Office of the Governor
State of Rhode Island and Providence Plantations
State House
Providence, Rhode Island 02903-1196
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Donald L. Carcieri
Governor

2009 APR -9 AM 11:37
SECRETARY OF STATE
PUBLIC INFORMATION

EXECUTIVE ORDER

09-08

April 8, 2009

NOTARY PUBLIC CODE OF CONDUCT AND DISCIPLINARY PROCEDURES

WHEREAS, pursuant to Chapter 30 of Title 42 of the Rhode Island General laws the Offices of Governor and Secretary for State are responsible for the appointment, registration and disciplining of notaries public; and

WHEREAS, incidents of notary public misconduct are on the rise and there are currently no statutes, rules or regulations in Rhode Island regarding standards of notary conduct; and

WHEREAS, an advisory code of conduct for notaries public would help protect Rhode Island citizens; and

WHEREAS, the Governor has the authority to remove notaries pubic for cause pursuant to R.I.G.L.§42-30-10; and

WHEREAS, this Executive Order is intended to spell out the procedures for removing such notaries and to conform with due process requirements in the exercise of that power.

NOW, THEREFORE, I, DONALD L. CARCIERI, by virtue of the authority vested in me as Governor of the State of Rhode Island and Providence Plantations, do hereby order and direct the following:

1. By execution of this executive order, I hereby endorse the provisions of the document entitled, "Standards of Conduct for Notaries Public in the state of Rhode Island and Providence Plantations," which has been drafted and approved by the legal divisions of both my office and that of the Secretary of State, and reflects codes of conduct adopted in other states such as our neighboring state of Massachusetts.

2. All notaries public in the State of Rhode Island are encouraged to act in accordance with the provisions of this document in order to better protect and serve the citizens of the State of Rhode Island.

3. Copies of aforementioned document can be obtained through the legal divisions of the Office of the Governor or Secretary of State and those divisions are prepared to answer any questions that may arise from the document.

4. I also hereby delegate my authority to discipline notaries public pursuant to R.I.Gen.Laws§42-30-10 to the Department of Administration, which shall investigate, prosecute, and adjudicate claims and charges against notaries pursuant to R.I.Gen.Laws §42-30-10 and the Administrative Procedures Act, Chapter 35 of Title 42 of the Rhode Island General Laws. The Department of Administration may seek help from other agencies in order to accomplish this charge as it may deem necessary.

So Ordered:

Donald L. Carcieri

Dated: 4/9/09

By His Excellency
Donald L. Carcieri, Governor of the State of Rhode Island and Providence Plantations

2009 APR -9 AM 11:36

*and*

By The Honorable
A. Ralph Mollis, Secretary of State, State of Rhode Island and Providence Plantations

SECRETARY OF STATE

# STANDARDS OF CONDUCT FOR NOTARIES PUBLIC IN THE STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS

Section 1: Applicability

(a) All notaries public should adhere to the "Standards of Conduct for Notaries Public in the State of Rhode Island and Providence Plantations." These standards will be considered by the Governor in the appointment, reappointment and removal of notaries public from their commissions.

(b) Nothing in these "Standards of Conduct for Notaries Public in the State of Rhode Island and Providence Plantations" supercedes the provisions of any court rule, including court forms; The Rhode Island General Laws, including but not limited to Title 42, Chapter 30; any Federal statute; or any regulation adopted pursuant to The Rhode Island General Laws or Federal statute.

Section 2: Definitions

As used in the "Standards of Conduct for Notaries Public in the State of Rhode Island and Providence Plantations," the following words shall have the following meanings:

(a) "**Acknowledgment**" shall mean a notarial act in which an individual, at a single time and place:

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

(2) is personally known to the notary public or is identified by the notary through satisfactory evidence of identity; and

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

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

(1) appears in person before the notary public;

(2) is personally known to the notary public or is identified by the notary through satisfactory evidence of identity; and

(3) makes a vow of truthfulness or fidelity under the pains and penalties of perjury based on personal honor and without invoking a deity or using any form of the word "swear."

(c) **"Commission"** means both to empower to perform notarial acts and the written evidence of authority to perform those acts.

(d) "**Copy certification**" shall mean a notarial act in which a notary public:

(1) is presented with a document that is neither a vital record, a public record nor publicly recordable; and

(2) copies or supervises the copying of the document using a photographic or electronic copying process; or

(3) compares the document to the copy; and

(4) determines that the copy is accurate and complete; and

(5) applies an acknowledgement to the document owner's signature attesting to the above listed facts.

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

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

(g) "**Jurat**" means a notarial act in which an individual, at a single time and place:

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

(2) is personally known to the notary public or is identified by the notary through satisfactory evidence of identity;

(3) signs the document in the presence of the notary public; and

(4) takes an oath or affirmation before the notary public vouching for the truthfulness or accuracy of the signed document.

(h) "**Notarial act**" and "**notarization**" shall mean any act that a notary public is empowered to perform.

(i) **"Notarial Certificate" and "Certificate"** shall mean the part of, or an attachment to, a notarized document that is completed by the notary public, bears the notary's signature and seal and states the facts attested by the notary in a particular notarization.

(j) "**Notary public**" or "**notary**" shall mean any person commissioned to perform official acts pursuant to Title 42, Chapter 30 of The Rhode Island General Laws, as amended.

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

(1) appears in person before the notary public;

(2) is personally known to the notary public or is identified by the notary through satisfactory evidence of identity; and

(3) makes a vow of truthfulness or fidelity under the pains and penalties of perjury by invoking a deity or using any form of the word "swear."

(l) "**Official misconduct**" shall mean:

(1) a notary's public performance of any act prohibited, or failure to perform any act mandated by any law, in connection with a notarial act; or

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

(m) "**Personal appearance**" shall mean that the principal and the notary public are physically close enough to see, hear, communicate with and hand identification documents to each other.

(n) "**Personal knowledge of identity**" shall mean familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

(o) "**Principal**" shall mean a person whose signature is notarized, or a person other than a credible witness, taking an oath or affirmation from the notary public.

(p) "**Regular place of work or business**" shall mean a stationary office or workspace where one spends most of one's working or business hours.

(q) "**Satisfactory evidence of identity**" shall mean identification of an individual based on at least one current document issued by a Federal or State or tribal government agency bearing the photographic image of the individual's face and signature; or on the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the individual; or identification of an individual based on the notary's personal knowledge of the identity of the principal. For a person who is not a United States citizen, "satisfactory evidence of identity" shall mean identification of an individual based on a valid passport, or another government-issued document evidencing the

individual's nationality or residence, that bears a photographic image of the individual's face and signature.

(r) "**Signature witnessing**" shall mean a notarial act in which an individual, at a single time and place:

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

(2) is personally known to the notary public or is identified by the notary through satisfactory evidence of identity; and

(3) signs the document in the presence of the notary public.

Section 3: Scope and Description of Duties

(a) A notary public may perform the following notarial acts: acknowledgements, oaths and affirmations, jurats, signature witness, copy certifications, issuance of subpoenas and deposition of witnesses.

(b) In completing a notarial act, a notary public should sign his or her name exactly as it appears on the notary's commission, write the title "Notary Public" after his or her signature, list his or her commission expiration date and list his or her notary identification number.

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

(d) Although not required by The Rhode Island General Laws, it is prudent for a notary public to use a seal when notarizing documents. The seal should include the notary's name exactly as it appears on his or her commission and the words "NOTARY PUBLIC" and "RHODE ISLAND." A notary's seal is the exclusive property of the notary; it may not be used by any other person.

(e) Each notary public should develop and adhere to his or her own "standard operating procedure" when notarizing instruments. This will benefit the notary if he or she is ever required to testify as how a particular instrument was notarized. A notary may find the use of a "journal of notarial acts" to be a beneficial tool. Notaries electing to use a "journal of notarial acts" should as a matter of good practice record the following:

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

(2) the type of notarial act;

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

(4) the signature, printed name and address of each principal and witness;

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

i. a statement that the person is "personally known to me;" or

ii. a notation of the type of identification document, the issuing agency, its serial or identification number and its date of issuance or expiration;

1. If the identification number on the document is the person's Social Security number, instead of including the number, write in the words "Social Security number" or the acronym "SSN;" or

iii. a notation if the notary public identified the individual on the oath or affirmation of a credible witness or based on the notary's personal knowledge of the individual;

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

(7) the address where the notarization was performed.

(8) A notary public should record in the journal the circumstances for not completing a notarial act.

*A notary public should not record a Social Security or credit card number in the journal.*

(f) Certificates for Notarial Acts

A notary public should take the acknowledgment of the signature or mark of persons acknowledging for themselves or in any representative capacity by using substantially the following form:

State of _____
County of _____

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

_____ (official signature and seal of notary)

A notary public should use a jurat certificate in substantially the following form in notarizing a signature or mark on an affidavit or other sworn or affirmed written declaration:

State of _____
County of _____

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

_____ (official signature and seal of notary)

A notary public should witness a signature in substantially the following form in notarizing a signature or mark to confirm that it was affixed in the notary's presence without administration of an oath or affirmation:

State of _____
County of _____

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

_____ (official signature and seal of notary)

A notary public should certify a copy by using substantially the following form:

State of _____
County of _____

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 _____, and to the best of my knowledge the copied document is neither a vital record nor a publicly recordable document, certified copies of which may be available from an official source other than a notary.

_____ (official signature and seal of notary)

(g) A notary public may certify the affixation of a signature by mark on a document presented for notarization if:

(1) the principal affixes the mark in the presence of the notary public and of 2 witnesses unaffected by the document;

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

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

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

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

(1) the principal directs the notary public to do so in the presence of 2 witnesses who are unaffected by the document;

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

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

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

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

(6) the notary public writes below the signature: "Signature affixed by notary public in the presence of (names and addresses of principal and 2 witnesses);" and

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

(i) This section does not require a notary public to use the forms set forth above if the form of acknowledgment, jurat, signature witnessing or copy certification if a document contains an alternative form from another State if the document is to be filed or recorded in, or governed by the laws of, that other State.

(j) This section does not require a notary public to use the forms set forth above if the form of acknowledgment, jurat, signature witnessing or copy certification appears on a printed form that contains an express prohibition against altering that form.

Section 4: Prohibited Acts

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

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

(2) the principal is not personally known to the notary public or is not identified by the notary through satisfactory evidence of identity;

(3) the document presented for a certification is a vital record, a public record or a publicly recorded document that is available as a certified copy from an official source other than a notary public;

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

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

(6) the notary public is a party to or is named in the document that is to be notarized, except that a notary may notarize a document if the notary is named in the document for the sole purpose of receiving notices relating to the document and except that a notary who is licensed as an attorney in the State of Rhode Island and is named as an executor, trustee or in any fiduciary capacity in a document, or employees of such attorney, may perform notarial acts concerning such document;

(7) the notary public will receive as a direct result of the notarial act any commission, fee, advantage, right, title, interest, cash, property or other consideration exceeding in value the fees set forth in section 42-30-13 of The Rhode Island General Laws or has any financial interest in the subject matter of the document. This section shall not preclude a notary who is licensed as an attorney in the State of Rhode Island or any employee of such attorney;

(8) notarial acts concerning any document where the attorney receives a legal fee for professional legal services rendered in connection with such document;

(9) the notary public is a spouse, domestic partner, parent, guardian, child or sibling of the principal, including in-law, step, or half relatives, except where such persons witness a will or other legal document prepared by the notary who is an attorney licensed in the State of Rhode Island.

(b) A notary public should not refuse to perform a notarial act solely based on the principal's race, advanced age, gender, sexual orientation, religion, national origin, health or disability.

(c) A notary public should not influence a person either to enter into or avoid a transaction involving a notarial act by the notary, except that the notary may provide advice relating to that

transaction if the notary is duly qualified, trained or experienced in a particular industry or professional field.

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

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

(f) A notary public should not provide or send a signed or sealed notarial certificate to another person with the understanding that it will be completed or attached to a document outside of the notary's presence.

(1) in connection with a commercial, non-consumer transaction, a notary public may deliver a signed, sealed or signed and sealed notarial certificate to an attorney with the understanding that:

(i) the attorney will attach the certificate to a document outside of the notary's presence; and
(ii) the attorney will hold such notarial certificate in escrow; and
(iii) the attorney informs the notary that the attorney will obtain the approval of the principal, or principals, involved before attaching the certificate to the document.

(g) A notary public should not notarize a signature on a blank or incomplete document, except in connection with a commercial, non-consumer transaction, a notary may deliver a signed, sealed, or signed and sealed notarial certificate to an attorney with the understanding that:

(i) the attorney will attach the certificate to a document outside of the notary's presence; and
(ii) the attorney will hold such notarial certificate in escrow; and
(iii) the attorney informs the notary that the attorney will obtain the approval of the principal or principals involved before attaching the certificate to the document.

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

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

(j) A notary public should not use the term "notario" or "notario publico" or any equivalent non-English term in any business card, advertisement, notice or sign. It is recommended to use only the commission title of "Notary Public." Any equivalent non-English term may imply to the general public that legal services are being rendered.

(k) A notary public should not influence a person either to enter into or avoid a transaction involving a notarial act by the notary, except that the notary may advise against a transaction if the notary knows or has good reason to believe that the associated transaction is unlawful.

Section 5: Limitations of Discretion.

A notary public should perform any notarial act for any person requesting such an act who tenders the fee set forth in section 42-30-13 of The Rhode Island General Laws unless:

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

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

(3) the act is prohibited by other applicable law; or

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

Section 6: Prohibition Against the Unauthorized Practice of Law

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

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

Section 7: Advertising Disclaimer Required

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

Section 8: Change of Name or Address and Loss of Seal

(a) Within 10 days after the change of a notary public's residence or name, the notary should file with the Office of the Secretary of State, Notary Public Section, a Change of Address or Change of Name form. The required forms can be obtained from the Notary Public Section, 148 W. River Street, Providence, RI 02904 or (401) 222-1487 or www.sec.state.ri.us.

(b) Any notary public whose seal is lost, misplaced, destroyed, broken, damaged, stolen or otherwise unworkable should immediately deliver written notice of that fact to the Office of the Secretary of State. If and when the notary's seal is recovered or replaced, written notice of the recovery or replacement should also be delivered immediately to the Office of the Secretary of State.

Section 9: Notification of Resignation or Death

(a) A notary public who ceases to be a qualified elector, ceases to be a member of the Rhode Island Bar or who becomes permanently unable to perform his or her notarial duties, should resign his or her commission.

(b) A notary public who resigns his or her commission should send to the Office of the Secretary of State by any means that provides a tangible receipt or acknowledgment, including certified mail and electronic transmission, a signed notice indicating the effective date of the resignation.

(c) If a notary public dies during the term of his or her commission, the notary's personal representative, as soon as reasonably practicable after death, should notify the Office of the Secretary of State of the death in writing by any means that provides a tangible receipt or acknowledgment, including certified mail and electronic transmission. The notary's personal representative should also comply with Section 10 of this document.

Section 10: Duties at the End of the Commission

When a notary public commission expires, is resigned, or is revoked, the notary should:

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

(b) If the notary public elected to use a "journal of notarial acts" as a matter of good practice, the notary should retain the journal and records for seven years after the date of expiration, resignation or revocation.

Section 11: Removal of Notary Public

In accordance with the provisions of The Rhode Island General Laws section 42-30-10 a notary public's commission may be revoked for official misconduct or may be removed for cause by the Governor, in his or her discretion.

Section 12: Revocation of Commission

In accordance with the provisions of The Rhode Island General Laws section 42-30-10, a notary public's commission shall be revoked if he/she is convicted of a felony and incarcerated.

Section 13: Fraud or Deceit in Office

In accordance with the provisions of The Rhode Island General Laws section 42-30-16, a notary public who is found to have practiced fraud or deceit will be held accountable and shall be guilty of a misdemeanor and fined not more than one thousand ($1,000.00) or imprisoned not more than one (1) year or both.