

## CHAPTER 359

### NOTARIES PUBLIC

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#### 359.01 COMMISSION.

Subdivision 1. **Resident notaries.** The governor may appoint and commission as notaries public, by and with the advice and consent of the senate, as many citizens of this state or resident aliens, over the age of 18 years, as the governor considers necessary. The governor will appoint and commission notaries public and the secretary of state shall receive applications for appointments and commissions, shall keep a register of those persons appointed and commissioned as notaries public by the governor with the advice and consent of the senate, shall update that register when informed of a change in name and address by a notary public, shall process applications by a notary public for reappointment, shall receive fees for the performance of these functions to be deposited into the general fund, and shall perform those clerical and administrative duties associated with these functions. The governor may also receive such applications directly.

Subd. 2. **Nonresident notaries.** (a) The governor, by and with the advice and consent of the senate, may appoint as notary public a person who is not a resident of this state if:

(1) the person is a resident of Wisconsin, Iowa, North Dakota, or South Dakota, and of a county that shares a boundary with this state;

(2) the person designates the secretary of state as agent for the service of process for all purposes relating to notarial acts and for receipt of all correspondence relating to notarial acts.

(b) The secretary of state shall receive applications for nonresident notary appointments and commissions, shall keep a register of those persons appointed and commissioned as notaries public by the governor with the advice and consent of the senate, shall update that register when informed of a change in name and address by a notary public, shall process applications by a notary public for reappointment, shall receive fees for the performance of these functions to be deposited into the general fund, and shall perform those clerical and administrative duties associated with these functions. The governor may also receive such applications directly.

Subd. 3. **Fees.** (a) When making application for a commission the applicant must submit,

along with the information required by the secretary of state, a nonrefundable fee of \$40.

(b) All fees shall be retained by the secretary of state and are nonreturnable, except that an overpayment of a fee is the subject of a refund upon proper application.

Subd. 4. **Application.** The secretary of state shall prepare the application form for a commission. The form may request personal information about the applicant, including, but not limited to, relevant civil litigation, occupational license history, and criminal background, if any. For the purposes of this section, "criminal background" includes, but is not limited to, criminal charges, arrests, indictments, pleas, and convictions.

Subd. 5. **Registration to perform electronic notarizations.** Before performing electronic notarial acts, a notary public shall register the capability to notarize electronically with the secretary of state. Before performing electronic notarial acts after recommissioning, a notary public shall reregister with the secretary of state.

**History:** (6937) *RL s 2656; 1955 c 820 s 44; 1969 c 1148 s 59; 1973 c 725 s 67; 1984 c 504 s 1; 1984 c 609 s 23; 1984 c 654 art 2 s 129; 1Sp1986 c 3 art 1 s 82; 1992 c 513 art 3 s 72; 1993 c 354 s 2; 1993 c 369 s 127; 1996 c 439 art 1 s 22,23; 2004 c 251 s 19; 2005 c 156 art 2 s 37; 2006 c 260 art 7 s 5*

### **359.02 TERM.**

A notary commissioned under section 359.01 holds office for five years, unless sooner removed by the governor or the district court, or by action of the commissioner. Within 60 days before the expiration of the commission, a notary may apply for reappointment for a new term to commence and to be designated in the new commission as beginning upon the day immediately following the date of the expiration. A notary whose commission expires on January 1, 2005, may apply for reappointment six months before the expiration date. The reappointment takes effect and is valid although the appointing governor may not be in the Office of Governor on the effective day.

All notary commissions expire on January 31 of the fifth year following the year of issue.

**History:** (6938) *RL s 2657; 1953 c 63 s 1; 1984 c 504 s 2; 1986 c 444; 1989 c 6 s 1; 1989 c 189 s 1; 1993 c 354 s 3; 1993 c 369 s 128; 1994 c 465 art 3 s 72; 1996 c 439 art 1 s 24; 1999 c 11 art 4 s 1; 2001 c 208 s 25*

### **359.03 SEAL; REGISTER.**

Subdivision 1. **Requirement.** Every notary shall get an official seal, with which to authenticate official acts, and upon which shall be engraved the arms of this state, the words "notarial seal." The seal, with the notary's official register, is exempt from execution, and, on death or removal from office, the register must be deposited with the court administrator of the

district court of the notary's county.

Subd. 2. **Validation and legalization of certain instruments.** All instruments heretofore duly made and executed which have been acknowledged before a notary public as provided by law, but the seal used thereon has engraved on it "notary public," are hereby validated and legalized, and in case such instruments are recorded, the recording is hereby validated and legalized, and all such instruments are validated to the same extent as though properly sealed at the time of their acknowledgment. This subdivision shall not affect any action now pending in any of the courts of this state.

Subd. 3. **Specifications.** The seal of every notary public may be affixed by a stamp that will print a seal which legibly reproduces under photographic methods the seal of the state of Minnesota, the name of the notary, the words "Notary Public," and the words "My commission expires ....., " with the expiration date shown thereon or may be an electronic form. A physical seal used to authenticate a paper document shall be a rectangular form of not more than three-fourths of an inch vertically by 2-1/2 inches horizontally, with a serrated or milled edge border, and shall contain the information required by this subdivision.

Subd. 4. **Electronic seal.** A notary's electronic seal shall contain the notary's name, jurisdiction, and commission expiration date, and shall be logically and securely affixed to or associated with the electronic record being notarized.

**History:** (6939) RL s 2658; 1947 c 42 s 1; 1947 c 372 s 1; 1971 c 251 s 1; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1993 c 354 s 4,5; 2006 c 260 art 7 s 6,7

### **359.04 POWERS.**

Every notary public so appointed, commissioned, and qualified shall have power throughout this state to administer all oaths required or authorized to be administered in this state; to take and certify all depositions to be used in any of the courts of this state; to take and certify all acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments in writing or electronic records; and to receive, make out, and record notarial protests.

**History:** (6940) RL s 2659; 1947 c 372 s 2; 1993 c 354 s 6; 2006 c 260 art 7 s 8

### **359.05 DATE OF EXPIRATION OF COMMISSION AND NAME TO BE ENDORSED.**

Every notary public, except in cases provided in section 359.03, subdivision 3, taking an acknowledgment of an instrument, taking a deposition, administering an oath, or making a notarial protest, shall, immediately following the notary's physical or electronic signature to the jurat or certificate of acknowledgment, endorse the date of the expiration of the commission; such endorsement may be legibly written, stamped, printed upon the instrument, but must be disconnected from the seal, and shall be substantially in the following form: "My commission

expires ....., ....." Except in cases provided in section 359.03, subdivision 3, every notary public, in addition to signing the jurat or certificate of acknowledgment, shall, immediately following the signature and immediately preceding the official description, endorse thereon the notary's name with a typewriter, print the same legibly with a stamp, with pen and ink, or affix by electronic means; provided that the failure so to endorse or print the name shall not invalidate any jurat or certificate of acknowledgment.

**History:** (6941) *GS 1866 c 26 s 4; GS 1894 s 2271; 1905 c 48 s 1; 1921 c 430 s 1; 1947 c 372 s 3; 1971 c 251 s 2; 1986 c 444; 1993 c 354 s 7; 1998 c 254 art 1 s 107; 2006 c 260 art 7 s 9*

**359.06** [Repealed, 1976 c 2 s 128]

### **359.061 RECORD OF COMMISSION; CERTIFICATE.**

The commission of every notary shall be recorded in the office of the court administrator of the district court of the notary's county of residence, in a record kept for that purpose. The commission of a nonresident notary must be recorded in the office of the court administrator of the district court of the Minnesota county that borders the county in which the nonresident notary resides. The court administrator, when requested, shall certify to official acts in the manner and for the fees prescribed by statute or court rule.

**History:** *1976 c 239 s 109; 1983 c 359 s 46; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1996 c 439 art 1 s 25; 1997 c 222 s 55*

### **359.062 NOTICE; LANGUAGES OTHER THAN ENGLISH.**

(a) A notary public who is not an attorney who advertises the services of a notary public in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall post or otherwise include with the advertisement a notice in English and the language in which the advertisement appears. This notice must be of a conspicuous size, if in writing, and must state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN MINNESOTA AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If the advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(b) A notary public who violates this section is guilty of a misdemeanor.

**History:** *1996 c 401 s 2*

### **359.07 NOTARY IN DETACHED COUNTY.**

Subdivision 1. **Powers.** In any county which has heretofore been detached from another county of this state, and which has been newly created and organized, any notary public residing in such newly created and organized county, who was a resident of the county from which the new county was detached and created, shall have the same powers during the unexpired term of

appointment as such notary public was authorized by law to exercise under the commission issued to the notary as a resident of the county from which the new county was detached and created and within which the original appointment as notary public was made; and all acts heretofore done by any such notary public, while residing in the newly created and organized county, otherwise in conformity of law, are hereby declared to be legal and valid and to the same effect as if the notary public had been originally commissioned as a resident of the newly created and organized county.

Subd. 2. **Record of commission.** Such notary public so residing in the newly created and organized county shall have the commission as such notary public recorded by the court administrator of the district court of the newly created and organized county of residence, or of the county to which the newly created county is attached for judicial purposes, as provided in section 359.061, and when so recorded shall be entitled to the same certificate of and from the court administrator of the district court as provided in section 359.061.

Subd. 3. **Seal.** Such notary shall, immediately upon the adoption of this section, get an official seal, as provided in and in conformity with section 359.03.

**History:** (6943, 6944, 6945) 1907 c 323 s 1-3; 1980 c 509 s 142; 1986 c 444; 1Sp1986 c 3 art 1 s 82

### **359.071 CHANGE OF NAME OR ADDRESS.**

A notary shall notify the secretary of state of any name or address change within 30 days of the change.

**History:** 1984 c 504 s 3; 1986 c 444; 1989 c 189 s 2; 1993 c 354 s 8; 1997 c 222 s 56; 2004 c 251 s 20

### **359.08 MISCONDUCT.**

Any notary who shall exercise the duties of office after the expiration of a term, or when otherwise disqualified, shall be guilty of a misdemeanor.

**History:** (6946) RL s 2661; 1963 c 753 art 2 s 5; 1986 c 444

### **359.085 STANDARDS OF CONDUCT FOR NOTARIAL ACTS.**

Subdivision 1. **Acknowledgments.** In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument or electronic record.

Subd. 2. **Verifications.** In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is

made in the presence of the officer on the statement verified.

Subd. 3. **Witnessing or attesting signatures.** In witnessing or attesting a signature, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named in the document or electronic record. When witnessing or attesting a signature, the officer must be present when the signature is made.

Subd. 4. **Certifying or attesting documents.** In certifying or attesting a copy of a document, electronic record, or other item, the notarial officer must determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

Subd. 5. **Making or noting protests of negotiable instruments.** In making or noting a protest of a negotiable instrument or electronic record, the notarial officer must determine the matters set forth in section 336.3-505.

Subd. 6. **Satisfactory evidence.** A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document or electronic record if that person (i) is personally known to the notarial officer, (ii) is identified upon the oath or affirmation of a credible witness personally known to the notarial officer, or (iii) is identified on the basis of identification documents.

Subd. 7. **Prohibited acts.** A notarial officer may not acknowledge, witness or attest to the officer's own signature, or take a verification of the officer's own oath or affirmation.

Subd. 8. [Repealed, 2007 c 148 art 2 s 84]

**History:** 2000 c 483 s 53; 2006 c 260 art 7 s 10; 2007 c 148 art 2 s 66,67

**359.09** [Repealed, 1965 c 811 art 10 s 336.10-102]

**359.10** [Repealed, 1965 c 811 art 10 s 336.10-102]

### **359.11 TAKING DEPOSITIONS.**

In taking depositions, the notary shall have the power to compel the attendance of and to punish witnesses for refusing to testify as provided by statute or court rule. All sheriffs shall serve and return all process issued by any notary in taking depositions.

**History:** (6949) RL s 2664; 1983 c 359 s 47; 2005 c 10 art 2 s 4

### **359.12 ADMINISTRATIVE ACTIONS AND PENALTIES.**

Every notary who shall charge or receive a fee or reward for any act or service done or rendered as a notary greater than the amount allowed by law, or who dishonestly or unfaithfully discharges duties as notary, or who has pleaded guilty, with or without explicitly admitting guilt,

plead nolo contendere, or been convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, is subject to the penalties imposed pursuant to section 45.027, except that a notary may be removed from office only by the governor or the district court. The commissioner has all the powers provided by section 45.027 and shall proceed in the manner provided by that section in actions against notaries.

**History:** (6950) RL s 2665; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1993 c 354 s 9