



What Every Notary Should Know

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Gwinnett County Clerk of Superior Court

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Origin

Notary Fact

Notaries public first developed in the Roman Empire. The word notary comes from the Latin word nota. Nota was a system of shorthand Cicero's clerk, Tullius Tiro, used to transcribe his speeches.

Information from the American Society of Notaries

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Why Are Documents Notarized?



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Why Are Documents Notarized?



- **To deter fraud.** An impartial witness (the Notary) ensures that the signer(s) of documents are who they say they are and not impostors
- The Notary makes sure that signers have entered into agreements knowingly and willingly

In a society in which business dealings between strangers are the norm rather than the exception, **Notaries create a trustworthy environment where strangers are able to share documents with full confidence in their authenticity**

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The Notary Public's Charge



Notaries must be impartial, which means they must never refuse to serve, or to discriminate in their quality of service, based of an individual's race, nationality, religion, politics, sexual orientation or status as a non-customer. As representatives of the state, Notaries must perform their official duties with respect and seriousness for the public service role they play as a trusted, impartial witness.

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Definitions in Georgia Law



§ 45-17-1. Definitions

(1) **"Attesting"** and **"attestation"** are synonymous and mean the notarial act of witnessing or attesting a signature or execution of a deed or other written instrument, where such notarial act does not involve the taking of an acknowledgment, the administering of an oath or affirmation, the taking of a verification, or the certification of a copy.

(2) **"Notarial act"** means any act that a notary public is authorized by law to perform and includes, without limitation, attestation, the taking of an acknowledgment, the administration of an oath or affirmation, the taking of a verification upon an oath or affirmation, and the certification of a copy.

(3) **"Notarial certificate"** means the notary's documentation of a notarial act.

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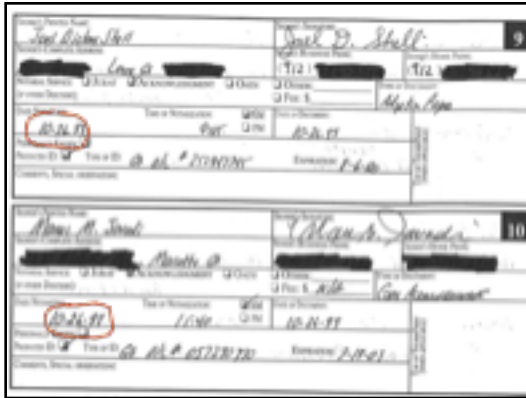
Should I Maintain a Notary Journal?



While Georgia law does not require a notary to keep a journal, which documents each notarial act in detail, it is **strongly** recommended that a journal be maintained.

- The journal serves as an archive of each notarial act.
- Elements of the act, including name of signer, signer's address, signer's signature, signer's telephone number, date and time of notarization, type of ID presented by signer, elements of the ID, date of document, type of document presented for notarization, and a comment section are essential to maintaining a journal.

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Let's see
how much
you know!

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1. _____ With whom (or what office) does a person apply to become a Notary?
- a. Georgia Secretary of State
 - b. The applicant's state representative
 - c. The Clerk of Superior Court of the applicant's home county
 - d. Probate Court of the applicant's home county
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§ 45-17-2.1. Application to be a notary; endorsements and declarations

(a) (1) Any individual desiring to be a notary public shall submit application to the clerk of superior court of the county in which the individual resides

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2. _____ A Georgia notary public may perform official acts anywhere in the the United States and its territories and possessions.

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FALSE – Georgia notaries may only perform acts within the physical boundaries of the state of Georgia.

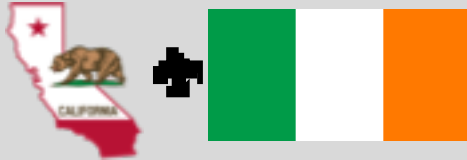
§ 45-17-9. Where notarial acts may be exercised

Notarial acts may be exercised in any county in the state.

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While We Are On the Subject

The origin of the signer(s) and/or the document is not a concern of the notary



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3. _____ A responsibility of the notary is to verify the validity of the document.

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FALSE—A notary's primary function is to **prevent and deter fraud** by always requiring the personal appearance of the signer and identifying the signer through personal knowledge or proper ID, such as a driver's license or passport. Unless the notary is an attorney licensed to practice law in Georgia, the notary may not explain the contents or the effects of a document or give any legal advice.

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4. _____ When the document signer is not physically present, the notary is permitted to perform a notarial act if the notary verifies the signer's identity via electronic/video technology.

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FALSE - A notary is prohibited from notarizing when the signer is not physically present before the notary, (face-to-face in the same room) at the same time, even if the notary personally knows the signer and recognizes his/her signature.

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5. _____ A notary is permitted to certify a photocopy of a birth certificate, death certificate, real estate deed or any other type of public record or publicly-recorded document.

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5. ____ A notary is permitted to certify a photocopy of a birth certificate, death certificate, real estate deed or any other type of public record or publicly-recorded document.

FALSE - Georgia law prohibits a notary from making a certified copy of a public record or publicly-recordable document. Birth certificates, death certificates and deeds are just three examples of publicly-recorded documents.

§ 45-17-8(a)(6)

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6. ____ When performing a notarial act, the notary should indicate in the notarial certificate the state and county of the notary's residence (State of Georgia, County of ____).

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FALSE - The notation in the notarial certificate that indicates "State of Georgia, County of ____" is called the venue, which is the location where the notarization actually takes place, not the county in which the notary is commissioned.

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7. _____ A person may act as the notary for his/her sister involving a power of attorney giving him/her (the notary) the authority to care for the sister's minor child.

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7. _____ A person may act as the notary for his/her sister involving a power of attorney giving him/her (the notary) the authority to care for the sister's minor child.

FALSE - But not because of the relationship! In this case, the notary is a party to the power of attorney, therefore, the notary is prohibited by Georgia law from performing the notarial act. [O.C.G.A. 45-17-8(c)(2)]

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8. _____ Georgia law allows notaries to charge a maximum of \$5 for a notarial act.

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8. _____ Georgia law allows notaries to charge a maximum of \$5 for a notarial act.

FALSE - The law allows a maximum fee of \$2 per notarial act. (O.C.G.A. 45-17-11)

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9. _____ A notary may perform a notarial act for someone who is signing by mark when that person cannot make a "normal" signature.

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9. _____ A notary may perform a notarial act for someone who is signing by mark when that person cannot make a signature commonly known as cursive.

TRUE - A mark is considered a legal signature if the person making that mark designates the mark as his/her signature. Another good reason to keep a notary journal! The signer would enter the mark in the journal.

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10. _____ It is considered a best practice for notaries to keep copies of the documents they notarize in order to protect themselves in the event a complaint of misconduct is filed against them.

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FALSE – Not a good practice! If a notary wants personal protection, he/she should carefully document each notarial act in a permanently bound recordbook especially designed for this purpose. Don't take on liability!

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11. _____ A notary public may be held personally liable for any financial loss caused by the notary's failure to properly perform his/her official duties.

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11._____ A notary public may be held personally liable for any financial loss caused by the notary's failure to properly perform his/her official duties.

TRUE – But no different than any other profession! A notary has unlimited personal liability for any loss caused by official misconduct.

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§45-17-2 Qualifications of notaries

(a) Any individual applying for appointment to be a notary public shall:

- (1) Be at least 18 years old;
- (2) Be a United States citizen or be a legal resident of the United States;
- (3) Be a legal resident of the county from which such individual is appointed;
- (4) Have, and provide at the time of the application, the applicant's operating telephone number; and
- (5) Be able to read and write the English language.

(b) The qualification of paragraph (3) of subsection (a) of this Code section shall not apply to any nonresident individual applying for appointment as a notary public under the provisions of Code Section 45-17-7.

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§45-17-7. Commissioning of nonresidents as notaries; powers and duties

(a) Any person who is a resident of a state bordering on the State of Georgia and who carries on a business or profession in the State of Georgia or who is regularly employed in the State of Georgia may be commissioned as a notary public by the clerk of the superior court of the county in which the person carries on said profession, business, or employment.

(b) Such person wishing to be commissioned as a notary public must meet all the requirements of Code Section 45-17-2, as it applies to this Code section.

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§ 45-17-2.3. Grant or denial of commission or recommission; grounds; unauthorized practice of law



(a) After an applicant submits to the clerk of superior court of the county the application, endorsements, and declaration of applicant as required in Code Section 45-17-2.1, the clerk of superior court shall either grant or deny a commission or recommission as a notary public within ten days following the applicant's submission of the necessary documents.

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§ 45-17-2.3. Grant or denial of commission or recommission; grounds; unauthorized practice of law



b) The clerk of superior court may in his or her discretion deny a commission or recommission to an applicant based on any of the following grounds:
(1) The applicant's criminal history;
(2) Revocation, suspension, or restriction of any notary commission or professional license issued to the applicant by this or any other state;
(3) The commission in this or any state of any act enumerated in subsection (a) of Code Section 45-17-15, whether or not criminal penalties or commission suspension or revocation resulted; or

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§ 45-17-2.3. Grant or denial of commission or recommission; grounds; unauthorized practice of law



(4) The applicant is found by the State Bar of Georgia, a court of this state, or a court of any other state to have engaged in the unauthorized practice of law.

(c) Any applicant who is denied a notarial commission or recommission by the clerk of superior court shall upon demand be allowed a hearing and adjudication before the superior court clerk with a right of de novo appeal to the superior court, such appeal to be determined by the court without the intervention of a jury.

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§ 45-17-8 Powers and duties generally



(a) Notaries public shall have authority to:



(1) Witness or attest signature or execution of deeds and other written instruments;

(2) Take acknowledgments;

(3) Administer oaths and affirmations in all matters incidental to their duties as commercial officers and all other oaths and affirmations which are not by law required to be administered by a particular officer;

(4) Witness affidavits upon oath or affirmation;

(5) Take verifications upon oath or affirmation;

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§ 45-17-8. (con't.) Powers and duties generally



6) Make certified copies, provided that the document presented for copying is an original document and is neither a public record nor a publicly recorded document certified copies of which are available from an official source other than a notary and provided that the document was photocopied under supervision of the notary; and
7) Perform such other acts as they are authorized to perform by other laws of this state.



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§ 45-17-8. (con't.) Powers and duties generally



b) No notary shall be obligated to perform a notarial act if he feels such act is:



(1) For a transaction which the notary knows or suspects is illegal, false, or deceptive;

(2) For a person who is being coerced;

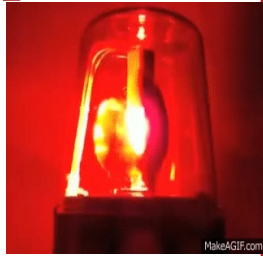
(3) For a person whose demeanor causes compelling doubts about whether the person knows the consequences of the transaction requiring the notarial act; or

(4) In situations which impugn and compromise the notary's impartiality, as specified in subsection (c) of this Code section.

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§ 45-17-8. (con't.) Powers and duties generally

(c) A notary shall be disqualified from performing a notarial act in the following situations which impugn and compromise the notary's impartiality:
(1) When the notary is a signer of the document which is to be notarized, or



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§ 45-17-8. (con't.) Powers and duties generally

(2) When the notary is a party to the document or transaction for which the notarial act is required.
(d) A notary public shall not execute a notarial certificate containing a statement known by the notary to be false nor perform any action with an intent to deceive or defraud.
(e) In performing any notarial act, a notary public shall confirm the identity of the document signer, oath taker, or affiant based on personal knowledge or on satisfactory evidence.



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§ 45-17-8. (con't.) Powers and duties generally

(f) The signature of a notary public documenting a notarial act shall not be evidence to show that such notary public had knowledge of the contents of the document so signed, other than those specific contents which constitute the signature, execution, acknowledgment, oath, affirmation, affidavit, verification, or other act which the signature of that notary public documents, nor is a certification by a notary public that a document is a certified or true copy of an original document evidence to show that such notary public had knowledge of the contents of the document so certified.

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§45-17-8.1. Signature and date of notarial act

(a) Except as otherwise provided in this Code section, in documenting a notarial act, a notary public shall sign on the notarial certification, **by hand in ink**, only and exactly the name indicated on the notary's commission and shall record on the notarial certification the exact date of the notarial act.

(b) The requirement of subsection (a) of this Code section for recording of the date of the notarial act shall not apply to an attestation of deeds or any other instruments pertaining to real property.

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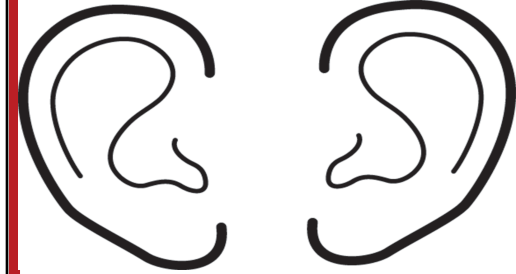
Give Thought to Signature



Your signature is the **ONLY** element of the notarial act that differentiates you from 7.125 billion people!

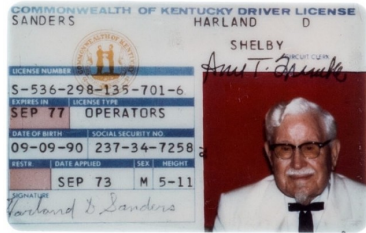
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Things We Hear



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Must ID presented by signer be unexpired?



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How do I handle multiple signers?

- As the notary, you are ONLY concerned with the signer(s) before you
- If document has places for multiple signers and all are not present, that's OK!
- The journal entry will be the proof of who or whom signed before you
- If multiple signers are present, notary must sign and imprint seal for each notarial act
- You can only prevent fraud that's in front of you. Altered documents after the fact are not your responsibility. Keep journal!

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§ 45-17-13. Change of residence, address, or name

(a) Every notary public shall notify in writing the appointing clerk of superior court and provide a copy of such notice to the Georgia Superior Court Clerks' Cooperative Authority of any change in the notary's residence or business address, whichever was used for the purpose of appointment, and of any change in the notary's telephone number. The notice shall contain both the old and new addresses and must be received by the clerk of superior court within 30 days of the change.

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§ 45-17-13. Change of residence, address, or name

(b)(1) Every notary public shall notify in writing the appointing clerk of superior court, with a copy to the Georgia Superior Court Clerks' Cooperative Authority, of any change in the notary's name. The notice shall contain both the old and new names, the new signature, and any new address and must be received by the clerk of superior court within 30 days of the change.

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§ 45-17-13. Change of residence, address, or name

(b)(2) A notary with a new name may begin to officially sign the new name on notarial certificates when the following steps have been completed:
(A) The notice described in paragraph (1) of this subsection has been received by the appointing clerk of superior court;
(B) A confirmation of the notary's name change has been received from the appointing clerk of superior court; and
(C) A new seal bearing the new name exactly as indicated in the confirmation has been obtained.

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§ 45-17-14. Notice of loss or theft of notarial seal

Within ten days of the loss or theft of an official notarial seal, the notary public shall send to the appointing clerk of superior court, with a copy to the Georgia Superior Court Clerks' Cooperative Authority, a written notice of the loss or theft.

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Where do I place my seal?

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The Proper Way To Affix Seal

Acknowledgment in an Individual Capacity

State of Georgia
County of DeKalb

This record was acknowledged before me on August 22, 2017

by Rachel Rose

Printed name of individual(s) signing document

who proved to me on the basis of satisfactory evidence who appeared before me

Personally Known
or
 Produced Identification

Type and # of ID (per 4 dphs) _____
ID Expiration Date _____

Michael V. Smith
Signature of Public Officer

Michael V. Smith
Notary Public, State of Georgia

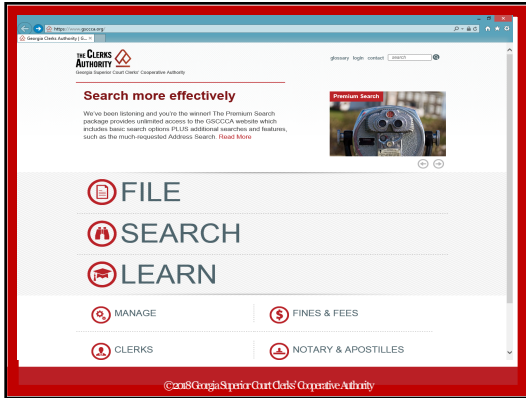
My commission expires: Jan. 31, 2017

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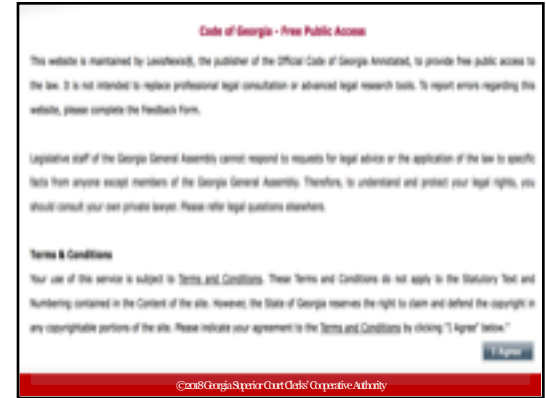
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Today's High Points

- The signer MUST ALWAYS be present
- Government issued ID with photo ONLY
- Georgia notaries may notarize in any of the 159 counties of Georgia (the physical boundaries)
- Notaries are commissioned by the Clerk of Superior Court of the county in which they reside
- Notary commissions are effective for four years
- Changes of name and changes of address must be communicated in writing to the commissioning Clerk of Superior Court, with a copy to the Clerks' Authority, within 30 days
- Loss or theft of seal must be communicated in writing to the commissioning Clerk of Superior Court, with a copy to the Clerks' Authority, within 10 days of discovery
- Recommended to keep a journal
- Four elements of the seal: name as commissioned, "State of Georgia," "Notary Public," county name where commissioned
- Blue or black ink ONLY for notary's signature and seal

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thank you

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