

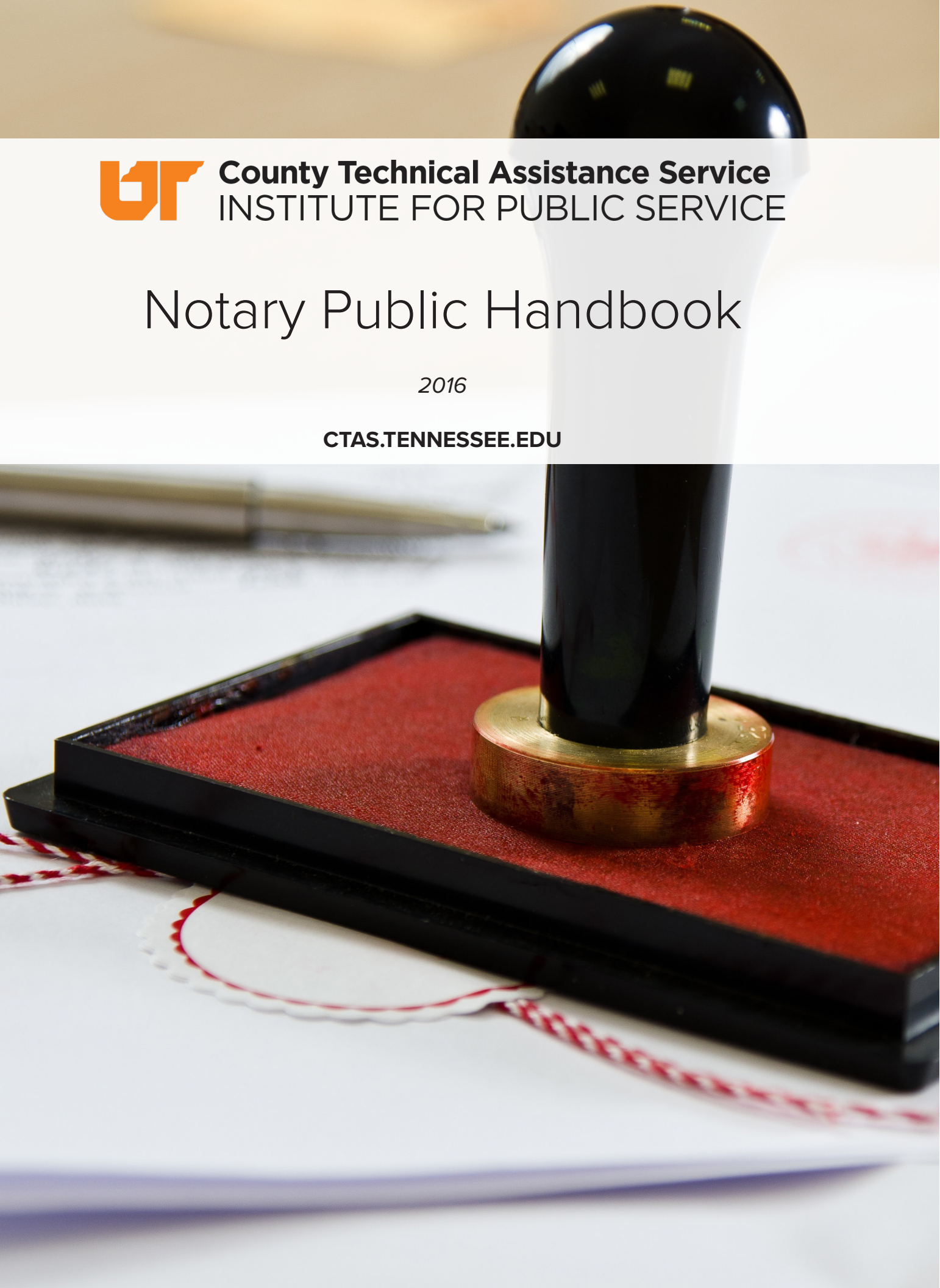


County Technical Assistance Service
INSTITUTE FOR PUBLIC SERVICE

Notary Public Handbook

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Notary Public Handbook

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Introduction

A notary public is considered a state official with statewide jurisdiction whose powers and duties are defined by statute. Op. Tenn. Atty. Gen. 07-157 (11/26/07). It is a relatively simple matter to become a notary public but the office has important responsibilities, limitations, and liability potential that should be fully recognized.

This handbook, intended as a general guide and not an authority, is especially designed to assist non-attorney notaries with the general requirements, duties, powers, limitations, liabilities, and legal significance of their actions as a notary public.

Legal counsel should be consulted whenever specific problems or questions arise concerning any aspect of the office of notary public. All fees quoted in this publication are as of the date of the writing and should be verified by consulting the *Tennessee Code Annotated*, referred to herein as T.C.A.

Additional information about notaries is available from the Tennessee Secretary of State's office.

Notaries Public

Qualifications. As a public official, a notary public must meet the general qualifications for holding office set out in T.C.A. § 8-18-101, as well as the specific requirements contained in the notary statutes at T.C.A. § 8-16-101. A notary must be at least 18 years of age and be either a United States citizen or a legal permanent resident at the time of election. Further, a notary must be a resident of or maintain a principal place of business in the county from which he or she is elected at the time of election. T.C.A. § 8-16-101. A person with a principal place of business in any Tennessee county may be elected a notary in that county even though that person's residence is in another state. United States citizenship is not a requirement of the office. A county legislative body member is not prohibited from serving as a notary public; however, such member may not vote on his or her appointment as a notary.

A person must certify under penalty of perjury that the person—

1. Has never been removed from office as a notary for official misconduct;
 2. Has never had a notarial commission revoked or suspended by this or any other state; and
 3. Has never been found by a court to have engaged in the unauthorized practice of law.
- T.C.A. § 8-16-101.

A person is disqualified from holding the office of notary public if that person—

1. Has been convicted of offering or giving a bribe, larceny or any other offense declared infamous by law (unless restored to citizenship);
2. Is a person against whom there is an unpaid judgment for money received by them in an official capacity and due to the United States, to Tennessee, or any Tennessee county;
3. Is a person who is a defaulter to the treasury at the time of election;
4. Is a soldier, seaman, marine, or airman in the regular army, navy, or air force of the United States; or
5. Is a member of congress or a person holding any office of profit or trust under any foreign power, other state, or the United States. T.C.A. § 8-18-101.

It is a misdemeanor to take office as a notary public if a disqualification exists. T.C.A. § 8-18-102. A notary public may be removed from office in an ouster proceeding just as any other public official. T.C.A. § 8-47-101 et seq.

Election to Office and Commission. A notary public is elected by the members of the county legislative body in the county where the notary then resides or maintains a principal place of business. T.C.A. § 8-16-101. After election, a notary must be approved and commissioned by the governor. T.C.A. §§ 8-16-102, 8-16-106.

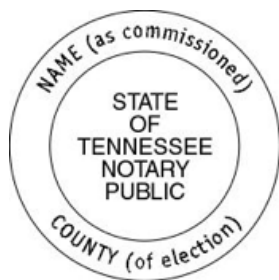
Applications for election as a notary, together with the application fee of \$12, are submitted to the county clerk. After election by the county legislative body, the county clerk certifies the notary's election to the Secretary of State. The county clerk retains \$7 of the application fee and submits the remaining \$5 to the Secretary of State for the issuance of the commission. When the commission is issued by the governor, the Secretary of State forwards it to the county clerk. T.C.A. § 8-16-106. The county clerk will then notify the applicant that the commission has been received. After the person has submitted the bond and taken the oath of office as required, the county clerk may deliver the commission to the new notary public. T.C.A. § 8-16-107.

Bond. After election by the county legislative body and before commencing duties or exercising powers, a notary must post bond by a surety company authorized to do business as a surety in Tennessee, or with two or more good personal sureties, approved by the county legislative body, in the amount of \$10,000. The bond is payable to the state and conditioned on the faithful performance of the duties of a notary public. The bond must be filed in the office of the county clerk in the county of election. T.C.A. § 8-16-104. The county clerk may charge \$2.00 for taking and recording the bond. T.C.A. § 8-21-701.

Oath. The notary must also take and subscribe to an oath before the county clerk or a deputy county clerk to support the constitutions of the State of Tennessee and the United States, and that the notary will, without favor or partiality, honestly, faithfully, and diligently discharge the duties of notary public. T.C.A. § 8-16-105.

Term. The notary's term is four years, beginning on the date of issuance of the commission by the governor. T.C.A. § 8-16-103. Renewal is by the same method as the original procedure. It is a Class C misdemeanor for any person who has been commissioned as a notary public to take an acknowledgment or otherwise to act in an official capacity after the expiration of the notary's commission. T.C.A. § 8-16-120.

Official Seal. State law requires that all notaries use an official seal prescribed and designed by the Secretary of State. The notary must purchase the official seal at his or her own expense. At the notary's request, the county clerk may obtain an official seal for the notary, and the county clerk may charge a fee for this service not to exceed 20 percent of the cost of the seal. T.C.A. § 8-16-114.



The current design prescribed by the Secretary of State is a circular seal with the notary's name (as it appears on the commission) printed at the top, the county of election printed at the bottom, and the words "State of Tennessee Notary Public" or "Tennessee Notary Public" printed in the center.

The seal may be imprinted by a rubber or other type stamp (not an impression seal), and the stamp must be imprinted in some color, not black or yellow, that is clearly legible and appears black when copied on a non-color copier. Notaries may continue to use their impression seals until the expiration of their term. The use of an embossed seal after May 12, 2003, does not render an acknowledgment defective. T.C.A. § 8-16-114.

Additional information concerning the seal may be obtained from the Secretary of State's Division of Business Services, which can be accessed from the Secretary of State's website at <http://sos.tn.gov/business-services>.

The seal must be surrendered to the county legislative body (through the county clerk) upon expiration of the notary's term of office or resignation, and the personal representative must surrender the seal in the event of the death of the notary. T.C.A. § 8-16-114.

Change of Name. If a notary public's surname changes, the notary shall notify the county clerk of the county from which the notary was elected and commissioned and shall pay to such county clerk a fee of seven dollars (\$7.00). The county clerk shall thereupon notify the Secretary of State of the change of address or name change and forward to the Secretary of State two dollars (\$2.00) of the seven-dollar fee received from the notary. T.C.A. § 8-16-109.

Moving Out of the County of Election. If a notary moves his or her residence or principal place of business out of the county from which he or she was elected to another county in Tennessee, the notary remains qualified to act as a notary in Tennessee but the notary must notify the county clerk in the county from which the notary was elected and pay to the county clerk a fee of \$7. The county clerk then notifies the Secretary of State of the change of address and forwards to the Secretary of State \$2 of the \$7 fee paid by the notary. T.C.A. § 8-16-109.

Moving Out of Tennessee. If a notary moves out of the State of Tennessee and has neither a residence nor a principal place of business in Tennessee, the notary is no longer qualified to act as a Tennessee notary public and must surrender his or her commission. It is a Class C misdemeanor for a person to act as a notary after moving out of Tennessee. T.C.A. § 8-16-110.

Powers, Duties, Fees, Records, and Liabilities

Powers. A Tennessee notary public is authorized to act in any county in Tennessee and has the power to acknowledge signatures upon personal knowledge or satisfactory proof, to administer oaths, to take depositions, qualify parties to bills in chancery, and to take affidavits. T.C.A. § 8-16-112. A notary is authorized to take acknowledgments, and to certify the probate or acknowledgment of a deed or other instrument to the county clerk. T.C.A. §§ 66-22-102, 66-22-105. A notary is also authorized to do formal protests of negotiable instruments, but this publication does not deal with the protest of a negotiable instrument because it is rarely used; an attorney should be consulted if this is required. T.C.A. § 24-5-103. A notary public can take an acknowledgment or affidavit of a nonresident of the State of Tennessee if that person is physically present within this state. A notary should not acknowledge his or her own signature nor notarize any signature if he or she is a party to the transaction or an agent of a party taking an acknowledgment. A notary should not notarize his or her spouse's signature because of the requirement that notaries discharge their duties "without favor or partiality." Op. Tenn. Atty. Gen. 10-97 (9/13/10). Attestations, protestations, and other evidence of publication or

acknowledgment made by a notary public under seal will be received into evidence. T.C.A. § 8-16-116.

Duties. A notary must sign all documents in ink by his or her own hand, and affix the notary's official seal. T.C.A. § 8-16-112. The official signature of the notary should reflect the notary's title as a notary public for the State of Tennessee. T.C.A. § 8-16-113. The true date of expiration of the notary's commission is required to be included on every certificate of acknowledgment executed by a notary, but a failure to do so will not invalidate the instrument. T.C.A. § 8-16-115. However, where the true date of expiration shows the commission has expired, the certificate of acknowledgment will be invalid. *Haynes v. State*, 374 S.W.2d 394 (Tenn. 1964).

Fees. Notaries and their employers may demand and receive reasonable fees and compensation for the notary's services. T.C.A. § 8-21-1201. Specific fees are not set out in the statute.

Records. If a notary charges a fee, the notary must keep a record either in an appropriate electronic form or a well-bound book of each of his or her attestations, protestations, and other instruments of publication. T.C.A. § 8-21-1201. A record of fees received should also be kept for income tax records. While no record is required if no fee is charged, it is recommended that every notary keep a record of his or her acts in a well-bound book or electronic file, which should include the following:

1. The date of the acknowledgment, affidavit or other transaction;
2. The name of the person whose signature is being notarized;
3. To whom the instrument is being executed;
4. A description, including the date, of the instrument;
5. Whether the person whose signature was notarized was a personal acquaintance or what proof was shown prior to notarizing the signature (see definition of "satisfactory evidence," discussed later); and
6. What fee, if any, was received.

Notaries Employed by Financial Institutions. If a notary is an employee of a financial institution subject to the Financial Records Privacy Act, compiled in title 45, chapter 10, and the notary or employer of the notary charges a fee, and the services performed by the notary are part of the notary's duties and within the scope of the notary's employment, then access to the record shall be governed by the Financial Records Privacy Act, or the federal Right to Financial Privacy Act of 1978 (12 U.S.C. § 3401 et seq.), whichever is applicable.

If the notary is an employee of a financial institution subject to the Financial Records Privacy Act, and the notary does not charge a fee for the services, then the records kept by the notary, if any, shall be considered records of the notary unless the financial institution adopts a written policy stating that such records are a record of the financial institution. In such case, access to the records shall be governed by the Financial Records Privacy Act or the federal Right to Financial Privacy Act of 1978, whichever is applicable. T.C.A. § 8-21-1201.

Liability. Tennessee statutes provide that if a notary who takes acknowledgment of a deed or other instrument fails or refuses to comply with and discharge the duties required of a notary, he or she shall forfeit and pay the sum of \$100 for the use of the county of the notary's residence and shall, moreover, be liable to the party injured for all damages, including costs, the party may

sustain by the notary's failure or refusal to discharge the statutory duties. T.C.A. § 66-22-113. Such action can be based on the negligence or misconduct of the notary. Other penalties for misconduct are discussed elsewhere in this publication. Liability is not limited to the amount of the statutorily mandated bond. Professional liability insurance may be available for a notary public.

Advertising. A notary who is not an attorney licensed to practice law in Tennessee who advertises his or her services as a notary public is required by law to include the following notice in the advertisement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF TENNESSEE, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

The foregoing disclaimer must be included in any advertisement, whether by radio, television, signs, pamphlets, newspapers, telephone directory, or other written or oral communication, or in any other matter. It must be in English and in the language used in the advertisement, if different. In a written advertisement the statement must be of conspicuous size. An advertisement on radio or television must include substantially the same message. T.C.A. § 8-16-401.

A notary public who is not an attorney licensed to practice law is prohibited from advertising or representing that the notary is an immigration consultant, immigration paralegal, or expert on immigration matters unless the notary is an accredited representative of an organization recognized by the board of immigration appeals. T.C.A. § 8-16-402.

These advertising requirements do not apply to notary services offered by banks, savings and loans, savings banks, or trust companies, nor to offers of notary services or fee listings for notary services in connection with loan closings, extensions of credit, security instruments, or title transfers. T.C.A. § 8-16-404.

Violation of the laws governing advertising by notaries is an unfair or deceptive act constituting a Class B misdemeanor punishable by up to six months in jail and/or a fine in an amount up to \$500. T.C.A. §§ 8-16-403; 40-35-111; 47-18-104.

Affidavits, Acknowledgments, and Depositions

The most frequent official act a notary public is requested to perform is the taking of affidavits and acknowledgments. Therefore, these areas are specifically addressed below.

Affidavits. An affidavit is a sworn statement made by a person called an affiant. The affiant makes oath before a notary public that the facts contained in the affidavit are true. The affidavit consists of the venue, body, affiant's signature, and jurat. Venue indicates the place where the affidavit is made or taken and must be a place where the notary is empowered to act. The body of the affidavit is preceded by an introductory sentence, contains a short description of the affiant and the capacity in which he or she is taking the oath, and then it contains the facts the affiant swears are true. The affiant's signature is subscribed at the end of the affidavit and should appear exactly as it appears in the introduction. The jurat, also known as the notary's certificate, is the concluding statement that the affidavit was sworn to before the notary on a

certain date. Immediately beneath the jurat appears the signature of the notary before whom the oath is taken, and the notary's commission.

The following is a suggested form of affidavit:

STATE OF TENNESSEE
COUNTY OF _____

_____, being duly sworn, makes oath as follows:

1. [Recite facts to be sworn to by affiant]
2. . . .

[affiant's signature]

Sworn to and subscribed before me
this _____ day of _____, 20_____.

[notary's signature & seal]

My commission expires: _____

If the affidavit is to be used in a legal proceeding, the caption of the proceeding should be set out at the top of the affidavit. The notary public need not be concerned with the truthfulness of the facts stated by the affiant (other than in regard to the identity of the affiant). If the facts are willfully misstated, the affiant is guilty of perjury. The notary, of course, cannot know the truth of the statements and is under no duty to investigate the facts. A notary may not take the affidavit of a person who does not personally appear before the notary.

Acknowledgments. An acknowledgment, as its name implies, is a declaration by a person who has executed or signed a deed or other document, that he or she has in fact executed such document. All acknowledgments must be taken under the seal of the officer taking the acknowledgment. T.C.A. § 66-22-110. An acknowledgment may be made before a notary, who then certifies to the fact either at the end of that document or on a separate paper that is attached. An acknowledgment is distinguishable from verification in that an acknowledgment establishes proper execution of a document while verification establishes the truth of a document's contents. Op. Tenn. Atty. Gen. 91-92 (11/19/91).

Definitions of some of the important terms used in the acknowledgment forms are found in T.C.A. § 66-22-106. “Know” or “personally acquainted with” has the following definition:

Having an acquaintance, derived from association with the individual in relation to other people and based upon a chain of circumstances surrounding the individual, which establishes the individual’s identity with at least reasonable certainty.

“Satisfactory evidence” is defined as the absence of any information, evidence, or other circumstances that would lead a reasonable person to believe that the person making the acknowledgment is not the individual he or she claims to be, together with any one of the following:

1. The oath or affirmation of a credible witness personally known to the officer that the person making the acknowledgment is personally known to the witness.
2. Reasonable reliance on the presentation to the officer of any one of the following, if the document is current or has been issued within five years:
 - (A) An identification card or driver license issued by the Tennessee Department of Safety; or
 - (B) A passport issued by the United States Department of State.
3. Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years, contains a photograph and description of the person named on it, is signed by the person, bears a serial or other identifying number, and, in the event that the document is a passport, has been stamped by the United States immigration and naturalization service:
 - (A) A passport issued by a foreign government;
 - (B) A driver’s license issued by a state other than Tennessee;
 - (C) An identification card issued by a state other than Tennessee; or
 - (D) An identification card issued by any branch of the armed forces of the United States.

Any certificate clearly evidencing an intent to authenticate, acknowledge, or verify a document will constitute a valid certificate of acknowledgment for the purposes for which the certificate may be used under the law. The statute states that it is the legislative intent that no specific form or wording be required in such certificate and that the ownership of property, or the determination of any other right or obligation, shall not be affected by the inclusion or omission of any specific words. T.C.A. § 66-22-114(b). The older form of the certificate can be used (T.C.A. §§ 66-22-107, 66-22-108), or the newer form, or a different form might be drafted but it needs to cover all of the elements of the certificate of acknowledgment as outlined in T.C.A. § 66-22-114. Although the certificate of acknowledgment need not include the “magic words” contained in the statutory form, it must nevertheless contain language to satisfy the substance of the certificate of acknowledgment. There has never been any intent to abrogate the requirement that the notary have personal knowledge or be personally acquainted with the person signing the document. Op. Tenn. Atty. Gen. 91-92 (11/19/91).

The form of acknowledgment that is set out in T.C.A. § 66-22-114 is as follows:

State of _____

County of _____

Personally appeared before me, (name of officer), (official capacity of officer), (name of the natural person executing the instrument), with whom I am personally acquainted, and who acknowledged that he or she executed the within instrument for the purposes therein contained [THE FOLLOWING TO BE INCLUDED ONLY WHERE A NATURAL PERSON IS EXECUTING AS AGENT] and who further acknowledged that he or she is the (*identification of the agency position of the natural person executing the instrument, such as “attorney-in-fact” or “president” or “general partner”*) of the maker or a constituent of the maker and is authorized by the maker or by its constituent, the constituent being authorized by the maker, to execute this instrument on behalf of the maker.

Witness my hand, at office,

This _____ day of _____, 20_____.

A notary should under no circumstances take the acknowledgment of a person who does not appear before the notary since the statute by express language “personally appeared before me” demands actual appearance. If identification as statutorily defined and stated above is not produced, the notary should refuse to take the acknowledgment. A notary should never disregard the responsibilities of the office.

Depositions. A deposition is the testimony of a witness taken by interrogatories, not in open court, but by a person commissioned to take the testimony issued by a court, or according to general law, and reduced to writing and duly authenticated, and intended to be used upon the trial of an action in court or a written declaration under oath, made after notice to the adverse party to enable cross-examination or upon written interrogatories.

The taking of depositions in this state is governed by Rules 27 through 32 of the Tennessee Rules of Civil Procedure (T.R.C.P.), which must be strictly followed. Any officer authorized to administer oaths by federal, state, or territorial law is authorized to take depositions. T.R.C.P. 28.01. No deposition shall be taken before a person who is a party to the action, or a relative, employee or attorney of one of the parties, or someone with a financial interest in the action or its outcome. “Employee” includes a person with a contractual relationship with a person or entity interested in the outcome of the litigation. Taking a deposition in violation of these provisions is a Class C misdemeanor. T.C.A. § 24-9-136.

Sample Notary Application

TENNESSEE NOTARY PUBLIC APPLICATION
COUNTY OF _____

This application must be signed under oath in the presence of a notary public and submitted to the county clerk at least _____ days prior to the meeting of the county legislative body at which it is to be considered. Once elected, you must then be commissioned by the governor. If elected, you will be required to post a bond in the amount of ten thousand dollars (\$10,000). The bond must be filed in the office of the county clerk, who will accept the required fees and administer the oath of office. You are not authorized to act as a notary public until you have received your commission from the governor, filed your bond, and taken the oath of office. If you move your residence or your principal place of business out of this county, you are required by law to notify the county clerk of this county of your change of address.

ANSWER EVERY QUESTION. PLEASE PRINT OR TYPE.

Date of Application: _____

Full Name (*as it will appear on your notary commission*):

First	Middle	Last
-------	--------	------

Residence Address: _____

Street Address

City	State	Zip
------	-------	-----

Name of Employer: _____

Principal Business Address: _____

Street Address

City	State	Zip
------	-------	-----

Telephone: (residence) _____ (business) _____

Date of Birth: _____

For RENEWAL applications, give the expiration date of your current commission:

PLEASE ANSWER THE FOLLOWING QUESTIONS YES OR NO.

	YES	NO
Have you ever been convicted of offering or giving a bribe, larceny, or any other offense declared infamous by law?		
If the answer to question 1 was yes, has your citizenship been restored?		
Is there an unpaid judgment against you for money received in an official capacity and due to the United States, to Tennessee or any Tennessee county, or are you a defaulter to the Treasury?		
Are you a soldier, seaman, marine, or airman in the regular Army, Navy, or Air Force of the United States, a member of the United States Congress, or a person holding any office of profit or trust under any foreign power, other state or the United States?		
Have you ever been removed from office as a notary public for official misconduct?		
Have you ever had a notarial commission revoked or suspended by this or any other state?		
Have you ever been found by a court of this state or any other state to have engaged in the unauthorized practice of law?		
Is there any other reason that you are legally disqualified from holding the office of a notary public?		

I do swear or affirm under penalties of perjury that the statements above are true and correct.

Signature of applicant

State of _____

County of _____

Personally appeared before me, _____, with whom I am personally acquainted, and who acknowledged that he/she executed the within instrument for the purposes therein contained.

Witness my hand, at office, this _____ day of _____, 20_____.

Notary Public

My commission expires: _____

Sample Notification of Change of Address Tennessee Notary Public

Pursuant to *Tennessee Code Annotated*, Section 8-16-109, if a Tennessee notary public moves his or her residence or principal place of business out of the county from which the notary was elected and commissioned to another county in Tennessee, the notary is required to notify the county clerk of the county from which the notary was elected and commissioned.

PLEASE TYPE OR PRINT.

FULL NAME OF NOTARY (*as it appears on commission*):

ADDRESS AT TIME OF ELECTION AND COMMISSION:

NEW ADDRESS:

EFFECTIVE DATE OF ADDRESS CHANGE: _____

A fee of Seven Dollars (\$7.00) must accompany this form, payable to the county clerk.

Date: _____

Signature of Notary Public