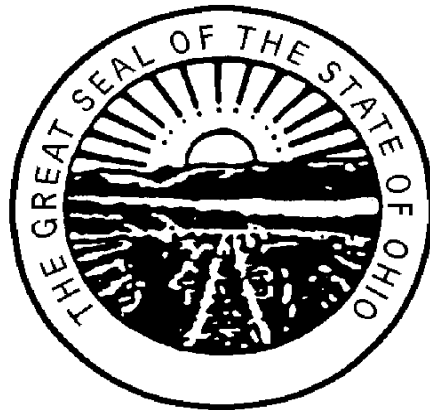


Geauga County Bar Association
Notary Public Handbook



The next test is on _____ at
9:00 A.M. at the Courthouse.
(It is on the third Thursday of every month)

You must take the test by _____

Questions - Call 440.286.7160

Foreword

This Manual for Notaries Public has been prepared by the Geauga County Notary Public Commission and the Geauga County Bar Association. It will be useful for study by any applicant who wants to become a Notary Public, and will also be useful as a guide for those who have already received their appointment. It is their hope that the Manual may be of some assistance to notaries public by defining and explaining, in some measure, their powers and duties, and also the penalties for their misfeasance.

The Manual is in no sense a text book or an exhaustive treatise upon the subject. It does not, nor is it intended to, cover all of the aspects of its subject matter in any definitive sense. Its primary purpose is merely to serve as a guide to notaries public with reference to some of the more common and practical questions which frequently arise in connection with the performance of their official duties.

Every notary public should carefully read and critically examine all of the statutes of Ohio which are quoted herein, and if ever a situation arises wherein he is doubtful, as to his powers or duties, he should seek the advice of competent counsel before attempting to perform any official act.

Notaries public are public officers and they should not consider lightly the dignity of their office or their responsibility to the community which they serve. It is essential that they have a clear and comprehensive understanding of their powers and duties. There is no valid substitute for this. To contribute to this end, the Manual is furnished for their assistance.

A NOTARY COMMISSION IS NOT TO BE CONFUSED WITH A LICENSE TO PRACTICE LAW. IN FACT, A NOTARY PUBLIC IS SPECIFICALLY PROHIBITED FROM PRACTICING LAW UNLESS, OF COURSE, THE NOTARY PUBLIC IS AN ATTORNEY.

In this manual all sections quoted are of the Ohio Revised Code.

A Manual For Notaries Public

I. INTRODUCTION

A "Notary Public" is defined as being an officer whose duty it is to attest the genuineness of any deeds or writings in order to render them available as evidence of the facts therein contained. It has been said that he is an officer known to the law of nations; hence, his official acts receive credence, not only in his own country, but in all others in which they are used as instruments of evidence. He is a public officer and at times an officer of the court.

Only a citizen or resident alien of the state, male or female, who is eighteen years of age or over, and a resident of the county in which he, or she, is appointed, is eligible to become a notary public by reason of the fact that a notary is a public officer, and that the Constitution provides that only electors may hold office.

II. THE STATUTES OF OHIO

Section 147.01 Appointment of Notaries Public

The governor may appoint and commission as notaries public as many persons as he considers necessary, who are citizens of this state and are of the age of eighteen or over. A notary public, shall be appointed and commissioned as a notary public for the state. The governor may revoke a commission issued to a notary public upon presentation of satisfactory evidence of official misconduct or incapacity.

Section 147.02 Certificate of Qualifications.

Before the appointment of notary public is made the applicant shall produce to the governor a certificate from a judge of the common pleas court, court of appeals, or supreme court, that he is of good moral character, a citizen of the county in which he resides, and, if it is the fact, that the applicant is an attorney at law qualified and admitted to practice in this state, and possessed of sufficient qualifications and ability to discharge the duties of the office of notary public. No judge shall issue such certificate until he is satisfied from his personal knowledge that the applicant possesses the qualifications necessary to a proper discharge of the duties of the office, or until the applicant has passed an examination under such rules and regulations as the judge may prescribe. If the applicant is admitted to the practice of law in this state, this fact shall also be certified by the judge in his certification.

The Ohio Constitution, Article 15, Section 4, provides as follows:

"No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector, provided that women who are citizens may be appointed as members of boards of, or to positions in, those departments and institutions established by the state or any political subdivision thereof involving the interests or care of women or children or both."

A "citizen" under Section 147.02 means an elector qualified to vote at every election at the place of his residence.

Section 147.03 Term of Office; Oath.

Each notary public, except a citizen of this state admitted to the practice of law by the Ohio Supreme Court, shall hold his office for the term of five years unless the commission is revoked. Before entering upon the duties of his office, he shall take and subscribe an oath to be endorsed on his commission.

A citizen of this state admitted to the practice of law by the Ohio Supreme Court shall hold his office as a notary public as long as such citizen is a resident of this state, is in good standing before the Ohio Supreme Court, and the commission is not revoked. Before entering upon the duties of his office he shall deposit with the secretary of state the certificate provided for in Section 147.02 of the Revised Code and shall take and subscribe an oath to be endorsed on his commission.

A notary public who violates the oath required by this section shall be removed from office by the court of common pleas of the county in which he resides, upon complaint filed and substantiated in such court, and the court shall thereupon certify such removal to the governor. The person so removed shall be ineligible for reappointment to the office of notary public.

NOTE: Application for renewal of your Notary Commission should be made at the Geauga County Notary Commission office no sooner than thirty (30) days prior to your expiration date and no later than thirty (30) days after the expiration date. You must bring your original Notary Commission, the white, wallet sized card that you may have received when you recorded your Notary Commission with the Clerk of Courts, or a copy of the recorded Notary Commission.

Caution: **YOU MAY NOT NOTARIZE AFTER YOUR COMMISSION EXPIRES!** If your Notary Commission has been expired more than thirty (30) days, you must reapply and be retested.

Section 147.04 Seal.

Before entering upon the discharge of his duties, a notary public shall provide himself with the seal of a notary public. The seal shall consist of the coat of arms of the state within a circle of one inch in diameter and shall be surrounded by the words "notary public, " "notarial seal, " or words to that effect, the name of the notary public and the words "State of Ohio." The seal may be of either a type that will stamp ink onto a document or one that will emboss it. The name of the notary public may, instead of appearing on the seal, be printed, typewritten, or stamped in legible, printed letters near his signature on each document signed by him.

If, by reason of marriage or otherwise, the name of a person is legally changed after he or she is commissioned a notary public and during the term of said commission, the said notary, when signing documents as such notary, should cause it to appear by some means or other that the signature is that of the same person who had been commissioned as notary public under the name appearing on the seal, or in printed, typewritten or stamped printed letters near the signature.

Section 147.05 Commissioned to be Recorded; Fee.

Before entering upon the duties of his office, a notary public shall leave his commission with the oath endorsed thereon with the clerk of the court of common pleas of the county in which he resides, the commission shall be recorded by the clerk in a book kept for that purpose. The clerk shall endorse on the margin of the record and on the back of the commission the time he received it for record, and make a proper index to all commissions recorded by him. For recording and indexing such commission, the fee of the clerk shall be as provided for in division (S) of Section 2303.20 of the Revised Code.

Section 147.06 Certified Copy of Commission to Be Evidence; Fees.

Upon Application, the clerk of the court of common pleas shall make a certified copy of a commission and the endorsements thereon, under the seal of the court, which certified copy shall be prima-facie evidence of the matters and facts therein contained. For each certified copy of a commission the clerk shall be entitled to receive a fee of two dollars.

Section 147.07 Powers; Jurisdiction.

A notary public may, throughout the state, administer oaths required or authorized by law, take and certify depositions take and certify acknowledgments of deeds,

mortgages, liens, powers of attorney, and other instruments of writing, and to receive, make, and record notarial protests. In taking depositions, he shall have the power that is by law vested in judges of county courts to compel the attendance of witnesses and punish them for refusing to testify. Sheriffs and constables are required to serve and return all process issued by notaries public in the taking of depositions.

Section 147.08 and Section 2303.20 Fees.

A notary public is entitled to the following fees:

- (A) For the protest of a bill of exchange or promissory note, one dollar and actual necessary expenses in going beyond the corporate limits of a municipal corporation to make presentment or demand;
- (B) For recording an instrument required to be recorded by a notary public, ten cents for each one hundred words;
- (C) For taking and certifying acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments of writing, and for taking and certifying depositions and affidavits, administering oaths, and other official services, the same fees as are allowed by law to judges of county courts for like services. See R.C. 1907.291.

NOTE: Should a notary be required to travel any distance or consume an unusual amount of time in performing the special duty he is permitted to make a reasonable charge for the time consumed in addition to the fees allowed by law.

Some of the fees allowed by law are as follows:

Taking acknowledgments	\$2.00
Taking and certifying depositions	Usual and customary charges
Swearing witnesses	2.00 each
For taking & certifying proof of an account	2.00
Swearing a person on an Affidavit	1.50
Issuing Subpoenas	2.00

Section 147.10 Notary Public Acting After Commission Expires.

No notary public shall do or perform any act as a notary public knowing that his term of office has expired.

Section 147.11 Forfeiture.

A person appointed notary public who performs any act as such after expiration of his term of office, knowing that his term has expired shall forfeit not more than five hundred dollars, to be recovered by an action in the name of the state. Such act shall render such person ineligible for reappointment.

Section 147.12 Acts Done by Notary Public After Term Valid.

An official act done by a notary public after the expiration of his term of office is as valid as if done during his term of office.

Section 147.13 Removal for Receiving Excess Fees.

A notary public who charges or receives for an act or service done or rendered by him a fee greater than the amount prescribed by law, or who dishonestly or unfaithfully discharges any of his duties as notary public, shall be removed from his office by the court of common pleas of the county in which he resides, upon complaint filed and substantiated in such court, and the court shall thereupon certify such removal to the governor. The person so removed shall be ineligible for reappointment to the office of notary public.

Section 147.14 Removal from Office for Certifying Affidavit Without Administering Oath.

No notary public shall certify to the affidavit of a person without administering the oath or affirmation to such person. A notary public who violates this section shall be removed from office by the court of common pleas of the county in which the conviction was had. The court shall thereupon certify such removal to the governor. The person so removed shall be ineligible to reappointment for a period of three years.

Section 147.37 Fees for Commission.

Each person receiving a commission as notary public, except a citizen of this state admitted to the practice of law by the Ohio Supreme Court, shall pay a fee of five dollars. Each person receiving a commission as a notary public who is a citizen of this state, admitted to the practice of law by the Ohio Supreme Court, shall pay a fee of ten dollars.

Section 147.99 Penalties.

(A) Whoever violates Section 147.10 of the Revised Code shall be fined not more than five hundred dollars.

(B) Whoever violates Section 147.14 of the Revised Code shall be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

III. QUALIFICATIONS

(Sections 147.01 and 147.02 of the Ohio Revised Code)

- 1.) Applicant must be 18 years of age or over.
- 2.) Applicant must be a citizen of Ohio.
- 3.) Applicant must be and remain a REGISTERED VOTER and a resident of the COUNTY in which he or she is appointed (Article 15, Section 4, Constitution of Ohio).
- 4.) Applicant must be certified to be of good moral character by a Judge of Common Pleas Court, Court of Appeals or the Supreme Court.

STEPS TO OBTAIN COMMISSION

- 1.) Make application and obtain a notary book from the Geauga County Notary Commission office, located at 100 Short Court Street, Chardon, OH 44024. (Call 286-7160 for hours and fees).
- 2.) Take and pass a written examination. Exams are given on the third Thursday of each month at 9:00 a.m.
- 3.) If you pass the Notary Exam, you will be given an Application for Appointment which must be fully completed before it is presented to a Judge of Geauga County Common Pleas Court for signing.
- 4.) Mail the completed and signed Application for Appointment to: Notary Commission Clerk, Ohio Secretary of State, P.O. Box 1658, Columbus, OH 43216-1658.
- 5.) Upon completion of all requirements, your Notary Commission will be issued from the office of the Governor of the State of Ohio. Remember that you will have STATEWIDE Jurisdiction for notarial duties.
- 6.) UPON RECEIPT OF YOUR NOTARY COMMISSION FROM THE GOVERNOR, IT IS **MANDATORY** THAT SAID COMMISSION BE PRESENTED TO THE CLERK OF COURTS IN GEAUGA COUNTY (THE COUNTY IN WHICH IT WAS GRANTED AND YOUR RESIDENCE COUNTY) FOR RECORDING, PRIOR TO ANY USE OF SAID COMMISSION (Section 147.05 of the Ohio Revised Code).
- 7.) After you receive your Notary Commission from the Governor, obtain a Notarial Seal. The seal shall consist of the coat of arms of the State of Ohio, within a one inch (1") diameter circle, and shall be surrounded by the words, "Notary Public", "Notary

Seal" (or words to that effect), and the words "State of Ohio". The seal may be either a type that will stamp ink or one that will emboss a document.

IV. DEPOSITIONS

Few notaries have occasion to participate in the taking of depositions. However, that you may have some knowledge as to what depositions are the following is for your guidance.

A deposition is a written declaration under oath, made upon notice to the adverse party; it is taken for the purpose of being used as testimony in connection with an action pending in court. Either party may commence taking testimony by deposition at any time after service upon the defendant. A notary public before whom depositions are taken must not be a relative or attorney of either party, or otherwise interested in the event of the action or proceeding. It is the duty of a notary public to subpoena the witnesses to be examined, which subpoena shall be served by the sheriff, the coroner, any constable of the county, or by a person designated by the notary public to make such service. When service is made by anyone other than a sheriff, coroner, or constable, proof of service shall be made by the affidavit of the person making the service. The notice must be served upon the adverse party, his agent or attorney of record, or left at his usual place of abode of such party or his agent. It must also be served so as to allow the adverse party time, exclusive of Sundays, the day of service and one day for preparation to arrive at the place named in the notice. If so stated in the notice, the examination may be adjourned from day to day. Upon the hearing of the testimony or statement of the witnesses, it is the duty of the notary public to swear the witnesses, take the testimony and reduce the same to writing, and to have the written testimony signed by the witness, unless the parties waive signature of the witness or witnesses, in which case the agreement for such waiver should be incorporated in the deposition. The deposition so taken must be sealed in an envelope endorsed with the title of the cause, and the name of the notary public before whom it was taken, who shall address and transmit it to the clerk of the court where the action or proceeding is pending.

The following fees are allowed for taking depositions in this state: swearing each witness one dollar; for each subpoena fifty cents; certifying depositions, twenty-five cents per hundred words. The notary public may retain the deposition until such fees are paid. He shall also tax the costs of the sheriff or other officer who serves the process aforesaid, and the fees of the witnesses; and, if directed by a person entitled thereto, may retain such depositions until his fees are paid.

V. SUBPOENA DUCES TECUM

As has before been stated, when the attendance of a witness before a notary public is required, the subpoena shall be issued by the notary public. This should be directed to the person named therein and require him to attend at a specified time and place to testify as a witness. It may also direct the person it names to bring with him any book, writing, or other thing under his control, which he may be compelled to produce as evidence.

VI. PROCEEDINGS FOR CONTEMPT

In its broad sense a contempt is a disregard of, or disobedience to the orders or commands of a public authority, legislative or judicial, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb its proceedings or impair due respect for its authority. In taking depositions a notary public acts in a ministerial capacity, but he is, nevertheless, vested by law with the power to compel attendance of witnesses. (See Section 147.07, ante). The powers of a notary public to punish for contempt are not, however, limited to this section alone. On refusal to be sworn, except upon failure to pay witness fees duly demanded, and an unlawful refusal to answer as a witness or to subscribe a deposition, may be punished as a contempt of the notary public by whom the attendance or testimony of the witness is required. So also, a refusal of a witness to obey a subpoena duces tecum issued by a notary public may be the basis of a contempt proceeding. A notary public is vested by statute with the power of imposing certain fines upon, or committing to jail, a person guilty of contempt. A contempt proceeding is quasi criminal in character, and hence the rules of evidence require the innocence of the defendant to be presumed. Although a notary public is clothed with this power of summary punishment of a person whom he believes to be guilty of contempt, this power should be exercised only with great caution and reserved for use only in cases where the exigencies of the situation require its immediate enforcement. It should be noted, however, that a notary public, presiding at the taking of a deposition, has no authority to commit a witness for contempt for refusal to answer any question unless, after being ordered by such notary public to answer, the witness shall unlawfully refuse to do so. A witness, whether he be a party to the action or not, has no legal right to refuse to answer any question merely because he believes that the testimony sought is irrelevant, incompetent or immaterial; and the fact that his refusal to answer is based upon the advice of an attorney will not excuse or justify his refusal. The reason for this is plain; neither the witness, the attorney, nor the notary public, is in a position to determine whether the information sought is irrelevant, incompetent, immaterial, or not. Such matters can

properly be decided only by a judge upon the trial of the case for there he will have the distinct advantage of hearing all of the evidence introduced by the parties to the controversy. Therefore, it becomes the plain duty of the notary public to compel the witness to answer such questions. The problem of their admissibility must be determined at the trial when the deposition of the witness is first offered in evidence. A witness may, however, lawfully refuse to answer any question his response to which would infringe upon any personal privilege of non-disclosure by the granted Constitution or statutes of Ohio, or by any rule of the common law recognized in this state. Thus, a witness cannot be compelled to disclose certain types of communications or information growing out of the relationship of attorney and client, physician and patient, clergyman or priest and penitent, husband and wife; nor can a witness incriminate himself. There are other persons also who, as witnesses, cannot be compelled to disclose certain information in their various capacities, such as newspaper reporters, public officers, and jurors. Not all of the testimony of such witnesses is privileged, however, and the burden of showing that the particular testimony sought to be excluded under this doctrine of privileged communications or privileged information rests upon the party seeking to exclude it. Such questions usually involve difficult questions of law and a notary public is hardly the person to decide them. If he should, however, believe the question does not infringe upon a lawful privilege of the witness and instructs the witness to answer, the witness must decide at his own peril whether he should answer the question or not. If he is committed to jail for contempt for his refusal to answer, the witness has the right to have the question of privilege determined by the Ohio courts in a subsequent habeas corpus proceeding. If the commitment was unlawful, the order will be set aside; but if the privilege claimed by the witness is not upheld by the court, the order will stand. By virtue of Section 2317.48 a party to an action is given broad authority to inspect books, papers and documents under the control of the adverse party to produce them as evidence either in court or before a notary public authorized to take testimony in the case. (See Section IV, supra.) A party to an action may, therefore, through a proper subpoena issued by a notary public, compel an adverse party to produce before the notary public as evidence certain specified papers and document in the possession of the adverse party. If such party refuses to produce such papers and documents for no other reason than that his refusal is on advice of counsel, he may, after having been ordered by the notary public to produce them, be committed for contempt for such refusal. If, however, the papers and documents contain any privileged matters as described in the preceding paragraphs of this section, the party has a right to claim his privilege of non-disclosure and to refuse to comply with the order. But the party has no such immunity in the testimony or production of documents does not involve self-incrimination or to the competency or relevancy of the evidence sought. Where, however, the papers and documents whose inspection

was demanded are the property of a corporation and are in the custody and control of one of its officers and are described in a subpoena duces tecum directed to him, such officer must produce the papers and documents upon proper demand or be held in contempt for refusal to do so. Corporations are not entitled to all the constitutional immunities and protections in private security which private individuals have in such matters. Hence, an officer of a corporation cannot refuse to produce its records in his possession, upon the plea that they will incriminate him or may incriminate the corporations.

Corporations, however, as well as individuals, are entitled to claim the benefit of the privilege of non-disclosure arising from the relationship of attorney and client. If, then, an officer of a corporation is served with a subpoena duces tecum issued by a notary public and is commanded thereby to appear before the notary public and to bring with him specified books, records, and documents which contain matters protected by the privilege, their production cannot be enforced over the objection of the corporation entitled to claim the privilege. If, however, the particular information sought does not come within the scope of the attorney-client privilege, the "person ordered to produce the books, papers, and records will act at his own peril if he elects to refuse to comply with the order. Should the notary public commit him for contempt, the order will stand if the witness cannot sustain the claim of privilege in a habeas corpus proceeding.

VII. AFFIDAVIT OR OATH

An affidavit is a voluntary statement reduced to writing, signed by the affiant, sworn to before some officer authorized by law to administer oaths, and by him properly attested. The affiant is the one who swears that the matters contained in the affidavit are true. It may be expressed either in the first or third person, though it is generally the latter. An affidavit may be sworn to before a notary public but he should not prepare the document.

Note: Some persons from religious scruples refuse to swear or take an oath. Such persons are permitted by law to "affirm" their statements and such affirmation may be accepted by a notary public in lieu of an oath. Section 3.21 provides:

A person may be sworn in any form he deems binding on his conscience.

Section 2319.04 - Before Whom Affidavit May Be Made

An affidavit may be made in or out of this state before any person authorized to take depositions, and unless it is a verification of a pleading must be authenticated in the same way as a deposition. Such affidavit may be made before any person

Section 147.51. Notarial Acts.

For the purposes of Sections 147.51 to 147.58 of the Revised Code, "notarial acts" means acts which the laws and regulations of this state authorize notaries public of this state to perform, including the administration of oaths and affirmations, taking proof of execution and acknowledgment of instruments, and attesting documents.

Section 147.52. Notarial acts by authorized person.

- (A) If the notarial act is performed by any of the persons described in divisions (A) to (D) of section 147.51 of the Revised Code, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank, or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his authority is not required.
- (B) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if:
 - (1) Either a foreign service officer of the United States residing in the country in which the act is performed or a diplomatic or consular officer of the foreign country residing in the United States certifies that a person holding that office is authorized to perform the act;
 - (2) The official seal of the person performing the notarial act is affixed to the document, or
 - (3) The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.
- (C) If the notarial act is performed by a person other than one described in divisions (A) and (B) of this section, there is sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.
- (D) The signature and title of the person performing the act are prima-facie evidence that he is a person with the designated title and that the signature is genuine.

Section 147.53. Taking an acknowledgment.

The person taking an acknowledgment shall certify that:

- (A) The person acknowledging appeared before him and acknowledged he executed the instrument;
- (B) The person acknowledging was known to the person taking the

acknowledgment, or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

Note: 1. (1977) A notary public is liable for damages to persons proximately resulting from an incorrect certification he makes under R.C. 147.53 absent the satisfactory evidence therein required: Keck v. Keck 540 OApp.2d 128, 375 N.E.2d 1256. (Fairfield Cty. 1977).

The notary public, after ascertaining that the person before him is the party signing or having signed the instrument, should ask the person the following question without the necessity of raising the right hand:

Do you acknowledge this to be your signature on the instrument before you and that it is your own free act and deed?"

The answer to this question must be "I do" or words to that effect. After this procedure, the notary public, should then complete one of the following suggested forms which is usually printed or typewritten in the document before the notary public.

Section 147.54. Recognized certificate of acknowledgment.

The form of a certificate of acknowledgment used by a person whose authority is recognized under section 147.51 of the Revised Code shall be accepted in this state if:

- (A) The certificate is in a form prescribed by the laws or regulations of this state;
- (B) The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or
- (C) The certificate contains the words "acknowledged before me," or their substantial equivalent.

Section 147.54.1. "Acknowledged before me" defined.

The words "acknowledged before me" means that:

- (A) The person acknowledging appeared before the person taking the acknowledgment;
- (B) He acknowledged he executed the instrument;
- (C) In the case of:
 - (1) A natural person, he executed the instrument for the purposes therein stated;
 - (2) A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on

behalf of the corporation by proper authority, and the instrument was the, act of the corporation for the purpose therein stated;

(3) A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by. proper authority and he executed the instrument as the act of the partnership for the purposes therein stated;

(4) A person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated;

(5) A person acknowledging as a public of officer, trustee, administrator, guardian, or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated; and

(D) The person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

Section 147.55. Forms of acknowledgment.

The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any section of the Revised Code. The forms shall be known as "statutory short forms of acknowledgment" and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(A) "For an individual acting in his own right:

STATE OF
COUNTY OF

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged.)

(Signature of person taking acknowledgment)

(Title or rank) (Serial number, if any)

(B) "For a corporation:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of person taking acknowledgment)

(Title or rank) (Serial number, if any)

(C) "For a partnership:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(Signature of person taking acknowledgment)

(Title or rank) (Serial number, if any)"

(D) "For an individual acting as principal by an attorney in fact:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact: on behalf of (name of principal).

(Signature of person taking acknowledgment)

(Title or rank) (Serial number, if any)

(E) "By any public officer, trustee, or personal representative:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of person taking acknowledgment)

(Title or rank) (Serial number, if any)

AUTHENTICATION

When papers are to be used outside of the State, an authentication is usually required. This is merely a declaration by the Clerk of the Common Pleas Court in the form of a certificate, that the notary is properly commissioned under law at the time of notarizing the instrument. The authentication is attached and forwarded with papers to the foreign Jurisdiction.

IX. POWER OF ATTORNEY

A power of attorney for the conveyance, mortgage, or lease of any estate or interest in real property must be signed attested, acknowledged, and certified in the same manner as deeds, mortgages, and leases. A power of attorney for the conveyance, mortgage or lease of an estate or interest in real property, must be recorded in the office of the recorder of the county in which such property is situated, previous to the execution of a deed, mortgage, or lease by virtue of such power of attorney. Such power of attorney once recorded cannot be revoked unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power of attorney was recorded.

Any person or persons interested may have a power of attorney authorizing the transfer of personal property, or the transaction of any business relating thereto admitted to record in the recorder's office of the county in which such property is situated, or in which any of such business is to be transacted. A power of attorney to sell, mortgage, or lease lands, executed by a husband and wife, but not acknowledged by the wife, is as to the wife utterly nugatory; such power can only be regarded as having been executed by the husband alone.

X. OTHER INSTRUMENTS REQUIRED TO BE ACKNOWLEDGED

A deed, mortgage or lease {for a term of more than three years) of any estate or interest in real property must be signed by the grantor, mortgagor or lessor, and such signing acknowledged by the grantor, mortgagor or lessor in the presence of a witness, who shall attest the signing and subscribe their names to the attestation. Such signing also must be acknowledged by the grantor, mortgagor or lessor before a person authorized by law to administer an oath (a notary public is one of these), who shall certify the acknowledge on the same sheet on which the instrument is written or printed, and subscribe his name thereto. (See Title VII herein.)

A deed, mortgage or lease not executed and acknowledged as required by law is not entitled to be recorded and even if recorded the record is irregular and has no effect as a constructive notice.

A party to an instrument cannot act as a notary public in taking an acknowledgment to the instrument.

In the case of a deed or a mortgage where the owner is married, it is necessary that both the husband and wife execute and acknowledge the instrument.

A chattel mortgage is an instrument whereby the owner of personal property transfers the title to such property to another, as security for the payment of money or the performance of contract or other obligation, subject to defeasance on payment or performance. The mortgagee is entitled to possession and control of the mortgaged property unless by terms of the instrument possession is reserved to the mortgagor, until the event of nonpayment of the debt secured or default in performance.

A chattel mortgage must be signed by the mortgagor, but no witnesses or acknowledgment are required. Before filing a chattel mortgage, the mortgagee must state thereon, under oath, the amount of the claim, and that it is just and unpaid, if given to secure the payment of a sum of money. Without such sworn statement the lien attempted to be secured by such mortgage will be invalid. An instrument embracing a conditional sale is a contract, which provides that the chattel sold is to remain the property of the vendor until the purchase money is paid. To constitute a conditional sale it must appear that the title remains in the vendor until payment, or until the particular condition set out in the contract is complied with. As between the parties to the contract the instrument is valid without the necessity of having it recorded, but as to all subsequent purchasers and mortgagees in good faith and for value and creditors it is absolutely void unless recorded. The instrument must be signed by the purchaser, but no witnesses or acknowledgment are required. Before filing a conditional sale agreement, the seller must state thereon, under oath the amount of the claim remaining unpaid.

A Bill of sale is an instrument whereby the seller transfers the title. It must be signed by the seller, but need not be witnessed nor acknowledged. A bill of sale, like a contract for the sale of lands, need not be recorded; in fact, the Recorder will not accept these instruments for record.

XI. PROTESTS OF NEGOTIABLE INSTRUMENTS

Few notaries will be engaged in presenting and protesting negotiable instruments. A notary public has the authority under the law of Ohio to present and protest negotiable instruments and in order that you may have some information the following is for your direction. The process requires technical perfection in the performance and should you be called upon for this duty you should acquaint yourself thoroughly in the procedure.

A notary public's duties, in regard to negotiable instruments, are important and his

responsibility great. Before undertaking to act as a notary public with reference to these instruments, he should familiarize himself with at least the most generally applicable principles of law governing the presentment, demand, protest, and notice of dishonor of such instruments. The engagement entered into by the acceptor of a bill of exchange and the maker of a promissory note, is, that it shall be paid at its maturity-that is, on the day that it falls due, and at the place specified for payment, if any place be designated upon its presentment. The engagement is absolute, but that of the drawer of a bill and the endorser of a bill or note is conditional, and contingent upon the true presentment at maturity, and notice in case it is not paid. The maker and acceptor are bound, although the bill or note be not presented on the day it falls due; but the drawer and endorsers are discharged if such presentment be not made, unless some sufficient cause excuses the holder for failure to perform that duty. Any bona fide holder of a negotiable instrument, or anyone lawfully in possession of it for the purpose of receiving payment, may present it for the purpose of receiving payment, may present it for payment at maturity. A notary public may thus make presentment of the instrument for payment. Presentment for payment, to be sufficient, must be made:

1. At a reasonable hour on a business day;
2. At a proper place as herein later defined
3. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

Presentment for payment is made at the proper place:

1. When made at the place specified in the instrument
2. At the address of the person designated in the instrument to make payment;
3. When no place is specified and no address is given, then at the usual place of business or residence of the person to make payment;
4. In any other case wherever the person to make payment can be found, or at his last known place of business or residence.

The instrument must be exhibited to the person from whom payment is demanded. Mailing a demand for payment is not sufficient.

When there are several persons, not partners, primarily liable on the instrument and no place of payment is specified presentment must be made to them all. When the day of maturity falls upon Sunday, or a holiday the instrument is payable on the next succeeding business day. The time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment. The instrument presented for payment should not be left by the notary public with the person to whom presentment is made unless the same has been paid in full. Upon default payment, the instrument should be returned to its owner.

When a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each endorser Any drawer or endorser to whom such notice is not given is discharged. This notice

may be given by the holder of the instrument or by a notary public by whom the presentment is made. The notice may be in writing or merely oral, and may be given by delivering through the mails. The notice should be promptly delivered so as to reach the parties entitled thereto, if residing in the same place as that of the notary public, not later than the day following the dishonor of the instrument. When the party to be given notice has furnished his address, notice must be given at that place, otherwise at his residence or place of business.

When a negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but the protest is not required except in case of instruments originating outside the State of Ohio. However, it is a common practice to protest domestic, as well as foreign, instruments. The protest must be annexed to the bill, or contain a copy of it, must be under the hand and seal of the notary public making it. Blank forms of these protests are easily obtainable from legal blank printers or some book stores. The protest must be made on the day of its dishonor. The protest, or, more strictly speaking, the notarial certificate thereof, should set forth:

1. The time of presentment;
2. The place of presentment;
3. The manner of presentment;
4. The cause or reason for protesting the instrument;
5. The demand made, and the answer given, if any, or the fact that the party could not be found.

The primary purpose of a "protest" is to record the testimony of the notary public that proper steps were taken to fix the liability of the parties obligated on the instrument. Courts regard it as prima facie evidence of all the facts stated therein, so far as they come within the scope of the notary's duties in making the presentment and demand and protest.

XII. LIABILITY OF A NOTARY

A notary public is a public officer whose duties are prescribed by law, and for any failure on his part to perform his whole duty, he is liable in damages to any person who suffers therefrom. His liability is not that of an insurer, but, if he is to be held liable at all, it must be on the ground of negligence, malice or corruption. Therefore, if a notary public neglects the duties imposed upon him by law to the damage of another, he may be liable personally. It is not intended to attempt to set forth all of the acts or omissions to act which might result in liability against a notary public, but attention is invited to some of the more common instances where such liability has been imposed.

PROOF OF IDENTITY UPON WHICH A NOTARY PUBLIC CERTIFYING TO AN ACKNOWLEDGMENT IS JUSTIFIED IN ACTING

Although a notary public is not a guarantor or insurer of the identity of the person whose notarial acknowledgment he administers and certifies, he is bound, to exercise reasonable diligence in the discharge of his official duties. Before certifying that a certain named person came before him and executed and acknowledged the execution of any instrument he must be reasonably sure of the identity of such person. Even in the absence of statutory provisions, the law does not permit an officer to take the acknowledgment of a stranger without satisfactory proof of his identity. The courts have held that a notary public is not justified in taking an acknowledgment upon the mere introduction of himself by the person desiring to make the acknowledgment. Likewise there is substantial agreement that a mere introduction by a third person, who is himself not well known to the notary public, is not sufficient evidence of identity to justify the notary public in certifying to the acknowledgment. If, on the other hand, the introducer is well known to the notary public, and is apparently well acquainted with the acknowledger, and there is nothing to create any suspicious. as to the identity of the latter, the notary public may be justified in relying upon the identification, without further proof. Under no circumstances should a notary public take an acknowledgment over a telephone. This is not a "personal appearance" before the notary public, nor can he truthfully certify that the instrument was signed in his presence. The human voice is easily imitated, and no one can be sure that the voice of the speaker is the voice of the signer. Any notary public who takes an acknowledgment in this manner is only inviting trouble, if not a liability. It may be very courteous to waive all precautions and formalities in this matter of identification; it may be disagreeable to speak plainly, and tell a party that one is not willing to assume that he is not falsely impersonating another; but no one is at liberty to practice courtesy or gain popularity, to indulge his own indolence, or avoid unpleasant things, at the expense of others. If these others sustain loss by his laxity, it is impossible to listen to assurances from him that he meant well, and really did not know better, where it was his plain duty to make certain of the identity of the person acknowledging the instrument, and not to certify if at all until he was sure. It is perfectly idle for him to protest that he did not know or suspect that his certificate was false. His business was to know that it was true.

XIII. THE PRACTICE OF LAW

The: term "draw for others " means the act of composing the legal language in the preparation of documents and does not include the acts of a secretary or

stenographer in transcribing and preparing a document dictated by a person authorized to draw legal documents.

A commission of a notary public is not a license to practice law. The powers and duties of a notary public are limited to those set forth in Section 147.07, supra. No other powers or privileges are implied or permitted. The courts of this state have held that it is unlawful for a notary public to prepare draw or draft for others any legal papers, documents or instruments, including the following: wills, deeds, notes, real estate mortgages, chattel mortgages, contracts, options, leases escrow instructions, releases, affidavits for mechanic's liens bulk sales affidavits, affidavits of any nature, bills of sale, powers of attorney, or pleadings in court. Likewise, no notary public is permitted to advise another person how to prepare draw or draft these or other instruments, to render opinions as to the title of real estate or to the rights and liabilities of others in matters of litigation. Any attempt on the part of a notary public to do any of these things may result in the revocation of his commission.

XIV. JURISDICTION

The jurisdiction of a notary public is in the State of Ohio. A notary public may perform all official acts as a notary public within the State of Ohio. It makes no difference where the individual comes from so long as they personally appear before the notary public within the jurisdiction. It is of no concern to the notary public where the land or subject matter referred to in the document is located The act of the notary must be with the State of Ohio for which the notary public is appointed rather than where the subject matter contained in the document to be notarized exists.

XV. DUTIES OF A NOTARY PUBLIC

A notary public may perform the following duties:

Administer oaths or affirmations

Certify acknowledgments

Take and certify depositions, and other instruments in writing

Issuing subpoenas in the taking of depositions

To receive, make and record notarial protests.

XVI. HINTS AND WARNINGS

1. Before entering upon your duties as a notary public, you are required to file your commission after receiving it from the Governor, with the oath endorsed thereon, with the clerk of the court of common pleas of Geauga County for recording. {See Section 147.05.}
2. Provide yourself with a notary public seal

3. Provide yourself with a rubber stamp, stating your name, the county in which your commission is recorded, and the date your commission expires. This should be impressed upon every instrument you sign immediately under or near your signature or you will have to print your signature in legible letters. {See Section 147.04.}
4. Study carefully and familiarize yourself thoroughly with the powers vested in a notary public. {See Section 147.07.}
5. Study carefully and familiarize yourself with the schedule of fees you are permitted to charge for your services. {See Section 147.08.}
6. You are subject to removal from office in the event you accept an excess fee and once removed you are ineligible for reappointment as a notary public. {See Section 147.13.}
7. Do not certify to the affidavit of any person without administering the oath or affirmation to such person. Should you fail to do this, you are guilty of a misdemeanor and will be subject to fine of not more than one hundred dollars and/or imprisonment, and removed from office. You will not be eligible for reappointment for a period of three years. {See Section 147.14.}
8. Do not perform any act as a notary public after your term of office has expired Should you do so, you shall forfeit to the State a penalty of not more than five hundred dollars, and are henceforth ineligible to reappointment. {See Section 147.11.} You are also guilty of a misdemeanor and subject to a fine of not more than five hundred dollars.
9. Do not exercise your power to punish for contempt except where the situation demands its immediate enforcement, and then only when acting under the advice of counsel present. You may subject yourself to damages for false imprisonment if your judgment be erroneous.
10. Do not take the acknowledgment of any person unless you personally know the person signing, or unless he has been identified by someone else, in whom you have confidence, who knows such person. Under no circumstances should an acknowledgment be taken over the telephone.
11. Do not take the acknowledgment of a signature of a person signing by mark (X), unless you saw him make the same and the mark is properly witnessed
12. Do not act as a notary public on any instrument beyond the territorial limits of the State of Ohio for which you are appointed. Your acts are invalid and you may destroy some valuable rights of persons interested in the proper authentication of the instrument which you have thus unlawfully certified.
13. Do not take the acknowledgment on any instrument wherein blanks are left to be filled in later. Read and examine it carefully before administering the oath or affirmation. Insist upon a completely prepared instrument before you take the acknowledgment of any person a party thereto.
14. Do not prepare for others any legal instrument or pleading, and do not advise or

counsel with anyone as to how it should be prepared These are acts falling within the practice of law and you are duty bound in such cases to point out that it would be unlawful for you to perform such acts and would subject you to the possibility of loss of your commission as a notary public. In the interest of the public, a careful check of all future activities by those commissioned as notaries public will be carried on under the supervision of the court, with the aid of the bar association of Geauga County.

15. The governor may revoke a commission issued to a notary public upon presentation of satisfactory evidence of official misconduct or incapacity.
16. A Notary Public may notarize an affidavit for a member of his or her family, providing the Notary Public does not have any INTEREST in the contents of the affidavit.
17. A Notary Public may not notarize his or her own signature.
18. WHEN IN DOUBT DON'T NOTARIZE.

Questions or inquiries regarding the contents of this booklet should be directed to the Geauga County Notary Commission, at (440) 286.7160

APPENDIX "A"

To renew your Notary Public Commission:

1. A Notary Public's Commission expires every five (5) years, if you are still a resident of Geauga County, you have thirty (30) days before AND after your commission expires to renew. If this time has expired, you WILL have to take the test again.
2. After filling out the application forms with the County's Notary Commission, a Judge's signature is needed on the application form, the form is then sent with your check for FIVE DOLLARS AND NO/100 (\$5.00) to the Commission Clerk for the Governor as per the instructions on the back side of the application.
3. When you receive your Commission Certificate back from the Governor, take it to the Clerk of Courts Office on the second floor of the Geauga County Courthouse in Chardon for recording.
4. It is also a good idea to record your Commission Certificate in any other county in Ohio that your place of business resides in.
5. If your commission has expired, you must perform all of the above before you may resume the duties of Notary Public.

Please call your Notary Public Commission Office to see if any changes have occurred if you are about to expire.

APPENDIX "B"

Geauga County Notary Commission
Attn: Stephen G. Macek
114 East Park Street
Chardon, OH 44024

January 1, 1999

Dear Mr. Macek:

Last week, I had spoken with your secretary regarding a problem I have been having in the Clerk of Courts Auto Title Office.

Many notaries are notarizing a signature on a document which has some blanks or in some cases all lines are left blank. This has become a real problem with auto titles where important information **must** be filled in.

After attending a seminar given by the Ohio Clerk of Courts Association where the Speaker was from the Notary Commission, I decided that more information must be given to notaries at the time they files their commission. In the legal office, we have a sample of an auto title. We are reminding them that all of the information must be filled in and nothing left blank.

I would appreciate if at the time of their test or when they receive their form to be signed by the judge, **you would remind them that all information must be filled in by the person signing the document that they are notarizing.**

If you have any questions or comments, please feel free to give me a call at extension 2290. Thanks for all your help.

Sincerely,

Denise M. Kaminski

ERASURES AND ALTERATIONS VOID THIS TITLE ASSIGNMENT. (Type or print in ink.)
ASSIGNMENT OF OWNERSHIP
 I (we) certify the vehicle or watercraft or outboard motor described in this title was transferred for the price of \$5,500.00 to:
 Transferee's/Buyer's printed name RALPH BOSAK
 Transferee's/Buyer's printed address 12526 JACKSON DR. BURTON, OH. 44021

ODOMETER CERTIFICATION
 Federal and State laws require that you state the mileage in connection with transfer of ownership. Failure to complete or providing false information may result in fines and/or imprisonment.
 I (we) certify to the best of my (our) knowledge that the odometer now reads 17251 miles and is the actual mileage of the vehicle unless one of the following statements is checked:
 The mileage stated is in excess of the mechanical limits.
 The odometer reading is not the actual mileage.
WARNING - ODOMETER DISCREPANCY.

I (we) warrant the title to be free of all liens.
 Transferee's/Buyer's printed name JOHN G. SPISAK
 Transferee's/Buyer's printed address 14191 RAVENNA RD. NEWBURY, OH 44065
 Sworn to and subscribed in my presence by JOHN SPISAK this 24th day of JUNE, 1995.
 My commission expires 2-27-96 Loretta Spisak, Notary Public, State of Ohio, Geauga County, My Commission Expires 2-27-96
 (seat) Clerk, Deputy Clerk of Courts - Notary

TRANSFEREE'S/BUYER'S ACKNOWLEDGEMENT OF ABOVE ODOMETER CERTIFICATION
 Transferee's/Buyer's printed name RALPH BOSAK
 Transferee's/Buyer's signature [Signature]

Warning to transferee and transferee (seller and buyer). You are required by law to state the true selling price. A false statement is in violation of section 2921.13 of the Ohio Revised Code and is punishable by six months imprisonment and a fine of up to one thousand dollars, or both. All transfers are audited by the Department of Taxation. The seller and buyer must provide any information requested by the Department of Taxation. The buyer may be assessed any additional tax found to be due.

APPLICATION FOR CERTIFICATE OF TITLE (Type or Print in ink.) Fee of \$5.00 for failure to apply for title within 30 days of assignment.
 Check type of application(s): Motor Vehicle Watercraft Outboard Motor Memorandum Salvage
 Applicant's printed name Ralph Bosak SSN/EIN _____
 Applicant's address 12526 Jackson Rd Burton, OH 44021
 Purchase Price \$ 5500.00 Dealer's Permit Number _____ Vendor's Number _____
 Condition of vehicle or watercraft or outboard motor (check only one): Good Fair Poor Wrecked
 Tax exemption: Yes Reason _____ Tax Paid \$ _____
 LIEN INFORMATION: If no lien, state "none". If more than one lien, attach statement of all additional liens.
 Lienholder NATIONAL CITY BANK Address 1900 E. North St. Cleve. OH
 I (we) state that all information contained in this application is true and correct.
 Applicant's signature Daniel Lewis POA Ralph Bosak
 Sworn to and subscribed in my presence by JOHN SPISAK this 6 day of JUNE, 1995.
 My commission expires 2-27-96 Loretta Spisak, Notary Public, State of Ohio, Geauga County, My Commission Expires 2-27-96
 (seat) Clerk, Deputy Clerk of Courts - Notary

OHIO CERTIFICATE OF TITLE

STATE OF OHIO No. 2800072867

COUNTY OF GEAUGA

IDENTIFICATION NUMBER 1FDEE14N2JHB92555	ORIGINAL BODY TYPE SW	YEAR 1988	MAKE FORD
MODEL 15V	ODOMETER 16,282	ODOMETER STATUS EXCEEDED	

COMMENTS
REPLACEMENT # 1

PRICE 4,700.00 **TAX** 270.25 **DATE ISSUED** 04/24/95

EVIDENCE
FL 46573040

OWNER
JOHN G. SPISAK
14191 RAVENNA RD
NEWBURY, OH 44065

PREVIOUS OWNER
MICHAEL E & KATHLEEN VACIK
1415 NW 156TH AVE GAINESVILLE, FL

FIRST LIENHOLDER DATE OF LIEN: _____ **SECOND LIENHOLDER DATE OF LIEN:** _____

LIEN DISCHARGE
Lienholder _____
by: _____ date _____
CLERK OF COURTS LIEN CANCELLATION
by: _____ date _____

LIEN DISCHARGE
Lienholder _____
by: _____ date _____
CLERK OF COURTS LIEN CANCELLATION
by: _____ date _____

WITNESS MY HAND AND OFFICIAL SEAL THIS 24th DAY OF APRIL, 1995
 7016990861 (SEAL)

Betty J. Montague
 BETTY J. MONTAGUE
 CLERK OF COURTS LJL

* 0 1 6 9 9 0 8 6 1 *

% 0 1 6 9 9 0 8 6 1

DO NOT ACCEPT TITLE SHOWING ANY ERASURES, ALTERATIONS OR MUTILATIONS.

HOW TO OBTAIN AN APOSTILL SEAL

You have asked the Notary Public Committee of the Geauga County Bar Association about how to go about obtaining an Apostill seal on a notarized document. The process is as follows:

First, the Clerk of the Common Pleas Court of Geauga County must certify the genuineness of the signature of the Notary Public. The clerk's office is located on the second floor of the Geauga County Courthouse located on the square in Chardon, Ohio. The cost is \$2.00 per signature certified.

Next, the document(s) are forwarded to:

The Ohio Secretary of State
Elections Division
Attention: Ms. Vera Clark
30 East Broad Street, 14th Floor
Columbus, Ohio 43266-0418

The Office of the Secretary of State will certify on the document(s) that the Clerk of Court is duly elected and presently holding the office in question. The fee is \$5.00 per certification. You may pay via personal checks or money orders. Sending a self-addressed, stamped envelope to the Secretary of State should speed the process.

If you have any further questions, please do not hesitate to contact me.