

ALABAMA REVISES NOTARY ACT

In response to numerous reports of fraud and abuse across the State regarding notaries public, the new and very prominent role notaries public have in Alabama's new marriage contract process, and widespread reports of notaries public not understanding their duties and responsibilities, the Alabama Legislature significantly revised and updated Alabama's Notary Public Act to address the noted problems and shortcomings with the existing law. The comprehensive revision of Alabama's Notary Public Act brings Alabama in line with a majority of American states that require training of notaries public and specify both civil and criminal penalties, should a notary public act negligently or criminally.

Alabama's revised Notary Public Act (*Ala. Act 2023-548*) was sponsored by Senator Sam Givhan (R) of Madison County and Representative David Faulkner (R) of Jefferson County. The Alabama Probate Judges Association ("APJA") encouraged and endorsed the legislative effort and representatives of the APJA worked closely with the sponsors in formulating the revised notary act. The revised Notary Public Act becomes effective on September 1, 2023.

The revised Notary Public Act amends *Ala. Code* §§ 36-20-71,72, 73.1, 74 and 75 (1975). The key features of the revised act are:

- notary public's term of office remains 4 years
- Alabama's judges of probate continue to appoint notaries public
- continues to require Alabama judges of probate to report appointments to the office of the Alabama Secretary of State
- Requires an uniform application form be utilized statewide, which will be developed by the Alabama Law Institute and the APJA
- Establishes a \$10.00 application fee to be paid to the judge of probate at the time application is submitted
- Increases the fee for issuance of a notary commission from \$10.00 to \$25.00
- Requires all applicants (except lawyers) to successfully complete a training program prepared by the Alabama Law Institute and the APJA, that will be hosted on the APJA's Internet website
- Increases the notary bond amount from \$25,000.00 to \$50,000.00
- Affords Alabama's judges of probate sole discretion to accept or deny applications
- Creates specific grounds to deny an application:
 - ▶ Applicant is not a resident of Alabama
 - ▶ Applicant makes the application to a judge of probate who is not the judge of probate of the county in which the applicant resides
 - ▶ Applicant has been convicted of a felony or crime involving morale turpitude
 - ▶ Applicant is currently a debtor in a bankruptcy proceeding
 - ▶ Applicant is under a current order adjudicating the applicant to be incapacitated
 - ▶ Applicant provides false information on the application
 - ▶ Applicant is unable or unwilling to successfully complete the required training program within 30 days of submission of application (judge of probate may extend for good cause shown)

- Any signature acknowledged by a notary public shall be physically executed within Alabama and in the physical presence of the notary public at the time of acknowledgement
- Maintains the process for electronic notarization established in 2021
- Requires the notary public to positively identify the prospective signatory via personal knowledge of the affiant or the examination of photo identification issued by a governmental entity or agency
- Remote notarization may not be used to notarize an absentee ballot application or absentee ballot affidavit or for any purpose relating to voting
- Increases the authorized notarization fee from \$5.00 to \$10.00 for each notarization act performed
- A notary public shall not perform an acknowledgment in any transaction where he or she has a pecuniary interest.
- Specifies that no fee may be charged by a state, county or municipal employee for a notarial act performed during, and as a part of, his or her public service, unless otherwise provided by law.
- The commissioning judge of probate may issue a warning to a notary public or restrict, suspend or revoke a notarial commission for a violation of the Notary Public Act and on any ground for which an application for a commission may be denied under the Notary Public Act. A period of restriction, suspension, or revocation does not extend the expiration date of a notary commission.
- Criminal penalties:

Class C Misdemeanor

- ▶ Holding one's self out to the public as a notary public without being commissioned
- ▶ Performing a notarial act with an expired, suspended or restricted commission
- ▶ Performing a notarial act before taking an oath of office
- ▶ Charging a fee for a notarial act in excess of the maximum fee allowed by the Notary Public Act (\$10.00)
- ▶ Taking an acknowledgment or administering an oath or affirmation without the principal appearing in person before the notary public or following the procedures for remote notarization
- ▶ Taking an acknowledgment or administering an oath or affirmation without personal knowledge or satisfactory evidence of the identity of the principal
- ▶ Taking a verification or proof without personal knowledge or satisfactory evidence of the identity of the subscribing witness

Class D Felony AND with intent to commit fraud or to intentionally assist in the commission of a fraudulent act

- ▶ Takes an acknowledgment or a verification or a proof or administers an oath or affirmation he or she knows or reasonably believes to be false
- ▶ Takes an acknowledgment or administers an oath or affirmation without the principal appearing in person before the notary public or without following the procedures for remote notarization

- ▶ Takes a verification or proof without the subscribing witness appearing in person before the notary, or without following the procedure for remote notarization
- ▶ Performs notarial acts in Alabama with the knowledge that he or she is not properly commissioned
- Reporting Suspected Violations
 - Any party to a transaction requiring a notarial certificate for verification and any lawyer licensed in Alabama who is involved in such a transaction, in any capacity, may execute an affidavit and file it with either the Alabama Secretary of State or the commissioning judge of probate who issued the notary commission in question, setting forth the actions that the affiant alleges were violations of the Notary Public Act.
- Investigation Of Complaints
 - The revised Notary Public Act creates a procedure for investigation of allegations of violations of the Notary Public Act by the Alabama State Law Enforcement Agency. Founded investigations shall be referred to the appropriate district attorney for prosecution.

Resignation or expiration of a notary commission does not terminate or preclude an investigation into the conduct of a notary public by the Alabama Secretary of State, the commissioning judge of probate who issued the notary commission in question, or a law enforcement agency.

The commissioning judge of probate who issued the notary commission may order injunctive relief against an individual who violates the Notary Public Act, including, but not limited to, ordering the surrender and destruction of a notary commission and a notary seal

- Criminal Liability Of Others
 - Any individual who knowingly solicits, coerces, or in any material way influences a notary to commit official misconduct is guilty as an aider and abettor and is subject to the same level of punishment as the notary public.
- Civil Liability
 - A notary public is not an insurer but under a duty to act honestly, skillfully, and with reasonable diligence.