

THE BASICS OF BEING A NOTARY PUBLIC –FOR NOTARIES AND FOR LAWYERS WHO PREPARE DOCUMENTS FOR NOTARIES

NOTARIES PUBLIC ARE REGULATED BY **CHAPTER 222 OF THE GENERAL LAWS**, WHICH TOOK EFFECT IN ITS CURRENT FORM IN JANUARY 2017. PRIOR TO THAT, REGULATION WAS BY EXECUTIVE ORDER 455 ISSUED BY GOV. ROMNEY IN 2004. PRIOR TO THAT, THERE REALLY WEREN'T VERY GOOD WRITTEN STANDARDS.

EO 455 WAS RESCINDED BY EO 571, AFTER THE STANDARDS WERE INCORPORATED INTO THE STATUTE

NOTARIES CAN DO EIGHT THINGS (MGL c. 222, §15):

THINGS WE NEVER DO AT CLA/CWJC:

1. Witnessing the opening of a bank safe, vault or box pursuant to MGL c. 167, §32.
2. Issuing summonses for witnesses pursuant to MGL c. 233, §1. (Summonses for witnesses are commonly used in criminal practice. We generally use subpoenas, which are essentially identical.)

THINGS WE RARELY DO AT CLA/CWJC:

3. oaths and affirmations
4. copy certification
5. signature witnessing

THINGS WE DO REGULARLY AT CLA/CWJC:

6. issuing subpoenas
7. jurats
8. acknowledgements

OATHS AND AFFIRMATIONS (MGL c. 222, §1)

"AFFIRMATION"-- a notarial act, or part thereof, that is legally equivalent to an oath and in which an individual, at a single time and place appears, in person, before a notary public, is

identified by the notary public through satisfactory evidence of identity and the individual makes a vow of truthfulness or fidelity under the penalties of perjury **without invoking a deity.**

"OATH"-- a notarial act, or part thereof, that is legally equivalent to an affirmation and in which an individual, at a single time and place, appears in person before a notary public, is identified by the notary public through satisfactory evidence of identity and takes a vow of truthfulness or fidelity under the penalties of perjury **by invoking a deity.**

COPY CERTIFICATION (MGL c. 222, §1)

"A notarial act in which a notary public is presented with a document that the notary public copies, or supervises the copying thereof, by a photographic or electronic copying process, compares the original document to the copy and determines that the copy is accurate and complete.

"On this ____ day of _____, 20__, I certify that the (preceding) (following) (attached) document is a true, exact, complete and unaltered **copy made by me** of _____ (description of the document), presented to me by _____.

_____ (official signature and seal of notary public)".

SIGNATURE WITNESSING (MGL c. 222, §1)

A notary public shall witness a signature in substantially the following form in notarizing a signature or mark to confirm that it was affixed in the notary public's presence without administration of an oath or affirmation:

"On this ____ day of _____, 20__, before me, the undersigned notary public, _____ (name of document signer) personally appeared, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document **in my presence.**

_____ (official signature and seal of notary public)".

ISSUING SUBPOENAS

Lots of information at

<https://www.mass.gov/info-details/massachusetts-law-about-subpoenas#massachusetts-rules->

Subpoena is normally prepared by the lawyer or other person requesting it—Notary's job is really only to sign.

JURATS AND ACKNOWLEDGEMENTS (MGL c. 222, §1)

Understand the difference and when to use which.

JURAT

A notarial act in which an individual, at a single time and place appears, in person, before a notary public, is identified by the notary public through satisfactory evidence of identity and: (i) presents a document; (ii) signs the document in the presence of the notary public; and (iii) takes an oath or affirmation before the notary public vouching for the truthfulness or accuracy of the contents of the signed document.

The JURAT is used for documents in which the important feature is that the signer SWEARS or AFFIRMS that the contents are true, such as Affidavits and similar documents.

"On this ____ day of _____, 20__, before me, the undersigned notary public, _____ (name of document signer) personally appeared, proved to me through satisfactory evidence of identification, which were _____, to be the person who signed the preceding or attached document in my presence and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his) (her) knowledge and belief.

_____ (official signature and seal of notary public)".

ACKNOWLEDGEMENT

A notarial act in which an individual, at a single time and place appears, in person, before a notary public, is identified by the notary public through satisfactory evidence of identity and presents a document to the notary public and indicates to the notary public that the signature on the document before the notary was voluntarily affixed by the individual for the purposes stated within the document or that the signature on the document was the individual's free act and deed and, if applicable, that the individual was authorized to sign in a particular representative capacity.

The Acknowledgement is used for documents in which the defining feature is that the document was signed voluntarily. Typical uses are Deeds and Powers of Attorney. These documents do not contain facts and are not "true" or not, so a Jurat is not appropriate..

"On this ____ day of _____, 20__, before me, the undersigned notary public, _____ (name of document signer) personally appeared, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

_____ (official signature and seal of notary public)".

**SPECIAL RULES FOR EXECUTION OF DOCUMENTS BY PERSONS WHO CANNOT SIGN (EITHER DUE TO ILLITERACY OR PHYSICAL DISABILITY)
(MGL c. 222, §15)**

SIGNING BY MARK

A notary public may certify the affixation of a signature by mark on a document presented for notarization if:

- (i) the principal affixes the mark in the presence of the notary public and 2 witnesses unaffected by the document;
- (ii) both witnesses sign their own names beside the mark; and
- (iii) the notary public notarizes the signature by mark through an acknowledgment, jurat or signature witnessing.

JOHN

HIS MARK

DOE

Mary Moe, witness to the signature
of John Doe by his mark

Jack Smith, witness to the signature
of John Doe by his mark

THEN DO THE STANDARD JURAT, ACKNOWLEDGEMENT OR SIGNATURE WITNESSING.

PHYSICAL INCAPACITY

A notary public may sign the name of a principal who is physically unable to sign or make a mark on a document presented for notarization if:

- (i) the principal directs the notary public to do so in the presence of 2 witnesses who are unaffected by the document;
- (ii) the principal does not have a demeanor that causes the notary public to have a compelling doubt about whether the principal knows the consequences of the transaction or document requiring the notarial act;
- (iii) in the notary public's judgment, the principal is acting of the principal's own free will;

(iv) the notary public signs the principal's name in the presence of the principal and the witnesses;

(v) both witnesses sign their own names beside the signature;

(vi) the notary public writes below the signature: "Signature affixed by notary public in the presence of (names and addresses of principal and 2 witnesses)"; and

(vii) the notary public notarizes the signature through an acknowledgment, jurat or signature witnessing.

Signature of John Doe

Mary Moe, witness

Jack Smith, witness

Signature affixed by Notary Public in the presence of John Doe, address, Mary Moe, address, and Jack Smith, address.

THEN DO THE STANDARD JURAT, ACKNOWLEDGEMENT OR SIGNATURE WITNESSING.

WHEN YOU CAN USE ALTERNATIVE FORMS OF CERTIFICATE

If the form of acknowledgment, jurat, signature witnessing or copy certification of a document contains an alternative form from another state if the document is to be filed or recorded in or governed by the laws of the other state.

If the form of acknowledgment, jurat, signature witnessing or copy certification appears on a printed form that contains an express prohibition against altering such form.

SATISFACTORY EVIDENCE OF IDENTIFICATION

Different rules for US citizens and non-citizens.

For citizens:

1. At least 1 current document issued by a federal or state government agency bearing the photographic image of the individual's face and signature

- Note that there is no requirement of an expiration date
- Can treat Puerto Rico DL or other document as “federal”
- Document issued by a unit of local government is not adequate

2. The oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the individual

The Notary has to know the “credible witness” personally and the credible witness has to know the signer personally

3. Identification of an individual based on the notary public's personal knowledge of the identity of the principal;

"Personal knowledge of identity" is familiarity with an individual resulting from interactions with that individual over a period of time sufficient to ensure beyond doubt that the individual is the person whose identity is claimed.

For non-citizens, it is only “identification of an individual based on a valid passport or other government-issued document evidencing the individual's nationality or residence and which bears a photographic image of the individual's face and signature.” No “credible witness” or “personal knowledge”

JOURNAL

For an attorney, complete exemption from journal requirement

For non-attorney employed by an attorney, certainly exempt for any notarial acts performed in the course of employment. Two sections of the statute seem to be in conflict on whether non-attorney notary employed by an attorney must have a journal for outside notarial acts (safer answer is yes)

STAMP AND SEAL (MGL c. 222, §8)

Notary shall have an official seal or stamp. Most have both. Raised seal was formerly required for recording documents in Registry of Deeds, but is no longer, if the Notary has complied with the requirement to print their name below the signature and include the language “My commission expires _____”

But it is much better to have a raised seal because a lot of people expect it and it will reduce problems in getting people to accept documents such as Powers of Attorney.

Seal is necessary if you need an Apostille (for a document being sent to a foreign country)

Most efficient way to comply with the printed name and commission expiration date requirements is to have a rubber stamp that has them (along with the facsimile of the seal of the Commonwealth).

NO-NOS

1. The principal is not there.
2. No satisfactory identification.
3. Principal's demeanor causes "compelling doubt" about whether principal knows the consequences of the document or transaction
4. Principal is not acting of his/her own free will
5. Notary is a party or is named (with certain exceptions)
6. Notary will get more than the statutory fee
7. Notary is close relative of the principal (except if principal is just a witness)
8. Discrimination
9. Non-attorney notary influencing a person to enter into or avoid transaction
10. Executing a certificate containing false information
11. Notarizing an incomplete certificate
12. Providing a signed certificate to another person (with exceptions)
13. Notarize a blank or incomplete document
14. Perform any notarial act with intent to deceive or defraud
15. Use "notario public" or any other non-English term in any sign, card, etc.
16. Claim to have powers the Notary does not have