

PREFACE AND ACKNOWLEDGEMENTS

This manual addresses the law and other relevant information pertaining to Notaries Public and Justices of the Peace in New Hampshire. It also briefly addresses the role and function of Commissioners of Deeds and other officials authorized by statute to perform notarial acts. The Secretary of State prepared the manual with the advice and approval of the Attorney General pursuant to RSA 455.

This manual first addresses the requirements of the Uniform Law on Notarial Acts. Then, it outlines the qualifications, duties, recommended procedures and other relevant information for 1) Notaries Public, 2) Justices of the Peace, and 3) Commissioners of Deeds. Remaining sections address military oaths and notarial acts, ethics, and unlawful acts. Appendices include definitions and pertinent New Hampshire statutes.

Each section contains a reference to relevant law. For instance, under NOTARIAL OFFICERS IN NEW HAMPSHIRE on page 5, the citation to “RSA 456-B:3” that follows indicates that the source for the law on appointment of Notaries Public is New Hampshire Revised Statutes Annotated 456-B:3. The statutes are available on the state’s website at <https://www.nh.gov/> (see “Laws and Rules”). Recommendations of the National Notary Association are included throughout the manual. You can access more information on the Association and its recommendations at <https://www.NationalNotary.org>.

The integrity of many New Hampshire business and legal transactions depends upon the knowledge and honesty of notarial officers. It is imperative that notarial officers have a thorough understanding of their duties and responsibilities. It is our hope that this manual will assist you in performing those duties effectively.

This manual is not a law book and it is not a substitute for legal advice. This manual also does not address the judicial duties of a Justice of the Peace. Court decisions and other law changes may occur between printings of the manual. The Secretary of State will update the manual within six months of the end of any legislative session that amends the statutes affecting Notaries Public, Justices of the Peace, or Commissioners. The current edition of the manual is available in print form at the Secretary of State’s Office, State House Room 204, 107 N. Main Street, Concord, New Hampshire, 03301 and from the Secretary of State’s website at <http://www.sos.nh.gov/>.

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INTRODUCTION

In the State of New Hampshire, the Governor, with the advice and consent of the Executive Council, appoints public officials who protect the integrity of certain business transactions, legal documents and proceedings, and other events. These public officials are referred to as notarial officers, and their official duties are called notarial acts.

This manual outlines the application and appointment procedures to become a Notary Public or Justice of the Peace, as well as the role and function of Notaries Public, Justices of the Peace, and other officials authorized to perform notarial acts in New Hampshire. It also addresses the history and requirements of the Uniform Notarial Act, adopted by the State in 2005 (effective January 1, 2006) as RSA 456-B.

USING THIS MANUAL

Throughout this manual we refer to sections of New Hampshire law using the abbreviation "RSA." This is an abbreviation for "Revised Statutes Annotated." The RSAs are a published collection of the statutes, legislatively adopted laws. The RSAs are organized by titles and then chapters. For example, Title XLII is labeled "Notaries, Commissioners, Justices of the Peace, and acknowledgements." Within each title there are chapters. For example, Chapter 456-B is labeled "Uniform Law on Notarial Acts." Within each chapter there are sections. For example RSA 456-B:1 refers to section 1 of Chapter 456-B, which is titled: Definitions." Within sections there may be subsections identified by a capital roman numeral. For example RSA 456-B:1, I, defines "Notarial act." Some RSA sections have further subdivisions, in most cases labeled with a small Arabic letter in alphabetical order. For example, RSA 456-B:1, IV (a) contains part of the definition of "In a representative capacity."

To read an RSA you may go online to the State of New Hampshire's web site, at: <http://www.gencourt.state.nh.us/rsa/html/nhtoc.htm> Navigate to the title, chapter, and section of interest. You can click on the Chapter heading to read the entire chapter or click on individual section headings to read just specific sections.

UNIFORM LAW ON NOTARIAL ACTS

The Uniform Law on Notarial Acts, hereinafter referred to as the Uniform Law, defines “the content and form of common notarial acts and [] provide[s] for the recognition of such acts performed in other jurisdictions.” The National Conference of Commissioners drafted the Uniform Law in 1982 and recommended its passage by all fifty states.

Uniform Law on Notarial Acts, National Conference of Commissioners on Uniform State Laws, Annual Conference Meeting July 30-Aug 6, 1982.

The Uniform Law applies to all public officials who perform notarial acts in New Hampshire, including Notaries Public, Justices of the Peace, Commissioners, and all other persons authorized to perform any notarial acts. Each section below addresses relevant portions of the Uniform Law applicable to each type of notarial officer.

RSA 456-B:1.

1. NOTARIAL OFFICERS IN NEW HAMPSHIRE

Pursuant to the Uniform Law, the following persons may perform notarial acts within this state:

- A Notary Public of New Hampshire;
- A Justice of the Peace of New Hampshire; or
- A judge, marital master, clerk, deputy clerk, register of probate, or deputy register of probate of any court of New Hampshire.

In 2019, the Legislature passed House Bill 256 allowing residents of abutting states who are registered Notaries in that state of residence and who are regularly employed or carry on a trade, business, or practice in New Hampshire to apply to be a Notary Public of this state. Once commissioned in New Hampshire, such an individual is a Notary Public of New Hampshire.

The New Hampshire version of the Uniform Law also permits those admitted to practice law here to administer an oath or affirmation for oral testimony.

In addition to those addressed in the Uniform Law, separate statutes authorize Commissioners of Deeds and certain members of the military to perform notarial acts. Notarial acts performed within New Hampshire under federal authority have the same effect as if performed by a notarial officer of New Hampshire. Effective July 1, 2007, licensed court reporters also have statutory authority to perform a limited notarial function. RSA 310-A:181 authorizes licensed court reporters to place any person under oath in the performance of their court reporting duties, without having been designated a Notary Public, Justice of the Peace, or Commissioner of Deeds, as specified in RSA 455.

RSA 310-A:181, 455:2, 456-B:3.

2. EVIDENCE THAT A PERSON HOLDS THE TITLE OF NOTARIAL OFFICER

Upon request of any person seeking notarization services, a notarial officer should be able to produce a copy of his or her commission signed by the Governor, evidencing that he or she is a notarial officer. The Secretary of State's office can also verify a person's status as a notarial officer.

In addition, the Uniform Law establishes the evidence that must be on a notarized document to show that a person is a notarial officer.

Notary Public

A signature and the official seal or legible official rubber stamp imprint are prima facie evidence that the person is a Notary Public. If the Notary uses an official rubber stamp rather than an official seal, the legible imprint of the stamp must contain the name of the Notary, the words "Notary Public" and "New Hampshire" and the Notary's commission expiration date.

Justice of the Peace

The name of the Justice and the expiration date of his or her commission are prima facie evidence that the person is a Justice of the Peace and that his or her signature is genuine. The name and expiration date of the commission may be typed, printed, or stamped on the document.

RSA 456-B:3.

3. NOTARIAL ACTS IN NEW HAMPSHIRE

A "notarial act" is any act that a Notary Public has authority to perform, including, but not limited to:

- taking an acknowledgement;
- 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.

The separate notarial officer sections below address the specific requirements for each notarial act. In addition to the acts identified in the Uniform Law, the sections below also address other New Hampshire statutes authorizing additional notarial acts.

456-B:1, I.

4. IDENTITY OF THE PERSON SEEKING NOTARIZATION

When performing any notarial act, the Uniform Law requires that the notarial officer determine the identity of the person appearing before him or her. Verification of identity is a profound responsibility for a notarial officer. Proper identification is critical in preventing forgeries and other fraud. Notarial officers verify signer identity as a “fiduciary of the public.” As a result, “the notary is expected to perform with integrity and diligence.”

Notary’s Duty of Care for Identifying Document Signers, 32 J. Marshall L. Rev. 1003 (1999), Peter J. Van Alstyne.

In New Hampshire, a notarial officer has a statutory duty to determine the identity of the person appearing before him or her. The National Notary Association recommends that notarial officers act with reasonable care in performing this duty. Reasonable care is the degree of care that a prudent and competent person engaged in the same activity would exercise under similar circumstances. Reasonable care is a test of liability for negligence. While New Hampshire has yet to address the identity issue specifically, other jurisdictions have found that a failure to exercise reasonable care in determining identity constitutes negligence. For example, a notarial officer who, as a favor, notarized a document without having the person named in the document appear before him or her and without confirming his or her identity, would likely be found to have acted negligently. As a result, a notarial officer should take the statutory duty to determine identity very seriously.

THERE IS NO EXCEPTION TO THE REQUIREMENT OF A PERSONAL APPEARANCE BEFORE THE NOTARIAL OFFICER.

To perform any notarial act in someone’s name, that person must be in the physical presence of the notarial officer. It is not sufficient that the notarial officer know the person and his or her signature on the document to be notarized. It is not sufficient that the person verify by telephone that it is his or her signature. The law does not currently permit a notarial officer to witness an act through video conference or other electronic means where the person making the act is at a physical location different from the notarial officer or otherwise not in the physical presence of the notarial officer. Even where a notarial officer may work with and perform notarial acts regularly for another person, there are no exceptions to the legal requirement that the person be in the physical presence of the notarial officer for each and every notarial act.

a. DETERMINING IDENTITY

A notarial officer may determine the identity of the person before him or her in one of the two following ways:

- The notarial officer's own *personal* knowledge as to the identity of the person; or
- Receipt of satisfactory evidence.

Personal Knowledge of Identity

The first requirement is straightforward. If a notarial officer personally knows the individual appearing before him or her who signed the document, the personal knowledge requirement has been satisfied. Personal knowledge does not require extensive knowledge of the individual or his or her history. If the notarial officer could testify under oath in a court of law as to the identity of the individual without using any identification or reference document, then the notarial officer has personal knowledge of the individual's identity.

RSA 456-B:2, I.

Satisfactory Evidence of Identity

If the notarial officer does not personally know the individual appearing before him or her, identification requires satisfactory evidence of the person's identity. The Uniform Law establishes the types of evidence that a notarial officer may accept as satisfactory evidence to establish identity.

- ***Identification by a Credible Witness***

A credible witness identifying the signer under oath or affirmation is satisfactory evidence of identity. The key here is that the witness must be credible ***and*** personally known to the notarial officer. It cannot be a person that the notarial officer has just met or someone the notarial officer knows to be dishonest. The witness must also personally know the signer appearing before the notarial officer. For example, an acquaintance of the notarial officer who personally knows the signer could identify the signer under oath or affirmation. However, in order for this to be satisfactory evidence, the notarial officer must know the acquaintance to be credible.

As with personal knowledge of identity above, extensive knowledge of the credible witness or his or her history is not required. The notarial officer is considered to "personally know" the witness if the notarial officer could testify under oath in a court of law as to the identity of the witness without using any identification or reference document.

- ***Identification by Documents***

Identification documents can also be satisfactory evidence of a signer's identity. The most commonly used form of identification document is a driver's license. Because of the importance of identity verification, it is good practice for the notarial officer to inspect the identification document to be sure that it is valid and not altered. In addition, the notarial officer should check to be sure that the name on the identification document is exactly the same as the name in the document being notarized. If the identification document spells the name differently, or if the

document says the person is, for example, John Doe, Sr. and the identification document says the person is John Doe, Jr., best practice would be to ask for clarification and additional documentation. The notarial officer must only perform the notarial act if satisfied that it is more likely than not that the signer is the person named in the identification document.

RSA 456-B:2, VI.

The Uniform Law, or other state statute, does not define or provide a specific list of acceptable identification documents.

New Hampshire's election law statutes provide a list of identification documents used in that context to determine a person's identity. *See* RSA 654:12. Acceptable identification documents for election law purposes include a photo driver's license issued by any state or the federal government, a United States passport, armed services identification, or other photo identification issued by the United States or a state or local government. *Id.* Because the notarial officer law does not provide a list of acceptable identification documents, it is good practice to consult this elections law list when deciding whether an identification document is acceptable.

5. CERTIFICATE OF NOTARIAL ACTS

Every time a notarial officer performs a notarial act, he or she must complete, sign, and date a certificate. The certificate must include:

- An identification of the jurisdiction in which the notarial act is performed; and
- The notarial officer's title.

If the official is a Notary Public, the certificate must also include the official stamp or seal and the date of expiration of the commission. If the officer is a commissioned officer on active duty in the military service of the United States, the certificate must also include the officer's rank.

A certificate of a notarial act is sufficient if it meets the above requirements and it:

- Is one of the short forms listed at the end of each notarial act section of this manual;
- Is in a form otherwise prescribed by New Hampshire law;
- Is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or
- Sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by RSA 456-B:2 (establishing identity, truth and accuracy of a copy; or for a protest, the matters set forth in RSA 382-A:3-505).

RSA 456-B:7.

6. NOTARIAL ACTS IN OTHER JURISDICTIONS OF THE UNITED STATES

A notarial act has the same effect under New Hampshire law even if performed in another state, commonwealth, territory, district, or possession of the United States, provided that any of the following persons performs the act:

- A Notary Public of that jurisdiction;
- A judge, clerk, or deputy clerk of a court of that jurisdiction; or
- Any other person authorized by the law of that jurisdiction to perform notarial acts.

Notarial acts performed in other jurisdictions under federal authority as provided in RSA 456-B:5 have the same effect as if performed by a notarial officer of New Hampshire.

The signature and title of a person performing a notarial act are sufficient evidence that the signature is genuine and that the person holds the designated title. The signature and indicated title of a Notary Public, a judge, a clerk, or a deputy clerk, conclusively establishes the authority of a holder of that title to perform a notarial act within that given jurisdiction.

RSA 456-B:4.

7. NOTARIAL ACTS UNDER FEDERAL AUTHORITY

Notarial acts performed anywhere by any of the following persons have the same effect under New Hampshire law as if performed by a notarial officer of New Hampshire:

- Judge, clerk, or deputy clerk of a court;
- A commissioned officer on active duty in the military service of the United States;
- An officer of the foreign service or consular officer of the United States; or
- Any other person authorized by federal law to perform notarial acts.

The signature and title of a person performing a notarial act are sufficient evidence that the signature is genuine and that the person holds the designated title. The signature and title of one

of the officers listed above conclusively establish the authority of that person to perform a notarial act.

RSA 456-B:5.

8. FOREIGN NOTARIAL ACTS

A notarial act performed by any of the following persons within and under the authority of a foreign country or an international organization has the same effect under New Hampshire law as if performed by a notarial officer of New Hampshire:

- A Notary Public or notary of the foreign jurisdiction;
- A judge, clerk, or deputy clerk of a court of record of the foreign jurisdiction; or
- Any other person authorized by the law of the foreign jurisdiction to perform notarial acts.

Either of the following conclusively establishes the authenticity and validity of the notarial act:

- A certificate by a foreign service or consular officer of the United States stationed in the country under the jurisdiction of which the notarial act was performed;
- A certificate by a Foreign Service or consular officer of that country stationed in the United States.

An official stamp or seal of the person performing the notarial act is sufficient evidence that the signature is genuine and that the person holds the indicated title. The official stamp or seal of any of the following officers conclusively establishes their authority to perform a notarial act:

- A Notary Public or notary; or
- A judge, clerk, or deputy clerk of a court of records.

If the title of office and indication of authority to perform notarial acts appears 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.

RSA 456-B:6.

NOTARIES PUBLIC

A Notary Public is an official appointed by the Governor, with the advice and consent of the Executive Council. The official responsibilities of Notaries Public include, among other things, administering oaths and affirmations, witnessing signatures, taking depositions, and acknowledging deeds and other instruments.

RSA 455:1, 3.

1. QUALIFICATIONS

A person applying to be a Notary Public must:

- Be at least 18 years of age;
- Be a New Hampshire resident or be a resident of an abutting state who is a Notary Public in that state of residence, and regularly employed or carries on a trade, business, or practice in this state at the time of applying; and
- Be endorsed by two New Hampshire Notaries Public and a person registered to vote in New Hampshire.

The definition of resident, found at RSA 21:6, is: “a person who is domiciled or has a place of abode or both in this state and in any city, town, or other political subdivision of this state, and who has, through all of his or her actions, demonstrated a current intent to designate that place of abode as his or her principal place of physical presence to the exclusion of all others.”

The endorsement by two New Hampshire Notaries Public and a person registered to vote requires more than just the endorser’s signatures on the application. It requires that the endorser actually give his or her approval and support to the applicant. Such approval requires that the endorser, at a minimum, personally know the applicant and believe that he or she is of a character consistent with the honesty and integrity required of a Notary Public.

In addition to the above qualifications, it is within the discretion of the Governor and Executive Council to find particular criminal convictions as disqualifying. Given that all applicants are statutorily required to provide a criminal background by signing a written statement under oath regarding their criminal history, this information is relevant to the appointment process and may be taken into consideration by the Governor and Executive Council during contemplation of an application.

RSA 5:10, 455:2, 16.

2. APPLICATION

The Secretary of State's office processes Notary Public applications. In order to apply to become a Notary Public, a person must complete the following steps.

- Obtain an application and criminal record release form from the Secretary of State's Office via mail, phone, fax, email or download at:

Secretary of State's Office
State House, Room 204
107 North Main Street
Concord, NH 03301
(603) 271-3242 (phone)
(603) 271-6316 (fax)
elections@sos.nh.gov
<https://sos.nh.gov/administration>

- Complete the application and have it endorsed by two New Hampshire Notaries Public and a person registered to vote in New Hampshire. These should be individuals who know the applicant and are able to "endorse" the applicant's suitability to be entrusted with the authority of a Notary Public.
- Sign a written statement under oath as to whether he or she has ever been convicted of a crime that was not annulled by a court, other than minor traffic violations.
- Pay a seventy-five dollar fee to the Secretary of State.

The applicant must mail or deliver the completed application, criminal record release form, and fee to the Secretary of State's office at the above address.

Qualifying Nonresident Applicants

A resident of an abutting state who is a Notary Public in their state of residence, and is regularly employed or carries on a trade, business, or practice in New Hampshire at the time of applying must complete the application process outlined above. In addition, a nonresident applicant must:

- Provide a criminal record check from his or her home state (in addition to the New Hampshire criminal record check above); and
- Submit to the Secretary of State (with the application materials and fee outlined above) an affidavit stating that the individual (i) is a resident of an abutting state, (ii) is a registered notary in such state, and (iii) is regularly employed or carries on a trade, business, or practice in New Hampshire.

RSA 5:10, 455:2.

APPLICANTS MUST NOT MAKE A FALSE REPRESENTATION ON THE APPLICATION.

A Notary Public applicant must not:

- Negligently make a material false representation on the application;
- Recklessly make a material false representation on the application; or
- Purposefully or knowingly make a material false representation on the application form.

Any person who negligently or recklessly makes a material false representation on the application form is subject to a civil penalty of up to one thousand dollars *per violation*. Any person who purposefully or knowingly makes a material false representation on the application form is guilty of a class A misdemeanor.

RSA 455:16.

PLEASE ALSO REFER TO THE ETHICS AND UNLAWFUL ACTS SECTIONS BELOW.

3. APPOINTMENT

Upon receipt of a completed application, the Secretary of State's office will forward it to the Governor and Executive Council (hereinafter Governor and Council) for nomination. If, after review of the application and criminal record check results the applicant is nominated to become a Notary Public, the application is once again submitted by the Secretary of State's office to the Governor and Council, this time for appointment. The Governor, with the advice and consent of the Executive Council, may then make the appointment. This process generally takes eight to ten weeks.

When a person is found to have a criminal record in New Hampshire, the applicant is notified and provided with a copy of the report received from the State Police. The applicant receives a letter advising him or her that in light of the criminal conviction history, if the person still seeks appointment as a Notary he or she must contact his or her Executive Councilor, provide the Councilor with a copy of the record, and seek the Executive Councilor's approval of the application moving forward to the appointment vote. If Executive Councilor notifies the Secretary of State's Office that he or she approves, the nomination is moved forward for a vote to appoint at the next meeting. The list of proposed appointments has an asterisk (*) by the name of nominees in this circumstance.

A Notary Public's commission begins on the date the Governor and Council confirm the appointment. The commission will indicate the appointment date. The individual, however, may not act as a Notary Public until he or she has taken the oath of office.

Approximately one week after appointment by the Governor and Council, a newly appointed Notary Public will receive his or her commission in the mail, along with the oath of office, and other information from the Secretary of State's office. The Notary should review and keep the information provided. The oath and commission need further action as described below.

RSA 92:2, 455:1.

4. TERM

A Notary Public's commission lasts five years from the date of appointment.

RSA 455:1.

5. OATH OF OFFICE AND COMMISSION

After receiving the oath of office and commission in the mail, a Notary Public must complete the following steps.

- Sign and take the oath of office before the authorized officials listed below.
- Ensure that the person(s) who administer the oath sign and affix their official seal (stamp) to the oath and to the Notary Public's Commission. Keep the signed commission for your records.
- Return the oath to the Secretary of State's office as soon as possible. Unless the oath is on file at the Secretary of State's office, the office cannot certify that you are qualified to act as a Notary Public.

A NOTARY PUBLIC CANNOT SIGN DOCUMENTS UNTIL HE OR SHE HAS TAKEN THE OATH OF OFFICE.

RSA 92:2, 5.

No person appointed to hold a public office where an oath is required, including Notaries Public, may exercise such office or perform any act of the office until he or she makes and subscribes the oath required by the New Hampshire Constitution.

RSA 92:2.

The following individuals may administer the official oath to a newly appointed notarial officer: any two members of the New Hampshire Executive Council, any member of the New Hampshire Executive Council with a New Hampshire Justice of the Peace, any two New Hampshire Justices of the Peace, any New Hampshire Justice of the Peace with any New Hampshire Notary Public, or any two New Hampshire Notaries Public.

The New Hampshire Constitution prescribes the official oath of office for public officials as follows:

I, A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitutions thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as [a Notary Public], according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God.

The person taking the oath substitutes his or her name as written on the commission for “A.B.”

If an individual has a religious objection to taking an oath or is otherwise opposed to taking an oath, he or she may make an affirmation instead. For such persons, the New Hampshire Constitution provides that the Notary may alter the oath to omit the word “swear” and the words “[s]o help me God,” and, instead, to say: “This I do under the pains and penalties of perjury.” A person whose beliefs do not allow him or her to either swear or affirm faith and true allegiance to the United States of America and the State of New Hampshire is not entitled to hold the position of Notary Public, an office of that government.

The oath of office is intended to be more than just ceremony and should be taken seriously. A Notary Public who violates his or her oath will be dismissed from office.

N.H. Constitution, Part II, Art. 84; RSA 92:5.

6. NOTARY SEAL

All of a Notary Public’s certifications must either be under an official seal or carry the legible imprint of an official rubber stamp.

An official seal must contain:

- The Notary’s name; and
- The words “Notary Public” and “New Hampshire”.

If the Notary uses an official seal, he or she must also have a separate rubber stamp containing his or her commission’s expiration date.

An official rubber stamp must contain:

- The Notary’s name;

- The words “Notary Public” and “New Hampshire”; and
- The expiration date of the Notary Public’s Commission.

The Secretary of States does not provide the seal and/or rubber stamp. The Notary must purchase them from an office supply store or other vendor.

While state law permits Notaries Public to use a rubber stamp, it may not be sufficient for certain purposes. For example, federal passport regulations may require a raised seal. A Notary Public should consider whether the rubber stamp is sufficient for each type of notarial act.

RSA 455:3.

7. FEES

Notaries Public are entitled to a fee of up to ten dollars for each oath, witness, service, or certification performed, with two exceptions. First, for services related to the taking of depositions, a Notary Public is entitled to a fee of at least five dollars but no more than fifty dollars. The Notary can vary the fee depending upon the amount the Notary feels is sufficient payment for the deposition services. Second, a Notary Public may not charge a fee for administering and certifying oaths of office of town officers.

In addition to the fees, when a Notary Public travels to swear witnesses, he or she is entitled to twenty cents per mile as mileage.

RSA 455:11; 517:19.

8. JOURNAL

While not required by law, it is recommended that a Notary Public maintain a journal of all notarial acts performed. Good practice would dictate including in the journal, at a minimum, the following information:

- (1) The notarial act performed;
- (2) The date of the notarial act;
- (3) The identifying information of the person appearing before the Notary Public; and
- (4) Any other details the Notary Public believes would be useful in referring back to the act.

A journal will provide a record of the details of each notarial act that the Notary Public can refer to if called upon to verify the act.

9. NAME CHANGE

A Notary Public should notify the Secretary of State's office any time his or her name changes during a commission. When notifying the Secretary of State, the Notary Public must include his or her former name and new name and any change of address.

In addition, a Notary Public should request a new commission reflecting his or her new name. The fee for a new commission is five dollars payable by cash or check to the Secretary of State's Office.

If the Notary Public is within six months of the end of his or her five-year commission, the Secretary of State's office practice is to permit the Notary Public to continue to sign official documents using both the old and new names rather than requesting a new commission. For example, if Jane Smith's name changes to Jane Jones she could sign as Jane (Smith) Jones.

10. ADDRESS CHANGE

A Notary Public should notify the Secretary of State's office of an address change during his or her five-year commission. Failure to notify the Secretary of State's office will result in the Notary Public not receiving an application for reappointment.

11. POWERS AND DUTIES

Once commissioned, a Notary Public has the power to perform a number of notarial acts within the State of New Hampshire. A notarial act is any act that a Notary Public has authority to perform which includes:

- Administering an oath or affirmation
- Taking a verification upon oath or affirmation
- Taking an acknowledgement
- Witnessing or attesting a signature
- Certifying or attesting a copy
- Noting a protest of a negotiable instrument
- Depositions
- Observing the opening of a safe deposit box for which the rent has not been paid

RSA 383-B:5-501, 455:3, 456-B:1, I.

A Notary Public is performing one of the listed acts, therefore, a Notary Public may not sign a blank document or jurat. The Notary Public must witness the act being notarized, by witnessing the signature, or oath, or directly verifying the accuracy of a copy being certified.

Note - If a Notary inadvertently omits the expiration date, he or she can subsequently add it pursuant to RSA 456:B-7. However, notarial officers should be warned that altering other items on the certificate, or pre or post-dating, could in constitute “tampering with public records or information”, a crime under to RSA 641:7.

A NEW HAMPSHIRE NOTARY PUBLIC MAY NOT PERFORM NOTARIAL ACTS OUTSIDE THE STATE.

What if a person cannot sign his or her own name?

A Notary Public may still perform a notarial act for a person who is unable to sign his or her name due to a physical disability or other inability to write. The Notary should make accommodations to allow a person with this type of disability to have a document notarized. While the notarial laws do not specifically address this issue, other statutes do. For example, the Uniform Commercial Code (RSA 382-A:1-201) defines the word “signed” to include any symbol executed or adopted by a party with present intention to authenticate a writing. It is best practice to permit the person to sign the document by marking an “X” or other symbol on the signature line. If the person is unable to make any mark at all, he or she may use a signature stamp. The Notary Public should exercise considerable caution in making sure the signature, whether a symbol or stamp, is the true signature of the signer. The Notary may want to have a witness present in such circumstances.

If another person needs to make the mark or signature for the signer, the Notary should add a statement to the notarial certificate stating that this occurred. For example, if a Notary is notarizing a document for John Doe, who is a quadriplegic, and Jane Doe, his wife, signs his name after he communicates to the Notary his intent that the document be signed, the Notary could write: “Notarized in the presence of John Doe, who was unable to sign his name due to a disability. Mr. Doe communicated his intent to sign this document and his wife Jane Doe signed his name in my presence.”

12.ADMINISTERING AN OATH OR AFFIRMATION

A Notary Public may administer oaths and affirmations. An oath is “a solemn declaration, accompanied by a swearing to God or a revered person or thing, that one’s statement is true or that one will be bound to a promise.” For example, “I, [name of declarant], do solemnly swear that [statement] is true, so help me God.” An affirmation is “a solemn pledge equivalent to an oath but without reference to a supreme being or to swearing....” If a person has a religious or other objection to taking an oath, he or she can make an affirmation instead. For such persons,

the notary may alter the oath to omit the word “swear” and replace it with the word “affirm” and to omit the words “[s]o help me God,” and, instead, to say: “This I do under the pains and penalties of perjury.” For example, “I, [name of declarant], do solemnly affirm, that [statement] is true, under the pains and penalties of perjury.”

The purpose of an oath or affirmation is simply “to ensure that the affiant consciously recognizes his [or her] legal obligation to tell the truth.” Therefore, no particular ceremony is necessary other than that the declarant hold up his or her right hand. The affiant must just “know [] that his [or her] statement is sworn and given under oath in the presence of an oathmaker.” RSA 516:19 allows that “any other form or ceremony may be used which the person to whom the oath is administered professes to believe more binding upon the conscience.” It is important to note that a notary must accommodate any person who, due to disability, cannot hold up his or her right hand, and may use any reasonable means of ensuring the person taking the oath understands the seriousness of the act.

Black’s Law Dictionary (11th ed. 2019), N.H. Constitution, Part II, Art. 84; RSA 455:3, 516:19, 20. Appeal of State of New Hampshire, 144 N.H. 85 (1999).

a. SWEARING IN A WITNESS DURING COURT PROCEEDINGS

When swearing in a witness during court proceedings, a Notary Public should request the witness to raise his or her right hand before making the oath. If the witness objects to raising his or her hand, he or she may use any other form or ceremony, as long as he or she “professes to believe [it] more binding upon the conscience.”

The oath generally used for swearing in a witness is:

Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

The language generally used for a witness making an affirmation rather than an oath is:

Please raise your right hand. Do you, under the pains and penalties of perjury, affirm to tell the truth, the whole truth and nothing but the truth?

RSA 516:19, 92:3.

Attorneys

In the State of New Hampshire, any person admitted to the practice of law in New Hampshire may administer an oath or affirmation as described above for taking oral testimony.

RSA 456-B:3, IV.

b. OATHS OF OFFICE FOR PUBLIC OFFICIALS

Persons appointed to hold public offices are statutorily required to take an official oath of office. No person chosen or appointed to any public office or to any position where an oath is required can exercise such office or position or perform any act therein until he or she has taken the oath. Any person who violates his or her oath will be dismissed from the office or position involved. RSA 92:2.

Notaries Public May Administer Official Oaths.

Notaries Public may administer official oaths as follows:

- To all military officers above the rank of field officers by any New Hampshire Notary Public with any New Hampshire Justice of the Peace; and
- To all other officers appointed by the Governor and Council, by any New Hampshire Notary Public with any New Hampshire Justice of the Peace, or any two New Hampshire Notaries.

Language of Official Oaths

The New Hampshire Constitution prescribes the oath a public official must take:

I, A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitutions thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as, according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God.

The name of the person taking the oath replaces "A.B." above and the office the person will perform fills the blank.

If a person does not wish to swear, the notary may substitute "*affirm*" for "*swear*," and the words "*[t]his I do under the pains and penalties of perjury*," for "*[s]o help me God*." Such affirmation shall, for all purposes, be and constitute an oath.

N.H. Constitution, Part II, Art. 84; RSA 92:3, 5.

Ceremony Required for Official Oaths

The person taking the oath is required to hold up his or her right hand. No other ceremony is necessary. RSA 92:4.

Certification and Recording of Official Oaths

The person administering an official oath must sign and affix his or her official seal (stamp) to the oath and return it immediately to the recording officer of the body making the election or appointment.

The Secretary of State's office records, among others, the following oaths: Notaries Public, Justices of the Peace, Commissioners of Deeds, the Attorney General, Deputy Attorney General, Assistant Attorneys General, State Representatives, State Senators, the Governor, all commissioners, board members, and department and division heads appointed by Governor and Council, County Elected Officials.

The oaths of any town elected or appointed officials are recorded with the town clerk.

The oaths recorded with the recording officer for the school district include, but are not limited to the following: Treasurer of the school board, and members of the school budget committee.

N.H. Constitution, Part II, Art. 84; RSA 42:8, 92:6.

c. TAKING A VERIFICATION UPON OATH OR AFFIRMATION

A verification upon oath or affirmation is a declaration under oath or affirmation in front of a Notary Public (or other authorized official) that his or her written statement is true. A Notary Public's certification of that verification upon oath or affirmation is referred to as a jurat. A jurat is required anytime a person must swear to the truth of the contents of a document, such as for an affidavit and certain court documents. In executing a jurat, a Notary is confirming that the person appeared before the Notary, took an oath or affirmation attesting to the truthfulness of the document, and signed the document in the Notary's presence.

An example of the wording that a Notary Public may use in taking a verification upon oath or affirmation is "Do you solemnly swear that the contents of this [name of document] signed by you are true and correct, so help you God?" or "Do you swear and affirm that the contents of this [name of document] signed by you are true and correct?"

As with all notarial acts, it is very important that the Notary identify the person making the verification upon oath or affirmation. The notarial officer must 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. Please see **IDENTITY OF THE PERSON SEEKING NOTARIZATION** on page 7 for a complete description of the identification process. Proper identification is especially important for verifications because the Notary is certifying that the signer attested to the truthfulness of the document. Note that a jurat on a document does not prove that its contents are true, it simply establishes that the signer has sworn that the contents are true.

RSA 456-B:1, III, B:2, II.

Sample Certification of Verification Upon Oath or Affirmation (Jurat)

<p>State of New Hampshire County of _____</p> <p>Signed and sworn to (or affirmed) before me on the ____ day of _____, 20__ by _____ (name(s) of person(s) making statement).</p> <p>_____ (Signature of notarial officer)</p> <p>(Seal, if any)</p> <p>Notary Public, State of New Hampshire</p> <p>My commission expires _____</p>

RSA 456-B:8, III.

13.TAKING AN ACKNOWLEDGEMENT

An acknowledgment is a declaration in front of a Notary Public (or other authorized official) that the person has signed a document for the purposes stated in the document. The purpose of an acknowledgment is for the Notary to confirm that the person making the acknowledgment is the person whose signature is on the document. Please see **IDENTITY OF THE PERSON SEEKING NOTARIZATION** on page 7 for a complete description of the identification process.

Acknowledgements are generally executed on deeds and other documents that are publicly recorded by a county official.

Note that the document may have been signed on a date prior to when the person is appearing before the Notary to acknowledge the signature. This differs from witnessing a signature, which requires signing the document in the presence of the Notary Public.

<p>The difference between an acknowledgment and a verification upon oath or affirmation is that for an acknowledgment a person is swearing that he or she is the person who signed the document while for a verification, in addition to swearing that he or she signed the document, the person is swearing that the contents of the document are true.</p>

RSA 456-B:1, II; B:2, I.

Acknowledgements - Individual or Representative Capacity

An acknowledgement may be made in an individual capacity or in a representative capacity. If an acknowledgement is made in an individual capacity, the person appearing before the Notary is acknowledging the document and signature on his or her own behalf. If an acknowledgement is made in a representative capacity, the person appearing before the Notary is appearing on behalf of some other person or entity.

A person may be appearing in a representative capacity in one of the following four ways:

- For or on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;
- As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;
- As an attorney in fact for a principal; or
- In any other capacity as an authorized representative of another.

When a person makes an acknowledgement in a representative capacity, the person is declaring that he or she signed the instrument with proper authority, and executed it as the act of the person or entity represented and identified in the document. The Notary must still determine the identity of the person appearing before him or her for such acknowledgements. The Notary is certifying that the person represented him or herself to the Notary as having authority to act in the representative capacity. The Notary does not have a duty to determine if the person in fact and law does have authority to represent the other person or entity. The jurat establishes only that the representation was made, not that the authority to represent the other person or entity exists in fact and law.

One common form of representative capacity is a power of attorney. A power of attorney is a document that a person (commonly referred to as the "principal") completes and signs granting another person (the "agent") authority to manage some aspect of the principal's property, finances, or health, among other things. This power can be broad or general depending on what the principal decides to authorize the agent to do. When the agent is signing a document in his or her capacity as power of attorney, he or she will typically sign his or her own name followed by "power of attorney for" and the name of the principal. The Notary Public must determine the identity of the person appearing before him or her (the agent), not the person being signed for (the principal). Best practice for a Notary Public in notarizing a document for a person using a power of attorney would be to require the agent to provide a certified copy of the power of attorney document evidencing that the agent has the authority to acknowledge the document for the principal.

If the notarized document is one recorded or filed with a court, typically attorneys will include a copy of the power of attorney document with the notarized document. For example, when recording a deed signed by a person with a power of attorney, the attorney would include a certified copy of the power of attorney document with the deed documents.

RSA 456-B:1, II, IV; 564-E.

Sample Procedure for Taking an Acknowledgement

The Notary Public should request the signer to raise his or her right hand and ask, “Do you swear and acknowledge that the signing of this document is your voluntary act and deed?” The signer must give an affirmative response before the Notary Public can complete the certification.

Certification of an Acknowledgement

After the Notary Public is satisfied that the person appearing before him or her is the person whose signature is on the document, the Notary must complete a certification. In doing so, the Notary certifies that the individual appeared before him or her on the date indicated and acknowledged the document in question. The certification is not part of the document, and does not affect its validity. The certification a Notary uses will vary depending upon whether the acknowledgement is made in an individual or representative capacity. Examples of each are provided below.

Sample Certification for an Acknowledgement Made in an Individual Capacity

State of New Hampshire
County of _____

This instrument was acknowledged before me on the ____ day of _____, 20__ by
_____ (name(s) of person(s)).

(Signature of notarial officer)

(Seal, if any)

Notary Public, State of New Hampshire

My commission expires: _____

RSA 456-B:8, I.

Sample Certification for an Acknowledgement Made in a Representative Capacity

<p>State of New Hampshire County of _____</p> <p>This instrument was acknowledged before me on the _____ day of _____, 20____ 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.)</p> <p>_____</p> <p>(Signature of notarial officer)</p> <p>(Seal, if any)</p> <p>Notary Public, State of New Hampshire</p> <p>My commission expires: _____</p>

RSA 456-B:8, II.

Taking an Acknowledgement for a Document that Needs an Apostille

Many countries require evidence that the signatures of public officials from other countries are authentic. Prior to the Hague Convention in 1961, all documents going from the United States to a foreign country had to be “legalized.” Essentially, legalization required the United States to have diplomatic or consular agents certify the authenticity of signatures, the capacity of the signer, and the identity of the seal or stamp on the document. The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents eliminated this cumbersome requirement and replaced it with a much simpler process that still ensured the legitimacy of the document. This simpler process is referred to as an apostille.

An apostille is a certification that a public official’s signature on a document is authentic. An apostille certifying a notarization by a New Hampshire public official can only be obtained from the Secretary of State’s office. However, before a document can receive an apostille from the Secretary of State’s office, it must have the original signature of a Notary Public or Justice of the Peace witnessing the signature of the public official. As a result, a Notary Public may be asked to take an acknowledgement of a document that will need an apostille. One common example is the requirement in many countries that the documents required for a United States citizen to adopt a child born in that country is notarized and that an apostille certify that the Notary’s signature is legitimate.

It is important to note that the apostille process established by the Hague Convention only applies to countries that have chosen to be parties to the Convention or that have since formally adopted the process. The Members of the Hague Conference on Private International Law can

be obtained from the Secretary of State at <http://sos.nh.gov/>. Please see also: http://www.hcch.net/index_en.php?act=states.listing.

RSA 5-C:99.

Getting an Apostille

Any document sent to a country that has adopted the apostille process must have an apostille on it. In New Hampshire, only the Secretary of State's Office can issue an apostille.

Under state law, a vital record with an apostille must contain the following:

- The signature of the state registrar or the clerk of the town or city;
- The notarized acknowledgement of the state registrar or clerk; and
- The acknowledgement of the document by the Secretary of State, including his or her signature and seal.

RSA 5-C:99.

BEFORE A DOCUMENT CAN RECEIVE AN APOSTILLE BY THE SECRETARY OF STATE'S OFFICE, IT MUST HAVE AN ORIGINAL NOTARY PUBLIC OR JUSTICE OF THE PEACE SIGNATURE WITNESSING THE SIGNATURE OF THE PERSON SWEARING TO OR AFFIRMING THE DOCUMENT.

The Secretary of State cannot certify signatures of town and city clerks, county or state registrars or other state officials. The signatures must be those of a Notary Public or Justice of the Peace for the State of New Hampshire. If signed by a Notary, the Notary's seal must be on the document. When the Secretary of State's office attaches the apostille, it is certifying that the signature of the Notary Public or Justice of the Peace, *not the person swearing to or affirming the document*, is authentic.

Fee for Apostille

The Secretary of State's office charges a ten-dollar fee per apostille. The fee is payable to the State of New Hampshire by cash or check. In addition to the regular fee, there is an expedited fee to receive apostilles on ten or more documents the same day of the request. Currently, there is no expedited fee for less than ten documents. The expedited fee for ten to twenty documents is twenty-five dollars, for twenty to thirty documents is fifty dollars, and for thirty to forty documents is seventy-five dollars.

RSA 5:10.

A NOTARY PUBLIC CANNOT CERTIFY A COPY OF A DOCUMENT CONTAINING AN APOSTILLE.

Certifying a copy is a notarial act in which a notarial officer certifies that a copy of a document is a true and accurate reproduction of the original. Under New Hampshire law, an apostille is a vital record document and cannot be copy certified by a Notary Public or Justice of the Peace.

RSA 5-C:98, 99.

14.DEPOSITIONS

A deposition is a written record of a witness's out-of-court testimony made for later use in court or for discovery purposes in a legal action. In New Hampshire, depositions occur before a Notary Public, or other authorized notarial officer. Generally, the opposing party requests a deposition. The person being deposed is commonly referred to as the "deponent." The attorney requesting the deposition asks the deponent questions first. Questions from the attorney for the deponent usually follow. If there are multiple parties to the legal action, the attorneys for each party have the opportunity to question the deponent.

RSA 516:4, 517:2.

Notice of Deposition

A Notary may issue a notice for witnesses to appear before that Notary, or any other Justice or Notary, to give depositions in any matter in which a deposition is lawful. A notice of deposition must be in writing and must contain the day, hour, and location of the deposition. The Notary Public must sign the notice.

RSA 517:4.

Deposition Testimony is Given Under Oath

Prior to the start of the deposition, the deponent must take an oath or affirmation that his or her testimony will be truthful. The Notary may administer this oath or affirmation in the same manner as one swears a witness during court proceedings. The Notary should request that the witness raise his or her right hand before making the oath or affirmation. If the witness objects to raising his or her hand, he or she may use any other form or ceremony, so long as he or she "professes to believe [it] more binding upon the conscience."

The oath generally used for swearing in a witness is:

Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

The language generally used for a witness making an affirmation rather than an oath is:

Please raise your right hand. Do you, under the pains and penalties of perjury, affirm to tell the truth, the whole truth and nothing but the truth?

Since any person admitted to the practice of law in New Hampshire may administer an oath or affirmation for oral testimony, an attorney present at a deposition could also administer the oath or affirmation to the deponent.

RSA 456-B:3, IV; 516:19.

Signing of the Deposition under Oath

After a deposition is taken and, if necessary, transcribed, the deponent generally reviews the deposition for accuracy. The deponent must then sign the deposition under oath attesting to the accuracy of the transcript. The language of such oath is required by law:

[C]ontains the truth, the whole truth and nothing but the truth relative to the cause for which it was taken.

A Notary Public or other authorized notarial officer must take the written oath attesting to the accuracy of the transcript of the deposition. Members of the bar who are not also notarial officers may not take this oath because they are limited to taking oaths for oral testimony *only*.

RSA 456-B:3, IV, 517:7.

Certification of a Deposition

The certification of a deposition must include the following:

- The time and place of taking the deposition;
- The case and court in which the deposition is to be used;
- Whether the adverse party was present or not;
- Whether the adverse party was notified or not; and
- Whether the adverse party objected or not.

RSA 517:8.

Fees for Depositions

For services related to the taking of depositions, a Notary Public is entitled to a fee of at least five dollars but no more than fifty dollars. The Notary can vary the fee depending upon the amount the Notary feels is sufficient payment for the deposition services. In addition to the fee, a Notary is entitled to twenty cents per mile as mileage to swear witnesses.

RSA 517:19.

A NOTARY PUBLIC MAY NOT TAKE A DEPOSITION IN CERTAIN CIRCUMSTANCES.

A Notary Public cannot take a deposition if he or she:

- Is a party to the action;
- Is a relative, employee, or attorney of a party to the action;
- Has a financial interest in the action or its outcome;
- Has entered into an arrangement to provide exclusive deposition transcribing or recording services for a person or entity which has a financial interest in the action or its outcome; or
- Is employed by, or is an independent contractor working for, a person or entity which has entered into an arrangement to provide exclusive deposition transcribing or recording services for a person or entity which has a financial interest in the action or its outcome.

RSA 517:3.

In addition to the above, Notaries who choose to do deposition work must familiarize themselves with the other statutes and rules governing depositions, including the remainder of RSA Chapter 517 entitled “Depositions.”

15.WITNESSING OR ATTESTING A SIGNATURE

Witnessing a signature is also referred to as attesting a signature. In order for a Notary Public to witness a signature, the person named in the document must appear before the Notary *and* sign the document in the Notary’s presence. The Notary’s certification that he or she witnessed a signature provides evidence that the document was actually signed on the date of the certification. This is different from an acknowledgement, which may have been signed on a date prior to the person appearing before the Notary to acknowledge the signature.

As is required for all notarial acts, the Notary Public must confirm the identity of the person appearing before him or her. Before witnessing a signature, a Notary must determine that the person signing the document is the person named in the document. Please see **IDENTITY OF THE PERSON SEEKING NOTARIZATION** on page 7 for a complete description of the identification process.

RSA 456-B:2, III, VI.

Sample Certification for Witnessing or Attesting a Signature

State of New Hampshire County of _____
Signed or attested before me on the ____ day of _____, 20__ by _____ (name(s) of person(s)).
_____ (Signature of notarial officer)
(Seal, if any)
Notary Public, State of New Hampshire
My commission expires _____

RSA 456-B:8, IV.

16.CERTIFYING OR ATTESTING A COPY

Certifying a copy, also referred to as attesting a copy, is a notarial act in which a Notary Public, or other authorized official, certifies that a photocopy, or other type of copy, of a document is a true and accurate reproduction of the original document. In certifying or attesting a copy of a document, the Notary Public must determine that the copy is a full, true, and accurate transcription or reproduction of the document.

RSA 456-B:2, IV.

Document Copy Certification

To have a copy of a document certified, a person must appear before the Notary Public with the original document. The person may also bring the copy to be certified, or make a copy in the Notary's presence. In either case, the Notary must check the entire copy to be sure it is a full, true, and accurate reproduction of the original. Once the Notary has determined that the copy is accurate, the Notary can certify that the document is a true and accurate reproduction of the original. The Notary must use the copy certification jurat, it is not sufficient for the Notary Public simply to sign his or her name on the copy.

Sample Copy Certification Jurat

<p>State of New Hampshire County of _____</p> <p>I certify that this is a true and correct copy of a document in the possession of _____ (name of person).</p> <p>Dated _____</p> <p>_____</p> <p>(Signature of notarial officer)</p> <p>(Seal, if any)</p> <p>Notary Public, State of New Hampshire</p> <p>My commission expires _____</p>

As a practical matter, for long or complex documents, it will typically be necessary for the copy to be made in the presence of the Notary using equipment the Notary reasonably believes makes accurate copies. Otherwise, it would be necessary to make a word for word comparison of the original to the copy before a Notary could certify that it is a true copy. Even where the Notary makes or personally witnesses a copy being made by standard copying equipment, the Notary should conduct a visual page-by-page comparison and inspection of each page to ensure that the copy is complete and accurate.

Documents that Cannot be Copy Certified

Vital records, apostille records, naturalization and citizenship certificates and recorded instruments cannot be copy certified.

- **Vital Records**

A vital record is a certificate or report of a vital event. Vital events include, birth, adoption, death, fetal death, marriage, divorce, legal separation, and civil annulment. Pursuant to RSA 5-C:98, I, a vital record may not be “duplicated” or “notarized” by any persons other than the division of vital records or clerks of towns and cities. While the statute does not prohibit copying of vital records in the public domain, it does strictly prohibit anyone other than the state registrar or the clerks of cities and towns from **certifying a copy** of a vital record. RSA 5-C:98, II goes on to clearly state that “[c]ertified copies of vital records shall be issued to the public only by the state registrar or a clerk of a town or city in accordance with this chapter.”

RSA 5-C:1, XXXVI-VII, 5-C:98.

A NOTARY PUBLIC MUST NEVER CERTIFY A COPY OF A VITAL RECORD.

If a person requests a copy certification of a vital record, a Notary must refuse. RSA 5-C:98, III provides that a “written application for a certified copy of a vital record shall be made by mail or in person at the division or at the office of a clerk of a town or city.” The division of Vital Records Administration is located at 9 Ratification Way (formerly 71 South Fruit Street), Concord, New Hampshire 03301-2455, in the State Archives building. (603) 271-4650, vitalrecords@sos.nh.gov.

- *Apostille*

Notaries Public may not copy certify an apostille. An apostille is an official document that contains the certification as provided for in the 1961 Hague Convention as discussed above. It is important to note that a Notary may not copy certify a document *after* it receives an apostille.

RSA 5-C:99.

- *Naturalization and Citizenship Certificates*

A naturalization certificate is a document issued to an individual who obtains United States citizenship through the naturalization process. Federal and certain state courts issued such certificates until October 1, 1991 when the United States Citizenship and Immigration Service (USCIS) began issuing them. A citizenship certificate is a document USCIS issues to an individual who obtains United States citizenship other than through naturalization or birth in the United States.

See generally www.uscis.gov.

A NOTARY PUBLIC MAY NOT COPY CERTIFY A NATURALIZATION OR CITIZENSHIP CERTIFICATE.

Under federal law, only USCIS can copy certify a certificate of naturalization or citizenship. Such documents are referred to as “Certified True Copies.” In addition, only the United States Attorney General and a clerk of court upon order of the court, can make certifications of naturalization and citizenship certificates or any part of the naturalization records of any court.

- *Recordable Instruments*

Each county in New Hampshire has an elected official known as the register of deeds and maintains an office, usually at the county seat, where deeds and similar legal documents are recorded and available for public inspection. Recordable instruments are documents recorded at the registry of deeds as required by law. All deeds and other conveyances of real estate and all court orders and other instruments affecting title to any interest in real estate (except probate records and tax liens which are exempt from recording by law) are considered recordable instruments. The register of deeds in each county is the only person with statutory authority to issue certified copies of instruments recorded at the registry of deeds. RSA 477:3-a, 478:4.

Item Copy Certification

In addition to document copy certification, the law on copy certification refers to the certifying or attesting a copy of “other” items. Examples of other items that could be copy certified include maps, diagrams, graphs, etc.

When copy certifying any item, the notarial officer must still determine that the copy is a full, true, and accurate transcription or reproduction. If the notary is unable to be certain that the copy is exactly the same as the original, he or she should refuse to make the certification. The National Notary Association recommends limiting copy certification of "other items" to those objects that may readily be photocopied.

Sample Copy Certification for a Document

State of New Hampshire
County of _____

I certify that this is a true and correct copy of a document in the possession of
_____ (name of person).

Dated _____

(Signature of notarial officer)

(Seal, if any)

Notary Public, State of New Hampshire

My commission expires _____

RSA 456-B:8, V.

17. NOTING A PROTEST

A protest of a negotiable instrument is a written statement by a Notary Public that, “upon presentment, a negotiable instrument was neither paid nor accepted.”

Historically, banking relied almost completely on the process of “presenting” a bill of exchange, note, or order to a financial institution for payment. This involved actual presentation of a paper note or bill for payment. It is out of this process that the concepts of protest, dishonor, and noting a protest arose. When a person or financial institution presented a bill or note for payment

and the payor refused to make the payment, the bill or note was said to be “dishonored.” In order to prove that a bill or note had been dishonored, a Notary Public would be required to “note the protest.”

Today, actual presentment rarely occurs. Under the Uniform Commercial Code (UCC), a protest is no longer necessary to establish liability for payment. As a result, the reasons for a Notary Public to note a protest have been all but eliminated. However, there are certain circumstances in modern commercial practice where noting a protest may be required. First, as noted in RSA 382-A section 3-505(a)(1), a document complying with RSA 382-A:3-505(b) that purports to be a protest is admissible in court and creates a presumption of dishonor. Second, the law in some countries requires protest in certain circumstances. For example, the law might require protest before going after drawers for drafts payable outside that country. While the concept of protest still exists for these limited purposes, it rarely comes up.

Evidence of Dishonor

When a person or party refuses to pay or accept a properly presented negotiable instrument, he or she is said to have “dishonored” it.

In New Hampshire, a Notary Public is required to determine whether there is evidence of dishonor before noting a protest. Section 3 of the UCC outlines the evidence a Notary Public must consider in determining whether he or she can note a protest. Specifically, pursuant to RSA 382-A:3-505, a Notary Public must determine whether any of the following evidence of dishonor exists:

- A certificate of dishonor made by a United States consul or vice consul, or a Notary Public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by non-acceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties;
- A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor; or
- A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

If a Notary Public determines that any of the above three pieces of evidence exist, the Notary may “note the protest.” RSA 382-A:3-505 (b) states that:

A protest is a certificate of dishonor made by... a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must

identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

See the “Definitions” section for helpful definitions of terms used throughout the manual.

RSA 382-A:3-505, 456-B:2, V.

Protest as Evidence

The protest of a bill of exchange, note, or order, which a Notary Public has duly certified, is considered evidence of the facts stated in the protest and of the notice given to the drawer or endorsers.

RSA 455:4.

The National Notary Association strongly recommends that no notary perform a protest unless familiar with the procedures or under the direct supervision of an appropriately experienced attorney or bank officer.

18.SAFE DEPOSIT BOXES

In the State of New Hampshire, a Notary Public must be present for the opening of any safe deposit box opened due to unpaid rent or non-removal of contents after termination of the lease. State law permits the leasing depository bank to open a safe deposit box if:

- The rent has not been paid for at least 6 months or the renter has not removed the contents within 30 days from the termination of the lease for any reason other than for non-payment of rent;
- The depository bank has provided written notice to the person in whose name the safe deposit box is leased; and
- The rent is not paid within 60 days from the date of the notice and/or the contents are not removed.

A Notary Public *and* an officer of the bank must be present to open a safe deposit box.

A NOTARY PUBLIC PRESENT FOR THE OPENING OF A SAFE DEPOSIT BOX MUST NOT BE AN EMPLOYEE OF THE LEASING CORPORATION.

The role of the Notary Public at such an event is to:

- Remove the contents of the safe deposit box;
- Make a list of the contents;
- Seal up the contents in a package; and,
- Mark on the package the name and address of the person in whose name the safe deposit box was leased (this information should be taken from the books of the depository bank.)

In the presence of the Notary Public, the package must be placed in one of the storage vaults of the depository bank. The Notary Public must record, under official seal, the proceedings and the list of the contents of the safe deposit box. The depository bank must maintain that recording in written or electronic form.

RSA 383-B:5-501.

19.COMPETENCY TO ACT AS A NOTARY PUBLIC

Outlined below are special circumstances under which a Notary Public has specific statutory authority to act or, alternatively, there are specific statutory limitations on acting.

A Notary Public who is a Stockholder, Director, or Employee of a Bank or other Corporation.

Pursuant to statute, a Notary Public who is a stockholder, director, or employee of a bank or other corporation *may*:

- Take the acknowledgement of any party to any written instrument executed to or by the corporation;
- Administer an oath to any other stockholder, director, officer, employee, or agent of the corporation; and
- Protest for non-acceptance or nonpayment bills of exchange, drafts, checks, notes, or other negotiable instruments which may be owned or held for collection by the corporation.

Notaries Public *may not*:

- Take the acknowledgment of any party to any written instrument executed to or by the corporation of which the Notary is a stockholder, director, officer or employee, where the Notary or other officer is a party to the instrument, either individually or as representative of the corporation; or
- Protest any negotiable instrument owned or held for collection by the corporation, where the Notary or other officer is individually a party to the instrument.

RSA 455:2-a.

All Notaries Public

A NOTARY PUBLIC MUST NEVER NOTARIZE HIS OR HER OWN SIGNATURE.

While good practice would dictate that a Notary Public should not notarize his or her own signature, state statutes also expressly prohibit it.

RSA 455:2-a.

20.REAPPOINTMENT

The Secretary of State's office mails applications for reappointment, also referred to as "renewals," to all Notaries Public about two months prior to the expiration of his or her five-year commission. A Notary Public should notify the Secretary of State's office if he or she moves during the five-year commission. Failure to notify the Secretary of State's office will result in the Notary not receiving the application for reappointment automatically.

If a Notary Public does not receive a renewal application, he or she may request one via mail, phone, fax, or email:

Secretary of State's Office
State House, Room 204
107 North Main Street
Concord, NH 03301
(603) 271-3242 (phone)
(603) 271-6316 (fax)
elections@sos.nh.gov

The process and fees for reappointment are the same as for the initial appointment.

JUSTICES OF THE PEACE

Like Notaries Public, Justices of the Peace are public officials appointed by the Governor, with the advice and consent of the Executive Council. Justices of the Peace can perform all of the duties of Notaries Public, as well as powers fundamental to both our State and its citizens - issuing arrest warrants, and performing marriages. These additional duties give rise to additional eligibility requirements, such as having been a registered voter in New Hampshire for at least three years prior to applying.

Justices of the Peace have long held an important and respected position in the history of New Hampshire. The office of Justice of the Peace has existed since this State was established and the State's Constitution repeatedly mentions the role of the Justices of the Peace. While the official duties have changed over time, the importance of having persons of integrity fill the role of Justice of the Peace has remained. For these reasons, the term of office for a Justice of the Peace is constitutionally limited to five years.

N.H. Constitution, Part II, Art. 75.

1. QUALIFICATIONS

A person applying to be a Justice of the Peace must:

- Be at least 21 years of age;
- Be a New Hampshire resident;
- Have been a registered voter in New Hampshire for at least three (3) years prior to the date of the application; and
- Be endorsed by two New Hampshire Justices of the Peace and a person registered to vote in New Hampshire.

The definition of resident, found at RSA 21:6, is: "a person who is domiciled or has a place of abode or both in this state and in any city, town, or other political subdivision of this state, and who has, through all of his or her actions, demonstrated a current intent to designate that place of abode as his or her principal place of physical presence to the exclusion of all others."

The endorsement by two New Hampshire Justices of the Peace and a person registered to vote requires more than just the endorsers' signatures on the application. It requires that the endorser actually give his or her approval and support to the applicant. Such approval requires that the endorser, at a minimum, personally know the applicant and believe that he or she is of a character consistent with the honesty and integrity required of a Justice of the Peace.

In addition to the above qualifications, it is within the discretion of the Governor and Council to find particular criminal convictions as disqualifying. Given that all applicants are statutorily required to provide a criminal background by signing a written statement under oath regarding their criminal history, this information is relevant to the appointment process and may be taken into consideration by the Governor and Council during consideration of an application.

RSA 455-A:2.

The qualifications to become a Justice of the Peace differ from those required to become a Notary Public. Historically, both offices required that the applicant have been a registered voter in New Hampshire for at least three years immediately preceding the date of the application. In 1989, the Governor and Council requested that the New Hampshire Supreme Court consider the constitutionality of the registered voter requirement. The Supreme Court held that, because a Justice of the Peace has additional powers (including arrest warrants and other judicial functions), the State has an increased interest in the individual's qualifications, which justify the registered voter requirement. However, the Court also reasoned that, because a Notary Public does not have these additional "judicial" functions, a Notary Public applicant cannot be subject to the same registered voter requirement.

Opinion of the Justices, 131 N.H. 433 (1989).

2. APPLICATION

The Secretary of State's office processes Justice of the Peace applications. In order to apply to become a Justice of the Peace, a person must complete the following steps:

- Obtain an application and criminal release form from the Secretary of State's office via mail, phone, fax, email or download at:

Secretary of State's Office
State House, Room 204
107 North Main Street
Concord, NH 03301
(603) 271-3242 (phone)
(603) 271-6316 (fax)
elections@sos.nh.gov
<https://sos.nh.gov/administrtrtion>

- Complete the application and have it endorsed by two New Hampshire Justices of the Peace and a person registered to vote in New Hampshire. These should be individuals who know the applicant and are able to "endorse" the applicant's suitability to be entrusted with the authority of a Justice of the Peace.

- Sign a written statement under oath as to whether he or she has ever been convicted of a crime that was not annulled by a court, other than minor traffic violations.
- Pay a seventy-five dollar fee to the Secretary of State.

The applicant must mail or deliver the completed application, criminal record release form, and fee to the Secretary of State's office at the above address.

RSA 5:10.

APPLICANTS MUST NOT MAKE A FALSE REPRESENTATION ON THE APPLICATION.

A Justice of the Peace applicant must not:

- Negligently make a material false representation on the application to become a Justice of the Peace;
- Recklessly make a material false representation on the application to become a Justice of the Peace; or
- Purposefully or knowingly make a material false representation on the application form.

Any person who negligently or recklessly makes a material false representation on the application form is subject to a civil penalty of up to one thousand dollars *per violation*. Any person who purposefully or knowingly makes a material false representation on the application form is guilty of a class A misdemeanor.

455:A-2.

PLEASE ALSO REFER TO THE ETHICS AND UNLAWFUL ACTS SECTIONS BELOW.

3. APPOINTMENT

Historically, Justices of the Peace were considered judicial officers. The New Hampshire Constitution states that the Governor and Council must nominate and appoint all judicial officers, including Justices of the Peace. A majority of the Executive Council must approve the nomination. The Constitution requires that the nomination of a Justice of the Peace be made at least three days prior to such appointment.

Statutes now also outline the appointment process for Justices of the Peace, which is similar to the appointment of Notaries Public. As a result, the appointment procedures described below are essentially the same as the procedures for appointment of Notaries public despite the fact that Justices of the Peace are still considered judicial officers.

Upon receipt of a completed application, the Secretary of State's office submits it to the Governor and Council for nomination. If, after review of the application and criminal record check results, the applicant is nominated to become a Justice of the Peace, the application is once again submitted by the Secretary of State's office, to the Governor and Council, this time for appointment. The Governor, with the advice and consent of the Executive Council, then makes the appointment. This process generally takes eight to ten weeks.

When a person is found to have a criminal record in New Hampshire, the applicant is notified and provided with a copy of the report received from the State Police. The applicant receives a letter advising him or her that in light of the criminal conviction history, if the person still seeks appointment as a Justice of the Peace he or she must contact his or her Executive Councilor, provide the Councilor with a copy of the record, and seek the Executive Councilor's approval of the application moving forward to the appointment vote. If Executive Councilor notifies the Secretary of State's Office that he or she approves, the nomination is moved forward for a vote to appoint at the next meeting. The list of proposed appointments has an asterisk (*) by the name of nominees in this circumstance.

A Justice of the Peace's commission begins on the date the Governor and Council confirms the appointment. The commission will indicate the appointment date.

Approximately one week after appointment by the Governor and Council, a newly appointed Justice of the Peace will receive his or her commission in the mail, along with the oath of office and other information from the Secretary of State's office. The Justice of the Peace should review and keep the information provided. The oath and commission need further action as described below.

N.H. Constitution, Part II, Art. 46; RSA 455-A:1.

4. TERM

A Justice of the Peace's term lasts five years from the date of his or her appointment. This term limit is set forth in both statute and the New Hampshire Constitution. The Constitution emphasizes the importance of a Justice of the Peace's duties and provides insight into the reason for the term limit as follows:

“In order that the people may not suffer from the long continuance in place of any Justice of the Peace who shall fail in discharging the important duties of his office with ability and fidelity, all commissions of Justice of the Peace shall become void at the expiration of five years from their respective dates, and upon the expiration of any commission, the same may if necessary be renewed or another person appointed as shall most conduce to the well being of the state.”

N.H. Constitution, Part II, Art. 75; RSA 455-A:1.

5. OATH OF OFFICE AND COMMISSION

After receiving the oath of office and commission in the mail, a Justice of the Peace must complete the following steps.

- Sign and take the oath of office before the authorized officials listed below.
- Ensure that the person(s) who administer the oath sign and affix their official seal (stamp) to the oath and to the Justice of the Peace's Commission. Keep the signed commission for your records.
- Return the oath to the Secretary of State's office as soon as possible. Unless the oath is on file at the Secretary of State's office, the office cannot certify that you are qualified as a Justice.

A PERSON CANNOT ACT AS A JUSTICE OF THE PEACE UNTIL HE OR SHE HAS TAKEN THE OATH OF OFFICE.

No person appointed to hold a public office where an oath is required, including Justices of the Peace, is permitted to exercise such office or perform any act of the office until he or she makes and subscribes the oath required by the New Hampshire Constitution.

RSA 92:2.

The following individuals may administer the official oath to a newly appointed Justice of the Peace: any two members of the New Hampshire Executive Council, any member of the New Hampshire Executive Council with a New Hampshire Justice of the Peace, any two New Hampshire Justices of the Peace, any New Hampshire Justice of the Peace with any New Hampshire Notary Public, or any two New Hampshire Notaries Public.

The New Hampshire Constitution prescribes the official oath of office for public officials as follows:

[I], A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitutions thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as [a Justice of the Peace], according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God.

The person taking the oath substitutes his or her name as it is written on the commission for "A.B."

If an individual has a religious objection to taking an oath or is otherwise opposed to taking an oath, he or she may make an affirmation instead. For such persons, the New Hampshire Constitution provides that the Notary may alter the oath to omit the word “swear” and the words “[s]o help me God,” and, instead, to say: “This I do under the pains and penalties of perjury.” A person whose beliefs do not allow him or her to either swear or affirm faith and true allegiance to the United States of America and the State of New Hampshire is not entitled to hold the position of Justice of the Peace, an office of that government.

The oath of office is intended to be more than just ceremony and should be taken seriously. Any Justice of the Peace who violates his or her oath will be dismissed from office.

N.H. Constitution, Part II, Art. 84; RSA 92:5.

6. NO SEAL REQUIRED

Unlike a Notary Public, a Justice of the Peace is not required to have a seal. When signing any document or instrument it is good practice to type, print or stamp:

- His or her name,
- The words “Justice of the Peace”; and
- The expiration date of his or her commission.

However, failure to meet these requirements does not invalidate the legal effect of the notarial act.

While state law permits Justices of the Peace to use a rubber stamp, it may not be sufficient for certain purposes. For example, federal passport regulations may require a raised seal. A Justice of the Peace should consider whether the rubber stamp is sufficient for each type of notarial act.

RSA 455-A:3.

7. FEES

Justices of the Peace are entitled to a fee of up to ten dollars for each oath, witness, service, or certification, with two exceptions. For depositions, a Justice is entitled to a fee of at least five dollars but no more than fifty dollars. The Justice can vary the fee depending upon the amount the Justice feels is sufficient payment for the services. A Justice may not charge a fee for administering and certifying oaths of office of town officers. Justices are entitled to a minimum fee of five dollars from those joined in marriage.

RSA 457:33; 517:19.

8. JOURNAL

While not required by law, it is recommended that a Justice of the Peace performing notarial acts maintain a journal of all notarial acts performed. Good practice would dictate including in the journal, at a minimum, the following information:

- (1) The notarial act performed;
- (2) The date of the notarial act;
- (3) The identifying information of the person appearing before the Justice of the Peace;
and
- (4) Any other details the Justice of the Peace believes would be useful in referring back to the act.

A journal will provide a record of the details of each notarial act that the Justice of the Peace can refer to if called upon to verify the act.

9. NAME CHANGE

A Justice of the Peace should notify the Secretary of State's office any time his or her name changes during a commission. When notifying the Secretary of State, the Justice of the Peace must include his or her former name, new name, and any change of address.

In addition, the Justice of the Peace should request a new commission reflecting his or her new name. The fee for a new commission is five dollars payable by cash or check to the Secretary of State's Office.

If the Justice of the Peace is within 6 months of the end of his or her 5-year commission, the Secretary of State's office practice is to permit the Justice of the Peace to continue to sign official documents using both the old and new names. For example, if Jane Smith changes her name to Jane Jones, she can sign as Jane (Smith) Jones rather than requesting a new commission.

10. ADDRESS CHANGE

A Justice of the Peace should notify the Secretary of State's office of an address change during his or her 5-year commission. Failure to notify the Secretary of State's office will result in the Justice of the Peace not receiving an application for reappointment.

11. POWERS AND DUTIES

Once commissioned, a Justice of the Peace has the power to perform a number of official acts within the State of New Hampshire. Justices of the Peace have the power to:

- Administer oaths and affirmations

- Take verifications upon oath or affirmation
- Acknowledge instruments
- Witness or attest a signature
- Certify or attest a copy
- Note a protest of a negotiable instrument
- Take depositions
- Perform marriage ceremonies
- Issue warrants

RSA 5-C:41; 92:5; 455-A:3; 457:31; 516:4; 592-A:5, A:8.

A Justice of the Peace is performing one of the listed acts, therefore, a Justice of the Peace may not sign a blank document or jurat. The Justice of the Peace must witness the act being notarized or performed, by witnessing the signature, or oath, or directly verifying the accuracy of a copy being certified, conducting the marriage or issuing a warrant.

A NEW HAMPSHIRE JUSTICE OF THE PEACE MAY NOT PERFORM THESE OFFICIAL ACTS OUTSIDE OF THE STATE.

What if a person cannot sign his or her own name?

A Justice of the Peace may still perform a notarial act for a person who is unable to sign his or her name due to a physical disability or other inability to write. The Justice should make accommodations to allow a person with this type of disability to have a document notarized. While the notarial laws do not specifically address this issue, other statutes do. For example, the Uniform Commercial Code (RSA 382-A:1-201) defines the word "signed" to include any symbol executed or adopted by a party with present intention to authenticate a writing. It is best practice to permit the person to sign the document by marking an "X" or other symbol on the signature line. If the person is unable to make any mark at all, he or she may use a signature stamp. The Justice of the Peace should exercise considerable caution in making sure the signature, whether a symbol or stamp, is the true signature of the person before him or her. The Justice may want to have a witness present in such circumstances.

If another person needs to make the mark or signature for the signer, the Justice of the Peace should add a statement to the notarial certificate stating that this occurred. For example, if a Justice of the Peace is notarizing a document for John Doe, who is a quadriplegic, and Jane Doe, his wife, signs his name after he communicates to the Justice of the Peace his intent that the document be signed, the Justice could write: "Notarized in the presence of John Doe, who was

unable to sign his name due to a disability. Mr. Doe communicated his intent to sign this document and his wife Jane Doe signed his name in my presence.”

12.ADMINISTERING AN OATH OR AFFIRMATION

A Justice of the Peace may administer oaths and affirmations. An oath is “a solemn declaration, accompanied by a swearing to God or a revered person or thing, that one’s statement is true or that one will be bound to a promise.” For example, “I, [name of declarant], do solemnly swear that [statement] is true, so help me God.” An affirmation is “a solemn pledge equivalent to an oath but without reference to a supreme being or to swearing...” If a person has a religious or other objection to taking an oath, he or she can make an affirmation instead. For such persons, the Justice may alter the oath to omit the word “swear” and replace it with the word “affirm” and to omit the words “[s]o help me God,” and, instead, to say: “This I do under the pains and penalties of perjury.” For example, “I, [name of declarant], do solemnly affirm, that [statement] is true, under the pains and penalties of perjury.”

The purpose of an oath or affirmation is simply “to ensure that the affiant consciously recognizes his [or her] legal obligation to tell the truth.” Therefore, no particular ceremony is necessary other than that the declarant hold up his or her right hand. The affiant must just “know [] that his statement is sworn and given under oath in the presence of an oathtaker.” RSA 516:19 allows that “any other form or ceremony may be used which the person to whom the oath is administered professes to believe more binding upon the conscience.” It is important to note that a Justice of the Peace must accommodate any person who, due to disability, cannot hold up his or her right hand, and may use any reasonable means of ensuring the person taking the oath understands the seriousness of the act.

Black’s Law Dictionary (11th ed. 2019), N.H. Constitution, Part II, Art. 84; RSA 455-A:3; RSA 516:19, 20; Appeal of State of New Hampshire, 144 N.H. 85, 89, (July 26, 1999).

a. SWEARING IN A WITNESS DURING COURT PROCEEDINGS

When swearing in a witness during court proceedings, a Justice of the Peace should request the witness to raise his or her right hand before making the oath. If the witness objects to raising his or her hand, he or she may use any other form or ceremony, as long as he or she “professes to believe [it] more binding upon the conscience.”

The oath generally used for swearing in a witness is:

Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

The language generally used for a witness making an affirmation rather than an oath is:

Please raise your right hand. Do you, under the pains and penalties of perjury, affirm to tell the truth, the whole truth and nothing but the truth?

RSA 516:19; 92:3.

Attorneys

In the State of New Hampshire, any person admitted to the practice of law in New Hampshire may administer an oath or affirmation as described above for taking oral testimony.

RSA 456-B:3, IV.

b. OATHS OF OFFICE FOR PUBLIC OFFICIALS

Persons appointed to hold public offices are statutorily required to take an official oath of office. No person chosen or appointed to any public office or to any position where an oath is required can exercise such office or position or perform any act therein until he or she has taken the oath. Any person who violates his or her oath will be dismissed from the office or position involved.

RSA 92:2.

Justices of the Peace May Administer Official Oaths.

Justices of the Peace may administer official oaths as follows:

- To the clerk of any court, by any two New Hampshire Justices of the Peace.
- To all military officers above the rank of field officers, and to all other officers appointed by the Governor and Council, by any member of the Council with a New Hampshire Justice of the Peace, or by any two New Hampshire Justices of the Peace, or by any New Hampshire Justice of the Peace with any New Hampshire Notary Public or by two New Hampshire Notaries Public.
- To all other officers, by any New Hampshire Justice of the Peace within his or her county.
- To town officers other than during town meeting, by a New Hampshire Justice of the Peace.
- To officers of school districts other than during school meeting, by a New Hampshire Justice of the Peace.

RSA 92:5.

Language of Official Oaths

The New Hampshire Constitution prescribes the oath a public official must take:

I, A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitutions thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as, according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God.

The name of the person taking the oath replaces "A.B." above and the office the person will perform fills the blank.

If a person does not wish to swear, the Justice may substitute "*affirm*" for "*swear*," and the words "[t]his I do under the pains and penalties of perjury," may be substituted for [s]o help me God." Such affirmation shall, for all purposes, be and constitute an oath.

N.H. Constitution, Part II, Art. 84; RSA 92:3.

Ceremony Required for Official Oaths

The person taking the oath is required to hold up his or her right hand. No other ceremony is necessary.

RSA 92:4.

Certification and Recording of Official Oaths

The person administering an official oath must sign and affix his or her official seal (stamp) to the oath and immediately return it to the recording officer of the body making the election or appointment.

The Secretary of State's office records, among others, the following oaths: Notaries Public, Justices of the Peace, Commissioners of Deeds, the Attorney General, Deputy Attorney General, Assistant Attorneys General, State Representatives, State Senators, the Governor, all commissioners, board members, and department and division heads appointed by Governor and Council, Elected County Officers.

The town clerk records the oaths of any officials elected or appointed by the town.

The recording officer for the school district records, among others, the following oaths: Treasurer of the school board, and members of the school budget committee.

N.H. Constitution, Part II, Art. 84; RSA 42:8, 92:6.

c. TAKING A VERIFICATION UPON OATH OR AFFIRMATION

A verification upon oath or affirmation is a declaration under oath or affirmation in front of a Justice of the Peace (or other authorized official) that his or her written statement is true. A Justice of the Peace's certification of that verification upon oath or affirmation is referred to as a jurat. A jurat is required anytime a person must swear to the truth of the contents of a document, such as for an affidavit and certain court documents. In executing a jurat, a Justice of the Peace is confirming that the person appeared before the Justice, took an oath or affirmation attesting to the truthfulness of the document, and signed the document in the Justice's presence.

An example of the wording that a Justice of the Peace may use in taking a verification upon oath or affirmation is "Do you solemnly swear that the contents of this [name of document] signed by you are true and correct, so help you God?" or "Do you swear and affirm under the pains and penalties of perjury that the contents of this [name of document] signed by you are true and correct?"

As with all notarial acts, it is very important that the Justice of the Peace identify the person making the verification upon oath or affirmation. The Justice of the Peace must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before him or her and making the verification is the person whose true signature is on the statement verified. Please see **IDENTITY OF THE PERSON SEEKING NOTARIZATION** on page 7 for a complete description of the identification process. Proper identification is especially important for verifications because the Justice of the Peace is certifying that the signer attested to the truthfulness of the document. Note that a jurat on a document does not prove that its contents are true, it simply establishes that the signer has sworn that the contents are true.

RSA 456-B:1, III, B:2, II.

Sample Certification of a Verification Upon Oath or Affirmation (Jurat)

<p>State of New Hampshire County of _____</p> <p>Signed and sworn to (or affirmed) before me on the __day of _____, 20__ by _____ (name(s) of person(s) making statement).</p> <p>_____ (Signature of notarial officer)</p> <p>(Seal, if any)</p> <p>Justice of the Peace, State of New Hampshire</p> <p>My commission expires _____</p>

RSA 456-B:8, III.

13. TAKING AN ACKNOWLEDGEMENT

An acknowledgment is a declaration in front of a Justice of the Peace (or other authorized official) that the person has signed a document for the purposes stated in the document. The purpose of an acknowledgement is for the Justice of the Peace to confirm that the person making the acknowledgement is the person whose signature is on the document. Please see IDENTITY OF THE PERSON SEEKING NOTARIZATION on page 7 for a complete description of the identification process.

Acknowledgements are generally executed on deeds and other documents that are publicly recorded by a county official.

Note that the document may have been signed on a date prior to when the person is appearing before the Justice of the Peace to acknowledge the signature. This differs from witnessing a signature, which requires signing the document in the presence of the Justice of the Peace.

<p>The difference between an acknowledgement and a verification upon oath or affirmation is that for an acknowledgement a person is swearing that he or she is the person who signed the document while for a verification, in addition to swearing that he or she signed the document, the person is swearing that the contents of the document are true.</p>

RSA 456-B:1, II; RSA 456-B:2, I.

Acknowledgements - Individual or Representative Capacity

An acknowledgement may be made in an individual capacity or in a representative capacity. If an acknowledgement is made in an individual capacity, the person appearing before the Justice of the Peace is acknowledging the document and signature on his or her own behalf. If an acknowledgement is made in a representative capacity, the person appearing before the Justice of the Peace is appearing on behalf of some other person or entity.

A person may be appearing in a representative capacity in one of the following four ways:

- For or on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;
- As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;
- As an attorney in fact for a principal; or
- In any other capacity as an authorized representative of another.

When a person makes an acknowledgement in a representative capacity, the person is declaring that he or she signed the instrument with proper authority, and executed it as the act of the person or entity represented and identified in the document. The Justice of the Peace must still determine the identity of the person appearing before him or her for such acknowledgements. The Justice of the Peace is certifying that the person represented him or herself to the Justice as having authority to act in the representative capacity. The Justice does not have a duty to determine if the person in fact and law does have authority to represent the other person or entity. The jurat establishes only that the representation was made, not that the authority to represent the other person or entity exists in fact and law.

One common form of representative capacity is a power of attorney. A power of attorney is a document that a person (commonly referred to as the "principal") completes and signs granting another person (the "agent") authority to manage some aspect of the principal's property, finances, or health, among other things. This power can be broad or general depending on what the principal decides to authorize the agent to do. When the agent is signing a document in his or her capacity as power of attorney, he or she will typically sign his or her own name followed by "power of attorney for" and the name of the principal. The Justice of the Peace must determine the identity of the person appearing before him or her (the agent), not the person being signed for (the principal). Best practice for a Justice of the Peace in notarizing a document for a person using a power of attorney would be to require the agent to provide a certified copy of the power of attorney document evidencing that the agent has the authority to acknowledge the document for the principal.

If the notarized document is one recorded or filed with a court, typically attorneys will include a copy the power of attorney document with the notarized document. For example, when

recording a deed signed by a person with a power of attorney, the attorney would include a certified copy of the power of attorney document with the deed documents.

RSA 456-B:1, II;IV; 564-E.

Sample Procedure for Taking an Acknowledgement

The Justice of the Peace should request the signer to raise his or her right hand and ask, “Do you swear and acknowledge that the signing of this document is your voluntary act and deed?” The signer must give an affirmative response before the Justice of the Peace can complete the certification.

Certification of an Acknowledgement

After the Justice of the Peace is satisfied that the person appearing before him or her is the person whose signature is on the document, the Justice must complete a certification. In doing so, the Justice of the Peace certifies that the individual appeared before him or her on the date indicated and acknowledged the document in question. The certification is not part of the document, and does not affect its validity. The certification a Notary uses will vary depending upon whether the acknowledgement is made in an individual or representative capacity. Examples of each are provided below.

Sample Certification for an Acknowledgement Made in an Individual Capacity

State of New Hampshire
County of _____

This instrument was acknowledged before me on the ____ day of _____, 20__ by
_____(name(s) of person(s)).

(Signature of notarial officer)

(Seal, if any)

Justice of the Peace, State of New Hampshire

My commission expires:_____

RSA 456-B:8, I.

Sample Certification for an Acknowledgement Made in a Representative Capacity

<p>State of New Hampshire County of _____</p> <p>This instrument was acknowledged before me on the ____ day of _____ , 20__ 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.)</p> <p>_____</p> <p>(Signature of notarial officer)</p> <p>(Seal, if any)</p> <p>Justice of the Peace, State of New Hampshire</p> <p>My commission expires:_____</p>

RSA 456-B:8, II.

Taking an Acknowledgement for a Document That Needs an Apostille

Many countries require evidence that the signatures of public officials from other countries are authentic. Prior to the Hague Convention in 1961, all documents going from the United States to a foreign country had to be “legalized.” Essentially, legalization required the United States to have diplomatic or consular agents certify the authenticity of signatures, the capacity of the signer, and the identity of the seal or stamp on the document. The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents eliminated this cumbersome requirement and replaced it with a much simpler process that still ensured the legitimacy of the document. This simpler process is referred to as an apostille.

An apostille is a certification that a public official’s signature on a document is authentic. An apostille certifying a notarization by a New Hampshire public official can only be obtained from the Secretary of State’s office. However, before a document can receive an apostille from the Secretary of State’s office, it must have the original signature of a Notary Public or Justice of the Peace witnessing the signature of the public official. As a result, a Notary Public may be asked to take an acknowledgement of a document that will need an apostille. One common example is the requirement in many countries that the documents required for a United States citizen to adopt a child born in that country is notarized and that an apostille certify that the Notary’s signature is legitimate.

It is important to note that the apostille process established by the Hague Convention only applies to countries that have chosen to be parties to the Convention or that have since formally adopted the process. The Members of the Hague Conference on Private International Law can

be obtained from the Secretary of State at <http://sos.nh.gov/>. Please see also http://www.hcch.net/index_en.php?act=states.listing.

RSA 5-C:99.

Getting an Apostille

Any document sent to a country that has adopted the apostille process must have an apostille on it. In New Hampshire, only the Secretary of State's office can issue an apostille.

Under state law, a vital record with an apostille must contain the following:

- The signature of the state registrar or the clerk of the town or city;
- The notarized acknowledgement of the state registrar or clerk; and
- The acknowledgement of the document by the Secretary of State, including his signature and seal.

RSA 5-C:99.

BEFORE A DOCUMENT CAN RECEIVE AN APOSTILLE BY THE SECRETARY OF STATE'S OFFICE, IT MUST HAVE AN ORIGINAL NOTARY PUBLIC OR JUSTICE OF THE PEACE SIGNATURE WITNESSING THE SIGNATURE OF PERSON SWEARING TO OR AFFIRMING THE DOCUMENT.

The Secretary of State cannot certify signatures of town and city clerks, county or state registrars or other state officials. The signatures must be those of a Notary Public or Justice of the Peace for the State of New Hampshire. If signed by a Notary, the Notary's seal must be on the document. When the Secretary of State's Office attaches the apostille, it is certifying that the signature of the Notary Public or Justice of the Peace, *not the person swearing to or affirming the document*, is authentic.

Fee for Apostille

The Secretary of State's office charges a ten dollar fee per certificate. The fee is payable by cash or check to the State of New Hampshire. In addition to the regular fee, there is an expedited fee to receive apostilles on ten or more documents the same day of the request. Currently, there is no expedited fee for less than ten documents. The expedited fee for ten to twenty documents is twenty-five dollars, for twenty to thirty documents is fifty dollars, and for thirty to forty documents is seventy-five dollars.

RSA 5:10.

A JUSTICE OF THE PEACE CANNOT COPY CERTIFY A DOCUMENT CONTAINING AN APOSTILLE.

Certifying a copy is a notarial act in which a notarial officer certifies that a copy of a document is a true and accurate reproduction of the original. Under New Hampshire law, an apostille is a vital record document and cannot be copy certified by a Notary Public or Justice of the Peace.

RSA 5-C:98-99.

14.DEPOSITIONS

A deposition is a written record of a witness's out-of-court testimony made for later use in court or for discovery purposes in a legal action. In New Hampshire, depositions occur before a Justice of the Peace, or other authorized notarial officer. Generally, the opposing party requests a deposition. The person being deposed is commonly referred to as the "deponent." The attorney requesting the deposition asks the deponent questions first. Questions from the attorney for the deponent usually follow. If there are multiple parties to the legal action, the attorneys for each party have the opportunity to question the deponent.

RSA 516:4, 517:2.

Notice of Deposition

A Justice of the Peace may issue a notice for witnesses to appear before that Justice, or any other Justice or Notary, to give depositions in any matter in which a deposition is lawful. A notice of deposition must be in writing and must contain the day, hour, and location of the deposition. The Justice must sign notice.

RSA 517:4.

Deposition Testimony is Given Under Oath

Prior to the start of the deposition, the deponent must take an oath or affirmation that his or her testimony will be truthful. The Justice of the Peace may administer this oath or affirmation in the same manner as one swears witness during court proceedings. The Justice of the Peace should request that the witness raise his or her right hand before making the oath or affirmation. If the witness objects to raising his or her hand, he or she may use any other form or ceremony, so long as he or she "professes to believe [it] more binding upon the conscience."

RSA 516:19.

The oath generally used for swearing in a witness is:

Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

The language generally used for a witness making an affirmation rather than an oath is:

Please raise your right hand. Do you, under the pains and penalties of perjury, affirm to tell the truth, the whole truth and nothing but the truth?

Since any person admitted to the practice of law in New Hampshire may administer an oath or affirmation for taking oral testimony, an attorney present at a deposition could also administer the oath or affirmation to the deponent.

RSA 456-B:3, IV.

Signing of the Deposition under Oath

After a deposition is taken and, if necessary, transcribed, the deponent generally reviews the deposition for accuracy. The deponent must then sign the deposition under oath attesting to the accuracy of the transcript. The language of such oath is required by law:

[C]ontains the truth, the whole truth and nothing but the truth relative to the cause for which it was taken.

A Justice of the Peace or other authorized notarial officer must take the written oath for the transcript of the deposition. Members of the bar who are not also notarial officers may not take this oath because their authority to take oaths is limited to oaths for oral testimony *only*.

RSA 456-B:3, IV, 517:7.

Certification of a Deposition

The certification of a deposition must include the following:

- The time and place of taking the deposition;
- The case and court in which the deposition is to be used;
- Whether the adverse party was present or not;
- Whether the adverse party was notified or not; and
- Whether the adverse party objected or not.

RSA 517:8.

Fees for Depositions

For services related to the taking of depositions, a Justice of the Peace is entitled to a fee of at least five dollars but no more than fifty dollars. The Justice of the Peace can vary the fee depending upon the amount the Justice of the Peace feels is sufficient payment for the deposition

services. In addition to the fee, a Justice of the Peace is entitled to twenty cents per mile as mileage to swear witnesses.

RSA 517:19.

A JUSTICE OF THE PEACE MAY NOT TAKE A DEPOSITION IN CERTAIN CIRCUMSTANCES.

A Justice of the Peace cannot take a deposition if he or she:

- Is a party to the action;
- Is a relative, employee, or attorney of a party to the action;
- Has a financial interest in the action or its outcome;
- Has entered into an arrangement to provide exclusive deposition transcribing or recording services for a person or entity which has a financial interest in the action or its outcome;
or
- Is employed by, or is an independent contractor working for, a person or entity which has entered into an arrangement to provide exclusive deposition transcribing or recording services for a person or entity which has a financial interest in the action or its outcome.

RSA 517:3.

In addition to the above, Justices of the Peace who choose to do deposition work must familiarize themselves with the other statutes and rules governing depositions, including the remainder of RSA Chapter 517 entitled “Depositions.”

15. WITNESSING OR ATTESTING A SIGNATURE

Witnessing a signature is also referred to as attesting a signature. In order for a Justice of the Peace to witness a signature, the person named in the document must appear before the Justice *and* sign the document in the Justice’s presence. The Justice’s certification that he or she witnessed a signature provides evidence that the document was actually signed on the date of the certification. This is different from an acknowledgement, which may have been signed on a date prior to the person appearing before the Justice of the Peace to acknowledge the signature.

Prior to witnessing a signature and before making the certification, a Justice of the Peace must determine that the person signing the document is the person named in the document. Please see **IDENTITY OF THE PERSON SEEKING NOTARIZATION** on page 7 for a complete description of the identification process.

RSA 456-B:2, III, VI.

Sample Certification for Witnessing or Attesting a Signature

State of New Hampshire
 County of _____

Signed or attested before me on ____ day of _____, 20__ by
 _____(name(s) of person(s)).

 (Signature of notarial officer)

(Seal, if any)

Justice of the Peace, State of New Hampshire

My commission expires_____

RSA 456-B:8, IV.

16.CERTIFYING OR ATTESTING A COPY

Certifying a copy, also referred to as attesting a copy, is a notarial act in which a Justice of the Peace or other authorized official certifies that a photocopy, or other type of copy, of a document is a true and accurate reproduction of the original document. In certifying or attesting a copy of a document, the Justice of the Peace must determine that the copy is a full, true, and accurate transcription or reproduction of the document.

RSA 456-B:2, IV.

Document Copy Certification

To have a copy of a document certified, a person must appear before the Justice of the Peace with the original document. The person may also bring the copy to be certified, or make a copy in the Justice of the Peace’s presence. In either case, the Justice of the Peace must check the entire copy to be sure it is a full, true, and accurate reproduction of the original. Once the Justice of the Peace has determined that the copy is accurate, he or she can certify that the document is a true and accurate reproduction of the original. The Justice must use the copy certification jurat, it is not sufficient for the Justice of the Peace simply to sign his or her name on the copy.

Sample Copy Certification Jurat

State of New Hampshire County of _____
I certify that this is a true and correct copy of a document in the possession of _____ (name of person).
Dated _____
_____ (Signature of notarial officer)
(Seal, if any)
Justice of the Peace, State of New Hampshire
My commission expires _____

As a practical matter, for long or complex documents, it will typically be necessary for the copy to be made in the presence of the Justice of the Peace using equipment the Justice reasonably believes makes accurate copies. Otherwise, it would be necessary to make a word for word comparison of the original to the copy before a Justice of the Peace could certify that it is a true copy. Even where the Justice of the Peace makes or personally witnesses a copy being made by standard copying equipment, the Justice should conduct a visual page-by-page comparison and inspection of each page to ensure that the copy is complete and accurate.

Documents that Cannot be Copy Certified

Vital records, apostille records, naturalization and citizenship certificates and recorded instruments cannot be copy certified.

- **Vital Records**

A vital record is a certificate or report of a vital event. Vital events include, birth, adoption, death, fetal death, marriage, divorce, legal separation, and civil annulment. Pursuant to RSA 5-C:98, I, a vital record may not be “duplicated” or “notarized” by any persons other than the division of vital records or clerks of towns and cities. While the statute does not prohibit copying of vital records in the public domain, it does strictly prohibit anyone other than the state registrar or the clerks of cities and towns from **certifying a copy** of a vital record. RSA 5-C:98, II goes on to clearly state that “[c]ertified copies of vital records shall be issued to the public only by the state registrar or a clerk of a town or city in accordance with this chapter.”

RSA 5-C:1, XXXVI-VII, 5-C:98.

A JUSTICE OF THE PEACE MUST NEVER CERTIFY A COPY OF A VITAL RECORD.

If a person requests a copy certification of a vital record, a Justice of the Peace must refuse. RSA 5-C:98, III provides that a “written application for a certified copy of a vital record shall be made by mail or in person at the division or at the office of a clerk of a town or city.” The division of Vital Records Administration is located at 9 Ratification Way (formerly 71 South Fruit Street), Concord, New Hampshire 03301-2455, in the State Archives building. (603) 271-4650, vitalrecords@sos.nh.gov.

- ***Apostille***

Justices of the Peace may not copy certify an apostille. An apostille is an official document which contains the certification as provided for in the 1961 Hague Convention as discussed above. It is important to note that a Justice may not copy certifying a document *after* it receives an apostille.

- ***Naturalization and Citizenship Certificates***

A naturalization certificate is a document issued to an individual who obtains United States citizenship through the naturalization process. Federal and certain state courts issued such certificates until October 1, 1991 when the United States Citizenship and Immigration Service (USCIS) began issuing them. A citizenship certificate is a document USCIS issues to an individual who obtains United States citizenship other than through naturalization or birth in the United States.

See generally www.uscis.gov.

A JUSTICE OF THE PEACE MAY NOT COPY CERTIFY A NATURALIZATION OR CITIZENSHIP CERTIFICATE.

Under federal law, only USCIS officials can copy certify a certificate of naturalization or citizenship. Such documents are referred to as “Certified True Copies.” In addition, only the United States Attorney General and a clerk of court upon order of the court, can make certifications of naturalization and citizenship certificates or any part of the naturalization records of any court.

- ***Recordable Instruments***

Each county in New Hampshire has an elected official known as the register of deeds and maintains an office, usually at the county seat, where deeds and similar legal documents are recorded and available for public inspection. Recordable instruments are documents recorded at the registry of deeds as required by law. All deeds and other conveyances of real estate and all court orders and other instruments affecting title to any interest in real estate (except probate records and tax liens which are by law exempt from recording) are considered recordable

instruments. The register of deeds in each county is the only person with statutory authority to issue certified copies of documents recorded at the registry.

RSA 477:3-a, 478:4.

Item Copy Certification

In addition to document copy certification, the law on copy certification refers to the certifying or attesting a copy of “other” items. Examples of other items that could be copy certified include maps, diagrams, graphs, etc.

When copy certifying any item, the notarial officer must still determine that the copy is a full, true, and accurate transcription or reproduction. If the Notary is unable to be certain that the copy is exactly the same as the original, he or she should refuse to make the certification. The National Notary Association recommends limiting copy certification of "other items" to those objects that may readily be photocopied.

Sample Document Copy Certification

State of New Hampshire
County of _____

I certify that this is a true and correct copy of a document in the possession of
_____ (name of person).

Dated _____

(Signature of notarial officer)

(Seal, if any)

Justice of the Peace, State of New Hampshire

My commission expires _____

RSA 456-B:8, V.

17.NOTING A PROTEST

A protest of a negotiable instrument is a written statement by a Justice of the Peace or Notary Public that, “upon presentment, a negotiable instrument was neither paid nor accepted.”

Historically, banking relied almost completely on the process of “presenting” a bill of exchange, note, or order to a financial institution for payment. This involved actual presentation of a paper note or bill for payment. It is out of this process that the concepts of protest, dishonor, and noting a protest arose. When a person or financial institution presented a bill or note for payment and the payor refused to make the payment, the bill or note was said to be “dishonored.” In order to prove that a bill or note had been dishonored a notarial officer would be required to “note the protest.”

Today, actual presentment rarely occurs. Under the Uniform Commercial Code (UCC), a protest is no longer necessary to establish liability for payment. As a result, the reasons for a Justice of the Peace to note a protest have been all but eliminated. However, there are certain circumstances in modern commercial practice where noting a protest may be required. First, as noted in RSA 382-A section 3-505(a)(1), a document complying with RSA 382-A:3-505(b) that purports to be a protest is admissible in court and creates a presumption of dishonor. Second, the law in some countries requires protest in certain circumstances. For example, the law might require protest before going after drawers for drafts payable outside that country. While the concept of protest still exists for these limited purposes, it rarely comes up.

Evidence of Dishonor

When a person or party refuses to pay or accept a properly presented negotiable instrument, he or she is said to have “dishonored” it.

In New Hampshire, a Justice of the Peace is required to determine whether there is evidence of dishonor before noting a protest. Section 3 of the UCC outlines the evidence a Justice of the Peace must consider in determining whether he or she can note a protest. Specifically, pursuant to RSA 382-A:3-505, a Justice of the Peace must determine whether any of the following evidence of dishonor exists:

- A certificate of dishonor made by a United States consul or vice consul, or a Notary Public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by non-acceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties;
- A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor; or
- A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

If a Justice of the Peace determines that any of the above three pieces of evidence exist, he or she may “note the protest.” RSA 382-A:3-505 (b) states that:

A protest is a certificate of dishonor made by... a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

See the “Definitions” section for helpful definitions of terms used throughout the manual.

RSA 382-A:3-505, 456-B:2, V.

Protest as Evidence

The protest of a bill of exchange, note, or order, which a Justice of the Peace has duly certified, is considered evidence of the facts stated in the protest and of the notice given to the drawer or endorsers. RSA 455:4.

The National Notary Association strongly recommends that no Justice of the Peace perform a protest unless familiar with the procedures or under the direct supervision of an appropriately experienced attorney or bank officer.

18.MARRIAGE

In New Hampshire, Justices of the Peace may to perform marriage ceremonies. In order to be married in this State, a couple is required to apply for a marriage license from the clerk of any town or city in the State. If granted, this license is valid for up to ninety days.

A JUSTICE OF THE PEACE MUST NEVER PERFORM A MARRIAGE CEREMONY WITHOUT HAVING FIRST RECEIVED THE MARRIAGE LICENSE.

Before joining any persons in marriage, a Justice of the Peace *must* receive the marriage license. The marriage license records that the marriage ceremony has taken place and who solemnized the marriage. No particular ceremony is required for a marriage in New Hampshire. The spouses and the Justice of the Peace who performs the ceremony complete the license. The spouses must review the information on the marriage license for completeness and accuracy *prior* to signing it.

The Justice of the Peace must record the following on the marriage license *after* the marriage has taken place:

- Certification that he or she is duly authorized to solemnize the marriage in accordance with RSA 457;
- His or her status as a Justice of the Peace commissioned by the State of New Hampshire, pursuant to RSA 457:31;
- The date of the marriage ceremony;
- The city, town or location and county where the couple were married;
- Certification that the spouses were married by the officiant in conformance with RSA 457 and that the information noted is correct to the best of his or her knowledge;
- The signature of the Justice of the Peace;
- The Justice's typed or printed name;
- The Justice's title and address; and
- An indication of whether the ceremony was religious or civil.
- The Justice of the Peace must then place his or her certification on the marriage license.

RSA 5-C:41.

A JUSTICE OF THE PEACE MAY NOT SERVE AS AN OFFICIANT AT HIS OR HER OWN MARRIAGE, AND MAY NOT CERTIFY HIS OR HER OWN MARRIAGE CERTIFICATE.

Reporting the Marriage Ceremony

A Justice of the Peace reports the fact that a marriage has taken place by forwarding the completed license to the clerk of the town or city that issued the license. Failure to report a marriage is a violation.

RSA 5-C:49.

THE COMPLETED LICENSE MUST BE MAILED OR DELIVERED BY THE JUSTICE OF THE PEACE TO THE CLERK WITHIN SIX DAYS OF THE CEREMONY.

A marriage license is considered filed on the date the clerk receives it. Upon receipt, the clerk dates and signs the marriage license and then forwards it to the division of vital records administration. The marriage license then becomes the official copy of the certificate of marriage.

A JUSTICE OF THE PEACE IS REQUIRED TO REPORT THE FACT THAT A MARRIAGE HAS TAKEN PLACE EVEN IF THE SPOUSES, ASK HIM OR HER NOT TO.

RSA 5-C:49.

Penalty for Performing a Marriage Ceremony Without A Valid License

When a Justice of the Peace performs a marriage ceremony without having first received the marriage license, or performs a marriage ceremony after receiving a marriage license which the Justice of the Peace knows to be invalid, he or she faces a \$60 fine for each offense.

RSA 457:34.

Fee for Marriage

For solemnizing a marriage, a Justice of the Peace is entitled to a fee of at least five dollars from the persons joined in marriage.

RSA 457:33.

Declining Requests to Perform Marriages

A Justice of the Peace who chooses to perform opposite-sex marriages but declines to perform same-sex marriages should consult with his or her private legal counsel regarding his or her legal obligations under this statute.

Duty to Report Abuse

Justices of the Peace should note that state law requires individuals in certain professions as well as “any other person having reason to suspect that a child has been abused or neglected” to report certain required information to the New Hampshire Department of Health and Human Services. Anyone making a report of child abuse or neglect or participating in a resulting investigation or judicial proceeding is immune from civil or criminal liability that might otherwise result.

For more information on what to do if you suspect child abuse or neglect please visit the following link: <https://www.dhhs.nh.gov/dcyf/cps/stop.htm>.

RSA 169-C:29-31.

Similarly, anyone who suspects an adult has been subjected to abuse, neglect, self-neglect, or exploitation or is living in hazardous conditions shall report that information to the New Hampshire Department of Health and Human Services. State law grants immunity to individuals who make such reports in good faith.

RSA 161:F-46, 47.

For more information on what to do if you suspect adult abuse or neglect please visit the following link: <https://www.dhhs.nh.gov/dcbcs/beas/adultprotection.htm>.

In either case, if the Department cannot be reached, such reports can be made initially to law enforcement personnel.

19. ARREST WARRANTS

Historically, Justices of the Peace functioned both as judicial and notarial officers. Justices of the Peace could preside over certain judicial matters and, until the first half of the twentieth century, Justices of the Peace had the authority to issue search warrants as well as arrest warrants. Much of that judicial authority was eliminated. However, a remnant of the judicial function remains in the authority to issue arrest warrants. New Hampshire Justices of the Peace are authorized by RSA 592-A:5, RSA 592-A:8, and RSA 592-B:4 to issue arrest warrants for the arrests related to any offense committed in any county.

RSA 594:10 gives law enforcement officials limited authority to make warrantless arrests. Nonetheless, they will often seek a warrant simply because there is a judicial preference for a warrant, and if there is a challenge to probable cause, it is more likely to be upheld if the officer obtained a warrant.

However, generally, when law enforcement officials want to make an arrest, they are legally required to obtain an arrest warrant. This requirement comes from Part I, Article 19 of the New Hampshire Constitution and the Fourth Amendment to the federal Constitution. In pertinent part, Part I, Article 19 of the New Hampshire Constitution provides that people have a right to be free from unreasonable arrest and, therefore, all arrest warrants must be supported by oath or affirmation, include identification of the person to be arrested, and be issued only “in cases and with the formalities, prescribed by law.”

Consequently, arrest warrants are necessary to arrest someone in their home; to arrest someone for a misdemeanor that was not committed in the presence of a law enforcement officer; or to arrest someone for violation of a protective order if more than twelve hours have passed since the incident.

Probable Cause is Required to Issue an Arrest Warrant

In order to issue an arrest warrant, a Justice of the Peace or other authorized magistrate must make a determination of probable cause. Generally, the law enforcement officer will bring the Justice of the Peace a sworn complaint, supporting affidavits signed under oath or affirmation, and an unsigned arrest warrant. The officer may also provide oral testimony under oath or affirmation. In making the determination of probable cause, the Justice of the Peace may consider the facts contained in the affidavits as well as any additional information the law enforcement officer provides.

It is very important that the Justice of the Peace document the oral testimony of the officer and attach it to the arrest warrant application. If it is not documented and the validity of the arrest warrant is challenged in court, the reviewing judge will not have the benefit of that additional information which was considered in making the probable cause determination.

The Justice of the Peace must then determine whether probable cause exists. Probable cause to arrest exists “when the arresting officer has knowledge and trustworthy information sufficient to warrant a person of reasonable caution and prudence in believing that the arrestee has committed an offense.” State v. Jaroma, 137 N.H. 562, 567 (1993) (citations omitted). To establish probable cause one need only demonstrate the probability, and not a prima facie showing, of criminal activity.

To make a probable cause finding, a Justice of the Peace must also have knowledge of the criminal statute(s) involved. Consequently, along with the review of the affidavit, the Justice of the Peace should review the statutory definition of the crime (which the arrest warrant application should identify by name and statute number). Such a review will enable the Justice of the Peace to determine whether the information establishes probable cause to believe that the suspect committed or is committing acts that would amount to the alleged crime.

Neutral and Detached Magistrate

While Justices of the peace have statutory authority to issue arrest warrants, a Justice of the Peace should never issue an arrest warrant in any particular matter unless he or she can function as a neutral and detached magistrate. It is essential to the protection granted by the Fourth Amendment that the determination of probable cause be made “by a neutral and detached magistrate instead of being judged by the officer...” directly involved in the investigation of the crime. Johnson v. United States, 333 U.S. 10 (1947). Some things a Justice of the Peace should consider when deciding whether he or she can function as a neutral and detached magistrate are whether he or she has already formed an opinion about the issue, and whether he or she has any personal or business ties to the arrestee or others that might influence his or her decision. This determination is critical because a court may invalidate an arrest warrant if the Justice of the Peace is not considered neutral and detached.

Identification of the Individual to be Arrested

The arrest warrant must clearly identify the individual to be arrested. Name alone is sufficient identification.

Who the Warrant Should be Directed To

The Justice may direct the arrest warrant to the sheriff of any county or his or her deputy, or to any constable or police officer of any town in the state. Historically, there were Justices of the Peace who had authority throughout the state and those who had authority limited to a smaller area. This is why the statutes distinguish between Justices of the Peace “throughout the state” and “within a town or district.” Today, that distinction no longer exists. As a result, a Justice of

the Peace may issue a warrant for the arrest of a person for any offense committed in any county in the state.

Where the Arrest Warrant Must be Returned To

Generally, the warrant is made returnable to a circuit or superior court. If the arrest warrant is issued for any offense committed in a town or city where there is a circuit court, the warrant must be made returnable to that court. Arrest warrants issued in cases over which a superior court has jurisdiction, shall be made returnable before that court. In most cases, the law enforcement officer seeking the arrest warrant will know which court the matter will be brought before, the court to which the warrant must be made returnable. If uncertain, a Justice of Peace should consult with the Clerk of Court for either the circuit or superior court.

Today, prosecutors bring arrested individuals before the superior or circuit court. Historically, arrest warrants required that the offender be brought to a district or municipal court; before a Justice of the Peace especially designated for trial or examination; or, in certain circumstances, before the issuing Justice of the Peace. Once again, this requirement comes from the historical authority a Justice of the Peace had to preside over hearings for certain offenses. Today a Justice of the Peace no longer has that jurisdiction and this provision in the statute is outdated.

RSA 490-F:3, 592-A:5, 8-10, 592-B:4, 5.

20.COMPETENCY TO ACT AS A JUSTICE OF THE PEACE

Outlined below are special circumstances under which a Justice of the Peace has specific statutory authority to act or, alternatively, there are specific statutory limitations on acting.

A Justice of the Peace who is a Stockholder, Director, or Employee of a Bank or other Corporation.

Pursuant to statute, a Justice of the Peace who is a stockholder, director, or employee of a bank or other corporation ***may***:

- Take the acknowledgement of any party to any written instrument executed to or by the corporation;
- Administer an oath to any other stockholder, director, officer, employee, or agent of the corporation; and
- Protest for non-acceptance or nonpayment bills of exchange, drafts, checks, notes, or other negotiable instruments which may be owned or held for collection by the corporation.

Justices of the Peace *may not*:

- Take the acknowledgment of any party to any written instrument executed to or by the corporation of which the Justice of the Peace is a stockholder, director, officer or employee, where the Justice of the Peace or other officer is a party to the instrument, either individually or as representative of the corporation; or
- Protest any negotiable instrument owned or held for collection by the corporation, where the Justice of the Peace or other officer is individually a party to the instrument.

All Justices of the Peace

A JUSTICE OF THE PEACE MUST NEVER NOTARIZE HIS OR HER OWN SIGNATURE.

While good practice would dictate that a Justice of the Peace should not notarize his or her own signature, State statutes also expressly prohibit it.

RSA 455:2-a.

21.REAPPOINTMENT

The Secretary of State's office mails applications for reappointment, also referred to as "renewals," to all Justices of the Peace about two months prior to the expiration of his or her five-year commission. A Justice of the Peace should notify the Secretary of State's office if he or she moves during the five-year commission. Failure to notify the Secretary of State's office will result in the Justice of the Peace not receiving an application for reappointment automatically.

If a Justice of the Peace does not receive a renewal application, he or she may request one via mail, phone, fax, or email at:

Secretary of State's Office
State House, Room 204
107 North Main Street
Concord, NH 03301
(603) 271-3242 (phone)
(603) 271-6316 (fax)
elections@sos.nh.gov

The process and fees for reappointment are the same as for the initial appointment.

COMMISSIONERS OF DEEDS

Commissioners of Deeds are public officials appointed by the Governor and Council or certain state courts as described below. Because Commissioners perform many of the same duties as Notaries Public and Justices of the Peace, this manual briefly addresses their role and duties.

Please note that the Commissioners referred to in this section are distinct from the commissioners appointed by the courts to manage property that the court has taken control of and from those who are the executive heads of state departments.

1. COMMISSIONERS OF DEEDS APPOINTED BY THE GOVERNOR & COUNCIL

Commissioners are appointed to a five-year term. After appointment, a Commissioner must take and subscribe an oath before a Justice of some court of record that he or she will well and faithfully perform all the duties of the office. The Commissioner must file the oath with the New Hampshire Secretary of State's office within three months after it is taken.

There are two main differences between Commissioners and Justices of the Peace. First, Commissioners may not perform marriage ceremonies nor issue arrest warrants, while Justices of the Peace can. Second, Commissioners may perform their duties both within and outside of New Hampshire, while Justices of the Peace can only perform their duties within the State.

Commissioners' powers and duties are as follows:

- Administer oaths;
- Take depositions and affidavits to be used in the State of New Hampshire and notify parties of the time and date thereof; and
- Take the acknowledgement of deeds or instruments to be used or recorded in this state.

Commissioners may exercise these powers "with the same effect as a [j]justice of the [p]eace of this state may do within the state."

Please see the detailed description above of the powers and duties of Justices of the Peace for more information. Note again that, unlike Justices of the Peace, Commissioners may not perform marriage ceremonies or issue arrest warrants.

RSA 455:12, 14.

2. COMMISSIONERS OF DEEDS APPOINTED BY THE COURTS

The supreme or superior court, or any justice thereof, may also appoint Commissioners. Commissioners so appointed have the same power as Justices of the Peace to administer oaths

and affirmations, to issue writs of summons to a witness, to proceed against a witness who fails to appear and give a deposition, and in all proceedings under his or her commission.

RSA 455:15, 517:15, 17.

3. COMMISSIONERS FOR OTHER STATES

Other states may appoint Commissioners to act within the State of New Hampshire. Commissioners for other states may take depositions, administer oaths and affirmations and take the acknowledgment of deeds within this state, *to be used in their own state*. These Commissioners have the same power as Justices of the Peace in this state to administer oaths and affirmations, to issue writs of summons to a witness, to proceed against witnesses who fail to appear to give a deposition, and in all proceedings under his or her commission.

RSA 455:15.

4. UNLAWFUL ACTS

Commissioners have the same responsibilities as other notarial officers to perform their duties with integrity and honesty. The unlawful acts described above for both Notaries Public and Justices of the Peace are similarly unlawful for Commissioners. Please see the Unlawful Acts section below for a detailed description of unlawful acts and penalties.

MILITARY OATHS AND NOTARIAL ACTS

New Hampshire authorizes certain members of the military to perform notarial acts as follows:

Commissioned and warrant officers of the New Hampshire National Guard and state guard have the power to administer oaths. Statutes strictly limit this power for the administration of military justice and for other purposes of military administration.

Commissioned and warrant officers of the armed forces of the United States, in addition to those named above, may administer enlistment oaths to those enlisting or re-enlisting in the New Hampshire National Guard.

Judge advocates and paralegals, serving in the militia, have the general powers of a Notary Public in the performance of all notarial acts to be executed by any member of the militia or United States armed forces and other persons eligible for legal assistance services by law or regulation.

RSA 110-B:64, I.

Signature and Title as Evidence

The signature of the military person acting as a Notary, together with the title of that person's office, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act. RSA 110-B:64, II.

Statutory Form for Notarizations by Members of the Military

Notarizations or acknowledgments performed by members of the military pursuant to RSA 110-B:64 should follow the form below:

I, (name of military official), certify that the foregoing instrument was subscribed and (sworn)(affirmed) before me this (day of the month) day of (month), (year) by (name of person making statement), (Armed Forces service number/SSN), and who is known to me to be (a member of the New Hampshire national guard) (the spouse of a national guard member).

NOTARIZATIONS BY MEMBERS OF THE MILITARY PURSUANT TO RSA 110-B:64 ARE NOT REQUIRED TO BE UNDER OFFICIAL SEAL.

Fee

Members of the military acting pursuant to the grant of authority in RSA 110-B:64 are not entitled to any fee for the performance of notarial acts.

RSA 110-B:64, II.

ETHICS

As public officials/servants it is very important that notarial officers be persons of integrity and honesty. A notarial officer must be very cautious to perform his or her duties as required by the law.

See the Competency to Act as a Notary Public/Justice of the Peace sections above for a detailed description of additional statutes prohibiting certain relationships.

Conflicts of Interest

All notarial officers addressed in this manual have both a statutory and common law duty to avoid conflicts of interest in the performance of their duties. A conflict of interest is “a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.” For example, Notaries Public are prohibited by statute from taking a deposition in a lawsuit if a relative is a party to the action, or if he or she has a financial interest in the outcome. In just such a case the New Hampshire Supreme Court found that a conflict of interest existed where a deposition was taken before a Justice of the Peace who was the uncle of the plaintiff in the related litigation. The conflict of interest prevented the use of the deposition at the trial.

Black’s Law Dictionary (11th ed. 2019).

For public officials, like notarial officers, who do not serve the state on a full-time basis, the courts have recognized that the public office may only be a limited part of the official’s life. As a result, to constitute a conflict of interest, the pecuniary interest must be immediate, definite, and capable of demonstration. In general, a public official must never act in his or her own interest in performing official acts; official acts must always be done solely in the interest of the public.

To the observer, such relationships create doubt as to the integrity of the act. The statutes and common law addressing conflicts of interest seek to eliminate any doubt about the integrity of notarial acts by forbidding notarial officers from performing notarial acts where such relationships exist.

Bribery

Statutes also explicitly prohibit public servants (such as notarial officers) from soliciting, accepting, or agreeing to accept a bribe. A bribe is any pecuniary benefit promised, offered or given “to another with the purpose of influencing the [public servant’s] action, decision, opinion, recommendation, vote, nomination, or other exercise of discretion....” A pecuniary benefit means “any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain.”

A PUBLIC OFFICIAL WHO, SOLICITS, ACCEPTS, OR AGREES TO ACCEPT A BRIBE, OR FAILS TO REPORT TO A LAW ENFORCEMENT OFFICER THAT HE OR SHE

HAS BEEN OFFERED A BRIBE IS GUILTY OF A CLASS B FELONY PUNISHABLE BY UP TO 7 YEARS IN PRISON.

See generally RSA 640:2.

Improper Influence

Public servants must also be free from improper influence. State law requires public servants to report to a law enforcement officer any conduct by another designed to improperly influence the notarial officer. Such conduct includes threats of harm and private addresses to the public official. The statutory meaning of “harm” includes “any disadvantage or injury, to person or property or pecuniary interest, including disadvantage or injury to any other person or entity in whose welfare the public servant... is interested.” However, harm does not include “the exercise of any conduct protected under the First Amendment to the United States Constitution or any provision of the federal or state constitutions.” Failure to report such conduct to law enforcement is also a class B felony.

See generally RSA 640:3.

Compensation for Past Action, Gifts to Public Servants, Compensation for Services

The law also expressly forbids a public servant from accepting compensation even for a *past* official action. A public servant is guilty of a misdemeanor if he or she “solicits, accepts or agrees to accept any pecuniary benefit in return for having given a decision, opinion, recommendation, nomination, vote, otherwise exercised his discretion, or for having violated his [or her] discretion, or for having violated his [or her] duty.” In other words, even if the pecuniary benefit is not given, sought, or even suggested until *after* the official act has already been completed, a notarial officer is still forbidden from accepting it. Note that this does not prevent a Notary Public, Justice of the Peace, or Commissioner of Deeds from accepting fees for notarial acts, performing marriages, or other acts for which fees are authorized by statute. Similarly, public servants are guilty of a misdemeanor if they solicit, accept or agree to accept a gift from a person who is likely, in the *future* to become “subject to or interested in any matter or action pending before or contemplated by himself [or herself]...” or if they give advice or other assistance regarding a matter or transaction they have or likely will have official discretion to exercise.

See generally RSA 640:4, 5 and 6.

Purchase of Public Office

Finally, no public servant may solicit, accept, or agree to accept (for him or herself or another person or political party) money or any other pecuniary benefit as compensation for his or her endorsement of any person for a position as a public servant. This provision is particularly applicable to notarial officers, who may be asked to endorse an applicant to be a Notary Public or Justice of the Peace. A Notary Public should only endorse a person who is applying to be a notarial officer if the Notary Public believes the applicant is of a character that makes him or her

suitable for commissioning as a notarial officer. A notarial officer is guilty of a misdemeanor if he or she solicits, accepts, or agrees to accept a pecuniary benefit in return for his or her endorsement.

See generally RSA 640:7.

Statute and case law provide notarial officers with guidelines as to when a conflict of interest or other ethical violation might exist. However, it is incumbent upon the notarial officer, before performing a notarial act, to consider each requested act on a case-by-case basis to determine if a conflict of interest or other ethical violation might exist. Whether explicitly prohibited by statute or barred by common law, notarial officers must take special care to avoid conflicts of interest and other ethical violations during the performance of all notarial acts.

Notary Code of Professional Responsibility – Guiding Principles

To provide some guidance as to how to handle difficult situations that a notarial officer may encounter, the Notary Public Code of Responsibility - Guiding Principles, published by the National Notary Association, follows. The Guiding Principles were written solely for Notaries Public. However, many of the principles apply to all notarial officers.

NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY

Guiding Principles

I

The Notary shall, as a government officer and public servant, serve all of the public in an honest, fair, and unbiased manner.

II

The Notary shall act as an impartial witness and not for profit or gain from any document or transaction requiring a notarial act, apart from the fee allowed by statute.

III

The Notary shall require the presence of each signer and oath-taker in order to carefully screen each for identity and willingness, and to observe that each appears aware of the significance of the transaction requiring a notarial act.

IV

The Notary shall not execute a false or incomplete certificate, nor be involved with any document or transaction that is false, deceptive or fraudulent.

V

The Notary shall give precedence to the rules of law over the dictates or expectations of any person or entity.

VI

The Notary shall act as a ministerial officer and not provide unauthorized advice or services.

VII

The Notary shall affix a seal on every notary document and not allow this universally recognized symbol of office to be used by another or in an endorsement or promotion.

VIII

The Notary shall record every notarial act in a bound journal or other secure recording device and safeguard it as an important public record.

IX

The Notary shall respect the privacy of each signer and shall not divulge or use personal or proprietary information disclosed during execution of a notarial act for other than an official purpose.

X

The Notary shall seek instruction on notarization, and keep current on the laws, practices and requirements of the notarial office.

As Published by the National Notary Association, in The Notary Public Code of Professional Responsibility, July 2009. Available at www.nationalnotary.org.

UNLAWFUL ACTS

The legislature has outlined a number of acts (many of which are discussed above) that notarial officers are specifically prohibited by statute from committing, including:

- Making a notarial act that is false;
- Making a notarial act for a person without first requiring the person to establish his or her identity as described in the Uniform Law section of this manual;
- Making a notarial act purporting to have witnessed the maker's signing of the document or purporting to have received the oath or affirmation of the person, when the notarial officer did not actually witness the maker's signing of the document or did not actually receive the oath or affirmation of the person;
- Making a notarial act knowing he or she is not authorized to do; and
- Notarizing his or her own signature.

RSA 455:16.

As a public servant a notarial officer is also prohibited by statute from using his or her public office to commit “official oppression.” For notarial officers, any unauthorized act, which purports to be a notarial act, done for the purpose of benefiting the notarial officer or another, or to harm another, constitutes official oppression. Official oppression also includes knowingly refraining from performing a notarial duty imposed by law or clearly inherent in the nature of the office. Any public servant who commits official oppression is guilty of a misdemeanor.

RSA 643:1.

A notarial officer is similarly forbidden by statute from misusing information he or she acquires by virtue of his or her office or from another public servant. Misuse of information, a misdemeanor offense, includes:

- Acquiring or divesting himself or herself of a pecuniary interest in any property, transaction or enterprise which may be affected by such action or information; or
- Speculating or making a wager on the basis of such action or information; or
- Knowingly aiding another to do any of the foregoing.

RSA 643:2.

Finally, (except for the subsequent addition of the expiration date of the notarial officer’s commission as authorized by RSA 456-B:7, I) subsequent alterations to items on the certificate

should not be made. Alteration of other items on the certificate could, in certain circumstances, constitute a crime pursuant to RSA 641:7, entitled “Tampering With Public Records or Information.”

Penalties for Unlawful Acts

New Hampshire law sets forth specific penalties for the commission of unlawful acts by applicants or by those who have already been appointed notarial officers.

A notarial officer who negligently or recklessly commits any of the first three unlawful acts listed above is subject to a civil penalty of up to one thousand dollars *per violation*. These penalties are paid to the Secretary of State for deposit into the general fund.

A notarial officer who purposefully or knowingly commits *any* of the above listed acts is guilty of a class A misdemeanor.

A notarial officer who makes a notarial act knowing he or she is not authorized to do so is also guilty of a class A misdemeanor.

New Hampshire law authorizes the attorney general to notify a suspected violator of the state's intention to seek a civil penalty and may negotiate a settlement with the suspected violators without court action. The Secretary of State then will deposit any civil penalty paid as settlement into the general fund.

RSA 455:16.

A person who wishes to file a complaint against a notarial officer should contact the Attorney General's office, in writing at 33 Capitol Street, Concord, NH, 03301 or by telephone at 1-866-868-3703.

APPENDIX A – DEFINITIONS

All of the definitions in this section are drawn from Black’s Law Dictionary (11th Ed. 2019) unless otherwise noted.

Acknowledgement – 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. RSA 456-B:1, II.

Affirmation – A solemn pledge equivalent to an oath but without reference to a supreme being or to swearing; a solemn declaration made under penalty of perjury, but without an oath.

Apostille An apostille record means a vital record document which contains the certification as provided for in the 1961 Hague Convention and which is recognized in the United States and other certifying countries as a certified document. An Apostille conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office. RSA 5-C:99, 456-B:6, II.

Attorney in fact - An agent with authority to do some particular act, not of a legal character, for another. The agent is granted such authority by a written document called “power of attorney.” Gilbert Law Dictionary, p. 22 (1997). “A party may be represented by a person who is not a licensed attorney if that person is “of good character,” does not engage in such representation as a common practice, and has filed with the clerk a power of attorney signed by the party, witnessed and acknowledged, which specifically refers to the pending case and appoints that person the party’s attorney-in-fact for the purposes of the case.” Wiebusch on New Hampshire Civil Practice and Procedure: 4 Civil Practice and Procedure § 11.03 (2019)

Commission - A warrant or authority, from the government or a court, that empowers the person named to execute official acts.

Competency - The mental ability to understand problems and made decisions.

Credibility – The quality that makes something (as a witness or some evidence) worthy of belief.

Deponent – Someone who testifies by deposition.

Deposition – A witness’s out-of-court testimony that is reduced to writing for later use in court or for discovery purposes.

Dishonor – To refuse to accept or pay (a negotiable instrument) when presented.

Drawee – The person or entity that a draft is directed to and that is requested to pay the amount stated on it.

APPENDIX A – DEFINITIONS

Foreign notarial act - A notarial act performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multi-national or international organization by a Notary Public or Notary; judge, clerk, or deputy clerk of a court of record; or any other person authorized by the law of that jurisdiction to perform notarial acts. RSA 456-B:6, I.

Negotiable Instrument – A written instrument that (1) is signed by the maker or drawer, (2) includes an unconditional promise or order to pay a specified sum of money, (3) is payable on demand or at a definite time, and (4) is payable to order or to bearer.

Notarial act - Any act that a Notary Public 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. RSA 456-B:1, I.

Notarial officer - A Notary Public, Justice of the Peace, or other officer authorized to perform notarial acts. RSA 456-B:1, V.

Notice of protest – A statement, given usu. by a Notary Public to a drawer or indorser of a negotiable instrument, that the instrument was neither paid nor accepted.

Oath – A solemn declaration, accompanied by a swearing to God or a revered person or thing, that one's statement is true or that one will be bound to a promise.

Payor bank – A bank that is asked to pay the amount of a negotiable instrument and, on the bank's acceptance, is obliged to pay that amount.

Personal knowledge – Knowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said.

Power of attorney – An instrument granting someone authority to act as agent or attorney-in-fact for the grantor.

Presenting bank – A nonpayor bank that presents a negotiable instrument for payment.

Prima facie – Sufficient to establish a fact or raise a presumption unless disproved or rebutted.

Purported – Reputed; rumored.

Reasonable care - As a test of liability for negligence, the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances. Generally, reasonable care is the application of whatever intelligence and attention one possesses for the satisfaction of one's needs.

Recordable instruments - Documents that are required by law to be recorded at the registry of deeds.

APPENDIX A – DEFINITIONS

Representative Capacity - Acting (a) For and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative; (b) As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument; (c) As an attorney in fact for a principal; or (d) In any other capacity as an authorized representative of another. RSA 456-B:1, IV.

Satisfactory evidence of identity – When a person is personally known to the notarial officer, is identified upon the oath or affirmation of a credible witness personally known to the notarial officer, or is identified on the basis of identification documents. RSA 456-B:2, VI.

Verification upon oath or affirmation - A declaration that a statement is true made by a person upon oath or affirmation. RSA 456-B:1, III.

Vital record - a certificate or report of a vital event. RSA 5-C:1, XXXVII.

Vital events - Birth, adoption, death, fetal death, marriage, divorce, legal separation, and civil annulment. RSA 5-C:1, XXXVI.

APPENDIX B – PERTINENT NEW HAMPSHIRE STATUTES

CHAPTER 455 NOTARIES PUBLIC AND COMMISSIONERS

Notaries Public

RSA 455:1 Appointment. – Notaries public shall be appointed by the governor, with advice and consent of the executive council, and shall be commissioned for 5 years.

RSA 455:2 Application. – Any person applying to be a Notary Public shall be a resident of this state or be a resident of an abutting state who is regularly employed or carries on a trade, business, or practice in this state at the time of applying. The applicant shall sign a written statement under oath as to whether the applicant has ever been convicted of a crime that has not been annulled by a court, other than minor traffic violations. The applicant shall be endorsed for appointment by 2 Notaries Public and a registered voter of this state. A resident of an abutting state may be commissioned as a Notary Public in New Hampshire provided that the individual submits to the secretary of state: the notary application fee required under RSA 5:10 and an affidavit stating that the individual (i) is a resident of an abutting state, (ii) is a registered notary in such state, and (iii) is regularly employed or carries on a trade, business, or practice in New Hampshire.

RSA 455:2-a Competency. – It shall be lawful for any Notary Public or any other officer authorized to administer an oath or take an acknowledgment or proof of an instrument or make protest, 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 or other officer authorized to administer an oath or take an acknowledgment or proof of an instrument or make protest, to take the acknowledgment of an instrument executed by or to a bank or other corporation of which he is a stockholder, director, officer or employee, where such notary or other officer 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 or other officer is individually a party to such instrument. No person acting in the capacity of Notary Public shall notarize his or her own signature. This section shall not be construed to imply that the acts herein made lawful may heretofore have been unlawful, and no instrument heretofore acknowledged or notarized before a Notary Public or other officer who would have been competent to act under the terms hereof shall hereafter be impugned or invalidated on the grounds that such Notary Public or other officer was incompetent to act.

APPENDIX B – PERTINENT NEW HAMPSHIRE STATUTES

RSA 455:3 Powers. – Every Notary Public, in addition to the usual powers of the office, shall have the same powers as a Justice of the Peace in relation to depositions and the acknowledgment of deeds and other instruments and the administering of oaths. All acknowledgments made by a Notary Public shall be either under an official seal or shall carry the legible imprint of an official rubber stamp stating the name of the notary, the words "Notary Public, New Hampshire" and the expiration date of the Notary Public's commission.

RSA 455:4 Protest as Evidence. – The protest of a bill of exchange, note, or order, duly certified by a Notary Public, shall be evidence of the facts stated in the protest and of the notice given to the drawer or endorsers.

Notarial Fees

RSA 455:11 Notarial Fees. – Notaries public shall be entitled to a fee of up to \$10 for each oath, witness, service, or certification with the following exceptions:

I. For services related to the taking of depositions, the Notary Public shall be entitled to the same fees as Justices are entitled to receive pursuant to RSA 517:19.

II. No fees shall be allowed for administering and certifying oaths of office of town officers.

Commissioners

RSA 455:12 Appointment. – The governor, with advice and consent of the executive council, may appoint, in each state, district, and territory of the United States, and in each foreign country to which the United States sends a representative, a commissioner or commissioners of deeds, to continue in office 5 years.

RSA 455:13 Oath. – Before any commissioner of deeds shall perform any duty of his or her office, he or she shall take and subscribe an oath, before a judge of some court of record, that he or she will well and faithfully perform all the duties of the office, which oath shall be filed by him or her in the office of the secretary of state within 3 months after taking the same.

RSA 455:14 Powers. – Such commissioner of deeds may, both within and without this state, administer oaths, take depositions and affidavits to be used in this state and notify parties of the time and place thereof, and take the acknowledgment of deeds or instruments to be used or recorded in this state, in the same manner and with the same effect as a Justice of the Peace of this state may do within the state.

RSA 455:15 For Other States; By Court Appointment. – Any commissioner for any other state who is authorized to take depositions, administer oaths and affirmations and take the acknowledgment of deeds within this state, to be used in such other state, and any commissioner appointed by the supreme or superior court or any justice thereof, shall have the power to administer oaths and affirmations, to issue writs of summons to a witness, to proceed against such witness upon his neglect to appear and give his deposition, and in all proceedings under his commission, that is vested in Justices of the Peace in like cases.

Enforcement

RSA 455:16 Misconduct, Penalties. –

I. A person shall be subject to a civil penalty not to exceed \$1,000 if such person:

(a) When applying for a commission as a Notary Public, negligently or recklessly makes a material false representation on the application form;

(b) Holding a commission as a Notary Public or Justice of the Peace, negligently or recklessly makes a notarial act that is false;

(c) Holding a commission as a Notary Public or Justice of the Peace, negligently or recklessly makes a notarial act for a person not personally known by the notary without first requiring the person to establish his or her identity; or

(d) Holding a commission as a Notary Public or Justice of the Peace, negligently or recklessly makes a notarial act purporting to have witnessed the maker's signing of the document or purporting to have received the oath or affirmation of the person, when the notary did not actually witness the maker's signing of the document or did not actually receive the oath or affirmation of the person.

II. A person shall be guilty of a class A misdemeanor:

(a) If such person purposefully or knowingly commits any of the acts listed in paragraph I.

(b) If such person makes a notarial act, as defined by RSA 456-B:1, I, knowing he or she is not a person authorized by RSA 456-B:3 to perform a notarial act.

III. (a) The court, upon petition of the attorney general, may levy upon any person who violates the provisions of paragraph I a civil penalty in an amount not to exceed \$1,000 per violation. All penalties assessed under this paragraph shall be paid to the secretary of state for deposit into the general fund.

(b) The attorney general shall have authority to notify suspected violators of this section of the state's intention to seek a civil penalty, to negotiate, and to settle with such suspected violators without court action, provided any civil penalty paid as settlement shall be paid to the secretary of state for deposit into the general fund.

RSA 455:17 Notary Public, Justice of the Peace Manual, Education, Enforcement. –

I. The secretary of state, with the advice and approval of the attorney general, shall prepare or cause to be prepared an up-to-date manual on the privileges, duties, and responsibilities of notaries public and Justices of the Peace in New Hampshire. The manual shall be written in non-technical language. The manual shall be distributed to each person commissioned a Notary Public, commissioner of deeds pursuant to RSA 455:12, and Justice of the Peace. The manual shall be available to the public free of charge. The manual shall be updated within 6 months following the end of any session of the legislature that amends the statutes affecting the privileges, duties, or responsibilities of notaries public, commissioners, or Justices of the Peace. The first edition of the manual shall be prepared by September 1, 2007.

II. The secretary of state may use the funds from the portion of the fees paid by applicants for commissions as a Notary Public or a Justice of the Peace deposited into the fund established in RSA 5:10-b for the preparation, printing, and distribution of a Notary Public/Justice of the Peace manual, other education of notaries public/Justices of the Peace, or both, and the acquisition, development, and maintenance of electronic records systems that will enhance the efficiency of the management of public records maintained by his or her office and to enhance the ease of submitting applications and renewals. The secretary of state shall enter into an agreement with the attorney general to provide funds from the fund established in RSA 5:10-b for the use of the

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attorney general for legal services related to the Notary Public/Justice of the Peace manual and for the enforcement of laws relating to Notary Public or Justice of the Peace misconduct.

CHAPTER 455-A JUSTICES OF THE PEACE

RSA 455-A:1 Appointment. – Justices of the Peace shall be appointed by the governor, with the advice and consent of the executive council, and shall be commissioned for 5 years, as provided in the New Hampshire Constitution.

RSA 455-A:2 Application. –

I. Any person applying to be a Justice of the Peace shall indicate on the application whether he or she has been a registered voter in this state for at least 3 years immediately preceding the date of application. The applicant must sign a written statement under oath stating whether the applicant has ever been convicted of a crime that has not been annulled by a court, other than minor traffic violations. The applicant shall be endorsed for appointment by 2 Justices of the Peace and a registered voter of this state.

II. A person shall be subject to a civil penalty not to exceed \$1,000 if he or she negligently or recklessly makes a material false representation on the application form when applying for a commission as a Justice of the Peace. A person is guilty of a class A misdemeanor if he or she purposefully or knowingly makes a material false representation on the application form when applying for a commission as a Justice of the Peace. The civil penalty shall be imposed in the same manner as set forth in RSA 455:16.

RSA 455-A:3 Powers. – Every Justice of the Peace shall have the power to administer oaths, perform marriage ceremonies, acknowledge instruments, and any other power prescribed by law. A Justice of the Peace signing an acknowledgment or jurat on any document or instrument shall type, print, or stamp the name of the Justice of the Peace and state the expiration date of his or her commission on the document or instrument. However, failure to meet these requirements shall not impair the legal validity of any acknowledgment or jurat.

CHAPTER 456-B UNIFORM LAW ON NOTARIAL ACTS

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 14.

RSA 456-B:1 Definitions. –

I. "Notarial act" means any act that a Notary Public 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.

II. "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

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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.

III. "Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation.

IV. "In a representative capacity" means:

(a) For and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;

(b) As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;

(c) As an attorney in fact for a principal; or

(d) In any other capacity as an authorized representative of another.

V. "Notarial officer" means a Notary Public, Justice of the Peace, or other officer authorized to perform notarial acts.

RSA 456-B:2 Notarial Acts. – I. In taking an acknowledgment, the notarial officer must 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.

II. In taking a verification upon oath or affirmation, the notarial officer must 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.

III. In witnessing or attesting a signature the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.

IV. In certifying or attesting a copy of a document or other item, the notarial officer must determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

V. In making or noting a protest of a negotiable instrument the notarial officer must determine the matters set forth in RSA 382-A:3-505.

VI. A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is personally known to the notarial officer, is identified upon the oath or affirmation of a credible witness personally known to the notarial officer, or is identified on the basis of identification documents.

RSA 456-B:3 Notarial Acts in This State. –

I. A notarial act may be performed within this state by the following persons:

(a) A Notary Public of this state;

(b) A judge, marital master, clerk, deputy clerk, register of probate, or deputy register of probate of any court of this state; or

(c) A Justice of the Peace of this state.

II. Notarial acts performed within this state under federal authority as provided in RSA 456-B:5 have the same effect as if performed by a notarial officer of this state.

II. The signature, official seal or the legible imprint of an official rubber stamp stating the name of the notary, and the words "Notary Public, New Hampshire" and the expiration date of the Notary Public's commission of a person performing a notarial act or for a Justice of the Peace

the name of the Justice and the expiration date of his or her commission typed, printed, or stamped on the document are prima facie evidence that the signature is genuine and that the person holds the designated title.

IV. Any person admitted to the practice of law in this state may administer an oath or affirmation for the purpose of taking oral testimony.

RSA 456-B:7 Certificate of Notarial Acts. –

I. A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must 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 must 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 must also include the officer's rank.

II. A certificate of a notarial act is sufficient if it meets the requirements of paragraph I and it:

- (a) Is in the short form set forth in RSA 456-B:8;
- (b) Is in a form otherwise prescribed by the law of this state;
- (c) Is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or
- (d) Sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

III. By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by RSA 456-B:2.