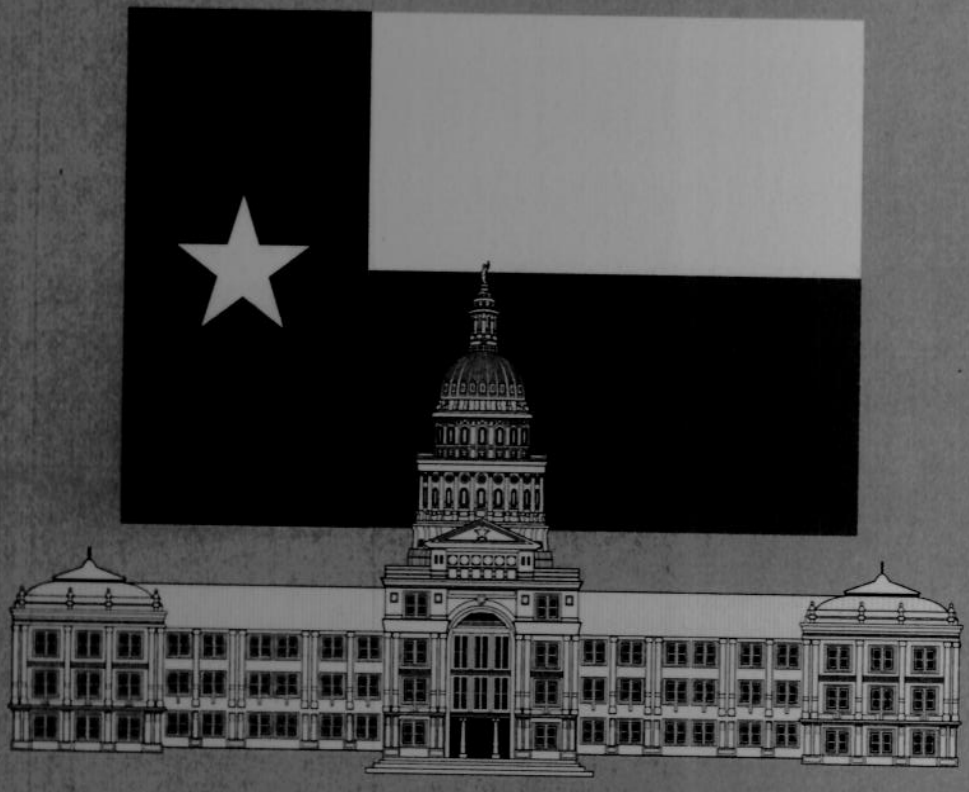
TEXAS NOTARY HANDBOOK



AMERICAN SOCIETY OF NOTARIES

Chapter 8 - Prohibited Acts and Penalties

Prohibited Acts

Texas notary law clearly details numerous acts that are strictly prohibited. In addition, standard notarial practice requires notaries to decline to perform notary services in some specific instances. Violations and acts of official misconduct create civil liability for the notary. Furthermore, some violations may result in criminal penalties against the notary. For all violations, the Secretary of State may take administrative disciplinary action against the notary, including revocation of the notary's commission.

Texas notaries must not perform any of the following prohibited acts:

- A notary may not issue an identification card. Tex. Gov't. Code §406.016(c).
- A notary who is not licensed to practice law in this state may not give legal advice or accept fees for legal advice. Tex. Gov't. Code §406.016(d). This includes:
  - -Preparing, drafting, selecting, or giving advice concerning legal documents;
  - -Explaining the contents or effect of a document;
  - -Determining the correct format or appropriate notarial act for a document; or
  - -Implying through an advertisement or in direct contact with a customer that you possess authority that the office of notary public does not confer.
- A notary who is not an attorney may not advertise notarial services in a language other than English unless the following statement is included in the advertisement in both English and the other language: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." Tex. Gov't. Code §406.017(a) and (b).
- A notary may not translate the words "notary public" into Spanish (notario publico), or any other language. Tex. Gov't. Code §406.017(c).
- A notary may not overcharge for notarial services. Tex. Gov't. Code §406.024 (b) and §603.010.
- A notary may not make a certified copy of a publicly recordable document. Tex. Gov't. Code §406.016(a)(5).
- A notary may not sign his/her official signature to an instrument in any name other than his/her commissioned name. Tex. Gov't. Code §406.016(b). The notary's seal must also contain the notary's exact commissioned name. Tex. Gov't. Code §406.013.
- A notary may not perform a notarial act unless the document signer is physically present with the notary at the time of the notarization. Tex. Gov't. Code §406.009(d)(6) and Tex. Civ. Prac. & Rem. Code §121.004(a).
- A notary may not take the acknowledgment of a person on a written instrument (or administer an oath on an affidavit) without completing the appropriate notarial certificate corresponding to the notarial act given. Tex. Civ. Prac. & Rem. Code §121.004(b).
- A notary may not take an acknowledgment or administer an oath unless the notary personally knows the signer or has satisfactory evidence of the signer's identity. Tex. Civ. Prac. & Rem. Code §121.005.

- A notary may not write in his/her recordbook the number of the identification document or any other number that could be used to compromise or steal the identity of a person who received a notarial act. Texas Admin. Code §87.60
- A notary may not notarize his/her own signature.
- A notary may not perform a notarial act without properly authenticating the act with the notary's official seal of office. Tex. Gov't. Code §406.013(a).
- A notary may not make a false statement on the Application for Appointment as a notary public. Tex. Gov't. Code §406.009(d)(2).

In addition to the prohibitions found in Texas law, standard principles of notarial practice prohibit notaries from violating any of the following:

- A notary should not take the acknowledgment of a person who does not speak or understand the language on a document written in English, unless the nature and effect of the document to be notarized is translated into a language that the signer does understand.
- A notary should not notarize if the signer appears to be mentally incapable of understanding the nature and effect of the document at the time the transaction takes place.
- A notary should not perform any notarial act for the execution of an incomplete document; that is, a document that contains blank spaces that should be filled-in prior to notarization, or a document that is missing pages.
- A notary public should never perform a notarial act for any family member. A notary is an impartial witness and, to avoid possible conflict of interest problems, the notary must refuse to perform notarial acts for persons related to the notary.
- A notary must refuse to perform a notarial act when the notary is a party to the document or transaction for which the notarial act is required. This could result in the document being challenged at a later date, and the integrity of the transaction could be questioned. However, a notary public is not disqualified from taking an acknowledgment or a proof of a written instrument as provided by Tex. Gov't. Code §406.016(a)(1) solely because of the person's ownership of stock or a participation interest in or employment by a financial institution that is an interested party to the underlying transaction.
- A notary should not amend a notarial certificate after the notarization is complete. If the notary fails to complete the notarial certificate with all the elements required by law while the person is present, the certificate should not be changed later. Instead, a new notarial act with a new notarial certificate is necessary.
- A notary must never notarize a photograph or attempt to certify the authenticity of a photo. Instead, the notary may take a person's sworn affidavit about the photograph.
- A notary must not certify the accuracy of a translation, even if the notary can read and understand the language of the document and its corresponding translation. Instead, the notary may take an unbiased translator's sworn affidavit certifying the accuracy of the translation.
- A notary may never attempt to certify the authenticity of objects, such as art,