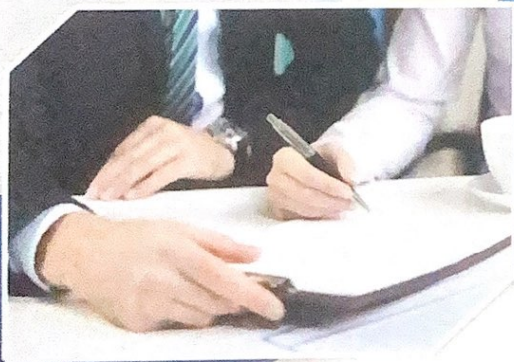




เอกสารประกอบการอบรม หลักสูตร ทนายความผู้ทำคำรับรองลายมือชื่อและเอกสาร



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สภาทนายความในพระบรมราชูปถัมภ์

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ความเป็นมาของการรับรองลายมือชื่อและเอกสาร
NOTARY PUBLIC : COMMON LAW V. CIVIL LAW
ระบบ NOTARY PUBLIC ในสหรัฐอเมริกา



LLM Chulalongkorn University, Thai Barrister at Law, LL.B, B.A. (English) Ramkhamhaeng University

ผู้ช่วยศาสตราจารย์ ดร. นิสิต อินทมาโน

ผู้อำนวยการหลักสูตรนิติศาสตรมหาบัณฑิต มหาวิทยาลัยศรีปทุม

SJD, LL.M University of Wisconsin-Madison, USA

THAT'S ALL ABOUT NOTARY PUBLIC

1. Roles of Notary Public
2. ความเป็นมาของการรับรองลายมือชื่อและเอกสาร
3. Notary Public : common law v. Civil law
4. ระบบ Notary Public ในสหรัฐอเมริกา
 - ✓ Oregon Notary Public
 - ✓ Oklahoma Notary Public
5. 23 Questions About Notaries in USA
6. Five notary statements
7. Exercise for you!!!



ROLES OF NOTARY PUBLIC

- Affidavit of eligibility to marry
- Affidavit of income
- Affidavits, oaths and declarations
- Affidavit for vehicle issues
- Assisting with documents required for work abroad
- Assisting with the purchase or sale of properties abroad
- Authenticating company documents and transactions
- Certification of copy documents

ROLES OF NOTARY PUBLIC (CONT.)

- Certification of translation
- Certification of documents for immigration or emigration
- Certification of academic records
- Foreign Adoptions
- Powers of Attorney for using in abroad
- Swearing oaths for marriage abroad
- Witnessing the execution of a will
- Witnessing a signature or seal on a form or declaration

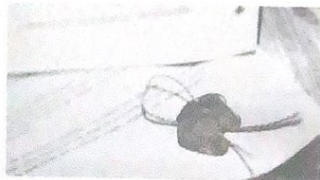
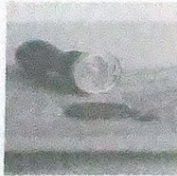
NOTARIES IN HISTORY*

- A notary is “a person of proven integrity appointment by the state to act as an impartial witness”
- Hence, the main function of the notary is to witness a legal proceeding so the the courts and other interested parties can be certain that the person signing a document knows what is being signed, is able to understand the action taken, and is in fact the person whose signature is on the document.
- In the old Roman Republic, notarii were public secretaries who were shorthand writers.
- As scribes became more and more common, they developed a service in the public marketplace to draw up legal documents and other written instruments.

*From chapter 1 Notaries in History, Oregon Notary Public Guide 2018 page 12

NOTARIES IN HISTORY

- Wax seals were used as signatures on documents.
- Later, ribbons tied together multi-page documents, and wax seals on the knots showed that no one had tampered with the knots. Then, it becomes notary seals.



ตัวอย่างตราประทับ (NOTARY STAMP) รูปแบบต่าง ๆ






Available Seals for Florida





Florida Notary Public Special

Get Your FREE Stamp

Purchase a 40 Seal Notary Seal and also a Free Rubber Stamp. You also receive one of the following 40 Florida Notary Public Rubber Stamps (not all areas included) Rectangle Rubber Stamp (not for notary use) - Purchase the 40 Seal Notary Seal and also one of the following 40 Florida Notary Public Rubber Stamps (not for notary use)




Notary Seal Example 4
 Rubber Stamp for notary use
 Size 1 1/2" x 1 1/2"
 Value \$12.95

Notary Seal Example 5
 Rubber Stamp for notary use
 Size 1 1/2" x 1 1/2"
 Value \$12.95

A NOTARY PUBLIC IN THE COMMON LAW



คือ โดยปกติ notaries ในระบบ common law ทำงานเสมือนเป็นเจ้าของที่ของรัฐ โดยมีพันธกิจตามกฎหมายให้อำนาจในการปฏิบัติหน้าที่ซึ่งอาจจะเป็นทนายความหรือไม่ก็ได้ (โดยเฉพาะในสหรัฐอเมริกา) เพื่อให้บริการประชาชนในรับรองลายมือชื่อหรือเอกสารที่ไม่มีข้อโต้แย้งทางธุรกรรม (non-contentious transactional) เช่น

- นิติกรรมที่เกี่ยวกับอสังหาริมทรัพย์
- โฉนดที่ดิน
- การมอบอำนาจให้กระทำการแทน
- การทำธุรกรรมที่เกี่ยวกับธุรกิจต่างประเทศ
- การรับรองเอกสารการขนส่งสินค้าทางทะเล

A NOTARY PUBLIC IN CIVIL LAW



- **notaries** ในระบบ **civil law** จะอาจเป็นทนายความ (**full-time lawyers**) และ/หรือเป็นเจ้าหน้าที่ในหน่วยงานของรัฐ (**public officers**) เป็นการเฉพาะซึ่งทำงานด้านเอกสารธุรกรรมที่ไม่มีข้อโต้แย้งทางธุรกรรม (**non-contentious transactional**) เกี่ยวกับการขึ้นทะเบียนหรือการรับรองเอกสารสาธารณะ จึงกำหนดให้ผู้ที่ทำหน้าที่เป็น **notaries** ต้องมีวุฒิการศึกษาตามกฎหมายไม่ต่ำกว่าชั้นปริญญาตรี ต้องผ่านการฝึกอบรมไม่น้อยกว่าระยะเวลาที่กำหนดและทดสอบความรู้ก่อนจึงจะสามารถปฏิบัติหน้าที่ **notaries** ได้
- ตัวอย่างกฎหมายที่เกี่ยวข้องกับการทำงานของ **notaries** ในประเทศที่ใช้ประมวลกฎหมาย
 - ✓ กฎหมายทรัพย์สิน
 - ✓ กฎหมายครอบครัว
 - ✓ กฎหมายพินัยกรรม
 - ✓ กฎหมายการจัดตั้งบริษัท

ระบบ NOTARY PUBLIC ในสหรัฐอเมริกา*

- A notary is "a person of proven integrity appointed by the state to act as an impartial witness" (National Notary Association Home Study Course).
- The main function of the notary is to witness a legal proceeding so that the courts and other interested parties can be certain that the person signing a document knows what is being signed, is able to understand the action taken, and is in fact the person whose signature is on the document.*

*2018 Oregon Notary Public Guide

ระบบ **NOTARY PUBLIC** ในสหรัฐอเมริกา

Three Components of a Notary Public

“He or she must be of proven integrity, an officer of the state, and an impartial witness to a particular transaction.”



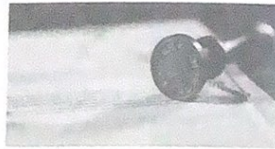
1. PROVEN INTEGRITY



- Because a notary's whole purpose is to detect and deter fraud, Oregon statutes require notary applicants to undergo a criminal background check.
- The law requires that an applicant must “not have been convicted of a felony or any crime involving fraud, dishonesty or deceit during the 10- year period preceding the date of the application.” ORS 194.315(2)(d).
- If a person has been convicted of embezzlement or fraud, he or she will be disqualified to receive a notarial commission.
- A traffic violation such as a speeding ticket, however, isn't relevant to notarial functions and wouldn't disqualify one from obtaining a notarial commission.

2. MINISTERIAL OFFICER OF THE STATE

- A notary public is commissioned by the state and acts as an officer of the state.
- Because the office is ministerial rather than regulatory or judicial, the duties of the office are narrowly defined to certain prescribed acts of limited scope.
- A notary must follow written rules that allow only limited discretion in performing these acts.
- A notary needs to remember that they have become a State of Oregon Notary, not their employer's notary.



3. IMPARTIAL WITNESS

- The main function of the notary is to witness a legal proceeding.
- The notary may refuse to notarize if not satisfied of the willingness, competence or capacity, and identity of the signer.
- The notary does not validate or legalize the document nor guarantee its truth.
- It is important to the validity of the witnessed act that the notary be impartial



QUALIFICATIONS TO BECOME AN OREGON NOTARY PUBLIC

- 1) Be 18 years of age or older.
- 2) Be a resident of Oregon or have a place of employment or practice in this state.
- 3) Be able to read and write English.
- 4) Not have had a notary public commission revoked during the 10 year period
- 5) Complete a notary training course within the last 6 months.
- 6) Not have been convicted of a felony or of any crime involving fraud, dishonesty or deceit during the 10-year period
- 7) Not have been convicted of acting as or otherwise impersonating a notary public, obstructing governmental or judicial administration or engaging in the unlawful practice of law.
- 8) Not have been found by a court to have practiced law without a license or engaged in an unlawful trade practice.
- 9) Pass the Secretary of State's Notary Public examination.
- 10) The term for a Notary Commission is 4 years

BECOME A NOTARY IN OREGON STATE

1. Complete a training course.
2. Meet the qualifications to be a Notary Public for the State of Oregon
3. Submit your application.
4. Pass the required online exam
5. Oath of Office.
6. Receive your certificates.
7. Stamping Devices and Journals.

We do not provide these; you must purchase them yourself.

The journal and stamping device are the tools a notary uses to perform notarial acts and should be kept in a secure location accessible only to the notary.

23 QUESTIONS ABOUT NOTARIES

1. How old do I need to be to become a Notary Public?

You must be at least 18 years of age at the time of appointment.

2. Do I need to be a resident of this state?

You can be a resident of this state, or be a resident of another state and have a place of employment or practice within this state. If you live in another state and are an Oregon notary, you must perform all notarizations in the state of Oregon.

3. Must I be able to read and write the English language?

Yes.

23 QUESTIONS ABOUT NOTARIES

4. How long is a commission good for?

The term of office for Oregon Notaries Public is 4 years.

23 QUESTIONS ABOUT NOTARIES

5. If my employer pays for my commission and my stamping device, am I only a notary for the business in which I am employed?

No. The notarial commission and its related tools belong to the notary public and not the employer. A notary public is commissioned by the State of Oregon to provide a service to the public. The law does not state that notaries MUST serve the public, but if service is refused without just cause, the notary public and their employer could face a civil law suit. ORS 194.990(1)(a).

23 QUESTIONS ABOUT NOTARIES

6. My former employer paid for my notarial commission and kept my stamping device. Can they do that and can I still be a notary?

An individual, not an employer, is commissioned as a notary public. It does not matter who paid for the notarial commission, stamping device, and notarial journal—they belong to the notary public.

23 QUESTIONS ABOUT NOTARIES

7. May a notary prepare legal documents?

Only if the notary public is an attorney, supervised by an attorney (such as a paralegal), or prepares such documents as a licensed professional. Even then, a notary public must not be party to the transaction or have a direct beneficial interest in it.

23 QUESTIONS ABOUT NOTARIES

8. Am I required to be bonded or have liability (errors and omissions) insurance?

Oregon does not require its notaries public to be bonded or to have liability insurance. This is left to the discretion of the notary public.

23 QUESTIONS ABOUT NOTARIES

9. May I notarize for a minor?

A minor must provide acceptable ID just as an adult would. ORS 194.240(2). Have the minor put his or her age next to the signature so that the receiving party realizes that they are dealing with a minor.

Note the age of the minor in the notarial journal. Minors must be competent when signing.

Ask questions of the minor such as

“What kind of document are you signing?”

“What will the document do?”

“Do you want to sign the document?”

If the notary public is not comfortable with the answers the minor gives, the notary should refuse to notarize, noting why in the notarial journal, and advise the customer to seek legal advice.

23 QUESTIONS ABOUT NOTARIES

10. My employer wanted me to notarize a document signed by a client who came in while I was at lunch. I told him that I couldn't notarize unless the client appeared before me. Was I correct?

Yes. All notarizations require the signer to be present at the time of the notarization. The notary public needs the signer to sign the notarial journal and give appropriate identification information.

23 QUESTIONS ABOUT NOTARIES

11. Must a notary always notarize?

A notary is not always required to notarize. In fact, when you are in doubt because something appears fraudulent (the ID looks fake), or some other aspect of the notarization appears amiss, you should not notarize. It is your responsibility to maintain your expertise, since you are commissioned for all the permitted acts and not a specialty.

23 QUESTIONS ABOUT NOTARIES

12. May I notarize for someone in a hospital or nursing home?

Special care must be taken when notarizing for the elderly or those in a medical care setting. Awareness may need to be established by someone in authority (e.g., doctor, nurse, or attorney).

Medications can alter the customer's reasoning abilities. Consult with the signer's doctor/nurse/attorney and write down their remarks in the notarial journal. Have the authority sign your journal by their remarks, as to the awareness of the customer/patient.

Prior to notarizing, ask the customer some questions about the document to be sure that they understand what they are signing and seem competent in their responses. Common sense, as well as reasonable care and caution, are the prime indicators on whether to proceed.

When in doubt, don't notarize, noting the refusal in the notarial journal, and advise the customer to seek legal advice.

23 QUESTIONS ABOUT NOTARIES

13. Should I notarize a blank or incomplete document?

Common sense would prevent most notaries from notarizing a signature on a completely blank sheet of paper, knowing that a fraudulent document could be created on the blank sheet. Even blank spaces that can be filled in later have a potential for fraudulent use. If blanks are intended to be left blank, it is up to the customer to indicate that in some manner (e.g., N/A to indicate not applicable).

23 QUESTIONS ABOUT NOTARIES

14. My current commission has expired and I have reapplied. May I use my old stamp until my new stamp is made?

No. The stamp with the expired date should be destroyed as soon as possible.

23 QUESTIONS ABOUT NOTARIES

14. What should I do if my notary stamping device is stolen?

Report the incident to the police, then report the fact to the Secretary of State, Corporation Division using the Missing Stamp, Certificate or Journal form. The Secretary of State, Corporation Division will email a Certificate of Authorization with a new commission number, so the notary public can begin the process of replacing the notary stamping device.

23 QUESTIONS ABOUT NOTARIES

15. May I choose not to keep the notarial journal?

The law states that all notaries shall maintain one or more journals in which the notary public chronicles all notarial acts that the notary public performs. Penalties can and will be incurred if this is not done. ORS 194.300(1).

23 QUESTIONS ABOUT NOTARIES

16. Is my notarial journal a public record that anyone may look at?

Most notaries public are exempt from disclosing the notarial journal contents unless requested by the Secretary of State, Corporation Division, or when required by subpoena. OAR 160-100-0430(2). If the notary public is a public official or public employee, then the notarial journal falls under public record laws. Should the Secretary of State, Corporation Division, deem that it is in the public interest not to disclose such information, the notarial journal would not be made public.

23 QUESTIONS ABOUT NOTARIES

17. Should I keep copies of every document that I notarize?

No, a notary should not keep copies of the documents that they notarize. Your journal entry is sufficient evidence for the purpose of recording a notarial act. If a notary should keep an original record provided by the person for notarization, the notary may not withhold access to the original record. However, the Secretary of State strongly recommends that notaries do not keep such records.

23 QUESTIONS ABOUT NOTARIES

18. Should I keep copies of identification that I use to identify the signer?

No, a notary should not keep copies of identification that they use to identify the signer. Your journal entry is sufficient evidence for the purpose of recording how you identified the signer.

23 QUESTIONS ABOUT NOTARIES

19. May a notary public in Oregon perform a marriage ceremony?

No, only Florida, Maine, Nevada, and South Carolina notaries public may perform a marriage ceremony.

23 QUESTIONS ABOUT NOTARIES

20. May a signer use a signature stamp on the document they want notarized?

Yes. A stamp, a mark, or other indication of the execution is sufficient. The signature stamp should match or be a legible reproduction of a person's signature on their identification document.

23 QUESTIONS ABOUT NOTARIES

21. May I correct a mistake I made in a notary certificate several days after it was executed?

Corrections can be made. Only the notary public may make corrections that are needed, and the corrections must be made on the original certificate. Note in your journal any corrections or changes that were made to the certificate.

23 QUESTIONS ABOUT NOTARIES

22. If two people sign the same document and they're both on the same notarial certificate, do I charge \$10 or \$20?

The fee would be \$20. The fee is per notarial act. Even if the notary public is using one notarial certificate, the notary public in this case is identifying and witnessing two separate executions on the document. OAR 160-100-0400.

23 QUESTIONS ABOUT NOTARIES

23. Am I required to display a list of the notary fees that I may charge?

If the notary public is going to charge for services, the fees must either be prominently displayed or handed to the customer, prior to the notarization, so that the customer can refuse notarial services if the customer does not wish to pay. OAR 160-100-0400; OAR 160-100-0410.

OKLAHOMA: NOTARY PUBLIC GUIDE

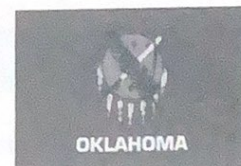


AUTHORITY OF A NOTARY

- An Oklahoma notary public may perform notarial acts **anywhere in the state of Oklahoma** even though the appointment is for the county of residence or, in the case of a non-resident employed in Oklahoma, the county of employment.
- Whenever a document is notarized, the notary must indicate on the document the county in which the notarization is taking place. A notary may **not** notarize his/her own signature.



OKLAHOMA: NOTARY PUBLIC GUIDE



BOND REQUIREMENT

- Before a person can act as a notary and no more than sixty (60) days after the issuance of his/her commission, he/she must file a \$1,000.00 surety bond, an oath of office, loyalty oath and a \$10.00 filing fee with the Office of the Secretary of State.
- The bond must be issued for a term that commences on the bond's effective date and terminates on the commission's expiration date. The notarial bond may be purchased from an insurance agency or bonding company.



OKLAHOMA: NOTARY PUBLIC GUIDE



NOTARY LOG

- State law does not require a notary to keep records of their official acts.
- However, it is recommended that a notary maintain a log of his/her official acts to assist in recalling past notarial acts, if needed, or if legally challenged. If a notary is called upon to testify in court, a log may become evidence to help establish what actually took place.
- Information to be retained in the notary log should include the following:
 1. Date of notarial act;
 2. Type of notarial act performed;
 3. A description of the document;
 4. The signature and printed name and address of each person for whom a notarial act was performed;
 5. A description of the form of identification provided (i.e. driver's license or photo identification) or a statement that the person was "personally known" to the notary;
 6. The location where the notarization was performed;
 7. The amount of fee charged, if any; and
 8. Personal notes.

FIVE NOTARY STATEMENTS



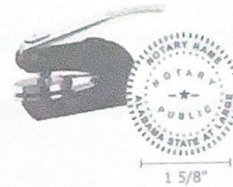
- (1) **Acknowledgments** (การทูลสัตยาบัน)
 - For an acknowledgment in an individual capacity;
 - For an acknowledgment in a representative capacity;
- (2) **Oaths and Affirmations** (การทูลสัตยาบันต่อความสัตย์จริง)
 - For a verification on oath or affirmation
- (3) **Witnessing or attesting a signature**
 - For witnessing or attesting a signature:
- (4) **Certifying a copy of a record:**
 - For certifying a copy of a record:
- (5) **Depositions** (คำให้การตามบทสาท)
 - For certifying the transcript of a deposition:

1. ACKNOWLEDGMENTS

(คำแถลงยืนยัน)

An acknowledgment is a declaration by an individual before a notarial officer that:

- (1) the individual has signed a record for the purpose stated in the record; and
- (2) if the record is signed in a representative capacity, the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.



2. OATHS AND AFFIRMATIONS

(ถ้อยแถลงด้วยวาจาที่มีการสาบานว่าให้ข้อมูลด้วยความสัตย์จริง)

- An oath is a formal declaration or promise to perform an act faithfully and truthfully or an affirmation of the truth of a statement.
- Oaths are usually given for three purposes:
 - (1) That a statement is the truth;
 - (2) That the testimony he or she will be giving will be the truth;
 - (3) That he or she will faithfully perform the duties of a public office.
- Oaths may be spoken or written.
- An oath that is not based on an appeal to a higher power or supreme being is called an affirmation.
- Individuals who prefer not to swear may make an affirmation.

