

# SENATE NO. 877

## AN ACT RELATIVE TO STANDARDS OF CONDUCT FOR NOTARIES PUBLIC

*Be it enacted by the Senate and House of Representatives in General Court assembled,  
And by the authority of the same, as follows:*

1 SECTION 1. Chapter 222 of the General Laws is hereby amended by striking out sections 8 and 8A  
2 and inserting in place thereof the following sixteen sections:

3 Section 8. Definitions.

4 As used in sections 8 through 8N, the following words shall have the following  
5 meanings:

6 "Acknowledgment" shall mean a notarial act in which an individual, at a single time and  
7 place:

8 (a) appears in person before the notary public and presents a document;

9 (b) is identified by the notary public through satisfactory evidence of identity; and

10 (c) indicates to the notary public that the signature on the document was voluntarily affixed by  
11 the individual for the purposes stated within the document and, if applicable, that the individual  
12 had authority to sign in a particular representative capacity.

13 "Affirmation" shall mean a notarial act, or part thereof, that is legally equivalent to an  
14 oath in which an individual, at a single time and place:

15 (a) appears in person before the notary public;

16 (b) is identified by the notary public through satisfactory evidence of identity; and  
17 (c) makes a vow of truthfulness or fidelity under the penalties of perjury without invoking a  
18 deity.

19 "Copy certification" shall mean a notarial act in which a notary public:

- 20 (a) is presented with a document;
- 21 (b) copies or supervises the copying of the document using a photographic or electronic  
22 copying process;
- 23 (c) compares the document to the copy; and
- 24 (d) determines that the copy is accurate and complete.

25 "Credible witness" means an honest, reliable, and impartial person who personally knows  
26 an individual appearing before a notary and takes an oath or affirmation from the notary to vouch for  
27 that individual's identity.

28 "Journal of notarial acts" or "journal" shall mean a permanently bound book that creates  
29 and preserves a chronological record of notarizations performed by a notary public.

30 "Jurat" means a notarial act in which an individual, at a single time and place:

- 31 (a) appears in person before the notary public and presents a document;
- 32 (b) is identified by the notary public through satisfactory evidence of identity;
- 33 (c) signs the document in the presence of the notary public; and
- 34 (d) takes an oath or affirmation before the notary vouching for the truthfulness or accuracy of  
35 the signed document.

36 "Notarial act" and "notarization" shall mean any act that a notary public is empowered to  
37 perform.

38 "Notary public" or "notary" shall mean any person commissioned to perform official acts  
39 pursuant to Article IV of the Articles of Amendment of the Massachusetts Constitution.

40 "Oath" shall mean a notarial act, or part thereof, which is legally equivalent to an affirmation,  
41 and in which an individual, at a single time and place:

42 (a) appears in person before the notary;

43 (b) is identified by the notary through satisfactory evidence of identity; and

44 (c) makes a vow of truthfulness or fidelity under the penalties of perjury by invoking a deity.

45 "Official misconduct" shall mean:

46 (a) a notary's performance of any act prohibited, or failure to perform any act mandated, by  
47 sections 8 through 8k, or by any other law, in connection with a notarial act; or

48 (b) a notary's performance of an official act in a manner found to be grossly negligent or  
49 against the public interest.

50 "Personal knowledge of identity" shall mean familiarity with an individual resulting from  
51 interactions with that individual over a period of time sufficient to ensure beyond doubt that the  
52 individual has the identity claimed.

53 "Principal" shall mean a person whose signature is notarized, or a person taking an oath  
54 or affirmation from the notary.

55 "Regular place of work or business" shall mean a place where one spends most of one's  
56 working or business hours.

57 "Satisfactory evidence of identity" shall mean identification of an individual based on at least  
58 one current document issued by a Federal or state government agency bearing the photographic image  
59 of the individual's face and signature; or on the oath or affirmation of a credible witness unaffected by  
60 the document or transaction who is personally known to the notary and who personally knows the

61 individual; or identification of an individual based on the notary public's personal knowledge of the  
62 identity of the principal. For a person who is not a United States citizen, "satisfactory evidence of  
63 identity" shall mean identification of an individual based on a valid passport, or another government-  
64 issued document evidencing the individual's nationality or residence, that bears a photographic image  
65 of the individual's face and signature. For a person who is a Vermont or New Jersey resident, until  
66 January 1, 2008, "satisfactory evidence of identity" may include identification of an individual based  
67 on a valid driver's license that does not contain a photograph that is presented along with other  
68 documentary proof of identity that ensures beyond question that the person has the identity claimed.

69 "Signature witnessing" shall mean a notarial act in which an individual, at a single time and  
70 place:

71 (a) appears in person before the notary public and presents a document;

72 (b) is identified by the notary public through satisfactory evidence of identity; and

73 (c) signs the document in the presence of the notary public.

74 Section 8A. Qualifications of Applicants.

75 (a) A person qualified for a notary public commission shall:

76 (1) be at least 18 years of age; and

77 (2) reside legally or conduct business on a regular basis in Massachusetts.

78 (b) In the Governor's discretion, an application for appointment, reappointment or  
79 renewal of a commission may be denied based on:

80 (1) submission of an official application containing a material misstatement or omission of  
81 fact;

82 (2) the applicant's felony conviction or misdemeanor conviction that resulted in a prison  
83 sentence;

- 84 (3) the applicant's conviction of a misdemeanor with probation or a fine, or conviction for  
85 drunk driving;
- 86 (4) the applicant's admission of facts sufficient to warrant a finding of guilt of any crime;
- 87 (5) a finding or admission of liability against the applicant in a civil lawsuit based on the  
88 applicant's deceit;
- 89 (6) revocation, suspension, restriction, or denial of a notarial commission or professional  
90 license by this or any other state; or
- 91 (7) any other reason, including for official misconduct as defined in section 8, that, within the  
92 Governor's discretion, would make the applicant unsuitable to hold the commission as a notary  
93 public.

94 Section 8B. Duration of Commission.

95 As set forth in Article IV of the Articles of Amendment to the Constitution of the  
96 Commonwealth, a person commissioned as a notary public may perform notarial acts in any part of the  
97 commonwealth for a term of seven years, unless the commission is earlier revoked or the notary  
98 resigns.

99 Section 8C. Scope and Description of Duties.

100 (a) A notary public may perform the following notarial acts:

- 101 (1) acknowledgments;
- 102 (2) oaths and affirmations;
- 103 (3) jurats;
- 104 (4) signature witnessings;
- 105 (5) copy certifications;
- 106 (6) issuance of summonses for witnesses as set forth in section 1 of chapter 233;

107 (7) issuance of subpoenas; and  
108 (8) witness the opening of a bank safe, vault, or box as set forth in section 32 of chapter 167.

109 (b) In completing a notarial act, a notary shall sign his or her name exactly as it appears  
110 on the notary's commission.

111 (c) A notary shall keep an official notarial seal or stamp that is the exclusive property of  
112 the notary, may not be used by any other person, and shall meet the following requirements:

113 (1) A notary public shall obtain a new seal or stamp if the notary public renews his or her  
114 commission, receives a new commission, or changes his or her name.

115 (2) The notarial seal or stamp shall include: the notary public's name exactly as indicated on the  
116 commission; the words "notary public," "Commonwealth of Massachusetts" or  
117 "Massachusetts", the date of the expiration of his commission in the following language: "My  
118 commission expires \_\_\_\_"; and a facsimile of the great seal of the commonwealth.

119 (3) Each new notarial seal that uses ink shall use black ink.

120 (4) A notary public may satisfy the requirements of this section by using a stamp and a seal that  
121 together include all of the information required by this section.

122 (5) Failure to comply with this paragraph shall not affect the validity of any instrument, or the  
123 record thereof.

124 (d) A notary shall take the acknowledgment of the signature or mark of persons  
125 acknowledging for themselves or in any representative capacity by using substantially the following  
126 form

127 On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally  
128 appeared \_\_\_\_\_ (name of document signer), proved to me through  
129 satisfactory evidence of identification, which were \_\_\_\_\_, to be the

130 person whose name is signed on the preceding or attached document, and acknowledged to me  
131 that (he) (she) signed it voluntarily for its stated purpose.

132 (as partner for \_\_\_\_\_, a partnership)

133 (as \_\_\_\_\_ for \_\_\_\_\_, a corporation)

134 (as attorney in fact for \_\_\_\_\_, the principal)

135 (as \_\_\_\_\_ for \_\_\_\_\_, (a) (the) \_\_\_\_\_)

136 \_\_\_\_\_ (official signature and seal of notary)

137 (e) A notary shall use a jurat certificate in substantially the following form in notarizing a  
138 signature or mark on an affidavit or other sworn or affirmed written declaration:

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

145 \_\_\_\_\_ (official signature and seal of notary)

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

149 On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally  
150 appeared \_\_\_\_\_ (name of document signer), proved to me through  
151 satisfactory evidence of identification, which were \_\_\_\_\_, to be the  
152 person whose name is signed on the preceding or attached document in my presence.

153 \_\_\_\_\_ (official signature and seal of notary)

154 (g) A notary shall certify a copy by using substantially the following form:

155 On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that the (preceding) (following) (attached)  
156 document is a true, exact, complete, and unaltered copy made by me of \_\_\_\_\_  
157 (description of the document), presented to me by \_\_\_\_\_.

158 \_\_\_\_\_ (official signature and seal of notary)

159 (h) A notary public may certify the affixation of a signature by mark on a document

160 presented for notarization if:

161 (1) the principal affixes the mark in the presence of the notary public and of two witnesses  
162 unaffected by the document;

163 (2) both witnesses sign their own names beside the mark;

164 (3) the notary writes below the mark: "Mark affixed by (name of signer by mark) in the  
165 presence of (names and addresses of witnesses) and undersigned notary; and

166 (4) the notary public notarizes the signature by mark through an acknowledgment, jurat, or  
167 signature witnessing.

168 (i) The notary public may sign the name of a principal who is physically unable to sign or  
169 make a mark on a document presented for notarization if:

170 (1) the principal directs the notary to do so in the presence of two witnesses who are unaffected  
171 by the document;

172 (2) the principal does not have a demeanor that causes the notary public to have a compelling  
173 doubt about whether the principal knows the consequences of the transaction requiring the  
174 notarial act;

175 (3) in the notary public's judgment, the principal is acting of his or her own free will;

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

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

179 (6) the notary public writes below the signature: "Signature affixed by notary public in the  
180 presence of (names and addresses of principal and two witnesses)"; and

181 (7) the notary public notarizes the signature through an acknowledgment, jurat, or signature  
182 witnessing.

183 (j) This section does not require a notary public to use the forms set forth in this section  
184 and shall not prevent the use of any other forms heretofore lawfully used.

185 Section 8D. Prohibited Acts.

186 (a) A notary public shall not perform a notarial act if:

187 (1) the principal is not in the notary's presence at the time of notarization;

188 (2) the principal is not identified by the notary through satisfactory evidence of identity;

189 (3) the principal has a demeanor that causes the notary public to have a compelling doubt about  
190 whether the principal knows the consequences of the transaction or document requiring the  
191 notarial act;

192 (4) in the notary public's judgment, the principal is not acting of his or her own free will;

193 (5) the notary public is a party to or is named in the document that is to be notarized, except  
194 that a notary public may notarize a document if the notary public is named in the document for  
195 the sole purpose of receiving notices relating to the document and except that a notary public  
196 who is licensed as an attorney in the commonwealth and is named as an executor, trustee or in  
197 any fiduciary capacity in a document, or any employee of such attorney, may perform notarial  
198 acts concerning such document;

199 (6) the notary public will receive as a direct result of the notarial act any commission, fee,  
200 advantage, right, title, interest, cash, property, or other consideration exceeding in value the  
201 fees set forth in section 41 of chapter 262 or has any financial interest in the subject matter of  
202 the document. This section shall not preclude a notary public who is licensed as an attorney in  
203 the commonwealth , or any employee of such attorney, from notarial acts concerning any  
204 document where the attorney receives a legal fee for professional legal services rendered in  
205 connection with such document.

206 (7) the notary public is a spouse, domestic partner, parent, guardian, child, or sibling of the  
207 principal, including in-law, step, or half relatives, except where a legal document is prepared  
208 by the notary public who is an attorney licensed in the commonwealth.

209 (b) A notary public shall not refuse to perform a notarial act solely based on the  
210 principal's race, advanced age, gender, sexual orientation, religion, national origin, health, disability, or  
211 status as a non-client or non-customer of the notary public or the notary public's employer.

212 (c) A notary public shall not influence a person either to enter into or avoid a transaction  
213 involving a notarial act by the notary public, except that the notary public may provide advise relating  
214 to that transaction if subsection (b) of section 8G applies.

215 (d) A notary public shall not execute a certificate containing information known or  
216 believed by the notary public to be false.

217 (e) A notary public shall not affix an official signature or seal on a notarial certificate that  
218 is incomplete.

219 (f) A notary public shall not provide or send a signed or sealed notarial certificate to  
220 another person with the understanding that it will be completed or attached to a document outside of  
221 the notary public's presence, provided that in connection with a commercial, non-consumer

222 transaction, a notary public may deliver a signed, sealed, or signed and sealed notarial certificate to an  
223 attorney with the understanding that: (i) the attorney will attach the certificate to a document outside of  
224 the notary's presence; (ii) the attorney will hold such notarial certificate in escrow; and (iii) the  
225 attorney informs the notary public that the attorney will obtain the approval of the principal, or  
226 principals, involved before attaching the certificate to the document.

227 (g) A notary public shall not notarize a signature on a blank or incomplete document,  
228 except as provided in subsection (f)(1) above

229 (h) A notary public shall not perform any official act with the intent to deceive or  
230 defraud.

231 (i) A notary public shall not claim to have powers, qualifications, rights, or privileges that  
232 the office of notary public does not provide, including the power to counsel on immigration matters.

233 (j) A notary public shall not use the term "notario" or "notario publico" or any equivalent  
234 non-English term in any business card, advertisement, notice, or sign.

235 Section 8E. Limitations of Discretion.

236 A notary shall perform any notarial act for any person requesting such an act who tenders  
237 the fee set forth in section 41 of chapter 262 of the General Laws unless:

238 (a) the notary public knows or has good reason to believe that the notarial act or the associated  
239 transaction is unlawful;

240 (b) the principal has a demeanor that causes the notary public to have a compelling doubt about  
241 whether the principal knows the consequences of the transaction or document requiring the  
242 notarial act;

243 (c) the act is prohibited by any provision of this chapter or other applicable law; or

244 (d) the number of notarial acts requested practicably precludes completion of all acts at once, in  
245 which case the notary public shall arrange for later completion of the remaining acts.

246 Section 8F. Underlying Document.

247 (a) A notary public has neither the duty nor the authority to investigate, ascertain, or  
248 attest to the lawfulness, propriety, accuracy, or truthfulness of a document or transaction involving a  
249 notarial act.

250 (b) Failure of a document to contain the forms of acknowledgment, jurat, signature  
251 witnessing, or copy certification set forth in section 8C, or otherwise to comply with the requirements  
252 set forth in sections 8 through 8N shall not have any effect on the validity of the underlying document,  
253 or the recording thereof.

254 (c) Failure of a document to contain the forms of acknowledgment, jurat, signature  
255 witnessing, or copy certification set forth in section 8C should not be the basis of refusal to accept the  
256 document for filing, recordation, registration, or acceptance by a third party.

257 Section 8G. Prohibition Against the Unauthorized Practice of Law.

258 (a) A non-attorney notary public shall not assist a non-attorney in drafting, completing,  
259 selecting, or understanding a document or transaction requiring a notarial act, rendering legal advice,  
260 or otherwise engage in the practice of law.

261 (b) This section does not preclude a notary public who is duly qualified, trained, or  
262 experienced in a particular industry or professional field from selecting, drafting, completing, or  
263 advising on a document or certificate related to a matter within that industry or field.

264 (c) A notary public who is not an attorney licensed to practice law in the commonwealth,

265 or who is not directly supervised by such attorney, shall not conduct a real estate closing and shall not  
266 act as a real estate closing agent. A notary public who is employed by a lender may notarize a  
267 document in conjunction with the closing of his or her employer's real estate loans.

268 Section 8H. Advertising Disclaimer Required.

269 A non-attorney notary public who advertises notarial services in a language other than  
270 English shall include in the advertisement, notice, letterhead, or sign the following, prominently  
271 displayed in the same language the statement: "I am not an attorney and have no authority to give  
272 advice on immigration or other legal matters."

273 Section 8I. Official Journal.

274 (a) A notary shall keep, maintain, protect, and provide for lawful inspection a  
275 chronological official journal of notarial acts that is a permanently bound book with numbered pages,  
276 except as otherwise provided in this section.

277 (b) A notary public shall keep no more than one active journal at the same time.

278 (c) For every notarial act except for the issuance of summons or subpoenas, or the  
279 administration of an oral oath, the notary public shall record in the journal at the time of the  
280 notarization the following:

281 (1) the date and time of the notarial act, proceeding, or transaction;

282 (2) the type of notarial act;

283 (3) the type, title, or a description of the document, transaction, or proceeding. If multiple  
284 documents are signed by the same principal in the course of a transaction or during a single  
285 date (i.e. real estate closings, mortgage discharges, state laboratory drug analysis certificates,  
286 etc.), a single journal entry shall be sufficient;

287 (4) the signature, printed name, and address of each principal and witness, except that if a  
288 principal or witness tells the notary that he or she is a battered person, the notary shall make a  
289 note in the journal that the person's address shall not to be subject to public inspection.

290 (5) description of the satisfactory evidence of identity of each person including:

291 (A) a notation of the type of identification document, the issuing agency, its serial or  
292 identification number, and its date of issuance or expiration, provided that if the identification  
293 number on the document is the person's Social Security number, instead of including the  
294 number, the notary shall write in the words "Social Security number" or the acronym "SSN"; or

295 (B) a notation if the notary identified the individual on the oath or affirmation of a  
296 credible witness or based on the notary's personal knowledge of the individual;

297 (6) the fee, if any, charged for the notarial act; and

298 (7) the address where the notarization was performed.

299 (d) A notary public shall not record a Social Security or credit card number in the journal.

300 (e) A notary public shall record in the journal the circumstances for not completing a  
301 notarial act.

302 (f) A journal shall be recommended as the best practice, but not required, for a notary public  
303 who is an attorney licensed to practice law in the commonwealth or is employed by such  
304 attorney. Sections 8 through 8O shall not be construed in any way to impair or infringe on the  
305 attorney-client privilege or the attorney work product doctrine.

306 Section 8J. Inspection of the Official Journal.

307 (a) Except as provided in subsection (f) of section 8I, the journal may be examined

308 without restriction by a law enforcement officer in the course of an official investigation, subpoenaed  
309 by court order, or surrendered at the direction of the Governor's Office. Nothing in this section shall  
310 prevent a notary public from seeking appropriate judicial protective orders.

311 (b) A notary public shall safeguard the journal and all other notarial records and surrender  
312 or destroy them only by rule of law, by court order, or at the direction of the Governor's Office.

313 (c) When not in use, the journal shall be kept in a secure area under the exclusive control  
314 of the notary public, and shall not be used by any other notary nor surrendered to an employer upon  
315 termination of employment.

316 Section 8K. Duties at the End of the Commission.

317 When a notary commission expires, is resigned, or is revoked, the notary shall:

318 (a) as soon as reasonably practicable, destroy or deface all notary seals and stamps so that  
319 they may not be used; and

320 (b) retain the notarial journal and records for seven years after the date of expiration,  
321 resignation, or revocation.

322 Section 8L. Change of Name or Address.

323 Within 10 days after the change of a notary public's residence, business, mailing address,  
324 or name, the notary shall send to the secretary of the commonwealth a signed notice of the change,  
325 giving both the old and new information.

326 Section 8M. Revocation of Commission.

327 A notary public's commission may be revoked for official misconduct as defined in  
328 section 8, or for other good cause, as determined by the Governor with the consent of the Governor's  
329 Council as set forth in Article XXXVII of the Articles of Amendments to the Massachusetts  
330 Constitution.

331 Section 8N Justices of the Peace.

332           The conduct of justices of the peace, when taking acknowledgements or administering  
333 oaths, shall be subject to the provisions of sections 8 through 8M.

334 Section 8O. Other Law

335           (a) Nothing in sections 8 through 8N shall supersede the provisions of any state or  
336 federal court rule, including court forms, or the provisions of section 42 of chapter 183, including the  
337 forms set forth in the appendix thereto, or of section 2 of chapter 192, or of any Federal statute or  
338 Federal regulation duly promulgated.

339           (b) The provisions of sections 8 through 8F shall not apply to the Massachusetts National  
340 Guard or other Reserve Component Commands when conducting mobilization exercises and Soldier  
341 Readiness Processing

342 SECTION 2. Sections 8 through 8O of chapter 222 of the General Laws, as appearing in section 1 of  
343 this act, shall apply to all commissions authorized by said chapter, including commissions received  
344 before the effective date of this act.

345