness, 50 cents for each 100 words;

(10) for swearing a witness to a deposition, certificate, seal, and other business connected with taking the deposition, a fee of \$6; and

(11) for a notarial act not provided for, a fee of \$6.

(b) A notary public may charge a fee only for an acknowledgment or official act under Subsection (a). The fee charged may not exceed the fee authorized by Subsection (a).

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.18(a), eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 259, Sec. 1, eff. Sept. 1, 1995.

Sec. 406.025. SIGNATURE ON COMMISSIONS AFTER CHANGE IN OFFICE. If the governor or secretary of state ceases to hold or perform the duties of office, existing stocks of commissions bearing the person's printed name, signature, or facsimile signature may be used until they are exhausted, and the person succeeding to the office or the duties of the office shall have the commissions issued with:

(1) the obsolete printed name, signature, or facsimile signature struck through;

(2) the successor's printed name submitted for the obsolete printed name, signature, or facsimile signature; and

(3) the inscription "Printed name authorized by law" near the successor's printed name.

Added by Acts 1995, 74th Leg., ch. 719, Sec. 9, eff. Jan. 1, 1996.

SUBCHAPTER B. COMMISSIONER OF DEEDS

Sec. 406.051. APPOINTMENT. (a) The governor may biennially appoint and commission one or more individuals in other states, territories, or foreign countries or in the District of Columbia to serve as commissioner of deeds.

(b) An appointment may be made only on the recommendation of the executive authority of the state, territory, or foreign country or of the District of Columbia.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.052. TERM. The term of office of a commissioner of deeds is two years.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.053. OATH. Before performing the duties of office, a commissioner of deeds shall take and subscribe an oath to well and faithfully perform the duties of office under the laws of this state. The oath shall be:

(1) taken before the clerk of a court of record in the city, county, or country in which the commissioner resides;

(2) certified to by the clerk under the clerk's hand and seal of office; and

(3) filed in the office of the secretary of state of this state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.054. SEAL. A commissioner of deeds shall provide a seal with a star of five points in the center and the words "Commissioner of the State of Texas" engraved on the seal. The seal shall be used to certify all official acts of the commissioner of deeds. An instrument that does not have the impression of the seal, or an act of the commissioner of deeds that is not certified by the impression of the seal, is not valid in this state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 406.055. AUTHORITY. A commissioner of deeds has the same authority as a notary public to take acknowledgments and proofs of written instruments, to administer oaths, and to take depositions to be used or recorded in this state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.