

BOARD OF SELECTMEN POLICY

NOTARIES PUBLIC

Date Approved by BOS:

Signature of Chair:

November 28, 2005

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I. PURPOSE

Governor Mitt Romney issued Executive Order Revised 455 (03-13) setting forth new standards of conduct for notaries public in Massachusetts. The Order was effective May 15, 2004. The stated purpose was to provide specific guidance to notaries as to the nature and scope of their duties and to foster the ethical conduct of notaries.

II. APPLICATION

All town employees who are notaries public and who, as part of their town duties, are called upon to notarize documents shall comply with the standards and directions set forth in the attached memorandum prepared by Palmer & Dodge, LLP.

III. REFERENCES

Policy approved by the Board of Selectmen on November 28, 2005.

**MASSACHUSETTS GOVERNOR ROMNEY
ISSUES EXECUTIVE ORDER OUTLINING NEW
STANDARDS OF CONDUCT FOR NOTARIES PUBLIC**

Governor Mitt Romney issued Executive Order Revised 455 (03-13) setting forth new standards of conduct for notaries public in Massachusetts. The Order was effective May 15, 2004. The Governor's stated purpose in issuing the Order was to provide specific guidance to notaries as to the nature and scope of their duties and to foster the ethical conduct of notaries.

The Order makes several significant changes to the manner in which notaries perform their duties. First, it requires notaries to positively identify the person whose signature is being notarized. Second, it requires notaries to maintain a journal for recording specific information regarding each notarial act they perform. Third, it provides specific requirements regarding the use of a seal and stamp. Fourth, it provides explicit requirements for each different type of notarial act.

In addition to these requirements, the Order also sets forth standards regarding duties of notaries and acts that notaries are prohibited from performing. A notary's commission may be revoked for performing a prohibited act, failing to perform a required act, performing an official act in a manner found to be grossly negligent or against the public interest, or for other good cause as determined by the Office of the Governor.

Set forth below is an overview of the new standards and the practical changes that they entail.

Positively Identifying a Principal

The Order requires a notary to identify the person signing the document (referred to as the principal) through "satisfactory evidence of identity." Satisfactory evidence of identity can be obtained by any of the following:

- (1) a state or federal government agency issued photo identification bearing the photograph and signature of the principal; or
- (2) the oath or affirmation of a credible witness and who is unaffected by the document to be notarized [who is personally known to the notary and who personally knows the principal]; or
- (3) the personal knowledge of the notary.

Official Journal

The Order requires notaries to keep an official journal of all notarial acts. However, if a notary is an attorney licensed to practice law in Massachusetts, or is employed by such an attorney, he or she is advised that keeping a journal is recommended as a best practice, but is not a requirement.

If a notary does not fit into this attorney exception, all of the following requirements apply. The journal must be a permanently bound book with numbered pages. Each notarial act must be

recorded in the journal. At the time of performing each notarial act, a notary must record the following information in his or her journal:

- The date and time of the notarial act;
- The type of notarial act (e.g., acknowledgment, jurat, signature witnessing, copy certification);
- The type, title or description of the document, transaction or proceeding;
- The signature, printed name, and address of the principal and any witnesses;
- A description of the satisfactory evidence of identity obtained for the principal and any witnesses, including:
 - A notation in the journal as to the whether the notary identified a principal based on his or her own personal knowledge or the oath or affirmation of a credible witness.
 - If the notary sees a picture identification of the principal, the notary must record the type of identification, the issuing agency, its serial number or identification number and its date of issuance or expiration. *However*, if the serial number on the identification is the Principal's social security number, the notary must not record it. Instead, the notary should make a notation that the number was a social security number in his or her journal.
- The fee charged for the notarial act, if any;
- The address where the notarial act was performed; and
- If applicable, the reason for not completing a notarial act.

A notary shall keep the official journal in a secure area and shall not allow anyone else to use his or her journal. A notary's official journal may be examined without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order, or surrendered at the direction of the Governor's Office.

Notarial Seals and Stamps

The Order requires notaries to keep an official notarial seal or stamp that may differ from previous notary stamps. The new stamp or seal must include the following information:

- The notary's name exactly as it appears on his or her commission.
- The words "Notary Public."
- The words "Commonwealth of Massachusetts" or "Massachusetts."

- The words “My commission expires on _____ (date)” or “Commission expires on _____ (date)” or “Commission expires _____ (date).”
- A facsimile of the great seal of the Commonwealth of Massachusetts.

A notary may also use a black ink stamp and a seal together to meet all of these requirements. Upon renewal of a commission or a change in name, a notary must obtain a new seal and/or stamp.

Types of Notarial Acts and New Notary Block Forms

Following are the types of notarial acts that a notary may perform and the text of the notary blocks that must accompany each such act:

1. Acknowledgment: A formal statement that the principal executed the document freely.

Requirements for notarizing an acknowledgment are:

At a single time and place:

1. Principal appears in person and presents a document to the notary;
2. The notary must identify the principal through satisfactory evidence of identity; and
3. Principal must indicate to the notary that his or her signature on the document was voluntarily affixed and, if applicable, that he/she had authority to sign in a particular representative capacity. The notary should ask the principal the following question aloud, and the principal must give an affirmative answer:

“Do you acknowledge and declare that this is your signature [that you have authority to sign for the corporation/partnership] and that you willingly signed this document for the purposes stated in the document?”

The following language (or substantially similar language) must be used when acknowledging a signature:

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

* (as partner for _____, a partnership)
 * (as _____ for _____, a corporation)

*(as attorney in fact for _____, the principal)
*(as _____ for _____, (a) (the) _____)

(Signature of Notary)

2. Jurat Certifying Oath or Affirmation: A pledge by a principal attesting to the truthfulness of a statement.

A jurat is a certificate executed by a notary certifying that the principal swore (took an oath) or affirmed to the notary that the statements made in the document are truthful to the best of the principal's knowledge.

Requirements for completing a jurat are:

At a single time and place:

1. Principal appears in person before the notary and presents a document;
2. The notary must identify the principal through satisfactory evidence of identity;
3. Principal must sign the document in the presence of the notary; and
4. Principal must make a vow of truthfulness or fidelity under the pains and penalties of perjury by either making an Oath (in which the principal invokes a deity) or an Affirmation (in which the principal does not invoke a deity). The notary should ask the principal the applicable question aloud, and the principal must give an affirmative answer in one of the following ways:

(A) If the principal is making an Oath –

“Do you solemnly swear under the pains and penalties of perjury that the information contained in this document is true so help you God?”

(B) If the principal is making an Affirmation –

“Do you solemnly affirm under the pains and penalties of perjury that the information contained in this document is true?”

(C) If the principal is making an Oath or an Affirmation in a representative capacity for a corporation, partnership or other entity –

“Do you solemnly (swear)(affirm) under the pains and penalties of perjury that you have personal knowledge of the facts to be sworn, that the information contained in this document is true, and that you have the authority to sign for the (corporation)(partnership)(other entity) (so help you God)?”

The following language (or substantially similar language) must be used when executing a jurat:

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

(Signature of Notary)

3. **Signature Witnessing:** Confirmation that a principal's signature was affixed in a notary's presence.

Requirements for witnessing a signature are:

At a single time and place:

1. Principal appears in person before the notary and presents a document;
2. The notary must identify the principal through satisfactory evidence of identity; and
3. Principal must sign the document in the presence of the notary.

The following language (or substantially similar language) must be used when witnessing a signature:

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

(Signature of Notary)

4. **Copy Certification:** Certification that a document is a true, exact, complete and unaltered copy made by a notary.

Requirements for notarizing a copy certification are:

At a single time and place:

1. The notary is presented with a document;

2. The notary must copy or supervise the copying of the document using a photographic or electronic copying process;
3. The notary must compare the document to the copy; and
4. The notary must determine that the copy is accurate and complete.

The following language (or substantially similar language) must be used when notarizing a copy certification:

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

(Signature of Notary)

Use of the notary block language (or substantially similar language) detailed above is required unless a specific notary block form is required or allowed by:

- the provisions of any court rule or court form;
- any Massachusetts general law;
- any Federal statute;
- any regulation adopted pursuant to a Massachusetts or Federal statute;
- another state if the document is to be filed or recorded in, or is governed by the laws of, that other state; or
- a preprinted form that contains an express prohibition against altering that form.

The Order states that failure of a document to contain the prescribed notary block forms or any other failure to comply with the standards shall not have any effect on the validity of the underlying document.

For a complete copy of the Executive Order: <http://www.sec.state.ma.us/pre/prenot/notidx.htm>

If you have any questions on how the changes affect you, contact Palmer & Dodge LLP.