

State of Utah

Office of the Lieutenant Governor



Spencer J. Cox
Lieutenant Governor

**attached contains the following:*

May 9, 2017

Dear Utah Notary,

The 2017 General Legislative Session brought many needed changes and updates to the current notary code. Included in these numerous changes are new laws, as well as clarification to the existing language of Utah Code Annotated § Title 46 Chapter 1 *Notaries Public Reform Act*. It is very important that you review these changes as they go into effect on May 9, 2017.

In the interest of better serving those who seek your notarial services, please review the following pages to familiarize yourself with these changes. Further questions can be answered by contacting our office. Email: notary@utah.gov Phone: (801) 538-1041.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Storie".

Jennifer Storie
Notary Public Administrator
Office of the Lieutenant Governor

1) **46-1-2 Definitions.**

46-1-2(7) "Notarial Certificate" means the affidavit described in Section 46-1-6.5 that is:

- a. a part of or attached to a notarized document; and**
- b. completed by the notary and bears the notary's signature and seal**

What this means to the notary:

The law makes certain that an affidavit (notarial language) describing the events of the notarization are formatted similarly to what is described in Title 46-1-6.5 (see examples under number "5").

2) **46-1-2 Definitions.**

46-1-2(13) "Signature witnessing" means a notarial act in which an individual:

- a. appears in person before a notary and presents a document;**
- b. provides the notary satisfactory evidence of the individual's identity, or is personally known to the notary; and**
- c. signs the document in the presence of the notary**

What this means to the notary:

This is a new notarial act. This notarial language allows for a notary to just witness a signer's signature or confirm a signer's identity, without placing the signer under oath or affirmation. This still requires the signer to physically appear before the notary. This will be helpful when the notarization does not require the signer to be placed under oath or affirmation for the document's stated purpose.

3) **46-1-4. Bond.**

A notarial commission is not effective until:

- 1. the notary named in the commission takes a constitutional oath of office and files a \$5,000 bond with the lieutenant governor that:**
 - a. a licensed surety executes for a term of four years beginning on the commission's effective date and ending on the commission's expiration date; and**
 - b. conditions payment of bond funds to any person upon the notary's misconduct while acting in the scope of the notary's commission; and**
- 2. the oath and bond are approved by the lieutenant governor.**

What this means to the notary:

Previously, a person employed by the State of Utah could be bonded through the state's Risk Management office. After May 8, 2017, the Risk Management office will no longer issue bonds for state employees. A state employee would be required to receive their bond through an insurance company that issues surety bonds. These typically cost about \$50 for the 4-year commission of the notary. If the notary is currently commissioned under a Risk Management bond, the commission and bond will be valid until the commission expires.

4) 46-1-6 Powers and Limitations.

- 1. A notary may perform the following act:**
 - a. a jurat;**
 - b. an acknowledgment**
 - c. a signature witnessing**
 - d. a copy certification**
 - e. an oath or affirmation.**
- 2. A notary may not:**
 - a. perform an act as a notary that is not described in subsection (1); or**
 - b. perform an act described in subsection (1) if the person for whom the notary performs the notarial act is not in the physical presence of the notary at the time the notary performs the act.**

What this means to the notary:

This new addition to “Powers and limitations” adds the option to use “signature witnessing” if the situation calls for it. This change also affirms that acts not described in subsection (1) cannot be completed using your authority as a notary. It also reaffirms personal appearance by the signer when completing a notarization.

5) 46-1-6.5. Form of notarial certificate for document notarizations.

- 1. A correctly completed affidavit in substantially the form described in this section, that is included in or attached to a document, is sufficient for the completion of a notarization under this Title 46, Chapter 1, Notaries Public Reform Act.**
- 2. A notary shall ensure that a signer takes the following oath or makes the following affirmation before the notary witnesses the signature for a Jurat: "Do you swear or affirm under penalty of perjury that the statements in your document are true?"**
An affidavit for a jurat that is in substantially the following form is sufficient under Subsection (1):
"State of Utah
§
County of _____
Subscribed and sworn to before me (notary public name), on this (date) day of (month), in the year (year), by (name of document signer).
(Notary Seal) _____ Notary Signature".
- 3. An affidavit for an acknowledgment that is in substantially the following form is sufficient under Subsection (1):**
"State of Utah
§
County of _____
On this (date) day of (month), in the year (year), before me (name of notary public), a notary public, personally appeared (name of document signer), proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to in this document, and acknowledged (he/she/they) executed the same

(Notary Seal) _____ Notary Signature".

4. An affidavit for a copy certification that is in substantially the following form is sufficient under Subsection (1):

"State of Utah

§

County of _____

On this (date) day of (month), in the year (year), I certify that the preceding or attached document is a true, exact, and unaltered photocopy of (description of document), and that, to the best of my knowledge, the photocopied document is neither a public record nor a publicly recorded document.

(Notary Seal) _____ Notary Signature".

5. An affidavit for a signature witnessing that is in substantially the following form is sufficient under Subsection (1):

"State of Utah

§

County of _____

On this (date) day of (month), in the year (year), before me, (name of notary public), personally appeared (name of document signer), proved to me through satisfactory evidence of identification, which was (form of identification), to be the person whose name is signed on the preceding or attached document in my presence.

(Notary Seal) _____ Notary Signature".

What this means to the notary:

The law changed to provide specific notarial language for Jurat, Acknowledgement, Copy Certification, and Signature Witnessing. This will be very helpful to the notary, as the notary can replicate this language for any of the aforementioned acts, or use something substantially similar in format to produce a notarial certificate during a notarization. There is also an example of the verbal language for completing an oath or affirmation before administering a Jurat. The notary is required to read this language to the signer before completing a lawful Jurat. (See additional examples of notarial language in Title 57)

6) 46-1-7. Disqualifications.

A notary may not perform a notarial act if the notary:

1. *is a signer of the document that is to be notarized except in case of a self-proved will as provided in Section 75-2-504;*
2. *is named in the document that is to be notarized except in the case of a:*
 - a. *self-proved will as provided in Section 75-2-504;*
 - b. *licensed attorney that is listed in the document only as representing a signer or another person named in the document; or*
 - c. *licensed escrow agent, as defined in Section 31A-1-301, that:*
 - i. *acts as the title insurance producer in signing closing documents; and*
 - ii. *is not named individually in the closing documents as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, vendor, vendee, lessor, lessee, buyer, or seller;*

3. *will receive direct compensation from a transaction connected with a financial transaction in which the notary is named individually as a principal; or*
4. *will receive direct compensation from a real property transaction in which the notary is named individually as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor, lessee, buyer, or seller.*

What this means to the notary:

If the notary is a licensed escrow agent in good standing with the Utah Insurance Department, the notary is now able to explain closing documents and be named in the documents that will be notarized. This does not cover “notary signing agents” as there is no provision in State law that authorizes a notary to explain documents or accept money for services beyond the \$5 notary fee, unless the notary is a licensed attorney or a licensed escrow agent.

7) 46-1-15. Inspection of journal – Safekeeping and custody of journal.

- 1) *If a notary maintains a journal, the notary shall:*
 - a. *Keep the journal in the notary’s exclusive custody; and*
 - b. *Ensure that the journal is not used by any other person for any purpose*
- 2) *The notary’s employer may not require the notary to surrender the journal upon termination of the notary’s employment.*

What this means to the notary:

The length to which the notary should keep their journal after they are no longer a notary is left up to the notary to decide. We do suggest the notary keep the journal for a sufficient amount of time to be able to use as evidence if a notarization is called into question. The nationwide standard is 10 years.

8). 46-1-16. Official signature – Official seal – Seal impression.

- 6) *A notary may not use a notarial seal independent of a notarial certificate*

What this means to the notary:

Every notarization is required to have the notary’s seal (stamp), notarial language, and notary’s signature. A notary’s seal may not be used unless there is notarial language and a signature in place.

9) 46-1-18. Liability.

- 3) *It is a class B misdemeanor, if not otherwise a criminal offense under this code, for:*
 - a. *A notary to violate a provision of this chapter; or*
 - b. *The employer of a notary to solicit the notary to violate a provision of this chapter.*

What this means to the notary:

The criminal penalty for violating any provision under this chapter is now a class B misdemeanor. Previously this only applied to certain parts in the chapter.

10) 46-4-20. Change of name or address – Bond policy rider.

- 1) ***Within 30 days after the day on which a notary changes the notary's name, the notary shall provide to the lieutenant governor:***
 - a) ***The notary's new name, including official documentation of the name change; and a bond policy rider that a notary obtains in accordance with Subsection (2).***
- 2) ***To obtain a bond policy rider, the notary shall***
 - a) ***Notify the surety for the notary's bond***
 - b) ***obtain a bond policy rider reflecting both the old and new name of the notary;***
 - c) ***return the bond policy rider;***
 - d) ***destroy the original commission; and***
 - e) ***destroy the old official seal***
- 3) ***A notary is not required to change the notary's name by adopting the surname of the notary's spouse.***
- 4) ***Within 30 days of the day on which a notary's residential or business address changes, the notary shall provide the notary's new residential or business address to the lieutenant governor.***

What this means to the notary:

If a notary has legally changed their name, the notary has 30 days to notify the Lt. Governor's office of the change. There are times when a notary may not adopt their spouse's surname, in which case the notary may continue to use their original stamp until expiration. The notary will no longer have to pay a \$5 fee to change the notary's name on the commission, or send in the original certificate when requesting the change. The notary is now required to update the notary's business and residential address within 30 days of the change.

DISCLAIMER: This document is not a substitute for Utah State Code, and it is not intended to be comprehensive or an authoritative statement of law. For further legal information, please consult Utah State Code or other appropriate legal resources. Updated May 8, 2017.