Chapter 194

2009 EDITION

Notaries Public

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NOTARIES PUBLIC

(Definitions)

194.005 Definitions for ORS 194.005 to 194.200. As used in ORS 194.005 to 194.200:

(1) "Commercial paper" means such instruments as are within the scope of ORS chapter 73, including drafts, checks, certificates of deposit and notes.

(2) "Commission" means to empower to perform notarial acts and the written authority to perform those acts.

(3) "Good moral character" means character other than that which reflects moral turpitude and conduct which would cause a reasonable person to have substantial doubts about an individual's honesty, fairness and respect for the rights of others and for the laws of the state and the nation. To be relevant to deciding whether a person is of "good moral character," conduct of questionable good moral character must be rationally connected to the applicant's fitness to be a notary public.

(4) "Notarial act" and "notarization" have the meaning given those terms under ORS 194.505.

(5) "Notarial certificate" and "certificate" mean the part of, or attachment to, a notarized document for completion by the notary and bearing the notary's signature and official seal.

(6) "Notarial journal" means the journal described under ORS 194.152.

(7) "Notary public" and "notary" mean any person commissioned to perform notarial acts under ORS 194.005 to 194.200.

(8) "Official misconduct" means a notary's performance of or failure to perform any act prohibited or mandated respectively by ORS 194.005 to 194.200 or 194.505 to 194.595, or any rule adopted under ORS 194.005 to 194.200 or 194.505 to 194.595, or any other law governing notarization. [1967 c.541 §12; 1983 c.393 §12a; 1989 c.976 §1]

(Appointment and Commission)

194.010 Appointment of notary public; Certificate of Authorization; office may be nonlucrative; functions not official duties; rules. (1) Upon application as prescribed under ORS 194.014, the Secretary of State shall appoint and commission individual persons as notaries public.

(2) Upon appointment as a notary public, the Secretary of State shall send to the person appointed a notarial commission and a Certificate of Authorization with which the person appointed shall obtain an official seal.

(3) The notary public shall retain the commission during the term of appointment.

(4)(a) Only upon presentation by the notary public of the Certificate of Authorization is a vendor authorized to provide the notary with the official seal described under ORS 194.031.

(b) A vendor of official seals shall make note of the receipt of a Certificate of Authorization by a signature of the vendor or an authorized representative of the vendor upon the Certificate of Authorization.

(c) Subject to the procedures set forth under ORS 194.980, any vendor of official seals who furnishes an official seal to any person in violation of paragraph (a) of this subsection may incur a civil penalty in an amount, established by rule of the Secretary of State, that is within the limits set forth under ORS 194.980 (2)(a). Once incurred, the penalty shall be treated in all respects as a civil penalty incurred under ORS 194.980.

(5) Each notary public may file with the Secretary of State a statement waiving the fees specified under ORS 194.164 (1); and in such case the office of notary public is considered nonlucrative.

(6) The functions of a notary public are not considered official duties under section 1, Article III of the Oregon Constitution. [Amended by 1961 c.498 §1; 1967 c.541 §1; subsection (2) enacted as 1967 c.541 §8; 1975 c.161 §3; 1977 c.128 §1; 1983 c.393 §13; 1985 c.487 §1; 1989 c.976 §2]

194.012 Term of office. The term of office of a notary public is four years commencing with the effective date specified in the notarial commission. A notary public may perform notarial acts during the term of the commission, or until the commission is revoked, but may not perform notarial acts during any period when the commission is suspended. [1989 c.976 §6]

194.014 Application for appointment and commission. Every individual person, before entering upon the duties of a notary public, shall file with the Secretary of State a completed application for appointment and commission as a notary public. Application shall be made on a form prescribed by the Secretary of State and shall include an oath of office, the legal name and an official signature. Each applicant for appointment and commission as a notary public shall swear, under penalty of perjury, that the answers to all questions on the application are true and complete to the best of the applicant's knowledge, and that the applicant is qualified to be appointed and commissioned as a notary public. The application process shall be ordered or arranged so that applications may be readily submitted by mail. [1989 c.976 §4]

194.020 Application fee. (1) To defray costs incurred by the Secretary of State to process the application made under ORS

194.014, each applicant for appointment as a notary public shall pay in advance to the Secretary of State a nonrefundable application fee not to exceed $20.

(2) Any fee received by the Secretary of State under subsection (1) of this section shall be deposited in the State Treasury and credited to the Operating Account under ORS 56.041, and is in lieu of any fee charged under ORS 177.130. [Amended by 1957 s.s. c.7 §1; 1967 c.541 §3; 1983 c.393 §16; 1989 c.976 §9; 1993 c.66 §10]

Note: The amendments to 194.020 by section 17, chapter 745, Oregon Laws 2009, were referred to the people by referendum petition for their approval or rejection at a special election to be held throughout this state on January 26, 2010. See section 8, chapter 714, Oregon Laws 2009. 194.020, as amended by section 17, chapter 745, Oregon Laws 2009, is set forth for the user's convenience.

194.020. (1) To defray costs incurred by the Secretary of State to process the application made under ORS 194.014, each applicant for appointment as a notary public shall pay in advance to the Secretary of State a nonrefundable application fee not to exceed $40.

(2) Any fee received by the Secretary of State under subsection (1) of this section shall be deposited in the State Treasury and credited to the Operating Account under ORS 56.041, and is in lieu of any fee charged under ORS 177.130.

194.022 Qualifications; written examination; education course. (1) A person appointed and commissioned as a notary public must:

(a) Be 18 years of age or older at the time of appointment.

(b) Be a resident of this state at the time of appointment, or be a resident of an adjacent state and be regularly employed or carry on a trade or business within this state at the time of appointment.

(c) Be able to read and write the English language at the time of appointment.

(d) Be of good moral character.

(e) Not have had a notary commission revoked for official misconduct during the five-year period preceding the date of application.

(f) Not have been convicted of a felony, or of a lesser offense incompatible with the duties of a notary public, during the 10-year period preceding the date of application.

(g) Have satisfactorily completed a written examination prescribed by the Secretary of State to determine the fitness of the person to exercise the functions of the office of notary public.

(h) Have satisfactorily completed a three-hour notary public education course that:

(A) Includes, but is not limited to, instruction on the laws, rules, practices and procedures relating to notaries public; or

(B) If the person is employed, includes, but is not limited to, instruction on the laws, rules, practices and procedures relating to the notary public functions to be performed by a notary public in the course of employment.

(2) The Secretary of State shall:

(a) Make the written examination required by subsection (1) of this section a part of the application form.

(b) Furnish study materials relating to the written examination without charge upon request of the applicant. [1989 c.976 §7; 2005 c.733 §3]

194.024 Investigation of applicant; consent. (1) To assist in determining the identity of an applicant for notary public, or if the applicant has been convicted of a felony or of a lesser offense incompatible with the duties of a notary public, upon consent of the person making application for appointment as notary public and upon request of the Secretary of State, the Department of State Police shall furnish to the Secretary of State any information that the department may have in its possession from its central bureau of criminal identification, including but not limited to manual or computerized information and any information to which the department may have access, including but not limited to the Law Enforcement Data System established in ORS 181.730. For purposes of receiving the information described in this subsection, the Secretary of State is a "criminal justice agency" under ORS 181.010 to 181.560 and 181.715 to 181.730 and the rules adopted under ORS 181.555.

(2) A person making application for appointment as notary public shall be deemed, upon signing or with signature upon the application filed under ORS 194.014, to have given the consent necessary for purposes of subsection (1) of this section. [1989 c.976 §8; 1993 c.188 §14]

194.028 Notary public education courses; rules. (1) The Secretary of State:

(a) Shall offer one or more notary public education courses each calendar year.

(b) May certify providers of notary public education courses, including employers of notaries public, to provide the courses required by this subsection if the secretary determines that the provider offers an education program curriculum similar to the education program curriculum offered by the secretary.

(c) Shall adopt rules establishing the requirements for certification as a provider of notary public education courses.

(2) A person may satisfy the notary public education requirement under ORS 194.022

by taking a course offered by the secretary or by a provider of notary public education courses certified by the secretary. [2005 c.733 §2]

194.030 [Amended by 1961 c.498 §2; repealed by 1967 c.541 §5 (194.031 enacted in lieu of 194.030)]

194.031 Notarial seal; exception for notarization of certain plats; filing of sample imprint; replacement seal; rules. (1) The official seal of a notary public shall be a stamp made of rubber or some other substance capable of making a legible imprint on paper in black ink. The imprint must legibly reproduce under photographic methods.

(2) The Secretary of State shall adopt rules prescribing the size and form of the imprint of the official seal to promote uniformity, legibility and permanency.

(3) Except as provided in subsection (4) of this section, the attempt to notarize an instrument required to be notarized shall be of no effect unless it bears an imprint of the official seal of the notary who performed the notarization made in the manner required under subsections (1) and (2) of this section.

(4) The imprint of the official seal of a notary public shall not be required to effectuate a notarization of a subdivision or partition plat required under ORS 92.010 to 92.192 or a condominium plat required under ORS 100.115, or any replat, supplement or amendment thereto, if the following appear below the notary's signature:

(a) The printed name of the notary public;

(b) The words "NOTARY PUBLIC - OREGON";

(c) The words "COMMISSION NO." immediately followed by the notary public's commission number; and

(d) The words "MY COMMISSION EXPIRES" immediately followed by the date the notary public's commission expires, expressed in terms of the month, by name not abbreviated, two-digit date and complete year.

(5) Upon delivery of an official seal to a notary public, the notary public shall cause an imprint of the official seal to be filed in the office of the Secretary of State, together with any other information that is by rule required. The filing shall be done in the manner and within the time prescribed by rule.

(6) Any notary whose official seal is lost, misplaced, destroyed, broken, damaged or that is otherwise unworkable shall immediately mail or deliver written notice of that fact to the Secretary of State. The Secretary of State shall issue a Certificate of Authorization which the notary public may use to obtain a replacement seal.

(7) A seal embosser may be used as an adjunct to the official seal. The use of the seal embosser shall be in compliance with any rules adopted by the Secretary of State. [1967 c.541 §6 (enacted in lieu of 194.030); 1983 c.393 §17; 1989 c.976 §10; 2001 c.63 §1]

194.040 Record of appointments and commissions; Secretary of State's power to certify status of notary. (1) The Secretary of State shall keep a record of appointment and commission of each notary public. The Secretary of State may certify as to the term of office of such notary public and imprint upon all instruments requiring a notarial certificate.

(2) Full faith and credit shall be given to all protestations, attestations and other instruments of publication of all notaries public appointed under ORS 194.010. [Amended by 1967 c.541 §9; 1983 c.393 §18; 1989 c.976 §11]

194.043 Scope of appointment and commission. Each notary public appointed and commissioned by the Secretary of State may perform notarial acts anywhere within this state. A notary public so appointed and commissioned may not perform notarial acts in another state, but may notarize a document originating in another state if the notarization is performed in this state. [1989 c.976 §5]

194.045 [1969 c.394 §§2,3,4; 1977 c.641 §1; 1983 c.393 §19; 1989 c.976 §16; repealed by 2005 c.68 §1]

194.047 Change of address. Any person appointed and commissioned as a notary public whose residential or business address is changed shall, within 30 days after the change, mail or deliver a notice of address change to the Secretary of State. The notice shall include the old address and the new address. [1989 c.976 §13]

194.050 [Amended by 1961 c.498 §3; 1967 c.541 §4; repealed by 1983 c.393 §26]

194.052 Change of name; fee; rules. (1) A notary public with a change of name under ORS 33.410 to 33.440 or otherwise may continue to use the current commissioned name until the expiration date of the commission. If the notary, however, wishes to use the new name in performing a notarial act, the notary must apply for an amended commission by completing a Change of Name Form and submitting the required fee for amended commission, as adopted by rule. The Secretary of State shall send an amended notarial commission to the person appointed, together with a Certificate of Authorization with which the notary shall obtain a new seal, the new seal to be as described under ORS 194.031.

(2) If a notary public whose name is changed does not wish to change the com-

mission to the new name, the notary public shall, in any case, within 30 days after the change is effective, mail or deliver a notice of name change to the Secretary of State. The notice shall include the old name and the new name. [1989 c.976 §14]

194.060 [Repealed by 1967 c.541 §22]

194.063 Application for new commission; resignation. (1) A person may not be automatically reappointed as a notary public.

(2) Prior to expiration of a commission, a notary public may apply for a new commission in the manner provided by ORS 194.005 to 194.200, except that the person is not required to take the notary public education course described in ORS 194.022.

(3) A person shall resign a notarial commission by mailing or delivering a letter of resignation indicating the effective date of the resignation to the Secretary of State, if:

(a) The person no longer desires to be commissioned as a notary public;

(b) The person ceases to reside in Oregon, or if the person is a nonresident notary, ceases to be regularly employed or to carry on a trade or business within Oregon; or

(c) The person becomes unable to read or write. [1967 c.541 §11; 1977 c.128 §2; 1983 c.393 §21; 1985 c.487 §2; 1989 c.976 §17; 2005 c.733 §4]

194.067 [1967 c.541 §18; repealed by 1989 c.976 §37]

(Commercial Paper)

194.070 Protest of commercial paper. (1) A notary public may protest commercial paper if the notary public is:

(a) An officer or employee of a financial institution as defined in ORS 706.008 or an investment company, or a person serving under the direct supervision of the officer or employee; or

(b) An active member of the Oregon State Bar, or a person serving under the direct supervision of an active member of the Oregon State Bar.

(2) Each notary public who protests any commercial paper shall take the actions required by ORS 73.0505.

(3) A notary public may not protest any commercial paper owned or held for collection by a financial institution or investment company if the notary is individually a party to the commercial paper. [Amended by 1967 c.541 §13; 1993 c.545 §123; 2009 c.123 §1]

194.080 [Repealed by 1967 c.541 §22]

194.090 Record of protest; effect as evidence. Each notary public described in ORS 194.070 shall keep a record of all protests of commercial paper made by the notary public under ORS 73.0505. The record is competent evidence to prove notice of dishonor for purposes of ORS 73.0505. [Amended by 1967 c.541 §14; 1993 c.545 §124; 2009 c.123 §2]

194.100 Powers of notary connected with corporation; limitations. (1) A notary public who is a stockholder, director, officer or employee of a bank or trust company or other corporation may:

(a) Take the acknowledgment of any party to any written instrument executed to or by such corporation; or

(b) Administer an oath to any other stockholder, director, officer, employee or agent of such corporation.

(2) A notary public may not take the acknowledgment of an instrument executed by or to a bank or trust company or other corporation of which the notary is a stockholder, director, officer or employee, if the notary is a party to such instrument, either individually or as a representative of such corporation. [Amended by 1967 c.541 §15; 2009 c.123 §3]

194.110 [Repealed by 1989 c.976 §37]

194.120 [Amended by 1961 c.498 §4; repealed by 1989 c.976 §37]

194.130 Disposition of records on vacancy in office; penalty for failure to properly dispose of records or for destroying or altering records. (1) Whenever the office of a notary public becomes vacant, the record referred to in ORS 194.090 kept by the notary public, together with all the papers relating to such record, shall be deposited in the office of the Secretary of State. Any notary public neglecting for the space of three months after resignation or removal from office to deposit such record and papers in the Secretary of State's office, or any executor or administrator of a deceased notary public neglecting for the space of three months after the acceptance of that trust to lodge in the Secretary of State's office such record and papers as come into the hands of the notary public, shall forfeit not more than $500.

(2) If any person knowingly destroys, defaces, materially alters or conceals any record or paper of a notary public, that person shall forfeit not more than $500, and shall be liable to an action for damages by the party injured. [Amended by 1967 c.541 §19]

194.140 [Repealed by 1989 c.976 §37]

194.150 Recovery of forfeitures. All forfeitures under ORS 194.130 shall be recovered in a civil action in any court having jurisdiction of the same in the county where the notary public resides or is employed or is carrying on business. One-half shall be paid to the person bringing the action and one-half shall be paid to the State Treasurer to be credited to the General Fund. [Amended by 1967 c.541 §20; 1985 c.487 §3]

(Duties; Prohibitions)

194.152 Journal of notarial acts; rules; disclosure. (1) Each notary public shall provide, keep, maintain and protect one or more chronological journals of notarial acts performed by the notary public except for administering an oath or affirmation or certifying or attesting a copy.

(2) The Secretary of State shall adopt rules prescribing the form of the notarial journal to promote uniformity and establish the retention or disposition of the notarial journal and other notarial records, and prescribe rules to provide for exceptions to the notarial journal.

(3) A notary public who is an employee may enter into an agreement with the employer pursuant to which agreement the notarial journal or journals of the notary, in compliance with rules adopted under subsection (2) of this section, are retained or disposed of by the employer upon termination of employment.

(4) A notarial journal in the possession of a notary public who is not a public official or employee is exempt from disclosure under ORS 192.410 to 192.505. A notarial journal in the possession of the Secretary of State, or in the possession of a notary public who is a public official or employee, is not exempt from disclosure under ORS 192.410 to 192.505 unless the Secretary of State or other custodian determines that the public interest in disclosure is outweighed by the interests of the parties in keeping the journal record of the notarial act confidential. A determination by the Secretary of State or other custodian under this subsection is subject to review under ORS 192.410 to 192.505.

(5) This section does not apply to the record of protests of commercial paper required under ORS 194.090. [1989 c.976 §15; 2009 c.123 §4]

194.154 Disposition of seal and notarial journal upon resignation, revocation or expiration of commission; rules. (1)(a) A notary public whose notarial commission is resigned or revoked shall deliver the official seal to the Secretary of State within the time specified under subsection (2) of this section for disposition of the notarial journal and records.

(b) Upon normal expiration of a notarial commission, the notary public shall destroy the official seal as soon as is reasonably practicable.

(2) Except as provided under subsection (3) of this section, a notary public whose notarial commission is resigned, revoked or expired shall dispose of the notarial journal and records pursuant to rules adopted by the Secretary of State within 30 days after the effective date of the resignation, revocation or expiration, whichever occurs first.

(3) A former notary who intends to apply for a new commission need not dispose of the notarial journal and records within 30 days after commission expiration, but must do so within three months after expiration unless newly commissioned within that period. [1989 c.976 §19]

194.156 Disposition of seal and notarial journal upon death of notary; rules. If a notary dies during the term of commission, the notary's heirs or personal representative, as soon as reasonably practicable after death, shall:

(1) Deliver the official seal to the Secretary of State; and

(2) Notify the Secretary of State in writing of the date of death and of the manner in which the notarial journal and records have been disposed. Disposition, after death, of the notarial journal and records shall be as provided by rule. [1989 c.976 §20]

194.158 Prohibited acts. (1) A notary public may not perform a notarial act if the notary is a signer of or named in the document that is to be notarized.

(2) A notary may not indorse or promote any product, service, contest or other offering if the notary's title or seal is used in the indorsement or promotional statement. [1989 c.976 §§21,22]

194.160 [Amended by 1967 c.541 §16; repealed by 1989 c.976 §37]

194.162 Misrepresentation of notarial powers; notice of notarial powers and fees. (1) A notary public may select notarial certificates pursuant to ORS 194.005 to 194.200 and 194.505 to 194.595.

(2) A notary may not make representations to have powers, qualifications, rights or privileges that the office of notary does not have including the power to counsel on immigration matters.

(3) A notary who is not licensed to practice law in this state and who advertises notarial services in a language other than English shall include in the advertisement, notice or sign, in the same language and in English, the following:

(a) A statement, prominently displayed: "I am not licensed to practice law in the State of Oregon and I am not permitted to give legal advice on immigration or other legal matters or accept fees for legal advice."; and

(b) The fees for notarial acts specified under ORS 194.164.

(4) The notary shall post the notice required under subsection (3) of this section in

a conspicuous place in the notary's place of business.

(5) A person may not use the term "notario publico" or any equivalent non-English term, in any business card, advertisement, notice, sign or in any other manner that misrepresents the authority of a notary public. [1989 c.976 §23]

(Fees for Notarial Acts)

194.164 Fees for notarial acts; rules; collection of fees. (1) The Secretary of State shall adopt by rule a schedule fixing the fees that a notary public may charge for performing notarial acts. A fee may not exceed $10 per notarial act. The schedule shall include, but need not be limited to, fees for the following notarial acts:

(a) Acknowledgments.

(b) Oaths or affirmations without a signature.

(c) Verifications upon oath or affirmation.

(d) Copy certifications.

(e) Protesting commercial paper, except that a notary public may not charge a fee for protesting a check because of the insolvency of the financial institution upon which the check was written.

(2) A notary public may charge an additional fee for traveling to perform a notarial act if:

(a) The notary explains to the person requesting the notarial act that the fee is in addition to the fee specified under subsection (1) of this section and is not required by law; and

(b) The person requesting the notarial act agrees in advance upon the amount of the additional fee.

(3) A notary public shall display an English-language schedule of fees for notarial acts, as specified under subsection (1) of this section.

(4) A notary public who is employed by a private entity may enter into an agreement with the entity under which fees collected by the notary under this section are collected by and accrue to the entity.

(5) For purposes of defraying costs incurred by the public body for providing notarial services, a public body as defined in ORS 174.109 may collect the fees described in this section for notarial acts performed in the course of employment by notaries public who are employed by the public body. [1989 c.976 §24; 1997 c.631 §424; 2009 c.338 §2]

(Refusal to Issue; Revocation and Suspension of Commissions)

194.166 Grounds for refusal to issue commission; revocation or suspension of commission. The Secretary of State may refuse to issue a commission as notary public or may revoke or suspend the commission of any notary public upon any of the following grounds:

(1) Failure to meet or maintain the qualifications required under ORS 194.005 to 194.200 or refusal of the consent described under ORS 194.024.

(2) Substantial and material misstatement or omission of fact in the application submitted to the Secretary of State.

(3) Engaging in official misconduct.

(4) Conviction of a felony, or of a lesser offense incompatible with the duties of a notary public.

(5) Revocation, suspension, restriction or denial of a professional license issued by a governmental entity, if the revocation, suspension, restriction or denial was for misconduct, dishonesty or any cause substantially relating to the duties or responsibilities of a notary public.

(6) When adjudged liable for damages in any suit grounded in fraud or misrepresentation or in any suit based upon a failure to discharge fully and faithfully the duties as notary public.

(7) The use of false or misleading advertising wherein the notary public has represented that the notary public has powers, qualifications, rights or privileges that the office of notary does not have, including the power to counsel on immigration matters.

(8) Engaging in the unauthorized practice of law.

(9) Charging more than the fees adopted by the Secretary of State by rule under ORS 194.164.

(10) Failure to comply with ORS 194.162 (3) and (4).

(11) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit the notary public or another or substantially injure another.

(12) Failure to complete an acknowledgment at the time the notary's signature and official seal are affixed to the document.

(13) Execution of any certificate as a notary public containing a statement known to the notary public to be false.

(14) Using officially an official seal, seal embosser or other device making an imprint or impression that does not conform to ORS 194.031 or to the rules of the Secretary of State.

(15) Failure to give notice of change of address as required under ORS 194.047 or apply for, or give notice of, a change of name as required under ORS 194.052.

(16) Violation of ORS 194.070. [1989 c.976 §25; 2009 c.123 §5; 2009 c.338 §3]

194.168 Hearing on refusal to issue, suspension or revocation of commission. (1) If the Secretary of State proposes to refuse to issue, or to suspend or revoke, a commission of a notary public, opportunity for hearing shall be accorded as provided in ORS chapter 183 for a contested case. If the notary public does not request a hearing, revocation or suspension of the commission shall be effective 10 days after service of the Secretary of State's order.

(2) Judicial review of orders under subsection (1) of this section shall be as provided under ORS chapter 183 for a contested case. [1989 c.976 §26]

194.170 [Amended by 1983 c.393 §20; repealed by 1989 c.976 §37]

194.180 [1961 c.91 §1; repealed by 1971 c.250 §1]

194.190 [1983 c.506 §3; repealed by 1989 c.976 §37]

194.200 Action for damages or injunction for violation of ORS 194.166; attorney fees and costs; employer's liability. In addition to other remedies provided by law:

(1) A person injured by a violation of ORS 194.166 (7), (8), (10) or (11) may bring an individual action in an appropriate court to recover actual damages or $200, whichever is greater. The court or the jury, as the case may be, may award punitive damages and the court may provide such equitable relief as it deems necessary or proper. In addition to any other remedies awarded by the court, the prevailing party may be awarded attorney fees and costs and disbursements, at trial and on appeal.

(2) The Secretary of State or any private individual injured by a violation of ORS 194.166 (7), (8), (10) or (11) may bring a civil suit to enjoin the violation. In addition to any other remedies awarded by the court, the prevailing party may be awarded attorney fees and costs and disbursements, at trial and on appeal.

(3) An employer of a notary is liable to the notary for all damages recovered from the notary as a result of official misconduct that was coerced by threat of the employer, if the threat, such as that of demotion or dismissal, was made in reference to the particular notarization. [1983 c.506 §4; 1989 c.976 §29]

194.210 [Repealed by 1969 c.394 §5]

194.220 [Repealed by 1969 c.394 §5]

194.310 [Amended by 1961 c.498 §5; 1981 c.11 §4; 1983 c.506 §1; repealed by 1989 c.976 §37]

194.320 [Amended by 1981 c.11 §5; repealed by 1989 c.976 §37]

(Enforcement)

194.330 Attorney General to investigate or prosecute violation; payment of expenses. If, in the opinion of the Secretary of State, any alleged violation of ORS 194.005 to 194.200, 194.505 to 194.595 or 194.990 is not being investigated or prosecuted, the Secretary of State may direct the Attorney General to take full charge of the investigation or prosecution. If so directed, the Attorney General shall take full charge of the investigation or prosecution and the provisions of ORS 180.070, 180.080 and 180.090 shall apply. Notwithstanding ORS 180.070 (3), expenses associated with the Attorney General's investigation or prosecution shall be paid from the Operating Account under ORS 56.041. [1983 c.393 §23; 1989 c.976 §30; 1993 c.66 §11]

(Rules)

194.335 Rules. Subject to ORS chapter 183, the Secretary of State may adopt rules to carry out the purposes of ORS 194.005 to 194.200 and 194.505 to 194.595. [1989 c.976 §32]

194.410 [Amended by 1963 c.428 §1; repealed by 1977 c.404 §2 (194.500 to 194.580 enacted in lieu of 194.410)]

194.420 [Repealed by 1977 c.404 §2 (194.500 to 194.580 enacted in lieu of 194.420)]

194.430 [Repealed by 1977 c.404 §2 (194.500 to 194.580 enacted in lieu of 194.430)]

194.500 [1977 c.404 §11 (enacted in lieu of 45.125, 93.415, 93.430, 93.490, 93.500, 93.510, 93.520, 194.410, 194.420 and 194.430); repealed by 1983 c.393 §26]

UNIFORM LAW ON NOTARIAL ACTS

194.505 Definitions for ORS 194.005 to 194.200 and 194.505 to 194.595. As used in ORS 194.005 to 194.200 and 194.505 to 194.595, unless the context requires otherwise:

(1) An "acknowledgment" is a statement by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein.

(2) "In a representative capacity" means:

(a) For and on behalf of a corporation, partnership, trust or other entity, as an authorized officer, agent, partner, trustee or other representative;

(b) As a public officer, personal representative, guardian or other representative, in the capacity recited in the instrument;

(c) As an attorney-in-fact for a principal; or

(d) In any other capacity as an authorized representative of another.

(3) A "notarial act" or "notarization" is any act that a notary public of this state is authorized to perform, and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument.

(4) "Notarial officer" means a notary public or any other officer authorized to perform notarial acts.

(5) "Oath" and "affirmation" mean a notarial act or part thereof in which a notary certifies that a person made a vow in the presence of the notary on penalty of perjury.

(6) A "verification upon oath or affirmation" is a statement by a person who asserts it to be true and makes the assertion upon oath or affirmation. [1983 c.393 §2; 1989 c.976 §33; 1997 c.185 §1]

194.510 [1977 c.404 §10 (enacted in lieu of 45.125, 93.415, 93.430, 93.490, 93.500, 93.510, 93.520, 194.410, 194.420 and 194.430); repealed by 1983 c.393 §26]

194.515 Notarial acts. (1) In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

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

(3) In witnessing or attesting a signature the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.

(4) In certifying or attesting a copy of a document or other item, the notarial officer must determine that the proffered copy is a full, true and accurate transcription or reproduction of that which was copied.

(5) In making or noting a protest of a negotiable instrument a notarial officer must determine the matters set forth in ORS 73.0505.

(6) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person:

(a) Is personally known to the notarial officer;

(b) Is identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or

(c) Is identified on the basis of identification documents.

(7) For purposes of this section, "personally known" means familiarity with a person resulting from interactions with that person over a period of time sufficient to eliminate every reasonable doubt that the person has the identity claimed.

(8) For purposes of subsection (6)(c) of this section, a notarial officer has satisfactory evidence upon which to identify a person if the person:

(a) Produces a current driver license or current identity card issued by any state;

(b) Produces a current United States passport or a current officially recognized passport of a foreign country;

(c) Produces a current United States military identification card;

(d) Produces a current identity card issued by a federally recognized Indian tribe;

(e) Produces at least one current document, other than a document described in paragraphs (a) to (d) of this subsection, issued by the federal government or a state, county, municipal or other local government and containing the person's photograph, signature and physical description; or

(f) Is confined in a correctional facility and has been positively identified through examination or comparison of official government documents or records. [1983 c.393 §3; 1993 c.545 §125; 1997 c.185 §2; 1999 c.59 §49; 2003 c.533 §1; 2009 c.338 §1]

194.520 [1977 c.404 §3 (enacted in lieu of 45.125, 93.415, 93.430, 93.490, 93.500, 93.510, 93.520, 194.410, 194.420 and 194.430); repealed by 1983 c.393 §26]

194.525 Who may perform notarial acts; acts performed under federal authority. (1) A notarial act may be performed within this state by the following persons:

(a) A notary public of this state; or

(b) A judge, clerk or deputy clerk of any court of this state.

(2) Notarial acts performed within this state under federal authority as provided in ORS 194.545 have the same effect as if performed by a notarial officer of this state.

(3) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title. [1983 c.393 §4]

194.530 [1977 c.404 §4 (enacted in lieu of 45.125, 93.415, 93.430, 93.490, 93.500, 93.510, 93.520, 194.410, 194.420 and 194.430); repealed by 1983 c.393 §26]

194.535 Notarial acts in other jurisdictions of the United States. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if performed in another state, commonwealth, territory, district or possession of the United States by any of the following persons:

(a) A notary public of that jurisdiction;

(b) A judge, clerk or deputy clerk of a court of that jurisdiction; or

(c) Any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in ORS 194.545 have the same effect as if performed by a notarial officer of this state.

(3) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(4) The signature and title of an officer listed in subsection (1)(a) or (b) of this section conclusively establish the authority of a holder of that title to perform a notarial act. [1983 c.393 §5]

194.540 [1977 c.404 §5 (enacted in lieu of 45.125, 93.415, 93.430, 93.490, 93.500, 93.510, 93.520, 194.410, 194.420 and 194.430); repealed by 1983 c.393 §26]

194.545 Notarial acts under federal authority. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed anywhere by any of the following persons under authority granted by the law of the United States:

(a) A judge, clerk or deputy clerk of a court;

(b) A commissioned officer on active duty with the military services of the United States;

(c) An officer of the foreign service or consular officer of the United States; or

(d) Any other person authorized by federal law to perform notarial acts.

(2) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(3) The signature and title of an officer listed in subsection (1)(a) to (c) of this section conclusively establish the authority of a holder of that title to perform a notarial act. [1983 c.393 §6]

194.550 [1977 c.404 §6 (enacted in lieu of 45.125, 93.415, 93.430, 93.490, 93.500, 93.510, 93.520, 194.410, 194.420 and 194.430); repealed by 1983 c.393 §26]

194.555 Foreign notarial acts. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

(a) A notary public or notary;

(b) A judge, clerk or deputy clerk of a court of record; or

(c) Any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) An "Apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the designated office.

(3) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(4) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the designated title.

(5) An official stamp or seal of an officer listed in subsection (1)(a) or (b) of this section is prima facie evidence that a person with that title has authority to perform notarial acts.

(6) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, it conclusively establishes the authority of an officer with that title to perform notarial acts. [1983 c.393 §7]

194.558 Notarial acts under tribal government authority. (1) A notarial act has the same effect under the law of this state as though performed by a notarial officer of this state if performed anywhere by any of the following persons under authority granted by a federally recognized American Indian tribal government located within the United States:

(a) A notary public of the tribal government.

(b) A judge, clerk or deputy clerk of any court of the tribal government.

(c) Any other person authorized by the law of the tribal government to perform notarial acts.

(2) The signature and title of a person performing a notarial act under this section are prima facie evidence that the signature is genuine and that the person holds the designated title.

(3) The signature and title of an officer listed in subsection (1)(a) or (b) of this section conclusively establish the authority of a holder of that title to perform a notarial act. [2007 c.63 §4]

Note: 194.558 was added to and made a part of 194.505 to 194.595 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

194.560 [1977 c.404 §7 (enacted in lieu of 45.125, 93.415, 93.430, 93.490, 93.500, 93.510, 93.520, 194.410, 194.420 and 194.430); repealed by 1983 c.393 §26]

194.565 Certificate of notarial acts. (1) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office the notarial officer holds and may include the official stamp or seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty with the military services of the United States, it must also include the officer's rank.

(2) A certificate of a notarial act is sufficient if it meets the requirements of subsection (1) of this section and it:

(a) Is in the short form set forth in ORS 194.575;

(b) Is in a form otherwise prescribed by the law of this state;

(c) Is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(d) Sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(3) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by ORS 194.515. [1983 c.393 §8]

194.570 [1977 c.404 §8 (enacted in lieu of 45.125, 93.415, 93.430, 93.490, 93.500, 93.510, 93.520, 194.410, 194.420 and 194.430); repealed by 1983 c.393 §26]

194.575 Short forms. The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by ORS 194.565 (1):

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(1) For an acknowledgment in an individual capacity:

State of _____

County of _____

This instrument was acknowledged before me on _____ (date) by _____. (name(s) of person(s))

_____

(Signature of notarial officer)

(Seal, if any)

_____

Title (and Rank)

My commission expires: _____

(2) For an acknowledgment in a representative capacity:

State of _____

County of _____

This instrument was acknowledged before me on _____ (date) by _____ (name(s) of person(s)) as _____ (type of authority, e.g., officer, trustee, etc.) of _____. (name of party on behalf of whom instrument was executed)

_____

(Signature of notarial officer)

(Seal, if any)

_____

Title (and Rank)

My commission expires: _____

(3) For a verification upon oath or affirmation:

State of _____

County of _____

Signed and sworn to (or affirmed) before me on _____ (date) by _____. (name(s) of person(s) making statement)

_____

(Signature of notarial officer)

(Seal, if any)

_____

Title (and Rank)

My commission expires: _____

(4) For witnessing or attesting a signature:

State of _____

County of _____

Signed or attested before me on _____ (date) by _____. (name(s) of person(s))

_____

(Signature of notarial officer)

(Seal, if any)

_____

Title (and Rank)

My commission expires: _____

(5) For attestation of a copy of a document:

State of _____

County of _____

I certify that this is a true and correct copy of a document in the possession of _____.

Dated: _____

_____

(Signature of notarial officer)

(Seal, if any)

_____

Title (and Rank)

My commission expires: _____

[1983 c.393 §9]

194.578 Use of signature stamp by person who is blind or who has visual impairment or disability; rules. (1) As used in this section, "person who is blind" and "person with a visual impairment" have the meanings given those terms in ORS 346.110.

(2) Notwithstanding any provision of ORS 194.005 to 194.200 or ORS 194.505 to 194.595:

(a) A person who is blind, a person with a visual impairment or a person with a disability who is unable to sign any document because of the disability may use a signature stamp whenever the signature of the person is required on any document presented for notarization;

(b) In performing any notarial act involving the signature of a person described in paragraph (a) of this subsection, a notarial officer, in the manner prescribed by the Secretary of State by rule, shall witness the use of the signature stamp and accept the stamp in lieu of the signature of the person; and

(c) The notarial certificate of an act signed with a signature stamp shall contain the phrase "signed by stamp before me" or words to that effect. [1999 c.333 §2; 2007 c.70 §53]

194.580 [1977 c.404 §9 (enacted in lieu of 45.125, 93.415, 93.430, 93.490, 93.500, 93.510, 93.520, 194.410, 194.420 and 194.430); repealed by 1983 c.393 §26]

194.582 Use of electronic signatures; rules. (1) As used in this section, "electronic signature" has the meaning given that term in ORS 84.004.

(2) Notwithstanding any provision of ORS 194.005 to 194.200 or 194.505 to 194.595:

(a) A person may use an electronic signature in the manner prescribed by the Secretary of State by rule whenever the signature of the person is required on any electronic document presented for notarization;

(b) In performing any notarial act involving an electronic signature of a person described in paragraph (a) of this subsection, a notarial officer, in the manner prescribed by the Secretary of State by rule, shall accept the electronic signature of the person; and

(c) In addition to the requirements of ORS 194.505 to 194.595, the notarial certificate of an act signed with an electronic signature shall be attached electronically by the notarial officer in the manner prescribed by the Secretary of State by rule and shall contain the phrase "signed by electronic signature" or words to that effect.

(3) The Secretary of State shall adopt rules necessary to implement this section. [1999 c.718 §5; 2001 c.535 §29]

194.585 Uniformity of application and construction. ORS 194.505 to 194.575 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of ORS 194.505 to 194.575 among states enacting it. [1983 c.393 §11]

194.595 Short title. ORS 194.505 to 194.595 may be cited as the Uniform Law on Notarial Acts. [1983 c.393 §12]

FUNDING

194.700 Disposition of moneys. All moneys received by the Secretary of State under this chapter shall be paid into the State Treasury and credited to the Operating Account under ORS 56.041. [1983 c.393 §15; 1993 c.66 §9]

PENALTIES

194.980 Civil penalties; factors; notice; hearing; rules. (1) In addition to any other penalty provided by law, any notary public who is found to have performed an act of official misconduct may incur a civil penalty in the amount adopted under subsection (2) of this section, plus any costs of service or recording costs.

(2)(a) The Secretary of State shall by rule establish the amount of civil penalty that may be imposed for a particular act of official misconduct. A civil penalty shall not exceed $1,500 per act of official misconduct.

(b) In imposing a penalty authorized by this section, the Secretary of State may consider the following factors:

(A) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any official misconduct.

(B) Any prior acts of official misconduct.

(C) The gravity and magnitude of the official misconduct.

(D) Whether the official misconduct was repeated or continuous.

(E) Whether the cause of the official misconduct was an unavoidable accident, negligence or an intentional act.

(F) Any relevant rule of the Secretary of State.

(G) The notary's cooperativeness and efforts to correct the act of official misconduct.

(c) The penalty imposed under this section may be paid upon those terms and conditions as the Secretary of State determines to be proper and consistent with the public benefit. Upon request of the notary incurring the penalty, the Secretary of State shall consider evidence of the economic and financial condition of the notary in determining whether a penalty shall be paid.

(3) Imposition or payment of a civil penalty under this section shall not be a bar to any action or suit described in ORS 194.200, to a criminal proceeding or to a proceeding under ORS 194.168.

(4) A civil penalty shall not be imposed under this section until the notary public incurring the penalty has been given notice in writing from the Secretary of State specifying the violation. The notice is in addition to the notice required under ORS 183.745 and shall be served in the same manner as the notice required under ORS 183.745.

(5)(a) After initial notice as provided in subsection (4) of this section, a civil penalty may be imposed in the manner provided in ORS 183.745.

(b) The Secretary of State may delegate to a hearings officer appointed by the Secretary of State, upon such conditions as deemed necessary, all or part of the authority to conduct hearings required under ORS 183.745.

(6) Notwithstanding ORS 180.070 (3), expenses incurred by the Secretary of State or Attorney General under subsections (1) to (5) of this section or under ORS 194.200 (2) shall be paid from the Operating Account under ORS 56.041.

(7) All civil penalties and costs recovered under this section shall be paid into the Operating Account under ORS 56.041. [1989 c.976 §28; 1991 c.734 §11; 1993 c.66 §12]

194.985 Official Warning to Cease Official Misconduct. In lieu of a civil penalty imposed under ORS 194.980, the Secretary of State may deliver a written Official Warning to Cease Official Misconduct to any notary whose actions are judged by the Secretary of State to be official misconduct. [1989 c.976 §27]

194.990 Criminal penalties. (1) If punishment therefor is not otherwise provided for:

(a) A notary who knowingly and repeatedly performs or fails to perform any act prohibited or mandated respectively by ORS 194.005 to 194.200 or 194.505 to 194.595, or rules adopted thereunder, is guilty of a Class B misdemeanor.

(b) Any person not a notary public who knowingly acts as or otherwise impersonates a notary public is guilty of a Class B misdemeanor.

(c) Any person who knowingly obtains, conceals, defaces or destroys the official seal, journal or official records of a notary public is guilty of a Class B misdemeanor.

(d) Any person who knowingly solicits, coerces or in any way influences a notary public to commit official misconduct is guilty of a Class B misdemeanor.

(2) The remedies of subsection (1) of this section supplement other remedies provided by law.

(3) The clerk of the court in which a conviction under any provision of subsection (1) of this section is had shall forthwith transmit to the Secretary of State a duly certified copy of the judgment, which is sufficient grounds for revocation of the commission of the convicted notary public. [Amended by 1967 c.541 §21; 1989 c.976 §34]