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Ohio Notary Update

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Ohio's New Notary Landscape

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Senate Bill 263: Why all the change?

- ▶ Senator Matt Huffman
- ▶ Standardize
 - ▶ Require education and testing
 - ▶ Electronic applications
- ▶ Centralize
 - ▶ OUT - 88 Courts of Common Pleas
 - ▶ IN - Ohio Secretary of State
 - ▶ Responsible for all commissions as well as notary disciplinary issues
- ▶ Electronic notaries public



New Process - September 20, 2019

- ▶ Application (pay a fee)
- ▶ Bureau of Criminal Investigation Background Check (pay a fee)
- ▶ Visit an Authorized Entity for Education and Testing (pay a fee)
- ▶ Submit Proof of Successful completion to Secretary of State
- ▶ Commission Mailed to Applicant
 - ▶ No need to file with Clerk of Courts
- ▶ Caught in Transition?



Ugh...Fees

- ▶ New Traditional Notary Applicants (non-attorney)
 - ▶ \$15 Application Fee to the Secretary of State
 - ▶ \$130 for the education and test
- ▶ New Traditional Notary Applicants (attorney)
 - ▶ \$15 Application Fee to the Secretary of State
 - ▶ \$75 for the education
- ▶ Traditional Notary Renewals (non-attorney)
 - ▶ \$15 Application Fee to the Secretary of State
 - ▶ \$45 for the education

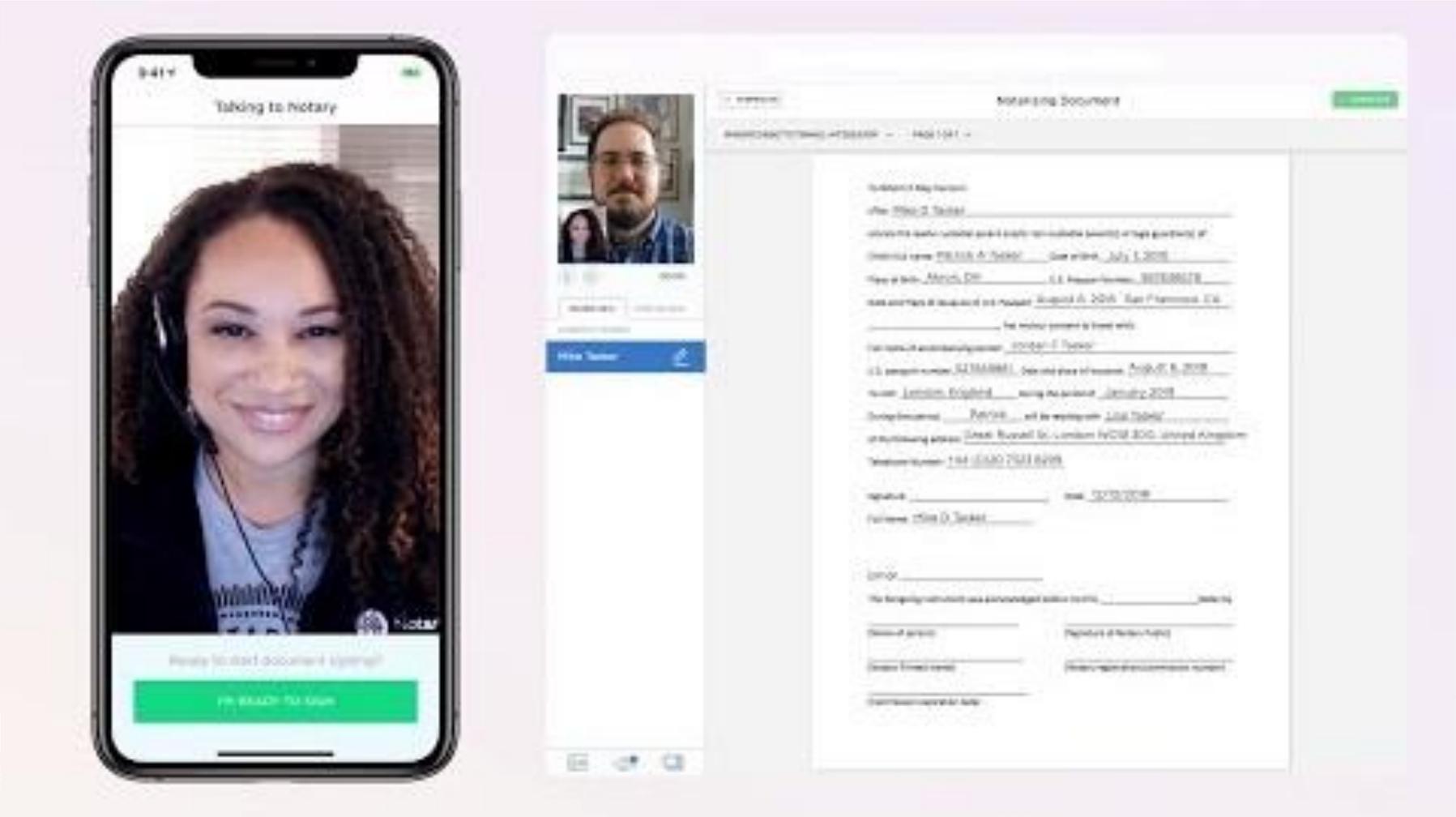


Traditional Notary

- ▶ Requirements
- ▶ Renewals
- ▶ Attorney Impact
- ▶ Changes
 - ▶ Acknowledgement
 - ▶ OUT: Affidavit --- IN: Jurat
 - ▶ Seal Size
 - ▶ Journal
 - ▶ Duty to Inform
 - ▶ Fees
 - ▶ Specific Prohibitions - Wayne Will Review



Electronic Notary: What Is It?



E-Notary

▶ Requirements

- ▶ Apply to Secretary of State
- ▶ Must Be a Traditional Notary Public
- ▶ Must Identify Technology the Applicant Will Be Using
- ▶ Education and Testing
- ▶ Attorney Applicants

▶ Renewals

- ▶ Commission Expiration
- ▶ Education



Ugh...Fees Part II

- ▶ New Electronic Notary Applicants
 - ▶ \$20 Application Fee to the Secretary of State
 - ▶ \$250 for the education and test
- ▶ Electronic Notary Renewals
 - ▶ \$20 Application Fee to the Secretary of State
 - ▶ \$160 for the education



E-Notary: Critical Aspects

- ▶ Must Know Technology
- ▶ Must Maintain Electronic Journal
- ▶ Fees for Providing an E-Notarization Up To \$25
- ▶ ORC 147.62 Focus on Identity Proofing
- ▶ ORC 147.591
 - ▶ Specific Language Discussing the Legality of E-Notarized Documents
 - ▶ Tells State and Local Government Agencies that E-Notarized Documents Cannot Be Rejected Solely Because of the Electronic Seal/Notary Signature



Ohio Notary Services, LLC

- ▶ Collaboration
- ▶ Akron Bar Association
 - ▶ Tenant
 - ▶ Jobs
 - ▶ Leadership
- ▶ Secretary of State
 - ▶ One of Several for Traditional Notary Education and Testing
 - ▶ ONLY Entity Authorized to Provide E-Notary Education and Testing
- ▶ BecomeAnOhioNotary.com
 - ▶ In-Person
 - ▶ Online



ORC 147.032 - Notary Discipline

- ▶ Secretary of State
 - ▶ Investigatory Authority
- ▶ Discipline Hearings
 - ▶ Admonish
 - ▶ Suspend
 - ▶ Revoke - Permanent; May Not Reapply
- ▶ Advisory board



NOTARY DOs AND DON'Ts FOR LAWYERS

Wayne Rice, Bar Counsel
Akron Bar Association

DO review the document to make sure that all blanks are completed or lined through (except for the notary certificate).

- Ask the signer or the preparer of the document (if present) to fill in or line through all blanks.
- **DO NOT** do this yourself as this can be construed as preparing a document for someone else, which is the unauthorized practice of law.

- You complete the notary certificate – this is your domain and your responsibility.
- No one can direct you as to what information goes into the notary certificate.
- Regardless of the date on the document, be sure that the notary certificate is dated with the date that the signer appears before you; *backdating* or *predating* a notary certificate is **never** permitted.

- If the notary certificate is pre-printed and the wording is not substantially compliant with Ohio law, line through the incorrect language, make the appropriate correction and initial it.

- If there is no notary certificate, attach a separate sheet of paper to the document signature page (staple the top two corners to the document).
- You will need to ask the signer if he or she wants an acknowledgment or jurat wording form; you can explain the difference but not suggest either format unless you are an attorney admitted to practice law in Ohio.

DO satisfy yourself as to the identity of the signer.

Unless you personally know the signer to be who he or she is, ask for identification (preferably government-issued, non-expired, with photo and signature).

DO NOT take someone else's word (even if you know him or her) as to the identity of the signer.

There are numerous cases where an unsuspecting notary has been taken advantage of by a client or an acquaintance who presents another individual as his or her spouse or other relative when that is not the case and the notary does not insist on identification.

DO be sure that the signer understands the document, is aware of the consequences of executing the document and that he or she is signing it ***willingly***, without ***any*** outside influence or coercion.

If you have any doubt about any of these elements, **DO NOT** proceed.

DO NOT attempt to explain the meaning or intent of the document or express an opinion about its content unless you are an attorney licensed to practice law in Ohio.

DO maintain a journal of your notarial acts.

- While it is not required in Ohio, it is an important tool that provides a written record of your official acts as it contains details of each transaction in the event a notarized document is lost or altered, facts concerning the notarization are challenged, or if you are ever accused of an inadvertent or willful mistake.

- A well-kept journal can demonstrate that you are consistent in your practices; i.e. establishing the identity of the signer, confirming the type of document and whether the notary certificate is an acknowledgment or a *jurat*, requiring that the document be signed in your presence and that you administer an oath/affirmation, and charging no more than the permitted fee.

DO develop a routine procedure for notarizing documents.

Make a checklist of the various steps that you need to do to complete a notarial act and keep a copy of that checklist with your notary equipment and journal so that you can follow it each time until the process becomes second nature to you.

By establishing and following a routine procedure, you can say with confidence that you do the same thing every time you notarize a document.

DO ask the signer to raise his or her right hand when administering an oath or affirmation. While this is not a statutory requirement, it does help underscore the seriousness of the occasion.

- ***Remember: the notary certificate on vehicle titles for both the seller and the buyer is a jurat and, if you are being asked to notarize both parties' signatures, both parties must sign the vehicle title in your present and you must administer an oath/affirmation to both of them.***

DO NOT:

- Notarize a document which you also have signed.
- Notarize your own signature.
- Take your own deposition.

DO NOT:

- Notarize a document for a transaction in which you have an interest, no matter how small or insignificant it may seem:
 - You have a direct financial or other interest in the transaction in question, excluding the notary fees as authorized in Chapter 147 of the Revised Code.
 - You are named, individually or along with someone else, as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor or lessee, or as a party in some other capacity to the transaction.

DO NOT:

- Certify that a document is either an original document or a true copy of another record.
 - You may, however, notarize the signature of a holder of a document on a written statement certifying that the document is a true copy of an original document.

DO NOT:

- Use a name or initial in signing certificates other than that by which you were commissioned.
- Sign notarial certificates using a facsimile stamp unless you have a physical disability that limits or prohibits your ability to make a written signature and you have submitted written notice to the secretary of state with an example of the facsimile signature stamp.

DO NOT

- Affix your signature to a blank form of an affidavit or certificate of acknowledgment and deliver that form to another person with the intent that it be used as an affidavit or acknowledgment.
- Notarize a document if you know that the signer has been adjudicated mentally incompetent by a court of competent jurisdiction.

•DO NOT

- Alter anything in a written instrument after it has been signed.
- Amend or alter the notarial certificate after the notarization is complete.
- Notarize a signature on an incomplete or blank document.
- Take an acknowledgment of execution instead of an oath or affirmation if an oath or affirmation is required.

DO NOT:

- Use the phrase “notario” or “notario publico” to advertise your services as a notary public, whether by sign, pamphlet, stationery, or other written communication, or by radio, television, or other non-written communication.

Unless you are an attorney licensed to practice law in Ohio **DO NOT:**

- Determine the validity of a power of attorney document or any other form designating a representative capacity, such as trustee, authorized officer, agent, personal representative, or guardian.
- Represent or advertise yourself as an immigration consultant or an expert in immigration matters.

Unless you are an attorney licensed to practice law in Ohio **DO NOT:**

- Solicit or accept compensation to prepare documents for or otherwise represent the interest of another person in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters.
- Solicit or accept compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or of the United States.

PENALTIES

Ohio Revised Code Section 147.032 (effective 09/20/2019) provides a general framework for investigations and penalties:

the secretary of state, after an investigation (initiated either by the secretary of state or upon a signed complaint by any person) and a hearing, may do any of the following:

revoke your notary commission;

suspend it for a specified period of time or until fulfillment of a condition, such as retraining, or both; or

issue a letter of admonition that shall be placed in your record with the secretary of state.

PENALTIES (cont'd)

Other sections of Chapter 147 provide for mandatory penalties for specific violations:

- If you violate the oath required by Section 147.03 (“I do hereby swear that I will support the Constitution of the United States and the Constitution of the State of Ohio, and that I will faithfully discharge the duties of the position to which I have been appointed, according to law, and to the best of my ability.”), the secretary of state, upon complaint filed and substantiated, shall remove you from office. You then will be ineligible for reappointment as a notary public.

PENALTIES (cont'd)

- If you are convicted of or plead guilty or no contest to any of the disqualifying offenses listed in Section 147.011, the secretary of state will revoke your commission and you cannot apply for a subsequent notary commission.

PENALTIES (cont'd)

- If you perform any notarial acts after the expiration of your term of office or after you resign your commission, knowing that your term has expired or that you have resigned your commission, you shall forfeit no more than \$500 to the state and be ineligible for reappointment.

PENALTIES (cont'd)

- If you charge or receive a fee in excess of that permitted by law, or you dishonestly or unfaithfully discharge any official duties as a notary public, the secretary of state, upon complaint filed and substantiated, will remove you from office and you will be ineligible for reappointment.

PENALTIES (cont'd)

- If you fail to administer the appropriate oath or affirmation when certifying an affidavit, the secretary of state will remove you from office and you will be ineligible for reappointment for a period of three years. You also can be fined not more than \$100 or imprisoned for not more than 30 days or both.

PENALTIES (cont'd)

- In addition to the foregoing penalties, an attorney who violates Chapter 147, also may be subject to disciplinary action for misconduct under the Ohio Rules of Professional Conduct.

PENALTIES (cont'd)

- *Columbus Bar Assn. v. Chodosh*: the attorney received a one-year stayed suspension for, among other things, making a settlement demand without the client's consent and then signing the client's name on a release of claims, signing his own name as a witness and then directing his secretary to notarize the client's signature without the client's knowledge.

Prof. Cond. R. 8.4(c): prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

PENALTIES (cont'd)

- *Disciplinary Counsel v. Clark*: Respondent's law firm conducted a review of his client files and discovered that over a seven-year period, respondent had engaged in at least 8 incidents of false notarization and/or backdating of clients' legal documents.

PENALTIES (cont'd)

In one instance, he actually witnessed his clients sign a warranty deed and notarized their signatures, but then he dated the document to coincide with the property's transfer date. He falsely attested to the date his clients had signed and acknowledged their signatures before him.

In another matter, respondent notarized signatures of clients returned by mail and falsely represented that the documents had been personally acknowledged before him.

PENALTIES (cont'd)

After the law firm discovery, respondent resigned from the firm and self-reported his actions. He received a six-month stayed suspension.

Prof. Cond. R. 8.4(c): prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Prof. Cond. R. 8.4(d): prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

PENALTIES (cont'd)

- *Disciplinary Counsel v. Moore*: Respondent signed a client's name to an affidavit without indicating that the signature was not the client's or that she had signed the client's name with the client's authorization, notarizing the signature as the client's, and then filing it with the court. Respondent received a public reprimand.

Prof. Cond. R. 3.3(a)(1): prohibiting a lawyer from making a false statement of fact or law to a *tribunal*.

PENALTIES (cont'd)

- Section 147.03 provides that an attorney's notary commission has no expiration as long as the attorney is a resident of this state or has the attorney's principal place of business or primary practice in this state, the attorney is in good standing before the Ohio supreme court, and the commission is not revoked.

PENALTIES (cont'd)

- An attorney is considered to be in good standing with the Supreme Court when ***all*** of the following apply:
- the attorney is admitted to the practice of law in Ohio;
- the attorney is registered under **Gov. Bar R. VI** for the current biennium and all prior bienniums for which registration was required;

PENALTIES (cont'd)

- with the exception of a public reprimand, the attorney is not subject to a Supreme Court attorney-discipline order, (e.g., an order of suspension, including during any stayed period of suspension, when there is a disbarment, or resignation from practice);

PENALTIES (cont'd)

- if the attorney has been disciplined, the attorney has paid all costs ordered by the court (e.g., board costs, publication costs) and has otherwise complied with all requirements as ordered by the court;
- if the attorney has been the subject of a CLE enforcement proceeding under [Gov. Bar R. X](#), the attorney has paid any fees imposed by the court for the attorney's non-compliance with CLE requirements;

PENALTIES (cont'd)

- the attorney has not been held in contempt by the Supreme Court or, if the attorney has been held in contempt, the attorney has been purged of contempt.