

UTAH CODE ANNOTATED

TITLE 13. COMMERCE AND TRADE

CHAPTER 49. IMMIGRATION CONSULTANTS REGISTRATION ACT

13-49-304. Translations -- Prohibited acts.

(1) For purposes of this section, "literal translation" of a word or phrase from one language means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

(2) An immigration consultant may not, with the intent to mislead, literally translate, from English into another language, words or titles, including, "notary public," "notary," "licensed," "attorney," "lawyer," or any other terms that imply that the person is an attorney, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material describing the immigration consultant.

TITLE 46. NOTARIZATION AND AUTHENTICATION OF DOCUMENTS AND DIGITAL SIGNATURES

CHAPTER 1. NOTARIES PUBLIC REFORM ACT

46-1-1. Short title.

This chapter is known as the "Notaries Public Reform Act."

46-1-2. Definitions.

As used in this chapter:

(1) "Acknowledgment" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the presence of the notary, to voluntarily signing a document for the document's stated purpose.

(2) "Commission" means:

- (a) to empower to perform notarial acts; and
- (b) the written authority to perform those acts.

(3) "Copy certification" means a notarial act in which a notary certifies that a photocopy is an accurate copy of a document that is neither a public record nor publicly recorded.

(4) "Electronic signature" has the same meaning as provided under Section 46-4-102.

(5) "Jurat" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has made, in the notary's presence, a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the signed document.

(6) "Notarial act" and "notarization" mean any act that a notary is empowered to perform under this section.

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

(8) "Notary" means any person commissioned to perform notarial acts under this chapter.

(9) "Oath" or "affirmation" means a notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary on penalty of perjury.

(10) "Official misconduct" means a notary's performance of any act prohibited or failure to perform any act mandated by this chapter or by any other law in connection with a notarial act.

(11) “Personal knowledge of identity” means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(12) (a) “Satisfactory evidence of identity” means identification of an individual based on:

(i) valid personal identification with the individual’s photograph, signature, and physical description issued by the United States government, any state within the United States, or a foreign government;

(ii) a valid passport issued by any nation; or

(iii) the oath or affirmation of a credible person who is personally known to the notary and who personally knows the individual.

(b) “Satisfactory evidence of identity” does not include:

(i) a driving privilege card under Subsection 53-3-207(10); or

(ii) another document that is not considered valid for identification.

46-1-3. Qualifications -- Commissioning -- Jurisdiction and term.

(1) Except as provided in Subsection (3), the lieutenant governor shall commission as a notary any qualified person who submits an application in accordance with this chapter.

(2) A person qualified for a notarial commission shall:

(a) be 18 years of age or older;

(b) lawfully reside in this state 30 days immediately preceding the filing for a notarial commission and maintain permanent residency thereafter;

(c) be able to read, write, and understand English;

(d) submit an application to the lieutenant governor containing no significant misstatement or omission of fact and include at least:

(i) a statement of the applicant’s personal qualifications, the applicant’s residence address, a business address in this state, and daytime telephone number;

(ii) the applicant’s age and date of birth;

(iii) all criminal convictions of the applicant, including any pleas of admission and nolo contendere;

(iv) all issuances, denials, revocations, suspensions, restrictions, and resignations of a notarial commission or other professional license involving the applicant in this or any other state;

(v) the acknowledgment of a passing score by the applicant on a written examination administered under Subsection (5);

(vi) a declaration by the applicant; and

(vii) an application fee determined under Section 63J-1-504;

(e) be a Utah resident or have permanent resident status under Section 245 of the Immigration and Nationality Act; and

(f) be endorsed by two residents of the state who are over the age of 18.

(3) The lieutenant governor may deny an application based on:

(a) the applicant’s conviction for a crime involving dishonesty or moral turpitude;

(b) any revocation, suspension, or restriction of a notarial commission or professional license issued to the applicant by this or any other state;

(c) the applicant’s official misconduct while acting in the capacity of a notary; or

(d) the applicant’s failure to pass the written examination.

(4) A person commissioned as a notary by the lieutenant governor may perform notarial acts in any part of this state for a term of four years, unless the person resigned or the commission is revoked or suspended under Section 46-1-19.

(5) Each applicant for a notarial commission shall take a written examination approved by the lieutenant governor and submit the examination to a testing center designated by the lieutenant governor for purposes of scoring the examination. The testing center designated by the lieutenant governor shall issue a written acknowledgment to the applicant indicating whether the applicant passed or failed the examination.

46-1-4. Bond.

(1) A notarial commission may not become effective until a constitutional oath of office and a \$5,000 bond has been filed with and approved by the lieutenant governor. The bond shall be executed by a licensed surety for a term of four years commencing on the commission's effective date and terminating on its expiration date, with payment of bond funds to any person conditioned upon the notary's misconduct while acting in the scope of his commission.

(2) The bond required under Subsection (1) may be executed by the Office of Risk Management for notaries public employed by a state office or agency.

46-1-5. Recommissioning.

An applicant for recommissioning as a notary shall submit a new application and bond and comply with the provisions of this chapter.

46-1-6. Powers and limitations.

The following notarial acts may be performed by a notary within the state:

- (1) acknowledgments;
- (2) copy certifications;
- (3) jurats; and
- (4) oaths or affirmations.

46-1-7. Disqualifications.

A notary may not perform a notarial act if the notary:

- (1) is a signer of the document that is to be notarized except in case of a self-proved will as provided in Section 75-2-504; or
- (2) is named in the document that is to be notarized except:
 - (a) in the case of a self-proved will as provided in Section 75-2-504; or
 - (b) in the case of a licensed attorney that is listed in the document only as representing a signer or another person named in the document;
- (3) will receive directly from a transaction connected with a financial transaction in which the notary is named individually as a principal; or
- (4) will receive directly from a real property transaction in which the notary is named individually as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor, or lessee.

46-1-8. Impartiality.

(1) A notary may not influence a person to enter into or to refuse to enter into a lawful transaction involving a notarial act by the notary.

(2) A notary shall perform notarial acts in lawful transactions for any requesting person who tenders the appropriate fee specified in Section 46-1-12.

Repealed and Re-enacted by Chapter 287, 1998 General Session

46-1-9. False or incomplete certificate.

A notary may not:

- (1) execute a certificate containing a statement known by the notary to be false or materially incomplete; or
- (2) perform any notarial act with intent to deceive or defraud.

46-1-10. Testimonials prohibited.

A notary may not endorse or promote any product, service, contest, or other offering if the notary's title or seal is used in the endorsement or promotional statement.

46-1-11. Prohibited acts -- Advertising.

(1) A nonattorney notary may not provide advice or counsel to another person concerning legal documents or legal proceedings, including immigration matters.

(2)(a)(i) A nonattorney notary who advertises notarial services in any language other than English shall include in the advertisement a notice that the notary public is not an attorney.

(ii) The notice under Subsection (2)(a)(i) must include the fees that a notary may charge pursuant to Section 46-1-12 and the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN UTAH AND MAY NOT GIVE LEGAL ADVICE ABOUT IMMIGRATION OR ANY OTHER LEGAL MATTER OR ACCEPT FEES FOR LEGAL ADVICE."

(b)(i) The notice required by Subsection (2)(a) shall be in English and in the language of the advertisement and in letters of a conspicuous size.

(ii) If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message.

(c)(i) Literal translation of the phrase "Notary Public" into any language other than English is prohibited if the literal translation implies that the notary is a licensed attorney.

(ii) In this Subsection (2)(c), "literal translation" means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

46-1-12. Fees and notice.

(1) The maximum fees that may be charged by a notary for notarial acts are for:

- (a) acknowledgments, \$5 per signature;
- (b) certified copies, \$5 per page certified;
- (c) jurats, \$5 per signature; and
- (d) oaths or affirmations without a signature, \$5 per person.

(2) A notary may charge a travel fee, not to exceed the approved federal mileage rate, when traveling to perform a notarial act if:

(a) the notary explains to the person requesting the notarial act that the travel fee is separate from the notarial fee in Subsection (1) and is neither specified nor mandated by law; and

(b) the notary and the person requesting the notarial act agree upon the travel fee in advance.

(3) A notary shall display an English-language schedule of fees for notarial acts and may display a nonEnglish-language schedule of fees.

(4) (a) The fee of a notary shall not exceed \$5 per individual for each set of forms relating to a change of that individual's immigration status.

(b) The fee limitation in Subsection (4)(a) shall apply whether or not the notary is acting as a notary but does not apply to a licensed attorney, who is also a notary rendering professional services regarding immigration matters.

46-1-13. Journal may be kept.

A notary may keep, maintain, and protect as a public record, and provide for lawful inspection a chronological, permanently bound official journal of notarial acts, containing numbered pages.

46-1-14. Entries in journal.

(1) For every notarial act, the notary may record the following information in the journal at the time of notarization:

- (a) the date and time of day of the notarial act;
- (b) the type of notarial act;
- (c) a description of the document or proceeding;
- (d) the signature and printed name and address of each person for whom a notarial act is performed;
- (e) the evidence of identity of each person for whom a notarial act is performed, in the form of:
 - (i) a statement that the person is “personally known” to the notary;
 - (ii) a description of the identification document, its issuing agency, its serial or identification number, and its date of issuance or expiration; or
 - (iii) the signature and printed name and address of a credible witness swearing or affirming to the person’s identity; and
- (f) the fee, if any, charged for the notarial act.

(2) A notary may record in the journal the circumstances in refusing to perform or complete a notarial act.

46-1-15. Inspection of journal -- Safekeeping and custody of journal.

If a notary maintains a journal, the notary shall:

- (1) safeguard the journal and all other notarial records as valuable public documents and may not destroy the documents; and
- (2) keep the journal in the exclusive custody of the notary, not to be used by any other notary or surrendered to an employer upon termination of employment.

46-1-16. Official signature -- Official seal -- Seal impression.

(1) In completing a notarial act, a notary shall sign on the notarial certificate exactly and only the name indicated on the notary’s commission.

(2) (a) A notary shall keep an official notarial seal that is the exclusive property of the notary and that may not be used by any other person.

(b) Upon the resignation, revocation, or expiration of a notarial commission, the seal shall be destroyed.

(c) Each notarial seal obtained by a notary on or after July 1, 2003 shall use purple ink.

(3) (a) A new seal shall be obtained for any new commission or recommission.

(b) A new seal shall be obtained if the notary changes the notary’s name of record at any time during the notary’s commission.

(c) The seal impression shall be affixed near the notary’s official signature on a notarial certificate and shall include a sharp, legible, and photographically reproducible ink impression of the notarial seal that consists of:

- (i) the notary public’s name exactly as indicated on the notary’s commission;
- (ii) the words “notary public,” “state of Utah,” and “my commission expires on (commission

expiration date)”;

(iii) for a notary seal issued on or after July 1, 2008, the notary’s commission number, exactly as indicated on the notary’s commission;

(iv) a facsimile of the great seal of the state; and

(v) a rectangular border no larger than one inch by two and one-half inches surrounding the required words and seal.

(4) An embossed seal impression that is not photographically reproducible may be used in addition to, but not in place of, the photographically reproducible seal required in this section.

(5) The notarial seal shall be affixed in a manner that does not obscure or render illegible any information or signatures contained in the document or in the notarial certificate.

(6) A notary acknowledgment on an annexation, subdivision, or other map or plat is considered complete without the imprint of the notary’s official seal if:

(a) the notary signs the acknowledgment in permanent ink; and

(b) the following appear below or immediately adjacent to the notary’s signature:

(i) the notary’s full name and commission number appears exactly as indicated on the notary’s commission;

(ii) the words “A notary public commissioned in Utah”; and

(iii) the expiration date of the notary’s commission.

(7) A notary acknowledgment on an electronic message or document is considered complete without the imprint of the notary’s seal if the following information appears electronically within the message:

(a) the notary’s full name and commission number appearing exactly as indicated on the notary’s commission; and

(b) the words “notary public,” “state of Utah,” and “my commission expires on _____ (date)”.

46-1-17. Obtaining a seal.

(1) A vendor may not provide a notarial seal, either inking or embossing, to a person claiming to be a notary, unless the person presents a photocopy of the person’s notarial commission, attached to a notarized declaration substantially as follows:

Application for Notary Seal

I, _____ (name of person requesting seal), declare that I am a notary public duly commissioned by the state of Utah with a commission starting date of _____, a commission expiration date of _____, and a commission number of _____. As evidence, I attach to this paper a photocopy of my commission.

(2) A vendor who provides a notarial seal in violation of this section is guilty of a class B misdemeanor.

46-1-18. Liability.

(1) A notary may be liable to any person for any damage to that person proximately caused by the notary’s misconduct in performing a notarization.

(2)(a) A surety for a notary’s bond may be liable to any person for damages proximately caused to that person by the notary’s misconduct in performing a notarization, but the surety’s liability may not exceed the penalty of the bond or of any remaining bond funds that have not been expended to other claimants.

(b) Regardless of the number of claimants under Subsection (2)(a), a surety’s total liability may not exceed the penalty of the bond.

(3) It is a class B misdemeanor, if not otherwise a criminal offense under this code, for:

- (a) a notary to perform an act in violation of Section 46-1-9 or Section 46-1-11; or
- (b) the employer of a notary to solicit the notary to perform a notarial act in violation of this chapter.

46-1-19. Revocation or suspension.

The lieutenant governor may revoke or suspend a notarial commission on any ground for which an application for a notarial commission may be denied under Section 46-1-3.

46-1-20. Change of name or address -- Bond policy rider.

(1) Within 30 days of a change in the notary's name, the notary shall provide to the lieutenant governor:

- (a) the notary's new name, including official documentation of the name change; and
- (b) a bond policy rider.

(2) To obtain a bond policy rider, the notary shall:

- (a) notify the surety for the notary's bond;
- (b) obtain a bond policy rider reflecting both the old and new name of the notary;
- (c) return a bond policy rider, the original "Certificate of Authority of Notary Public";
- (d) pay a \$5 fee; and
- (e) destroy the old official seal.

(3) Within 30 days of a change in the notary's address, the notary shall provide the notary's new address to the lieutenant governor.

46-1-21. Resignation.

(1) A notary who resigns a notarial commission shall provide to the lieutenant governor a notice indicating the effective date of resignation.

(2) A notary who ceases to reside in this state or who becomes unable to read and write as provided in Section 46-1-3 shall resign the commission.

(3) A notary who resigns shall destroy the official seal and certificate.

46-1-22. Notice not invalidated.

If a notarial act is performed contrary to or in violation of this chapter, that fact does not of itself invalidate notice to third parties of the contents of the document notarized.

46-1-23. Dedication of fees.

(1) The lieutenant governor shall deposit all money collected under this chapter into the General Fund as a dedicated credit to be used by the lieutenant governor to administer this chapter.

(2) All funding for the administration of this chapter shall be nonlapsing.

CHAPTER 4. UNIFORM ELECTRONIC TRANSACTIONS ACT

46-4-205. Notarization and acknowledgment.

(1) If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied by following the procedures and requirements of Subsection 46-1-16(7).

(2) The electronic signature of the person authorized to perform the acts under Subsection

(1), and all other information required to be included by other applicable law, shall be attached to or logically associated with the signature or record.

TITLE 57. REAL ESTATE

CHAPTER 2. ACKNOWLEDGMENTS

57-2-10. Proof of execution -- How made.

The proof of the execution of any conveyance whereby real estate is conveyed or may be affected shall be:

- (1) by the testimony of a subscribing witness, if there is one; or,
- (2) when all the subscribing witnesses are dead, or cannot be had, by evidence of the handwriting of the party, and of a subscribing witness, if there is one, given by a credible witness to each signature.

57-2-11. Witness must be known or identified.

No proof by a subscribing witness shall be taken unless such witness shall be personally known to the officer taking the proof to be the person whose name is subscribed to the conveyance as a witness thereto, or shall be proved to be such by the oath or affirmation of a credible witness personally known to such officer.

57-2-12. Certificate of proof by subscribing witness.

No certificate of such proof shall be made unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party is the person described in, and who executed, the same; that such person executed the conveyance, and that such person subscribed his name thereto as a witness thereof at the request of the maker of such instrument.

57-2-13. Form for certificate of proof.

The certificate of proof shall be substantially in the following form, to wit:
State of Utah, County of _____

On this _____ (month\day\year), before me personally appeared _____, personally known to me (or satisfactorily proved to me by the oath of _____, a competent and credible witness for that purpose, by me duly sworn) to be the same person whose name is subscribed to the above instrument as a witness thereto, who, being by me duly sworn, deposed and said that he resides in _____, county of _____, and state of Utah; that he was present and saw _____, personally known to him to be the signer of the above instrument as a party thereto, sign and deliver the same, and heard him acknowledge that he executed the same, and that he, the deponent, thereupon signed his name as a subscribing witness thereto at the request of said _____.

57-2-14. Proof of handwriting.

No proof by evidence of the handwriting of a party, or of the subscribing witness or witnesses, shall be taken unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, out of the jurisdiction, or cannot be had to prove the execution thereof.

57-2-15. Evidence required for certificate of proof.

No certificate of any such proof shall be made unless a competent and credible witness shall

state on oath or affirmation that he personally knew the person whose name is subscribed thereto as a party, well knows his signature, stating his means of knowledge, and believes the name of the party subscribed thereto as a party was subscribed by such person; nor unless a competent and credible witness shall in like manner state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knows his signature, stating his means of knowledge, and believes the name subscribed thereto as a witness was thereto subscribed by such person.

57-2-16. Subpoena to subscribing witness.

Upon the application of any grantee in any conveyance required by law to be recorded, or of any person claiming under such grantee, verified under the oath of the applicant, that any witness to such conveyance residing in the county where such application is made refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment or proof of such conveyance may issue a subpoena requiring such witness to appear before such officer and testify touching the execution thereof.

57-2-17. Disobedience of subpoenaed witness -- Contempt -- Proof aliunde.

Every person who, being served with a subpoena, shall without reasonable cause refuse or neglect to appear, or, appearing, shall refuse to answer upon oath touching the matters aforesaid, shall be liable to the party injured for such damages as may be sustained by him on account of such neglect or refusal, and may also be dealt with for contempt as provided by law; but no person shall be required to attend who resides out of the county in which the proof is to be taken, nor unless his reasonable expenses shall have first been tendered to him; provided, that if it shall appear to the satisfaction of the officer so authorized to take such acknowledgment that such subscribing witness purposely conceals himself, or keeps out of the way, so that he cannot be served with a subpoena or taken on attachment after the use of due diligence to that end, or in case of his continued failure or refusal to testify for the space of one hour after his appearance shall have been compelled by process, then said conveyance or other instrument may be proved and admitted to record in the same manner as if such subscribing witness thereto were dead.

CHAPTER 2A. RECOGNITION OF ACKNOWLEDGMENTS

57-2a-1. Short title.

This chapter is known as the "Recognition of Acknowledgments Act."

57-2a-2. Definitions.

As used in this chapter:

- (1) "Acknowledged before me" means:
 - (a) that the person acknowledging appeared before the person taking the acknowledgment;
 - (b) that he acknowledged he executed the document;
 - (c) that, in the case of:
 - (i) a natural person, he executed the document for the purposes stated in it;
 - (ii) a corporation, the officer or agent acknowledged he held the position or title set forth in the document or certificate, he signed the document on behalf of the corporation by proper authority, and the document was the act of the corporation for the purpose stated in it;
 - (iii) a partnership, the partner or agent acknowledged he signed the document on behalf of the

partnership by proper authority, and he executed the document as the act of the partnership for the purposes stated in it;

(iv) a person acknowledging as principal by an attorney in fact, he executed the document by proper authority as the act of the principal for the purposes stated in it; or

(v) a person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he signed the document by proper authority, and he executed the document in the capacity and for the purposes stated in it; and

(d) that the person taking the acknowledgment:

(i) either knew or had satisfactory evidence that the person acknowledging was the person named in the document or certificate; and

(ii) in the case of a person executing a document in a representative capacity, either had satisfactory evidence or received the sworn statement or affirmation of the person acknowledging that the person had the proper authority to execute the document.

(2) "Notarial act" means any act a notary public is authorized by state law to perform, including administering oaths and affirmations, taking acknowledgments of documents, and attesting documents.

57-2a-3. Persons authorized to perform notarial acts.

(1) Notarial acts performed in this state shall be performed by:

(a) a judge or court clerk having a seal;

(b) a notary public; or

(c) a county clerk or county recorder.

(2) The following persons authorized under the laws and regulations of other governments may perform notarial acts outside this state for use in this state with the same effect as if performed by a notary public of this state:

(a) a notary public authorized to perform notarial acts in the place where the act is performed;

(b) a judge, clerk, or deputy clerk of any court of record in the place where the notarial act is performed;

(c) an officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place where the act is performed;

(d) a commissioned officer in active service with the Armed Forces of the United States and any other person authorized by regulation of the Armed Forces to perform notarial acts if the notarial act is performed for any of his dependents, a merchant seaman of the United States, a member of the Armed Forces of the United States, or any other person serving with or accompanying the Armed Forces of the United States; or

(e) any other person authorized to perform notarial acts in the place where the act is performed.

57-2a-4. Proof of authority -- Prima facie evidence.

(1) Except as provided in Subsections(2) and(3), the signature, title or rank, branch of service, and serial number, if any, of any person described in Subsections 57-2a-3(1) through(5) are sufficient proof of his authority to perform a notarial act. Further proof of his authority is not required.

(2) Proof of the authority of a person to perform a notarial act under the laws or regulations of a foreign country is sufficient if:

(a) a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act;

- 57-2a-5. Certificate.**

57-2a-6. Form of certificate.

- (1) the certificate is in a form prescribed by the laws or rules of this state;
- (2) the certificate is in a form prescribed by the laws or regulations applicable in the place where the acknowledgment is taken; or
- (3) the certificate contains the words “acknowledged before me,” or their substantial equivalent.

The form of acknowledgment set forth in this section, if properly completed, is sufficient under any law of this state. It is known as “Statutory Short Form of Acknowledgment.” This section does not preclude the use of other forms.

The foregoing instrument was acknowledged before me this (date) by (person acknowledging, title or representative capacity, if any).

(Seal)

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