

## **PREFACE AND ACKNOWLEDGEMENTS**

This document is the Notary Public and Justice of the Peace manual prepared by the Secretary of State with the advice and approval of the Attorney General pursuant to RSA 455:17. The manual addresses the law and other relevant information pertaining to Notaries Public and Justices of the Peace in the State of New Hampshire. It also briefly addresses the role and function of Commissioners of Deeds and other officials authorized by statute to perform notarial acts.

The manual is organized into sections. First, the Uniform Law on Notarial Acts is covered. Second, for each officer, the duties, recommended procedures, and other relevant information are addressed. Third, ethical considerations for all notarial officers are addressed, and the Notary Public Code of Responsibility - Guiding Principles, developed by the National Notary Association, is included. Finally, sample documents and copies of forms, and other information are provided in the Appendix.

Each section of this manual contains a reference to the corresponding law that pertains to each topic. For instance, under “Notarial Officers in New Hampshire” on page 4, the citation to “RSA 456-B:3” indicates that the source for the law on appointment of notaries public can be found in New Hampshire Revised Statutes Annotated 456-B:3. The statutes are available through the state’s legislative branch web site. The legislative branch web site can be accessed through New Hampshire’s web home page at <http://www.nh.gov/>. Recommendations of the National Notary Association are included throughout the manual. Further information on the Association and its’ recommendations can be accessed through its’ web home page at <http://www.NationalNotary.org>.

The integrity of many New Hampshire business and legal transactions depends upon the knowledge and honesty of notarial officers. It is imperative that notarial officers have a thorough understanding of their duties and responsibilities. It is our hope that this manual will assist you in performing those duties effectively.

The manual is intended to assist notaries public and justices of the peace in performing their duties by providing easy access to the law and other relevant information. However, the manual is not a law book and it is not a substitute for legal advice. This manual also does not address the judicial duties of a Justice of the Peace. Court decisions and changes to statutes may be made between printings of the manual. The manual will be updated within 6 months after the end of any session of the Legislature that amends the statutes affecting the privileges, duties, or responsibilities of notaries public, justices of the peace, or commissioners.<sup>1</sup> The current edition of the manual will be available in print form at the Secretary of State’s Office, State Room 204, 107 N. Main Street, Concord, New Hampshire, 03301 and from the Secretary of State’s web site at <http://www.sos.nh.gov/>.

## TABLE OF CONTENTS

INTRODUCTION .....	4
UNIFORM LAW ON NOTARIAL ACTS .....	4
NOTARIAL OFFICERS IN NEW HAMPSHIRE .....	4
EVIDENCE THAT A PERSON HOLDS THE TITLE OF NOTARIAL OFFICER .....	5
NOTARIAL ACTS IN NEW HAMPSHIRE .....	5
IDENTITY OF THE PERSON SEEKING NOTARIZATION .....	6
NOTARIAL ACTS IN OTHER JURISDICTIONS OF THE UNITED STATES .....	9
NOTARIAL ACTS UNDER FEDERAL AUTHORITY .....	9
FOREIGN NOTARIAL ACTS .....	10
NOTARIES PUBLIC .....	11
QUALIFICATIONS .....	11
APPLICATION .....	11
APPOINTMENT.....	12
OATH OF OFFICE AND COMMISSION.....	13
NOTARY SEAL.....	15
FEES .....	16
JOURNAL .....	16
CHANGE OF NAME.....	16
CHANGE OF ADDRESS .....	17
POWERS AND DUTIES .....	17
ADMINISTERING AN OATH OR AFFIRMATION.....	18
(1) OATHS OF OFFICE FOR PUBLIC OFFICIALS .....	19
(2) TAKING A VERIFICATION UPON OATH OR AFFIRMATION .....	20
(3) TAKING AN ACKNOWLEDGEMENT.....	21
(4) DEPOSITIONS .....	26
(5) WITNESSING OR ATTESTING A SIGNATURE.....	28
(6) CERTIFYING OR ATTESTING A COPY .....	29
(7) NOTING A PROTEST.....	32
(8) SAFE DEPOSIT BOXES.....	33
COMPTENCY TO ACT AS A NOTARY PUBLIC .....	34
REAPPOINTMENT .....	35
JUSTICES OF THE PEACE .....	37
QUALIFICATIONS .....	37
APPLICATION .....	38
APPOINTMENT.....	39
OATH OF OFFICE AND COMMISSION.....	40
INDEX CARD .....	42
NO SEAL REQUIRED .....	42
FEES .....	43
JOURNAL .....	43
CHANGE OF NAME .....	43
CHANGE OF ADDRESS .....	44
POWERS AND DUTIES .....	44
(1) ADMINISTERING AN OATH OR AFFIRMATION.....	45
(2) OATHS OF OFFICE FOR PUBLIC OFFICIALS .....	46

(3) TAKING A VERIFICATION UPON OATH OR AFFIRMATION .....	48
(4) TAKING AN ACKNOWLEDGEMENT.....	49
(5) DEPOSITIONS.....	53
(6) WITNESSING OR ATTESTING A SIGNATURE .....	56
(7) CERTIFYING OR ATTESTING A COPY.....	57
(8) NOTING A PROTEST.....	59
(9) MARRIAGE.....	61
(10) CIVIL UNION .....	63
(11) ARREST WARRANTS .....	65
COMPETENCY TO ACT AS A JUSTICE OF THE PEACE .....	68
REAPPOINTMENT .....	69
COMMISSIONERS OF DEEDS .....	70
COMMISSIONERS OF DEEDS APPOINTED BY THE GOVERNOR.....	70
COMMISSIONERS OF DEEDS APPOINTED BY THE COURTS.....	70
COMMISSIONERS FOR OTHER STATES.....	71
UNLAWFUL ACTS .....	71
ADMINISTRATION OF OATHS AND NOTARIAL ACTS BY THE MILITARY .....	71
SIGNATURE AND TITLE AS EVIDENCE.....	71
FEE.....	72
ETHICS .....	73
CONFLICTS OF INTEREST.....	73
NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY .....	75
UNLAWFUL ACTS .....	76
PENALTIES FOR UNLAWFUL ACTS .....	77
DEFINITIONS .....	78
APPENDIX.....	80
LIST OF SUPERIOR COURTS .....	81
HAGUE CONVENTION MEMBERS .....	80
PERTINENT NEW HAMPSHIRE STATUTES .....	82
ENDNOTES .....	88

## **INTRODUCTION**

In the State of New Hampshire, the Governor, with the advice and consent of the Executive Council, appoints public officials whose duties serve to protect the integrity of certain business transactions, legal documents and proceedings, and other events. These public officials are referred to as notarial officers, and their official duties are referred to as notarial acts.

This manual outlines the application and appointment procedures to become a Notary Public or Justice of the Peace, as well as the role and function of notaries public, justices of the peace, and other officials authorized to perform notarial acts in New Hampshire. The history and requirements of the Uniform Notarial Act, adopted by the State of New Hampshire in 2005 as RSA 456-B:1 et seq., are also addressed.

## **UNIFORM LAW ON NOTARIAL ACTS**

The Uniform Law on Notarial Acts, hereinafter referred to as the Uniform Law, was “designed to define the content and form of common notarial acts and to provide for the recognition of such acts performed in other jurisdictions.”<sup>2</sup> The Uniform Law was drafted by the National Conference of Commissioners in 1982 and its passage was recommended within all of the fifty states. New Hampshire adopted the Uniform Law on Notarial Acts in 2005 as RSA 456-B:1 et seq. The law took effect in New Hampshire on January 1, 2006.

The Uniform Law applies to all public officials who perform notarial acts in New Hampshire, including notaries public, justices of the peace, commissioners, and all other persons authorized to perform any notarial acts. Accordingly, the sections of the Uniform Law directly applicable to each notarial officer are addressed in each of the notarial officer sections below.

RSA 456-B:1

## **NOTARIAL OFFICERS IN NEW HAMPSHIRE**

Pursuant to the Uniform Law, the following persons may perform notarial acts within this state:

- (1) A Notary Public of New Hampshire;
- (2) A Justice of the Peace of New Hampshire; or,
- (3) A judge, marital master, clerk, deputy clerk, register of probate, or deputy register of probate of any court of New Hampshire.

The New Hampshire version of the Uniform Law also permits a person admitted to practice law in the State to administer an oath or affirmation for the purpose of taking oral testimony.

In addition to the persons authorized to perform notarial acts in the Uniform Law, Commissioners of Deeds<sup>3</sup> and certain members of the military<sup>4</sup> are also authorized in separate

statutes to perform notarial acts. Notarial acts performed within New Hampshire under federal authority have the same effect as if performed by a notarial officer of New Hampshire. Effective July 1, 2007, licensed court reporters also have statutory authority to perform a limited notarial function. RSA 310-A:181 authorizes licensed court reporters to place any person under oath in the performance of their court reporting duties, without having been designated a Notary Public, Justice of the Peace, or commissioner of deeds, as specified in RSA 455.<sup>5</sup>

RSA 310-A:181, 456-B:3.

## **EVIDENCE THAT A PERSON HOLDS THE TITLE OF NOTARIAL OFFICER**

Any person who holds the title of notarial officer should be able to produce, upon request of a person seeking notarization services, a copy of his or her commission signed by the Governor, evidencing that he or she is a notarial officer. A person's status as a notarial officer can also be verified by contacting the Secretary of State's office.

In addition, the Uniform Law establishes the evidence that must be on a notarized document to show that a person holds the designated title of notarial officer.

### ***Notary Public***

For a Notary Public, the signature along with the official seal or legible imprint of an official rubber stamp are prima facie evidence that the person holds the title of Notary Public. If the notary uses an official rubber stamp rather than an official seal, the legible imprint of the stamp must contain the name of the notary, the words "Notary Public" and "New Hampshire" and the expiration date of the Notary Public's commission. If the expiration date is inadvertently omitted, RSA 456:B-7, I permits it to be subsequently added. However, notarial officers should be warned that alteration of other items on the certificate, like pre or post-dating, could in certain circumstances constitute a crime pursuant to RSA 541:7, entitled "Tampering With Public Records or Information."

### ***Justice of the Peace***

For a Justice of the Peace, the name of the justice and the expiration date of his or her commission on the document are prima facie evidence that the person holds the title of Justice of the Peace and that his or her signature is genuine. The name and expiration date of the commission may be typed, printed, or stamped on the document.

RSA 456-B:3

## **NOTARIAL ACTS IN NEW HAMPSHIRE**

A "notarial act" is any act that a Notary Public is authorized to perform, including, but not limited to:

- (1) taking an acknowledgement;

- (2) administering an oath or affirmation;
- (3) taking a verification upon oath or affirmation
- (4) witnessing or attesting a signature;
- (5) certifying or attesting a copy; and
- (6) noting a protest of a negotiable instrument.

The specific requirements for each notarial act are addressed in the separate notarial officers sections. In addition to the acts identified in the Uniform Law, there are notarial acts that certain notarial officers are authorized to perform by other New Hampshire statutes. These acts are addressed below in the section covering the notarial officer authorized to perform them.

456-B:1, I.

## **IDENTITY OF THE PERSON SEEKING NOTARIZATION**

When performing any notarial act, the Uniform Law requires that the notarial officer determine the identity of the person appearing before him or her. The notarial officer's "[R]esponsibility to reasonably verify the identity of every person for whom [he or] she notarizes is profound."<sup>6</sup> Proper identification is critical to prevent one person from using the identity of another in having a notarial act performed. "The notary performs this function of signer identification as a fiduciary of the public."<sup>7</sup> As a result, "the notary is expected to perform [it] with integrity and diligence."<sup>8</sup>

In New Hampshire, a notarial officer has a statutory duty to determine the identity of the person appearing before him or her. The National Notary Association recommends that notarial officers act with reasonable care in performing this duty. Reasonable care is the degree of care that a prudent and competent person engaged in the same endeavor would exercise under similar circumstances.<sup>9</sup> Reasonable care is a test of liability for negligence.<sup>10</sup> While New Hampshire has yet to specifically address the identity issue, other jurisdictions have found that a failure to exercise reasonable care in determining identity constitutes negligence. For example, a Notary Public who, as a favor, notarized a document without having the person named in the document appear before her and without confirming her identity, was found to have acted negligently.<sup>11</sup> As a result, a notarial officer should take the statutory duty to determine the identity of the person appearing before him or her very seriously.

## **THERE IS NO EXCEPTION TO THE REQUIREMENT OF A PERSONAL APPEARANCE BEFORE THE NOTARIAL OFFICER.**

A person must be physically in the presence of the notarial officer for any notarial act to be performed in that person's name. It is not sufficient that the notarial officer know the person and his or her signature on the document to be notarized. It is not sufficient that the person verify by telephone that it is his or her signature. The law does not currently permit a notarial officer to witness an act through video conference or other electronic means where the person making the act is at a physical location different from the notarial officer or otherwise not in the physical presence of the notarial officer. Even where a notarial officer may work with and perform

notarial acts regularly for another person, there are no exceptions to the legal requirement that the person be in the physical presence of the notary for each and every notarial act.

### ***Determining Identity***

A notarial officer may determine the identity of the person before him or her in one of the two following ways:

- (1) The Notary Public's own *personal* knowledge as to the identity of the person; or,
- (2) Receipt of satisfactory evidence.

#### **(1) Personal Knowledge of Identity**

The first requirement is straight forward. If a Notary Public personally knows the individual appearing before him or her who signed the document, the personal knowledge requirement has been satisfied. Personal knowledge does not require extensive knowledge of the individual or his or her history. If the notary could testify under oath in a court of law as to the identity of the individual without using any identification or reference document, then the notary has personal knowledge of the individual's identity.

RSA 456-B:2, I.

#### **(2) Satisfactory Evidence of Identity**

If the notary does not personally know the individual appearing before him or her, identification requires satisfactory evidence of the person's identity. The Uniform Law establishes the types of evidence that a notarial officer may accept as satisfactory evidence to establish identity for the purpose of performing a notarial act.

##### ***a. Identification by a Credible Witness***

Satisfactory evidence can be provided in the form of an identification of the person by a credible witness made under oath or affirmation. The key here is that the witness must be someone that the notary personally knows *and* who is credible. It cannot be a person that the notary has just met or someone the notary knows to be dishonest. The witness must also personally know the signer who is appearing before the notary. For example, a person appearing before the notary could be identified under oath or affirmation by an acquaintance of the notary who personally knows the signer of the document. The identification by the notary's acquaintance would be satisfactory evidence so long as the acquaintance is someone who the notary knows to be credible and who personally knows the signer. Personal knowledge here also does not require extensive knowledge of the individual or his or her history. If the witness could testify under oath in a court of law as to the identity of the individual without using any identification or reference document, then the witness has personal knowledge of the individual's identity.

##### ***b. Identification by Documents***

Satisfactory evidence of a person's identity can also be provided in the form of identification documents. A person appearing before a notary may bring an identification document to identify

him or herself. The most commonly used form of identification document is a driver's license. Because of the importance that the identity of the person appearing before the notarial officer be confirmed, good practice would include inspecting the identification document to be sure that it has not been altered. In addition, the notary should check to be sure that the name on the identification document is exactly the same as the name in the document being notarized. If the identification document spells the name differently, or if the document says the person is, for example, John Doe, Sr. and the identification document says the person is John Doe, Jr., best practice would be to ask for clarification and additional documentation. The notarial officer must only perform the notarial act if satisfied that it is more likely than not that the individual appearing before him or her is the person named in the identification document.

RSA 456-B:2, VI.

The Uniform Law on Notarial Acts does not define identification documents nor does it provide a specific list of acceptable identification documents in our statute.

While the notary statutes do not define identification documents, New Hampshire's election law statutes provide a list of identification documents that may be used in determining a person's identity. *See* RSA 654:12. Acceptable identification documents for election law purposes include a photo driver's license issued by any state or the federal government, a United States passport, armed services identification, or other photo identification issued by the United States government, or a photo identification issued by a local or state government. *Id.* The election law also allows use of other photo identification, such as an employee photo identification card issued by a local employer where the official is familiar with the appearance of a legitimate employee ID from that employer and knows that the employer exercises reasonable care in issuing employee identification cards. *Id.* Because the notary law does not provide a list of acceptable identification documents, good practice would include consulting this elections law list when deciding whether an identification document is acceptable.

## **CERTIFICATE OF NOTARIAL ACTS**

Every time a notarial officer performs a notarial act, he or she must complete a certificate that is signed and dated. The certificate must include:

- (1) An identification of the jurisdiction in which the notarial act is performed; and
- (2) The notarial officer's title.

If the official is a Notary Public, the certificate must also include the official stamp or seal and the date of expiration of the commission. If the officer is a commissioned officer on active duty in the military service of the United States, the certificate must also include the officer's rank.

A certificate of a notarial act is sufficient if it meets the above requirements and it:

- (1) Is one of the short forms listed at the end of each notarial act section of this manual;
- (2) Is in a form otherwise prescribed by New Hampshire law;

- (3) Is in a form prescribed by the laws or regulations applicable where the act was performed; or
- (4) Sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by RSA 456-B:2 (establishing identity, truth and accuracy of a copy, or for a protest, the matters set forth in RSA 382-A:3-205).

RSA 456-B:7.

## **NOTARIAL ACTS IN OTHER JURISDICTIONS OF THE UNITED STATES**

A notarial act has the same effect under New Hampshire law even if performed in another state, commonwealth, territory, district, or possession of the United States, provided the act is performed by any of the following persons:

- (1) A Notary Public of that jurisdiction;
- (2) A judge, clerk, or deputy clerk of a court of that jurisdiction; or
- (3) Any other person authorized by the law of that jurisdiction to perform notarial acts.

Notarial acts performed in other jurisdictions under federal authority as provided in RSA 456-B:5 have the same effect as if performed by a notarial officer of New Hampshire.

The signature and title of a person performing a notarial act are sufficient evidence that the signature is genuine and that the person holds the designated title. The signature and indicated title of either a Notary Public, a judge, a clerk, or a deputy clerk, conclusively establishes the authority of a holder of that title to perform a notarial act within that given jurisdiction.

RSA 456-B:4

## **NOTARIAL ACTS UNDER FEDERAL AUTHORITY**

Notarial acts performed anywhere by any of the following persons have the same effect under New Hampshire law as if performed by a notarial officer of New Hampshire:

- (1) Judge, clerk, or deputy clerk of a court;
- (2) A commissioned officer on active duty in the military service of the United States;
- (3) An officer of the foreign service or consular officer of the United States; or
- (4) Any other person authorized by federal law to perform notarial acts.

The signature and title of a person performing a notarial act are sufficient evidence that the signature is genuine and that the person holds the designated title. The signature and title of one of the officers listed above conclusively establish the authority of that person to perform a notarial act.

RSA 456-B:5

## **FOREIGN NOTARIAL ACTS**

A notarial act performed by any of the following persons within and under the authority of a foreign country or an international organization has the same effect under New Hampshire law as if performed by a notarial officer of New Hampshire:

- (1) A Notary Public or notary of the foreign jurisdiction;
- (2) A judge, clerk, or deputy clerk of a court of record of the foreign jurisdiction; or
- (3) Any other person authorized by the law of the foreign jurisdiction to perform notarial acts.

Either of the following conclusively establishes the authenticity or validity of the notarial act:

- (1) A certificate by a foreign service or consular officer of the United States stationed in the country under the jurisdiction of which the notarial act was performed;
- (2) A certificate by a Foreign Service or consular officer of that country stationed in the United States.

An official stamp or seal of the person performing the notarial act is sufficient evidence that the signature is genuine and that the person holds the indicated title. The official stamp or seal of any of the following officers conclusively establishes their authority to perform a notarial act:

- (1) A Notary Public or notary;
- (2) A judge, clerk, or deputy clerk of a court of records.

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, the authority of an officer with that title to perform notarial acts is conclusively established.

RSA 456-B:6

## NOTARIES PUBLIC

A Notary Public is an official appointed by the Governor, with the advice and consent of the Executive Council. The official responsibilities of notaries public include, among other things, administering oaths and affirmations, witnessing signatures, taking depositions, and acknowledging deeds and other instruments.

RSA 455:1, 3.

### QUALIFICATIONS

A person who wishes to apply to be a Notary Public must:

- (1) Be at least 18 years of age;
- (2) Be a New Hampshire resident; and,
- (3) Be endorsed by two New Hampshire notaries public and a person registered to vote in New Hampshire.

The endorsement by two New Hampshire notaries public and a person registered to vote requires more than just the endorser's signatures on the application. The endorsement referred to in the statute requires that the endorser actually give his or her approval and support to the applicant.<sup>12</sup> Such approval requires that the endorser, at a minimum, personally know the applicant and believe that he or she is of a character consistent with the honesty and integrity required of a Notary Public.

In addition to the above qualifications, it is within the discretion of the Governor and Executive Council to find particular criminal convictions as disqualifying. Given that all applicants are statutorily required to provide a criminal background by signing a written statement under oath regarding their criminal history, this information is relevant to the appointment process and may be taken into consideration by the Governor and Executive Council during contemplation of an application.

RSA 5:10, 455:2, 16

### APPLICATION

The application process to become a Notary Public is handled by the Secretary of State's Office. In order to apply to become a Notary Public, a person must:

- (1) Obtain an application and criminal record release form from the Secretary of State's Office. The application materials can be obtained by:
  - a) Calling (603) 271-3242;

- b) Mailing a request in writing to: Secretary of State's Office, 107 North Main Street, State House, Room 204, Concord, N.H. 03301;
  - c) Emailing a request to [elections@sos.state.nh.us](mailto:elections@sos.state.nh.us); or,
  - d) Downloading an application and criminal record release form from the Secretary of State's website at [sos.nh.gov/notary.html](http://sos.nh.gov/notary.html).
- (2) Complete the application and have it endorsed by two notaries public and a person registered to vote in New Hampshire. These should be individuals who know the applicant and are able to "endorse" the applicant's suitability to be entrusted with the authority of a Notary Public;
- (3) Sign a written statement under oath as to whether he or she has ever been convicted of a crime that was not annulled by a court, other than minor traffic violations; and,
- (4) Pay a seventy-five dollar fee to the Secretary of State.

The completed application, criminal record release form, and the fee, must be mailed or delivered to the Secretary of State's office at the above address.

RSA 5:10, 455:2.

### **APPLICANTS MUST NOT MAKE A FALSE REPRESENTATION ON THE APPLICATION.**

A person applying to become a Notary Public is prohibited by law from:

- (1) Negligently making a material false representation on the application;
- (2) Recklessly making a material false representation on the application; and,
- (3) Purposefully or knowingly making a material false representation on the application form.

Any person who negligently or recklessly makes a material false representation on the application form is subject to a civil penalty of up to one thousand dollars *per violation*. These penalties are paid to the secretary of state for deposit into the general fund. Any person who purposefully or knowingly makes a material false representation on the application form is guilty of a class A misdemeanor.

RSA 455:16.

### **APPOINTMENT**

Upon receipt of a completed application, the Secretary of State's office will forward it to the Governor and Executive Council for nomination. If, after review of the application and criminal record the applicant is nominated to become a Notary Public, the application is once again submitted by the Secretary of State's office to the Governor and Council, this time for

appointment. The Governor, with the advice and consent of the Executive Council, may then make the appointment. This process generally takes eight to ten weeks.

A Notary Public's commission begins on the date the Governor and Council confirm the appointment. The date of appointment will be indicated on the commission. The individual, however, may not act as a Notary Public until he or she has taken the oath of office.

Approximately one week after appointment by the Governor and Council, a newly appointed Notary Public will receive his or her commission in the mail, along with the oath of office, index card, and other information from the Secretary of State's office. The information provided should be reviewed and kept by the notary. The oath, commission, and index card need further action as described below.

RSA 92:2, 455:1.

### **TERM**

A Notary Public's commission lasts five years from the date of appointment.

RSA 455:1

### **OATH OF OFFICE AND COMMISSION**

After receiving the oath of office and commission in the mail, a Notary Public must:

- (1) Sign and take the oath of office before the authorized officials listed below; and,
- (2) Have those who sign the oath also sign the commission. Keep the signed commission for your records; and,
- (3) Return the oath to the Secretary of State's office as soon as possible. Unless the oath is on file at the Secretary of State's office, the office cannot certify that you a Notary Public.

Official oaths must be certified by the same person who administered them.

**A NOTARY PUBLIC CANNOT SIGN DOCUMENTS UNTIL HE OR SHE HAS TAKEN THE OATH OF OFFICE.**

RSA 92:2, 5.

### **OFFICIAL OATH**

No person appointed to hold a public office where an oath is required, including notaries public, is permitted to exercise such office or perform any act of the office until he or she makes and subscribes the oath required by the New Hampshire Constitution.

The official oath may be administered to a newly appointed notarial officer by any 2 members of the council, or by any member of the council with a Justice of the Peace, or by any 2 justices of the peace, or by any Justice of the Peace with any Notary Public.

RSA 92:2, 5.

The New Hampshire Constitution prescribes the language of the official oath of office for public officials as follows:

“[I], A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitution thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all duties incumbent on me as [a Notary Public], according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God.”<sup>13</sup>

The person taking the oath substitutes his or her name as it is written on the commission for “A.B.”

If a person who has been appointed a Notary Public has a religious objection to taking an oath or for other reasons is opposed to taking an oath, he or she is permitted to make an affirmation instead. The New Hampshire Constitution provides that for such persons, the language of the above oath may be altered to omit the word “swear” and the words “So help me God,” and to instead say “This I do under the pains and penalties of perjury.” A person whose beliefs do not allow him or her to either swear or affirm faith and true allegiance to the United States of America and the State of New Hampshire is not entitled to hold the position of Notary Public, an office of that government.

**The oath of office is intended to be more than just ceremony and should be taken seriously. A Notary Public who violates his or her oath of office after taking it shall be dismissed from office.**<sup>14</sup>

A sample commission and oath of office are included in the sample forms and notices section of this manual.

N.H. Constitution, Part II, Art. 84; RSA 92:5.

## **INDEX CARD**

Along with the commission, it is the practice of the Secretary of State’s office to send a newly appointed Notary Public an index card to be completed *after* he or she has taken the oath. The notary’s name, address, the date the oath was taken, the date of the commission, and the notary’s signature should be filled in. The notary’s signature on the card provides a sample signature for the record.

**Sample Index Card**

_____NAME
_____ADDRESS
I took my oath as a Notary Public on _____
My commission is dated _____
_____
Your Signature
Mail to Clerk of Superior Court for your County

After the index card has been filled out, the Notary Public must mail it to the Clerk of the Superior Court of the county in which he or she resides. A list of the superior courts is included in the Appendix.

**NOTARY SEAL**

All of a Notary Public’s certifications must either be under an official seal *or* carry the legible imprint of an official rubber stamp.

An official seal must have the following information printed on it:

- (1) The notary’s name; and,
- (2) The words “Notary Public” and “New Hampshire”.

If the notary uses an official seal, he or she must also have a separate rubber stamp that has the expiration date of the Notary Public’s commission on it.

An official rubber stamp must have the following information printed on it:

- (1) The notary’s name;
- (2) The words “Notary Public” and “New Hampshire”; and,
- (3) The expiration date of the Notary Public’s Commission.

The seal and rubber stamp are not provided by the Secretary of State. They must be purchased by the Notary Public from an office supply store or other vendor.

While state law permits notaries public to use a rubber stamp, it may not be sufficient for certain purposes. For example, federal passport regulations may require a raised seal. A Notary Public should consider whether the rubber stamp is sufficient for the type of notarial act being performed.
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RSA 455:3

## **FEES**

Notaries public are entitled to a fee of up to ten dollars for each oath, witness, service, or certification performed, with two exceptions. First, for services related to the taking of depositions, a Notary Public is entitled to a fee of at least five dollars but no more than fifty dollars. The notary can vary the fee depending upon the amount the notary feels is sufficient payment for the deposition services. Second, a Notary Public may not charge a fee for administering and certifying oaths of office of town officers.

In addition to the fees, when a Notary Public travels to swear witnesses, he or she is entitled to twenty cents per mile as mileage.

RSA 455:11; 517:19.

## **JOURNAL**

While not required by law, it is recommended that a Notary Public maintain a journal of all notarial acts performed. Good practice would dictate including in the journal, at a minimum, the following information:

1. The notarial act performed;
  2. The date of the notarial act;
  3. The identifying information of the person appearing before the Notary Public;
- and,
4. Any other details the Notary Public believes would be useful in referring back to the act.

A journal will provide a record of the details of each notarial act that the Notary Public can refer to if called upon to verify the act.

## **CHANGE OF NAME**

A Notary Public should notify the Secretary of State's office any time his or her name changes during a commission. When notifying the Secretary of State, the Notary Public must include his or her *prior* name and *new* name. In addition, a Notary Public should request a new commission reflecting his or her new name. The fee for a new commission is five dollars payable by cash or check to the Secretary of State's Office.<sup>15</sup>

If the Notary Public is within six months of the end of his or her five year commission, it is the practice of the Secretary of State's office to permit the Notary Public to continue to sign official documents using both the old and new names rather than requesting a new commission. For example, if Jane Smith's name changes to Jane Jones she could still sign as Jane (Smith) Jones.

## **CHANGE OF ADDRESS**

The Secretary of State's office should be notified any time a Notary Public has a change of address during his or her five year commission. Failure to notify the Secretary of State's office will result in the Notary Public not receiving an application for reappointment.

### ***What if a person cannot sign his or her own name?***

A Notary Public may still perform a notarial act for a person who is unable to sign his or her name due to a physical disability or other inability to write. Some accommodation should be made to allow a person with this type of disability to have a document notarized. While the notarial laws do not specifically address this issue, other statutes do. For example, in the context of the Uniform Commercial Code (RSA 382-A:1-201), the word "signed" is defined to include any symbol executed or adopted by a party with present intention to authenticate a writing. Best practice would be to permit the person to sign the document by marking an "X" or other symbol on the signature line. If the person is unable to make any mark at all and has a signature stamp, this may also be permitted. The Notary Public should exercise considerable caution in making sure the signature, whether a symbol or stamp, is the true signature of the person before him or her. Having a witness in addition to the notary is recommended.

If another person needs to make the mark or signature for the person, the notary should add a statement to the notarial certificate stating what actually occurred at the notarization. For example if a notary is notarizing a document for John Doe, who is a quadriplegic, and Jane Doe, his wife, signs his name after he communicates to the notary his intent that the document be signed, the notary could write: "Notarized in the presence of John Doe, who was unable to sign his name due to a disability. Mr. Doe communicated his intent to sign this document and his wife Jane Doe signed his name in my presence."

## **POWERS AND DUTIES**

Once commissioned, a Notary Public has the power to perform a number of notarial acts within the State of New Hampshire. A notarial act is any act that a Notary Public is authorized to perform, including the following acts:

16

- (1) Administering an oath or affirmation;
- (2) Taking a verification upon oath or affirmation;
- (3) Taking an acknowledgement;
- (4) Witnessing or attesting a signature;
- (5) Certifying or attesting a copy;
- (6) Noting a protest of a negotiable instrument;
- (7) Depositions; and,

(8) Observing the opening of a safe deposit box for which the rent has not been paid.

RSA 385:4, 455:3, 456-B:1, I.

A Notary Public is performing one of the listed acts, therefore, a Notary Public may not sign a blank document or jurat. The Notary Public must witness the act being notarized, by witnessing the signature, or oath, or directly verifying the accuracy of a copy being certified.

**A NEW HAMPSHIRE NOTARY PUBLIC IS NOT AUTHORIZED TO PERFORM NOTARIAL ACTS OUTSIDE THE STATE.**

**ADMINISTERING AN OATH OR AFFIRMATION**

A Notary Public is authorized to administer oaths and affirmations. An oath is “a solemn declaration or promise made with an appeal or sense of responsibility towards God for the truth or what is being stated.”<sup>17</sup> For example, “I, [name of declarant], do solemnly swear that [statement] is true, so help me God.” An affirmation is “a pledge equivalent to an oath but without reference to a supreme being or to swearing...”.<sup>18</sup> If a person has a religious or other objection to taking an oath, he or she is permitted to make an affirmation instead. For such persons, the language of the oath may be altered to omit the word “swear” and replace it with the word “affirm” and to omit the words “So help me God,” and to instead say “This I do under the pains and penalties of perjury.” For example, “I, [name of declarant], do solemnly affirm, that [statement] is true, under the pains and penalties of perjury.”<sup>19</sup>

When administering an oath or affirmation, no particular ceremony is necessary other than that the declarant hold up his or her right hand. “[A]ny other form or ceremony may be used which the person to whom the oath is administered professes to believe more binding upon the conscience.”<sup>20</sup> An oath (or affirmation) is properly administered when the declarant “knows that his statement is sworn and given under oath in the presence of an oathtaker.”<sup>21</sup> The purpose of the oath (or affirmation) is to emphasize the declarant’s legal obligation to tell the truth.<sup>22</sup> “[A] sworn document requires the affiant to swear to the truth of the document under oath, an oath may be administered without any affirmative act by an oathtaker.”<sup>23</sup> A notary must accommodate any person who, due to disability, cannot hold up his or her right hand, and may use any reasonable means of ensuring the person taking the oath understands the seriousness of the act.

N.H. Constitution Part II, Art. 84; RSA 455:3, 516:19, 20.

**Swearing in a Witness During Court Proceedings**

When swearing in a witness during court proceedings, a Notary Public should request the witness to raise his or her right hand before making the oath. If the witness objects to raising his or her hand, he or she may be permitted to use any other form or ceremony, so long as he or she “[P]rofesses to believe [it] more binding upon the conscience.”<sup>24</sup>

***Attorneys***

In the State of New Hampshire, any person admitted to the practice of law in New Hampshire may administer an oath or affirmation as described above for the purpose of taking oral testimony.

RSA 456-B:3, IV.

The language generally used for swearing in a witness under oath in New Hampshire is as follows:

“Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?”

The language generally used for a witness making an affirmation rather than an oath is as follows:

“Please raise your right hand. Do you under the pains and penalties of perjury affirm to tell the truth, the whole truth and nothing but the truth?.”<sup>25</sup>

### **(1) OATHS OF OFFICE FOR PUBLIC OFFICIALS**

Persons appointed to hold public offices are statutorily required to take an official oath of office. No person chosen or appointed to any public office or to any position where an oath is required can exercise such office or position or perform any act therein until he or she has taken the oath. Any person who violates his or her oath after taking it shall be dismissed from the office or position involved.

RSA 92:2.

#### ***Notaries Public May Administer Official Oaths.***

Notaries public are authorized to administer certain official oaths as follows:

- (a) To all military officers above the rank of field officers by any Notary Public with any Justice of the Peace; and,
- (b) To all other officers appointed by the governor and council, by any Notary Public with any Justice of the Peace.

RSA 92:5.

#### ***Language of Official Oaths***

The language for the oath a public official must make is prescribed by part 2, article 84 of the constitution of New Hampshire as follows:

“[I], A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitution thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all duties incumbent on me as ....., according to the best of my abilities, agreeably to the rules and regulations of

this constitution and laws of the state of New Hampshire. So help me God.”<sup>26</sup>

The name of the person taking the oath is substituted for “A.B.” above and the office the person will perform is inserted in the blank.

If a person does not wish to swear, the word “*affirm*” in the oath may be substituted for “*swear*,” and the words “*This you do under the pains and penalties of perjury*,” may be substituted for “*So help you God*.” Such affirmation shall, for all purposes, be and constitute an oath.

N.H. Constitution, Part II, Art. 84; RSA 92:3.

### ***Ceremony Required for Official Oaths***

The person taking the oath is required to hold up his or her right hand. No other ceremony is necessary.

RSA 92:4.

### ***Certification and Recording of Official Oaths***

An official oath must be certified *by the person administering it* and returned immediately to the recording officer of the body making the election or appointment.

The oaths that must be recorded at the Secretary of State’s office include, but are not limited to the following: Notaries Public, Justices of the Peace, Commissioners of Deeds, the Attorney General, Deputy Attorney General, Assistant Attorneys General, State Representatives, State Senators, the Governor, all commissioners, board members, and department and division heads appointed by Governor and Council, County Elected Officials.

The oaths that must be recorded with the town clerk include any officials appointed by the town.

The oaths that must be recorded with the recording officer for the school district include, but are not limited to the following: Treasurer of the school board, and members of the school budget committee.

NH Constitution, Part II, Art. 84; RSA 92:6, 195.

## **(2) TAKING A VERIFICATION UPON OATH OR AFFIRMATION**

A verification upon oath or affirmation is a declaration by a person under oath or affirmation, made in front of a Notary Public or other authorized official, that his or her written statement is true. The Notary Public’s certification that a person has made a verification upon oath or affirmation is referred to as a jurat. A jurat is required anytime a person must swear to the truth of the contents of a document, such as for an affidavit and certain court documents. In executing a jurat, a notary is confirming that the person appeared before the notary, was given an oath or affirmation by the notary attesting to the truthfulness of the document, and signed the document in the notary's presence.

An example of the wording that a Notary Public may use in taking a verification upon oath or affirmation is “Do you solemnly swear that the contents of this [name of document] signed by you are true and correct, so help you God?” or “Do you swear and affirm that the contents of this [name of document] signed by you are true and correct?”

As with all notarial acts, it is very important that the notary identify the person making the 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. Please see the “Identity of the Person Seeking Notarization” section beginning on page six of this manual for a complete description of the identification process. Proper identification is especially important for verifications because the notary is certifying that the signer attested to the truthfulness of the document. However, a jurat on a document does not prove that the contents of the document are true, it simply establishes that the signer has sworn that the contents are true.

RSA 456-B:1, III, B:2, II.

**Sample Certification of Verification Upon Oath or Affirmation**

The statutory short form for a certification of a verification upon oath or affirmation is as follows:

State of New Hampshire  
County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me on the \_ day of \_\_\_\_\_, \_\_\_\_ by  
\_\_\_\_\_ (name(s) of person(s) making statement).

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any)

Notary Public, State of New Hampshire

My commission expires \_\_\_\_\_

RSA 456-B:8, III.

**(3) TAKING AN ACKNOWLEDGEMENT**

An acknowledgment is a declaration by a person, in front of a Notary Public or other authorized official, that the person has signed a document for the purposes stated in the document. The purpose of an acknowledgment is to confirm that the signature on the document is authentic.<sup>27</sup> In order to make certain that the signature is authentic, the Notary Public must determine that the person appearing before him or her and making the acknowledgement is the person whose signature is on the document. Please see the “Identity of the Person Seeking Notarization” section beginning on page six of this manual for a complete description of the identification

process. Acknowledgements are generally executed on deeds and other documents that will be publicly recorded by a county official.

For an acknowledgement, the document may have been signed on a date prior to the person appearing before the notary to acknowledge the signature. This differs from witnessing a signature, which requires that a document actually be signed in the presence of the notary.

The difference between an acknowledgement and a verification is that for an acknowledgement a person is swearing that he or she is the person who signed the document while for a verification, in addition to swearing that he or she signed the document, the person is swearing that the contents of the document are true.

RSA 456-B:1, II, B:2, I

### **Acknowledgements - Individual or Representative Capacity**

An acknowledgement may be made in an individual capacity or in a representative capacity. If an acknowledgement is made in an individual capacity it means that the person appearing before the notary is acknowledging the document and signature on his or her own behalf. If an acknowledgement is made in a representative capacity means that the person appearing before the notary is appearing on behalf of some other person or entity. A person may be appearing in a representative capacity in one of the following four ways:

- 1) For or on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;
- 2) As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;
- 3) As an attorney in fact for a principal; or,
- 4) In any other capacity as an authorized representative of another.

When a person makes an acknowledgement in a representative capacity, the person is declaring that he or she signed the instrument with proper authority, and executed it as the act of the person or entity represented and identified in the document. The notary must still determine the identity of the person appearing before him or her for acknowledgements made in a representative capacity. The notary is certifying that the person represented him or herself to the notary as having authority to act in the representative capacity. The notary does not have a duty to determine if the person in fact and law does have authority to represent the other person or entity. The jurat establishes only that the representation was made, not that the authority to represent the other person or entity exists in fact and law.

One common form of representative capacity is a Power of Attorney. A Power of Attorney is a document that a person (commonly referred to as the "principal") completes and signs granting another person (the "agent") authority to manage some aspect of the principal's property, finances, or health, among other things. This power can be broad or general depending on what the principal decides to authorize the agent to do. When the agent is signing a document in his or her capacity as power of attorney, he or she will typically sign his or her own name followed by

"power of attorney for" and the name of the principal. The Notary Public must determine the identity of the person appearing before him or her (the agent), not the person being signed for (the principal). Best practice for a Notary Public in notarizing a document for a person using a power of attorney would be to require the agent to provide a certified copy of the power of attorney document evidencing that the agent has the authority to acknowledge the document for the principal.

If the notarized document is one that must be recorded or filed with a court, typically attorneys will include a copy of the power of attorney document with the notarized document. For example, when recording a deed that is signed by a person with a power of attorney, the attorney would include a certified copy of the power of attorney document with the deed documents to be recorded.

RSA 456-B:1, II, IV; 506, 5-7.

***Sample Procedure for Taking an Acknowledgement***

The Notary Public should request the signer to raise his or her right hand and ask, "Do you swear and acknowledge that the signing of this document is your voluntary act and deed?" The signer must give an affirmative response before the Notary Public can complete the certification.

28

**Certification of an Acknowledgement**

After the Notary Public is satisfied that the person appearing before him or her is the person whose signature is on the document, a certification must be completed. In the certification, the notary certifies that the individual appeared before him or her and acknowledged the document on the date indicated. The certification a notary uses will vary depending upon whether the acknowledgement is made in an individual or representative capacity.

***Sample Certification for an Acknowledgement Made in an Individual Capacity***

The statutory short form for a certification of an acknowledgment in an individual capacity is as follows:

State of New Hampshire  
County of \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_, \_\_\_\_ by  
\_\_\_\_\_ (name(s) of person(s)).

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any)

Notary Public, State of New Hampshire

My commission expires: \_\_\_\_\_

RSA 456-B:8, I.

***Sample Certification for an Acknowledgement Made in a Representative Capacity***

The statutory short form for a certification of an acknowledgement made in a representative capacity is as follows:

State of New Hampshire  
County of \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ 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)

Notary Public, State of New Hampshire

My commission expires:\_\_\_\_\_

RSA 456-B:8, II.

**Taking an Acknowledgement for a Document that Needs an Apostille**

An apostille is a certification on a document that the signature of a public official on the document is authentic. An apostille certifying a notarization by an official commissioned by the State of New Hampshire can only be obtained from the Secretary of State’s office. Before a document can receive an apostille from the Secretary of State’s office, it must have the original signature of a Notary Public or Justice of the Peace witnessing the signature of the person executing the document. As a result, a Notary Public may be asked to take an acknowledgement of a document that will need an apostille. One common example of a requirement for an apostille is the requirement in many foreign countries that the documents required for a United States citizen to adopt a child born in that foreign country be notarized and that an apostille certify that the notary’s signature is legitimate.

Many foreign countries require evidence that the signatures of public officials on documents from other countries are authentic. Since the Hague Convention in 1961, many countries accept an apostille to certify the authenticity of the signature of a public official on a document being sent to another country. Prior to the Hague Convention, all documents going from the United States to a foreign country had to be “legalized.” Essentially, legalization required the United States to produce diplomatic or consular agents to certify the authenticity of the signature on the document, the capacity in which the person signing the document acted, and the identity of the seal or stamp it bore.<sup>29</sup> The result of the Hague Convention was to eliminate this cumbersome requirement and replace it with a much simpler process that still ensured the legitimacy of the document. This simpler process is referred to as an apostille.<sup>30</sup> It is important to note that the apostille process established by the Hague Convention only applies to countries that have chosen

to be parties to the Convention or that have since formally adopted the process. A list of the countries is included in the Appendix to this manual.

RSA 5-C:99.

### ***Getting an Apostille***

Any document that will be sent to a country that has adopted the apostille process as a member of the Hague Convention, must have an apostille on it. An apostille can only be issued by a competent authority. In New Hampshire, an apostille can only be issued by the Secretary of State's Office.

Under State law, a vital record with an apostille must contain the following:

- (1) The signature of the state registrar or the clerk of the town or city;
- (2) The notarized acknowledgement of the state registrar or clerk; and,
- (3) The acknowledgement of the document by the Secretary of State, including his signature and seal.

RSA 5-C:99

**BEFORE A DOCUMENT WILL BE GIVEN AN APOSTILLE BY THE SECRETARY OF STATE'S OFFICE, IT MUST HAVE AN ORIGINAL NOTARY PUBLIC OR JUSTICE OF THE PEACE SIGNATURE, WITNESSING THE SIGNATURE OF THE PERSON SWEARING TO OR AFFIRMING THE DOCUMENT.**

The Secretary of State cannot certify signatures of town and city clerks, county or state registrars or other state officials. The signatures must be those of a Notary Public or Justice of the Peace for the State of New Hampshire. If signed by a notary, the notary's seal must be on the document. When the Secretary of State's office attaches the apostille, it is certifying that the signature of the Notary Public or Justice of the Peace, *not the person swearing to or affirming the document*, is authentic.

### ***Fee for Apostille***

The Secretary of State's office charges a ten dollar fee per apostille. The fee is payable to the State of New Hampshire by cash or check. In addition to the regular fee, there is an expedited fee to receive apostilles on ten or more documents the same day the request for them is made. Currently, there is no expedited fee for less than ten documents. The expedited fee for ten to twenty documents is twenty-five dollars, for twenty to thirty documents is fifty dollars, and for thirty to forty documents is seventy-five dollars.

RSA 5:10.

**ONCE AN APOSTILLE HAS BEEN ATTACHED TO A DOCUMENT, A NOTARY PUBLIC CANNOT COPY CERTIFY IT.**

Certifying a copy is a notarial act in which a notarial officer certifies that a copy of a document is a true and accurate reproduction of the original. Under New Hampshire law, an apostille is considered to be a vital record document and cannot be copy certified by a Notary Public or Justice of the Peace.

RSA 5-C:98, 99.

#### **(4) DEPOSITIONS**

A deposition is a written record of a witness's out-of-court testimony that is reduced to writing for later use in court or for discovery purposes in a legal action.<sup>31</sup> In New Hampshire, depositions must be taken before a Notary Public, or other authorized notarial officer. Generally, a deposition of a party or a witness is requested by the adverse party. The person being deposed is commonly referred to as the "deponent." The attorney for the party requesting the deposition has the opportunity to ask the deponent questions first. This is usually followed by questions from the attorney for the deponent. If there are multiple parties to the legal action, the attorneys for each party are also given the opportunity to question the deponent.

RSA 516:4, 517:2.

#### **Notice of Deposition**

A notary may issue a notice for witnesses to appear before himself or herself, or any other justice or notary, to give depositions in any matter in which a deposition may be lawfully taken. A notice of deposition must be in writing and must contain the day, hour, and place of taking the deposition. The notice must be signed by the Notary Public.

RSA 517:4.

#### **Deposition Testimony is Given Under Oath**

Prior to the start of the deposition, the deponent must take an oath or affirmation that his or her testimony will be truthful. The Notary Public may administer this oath or affirmation in the same manner as a witness is sworn in during court proceedings. A Notary Public should request the witness to raise his or her right hand before making the oath or affirmation. If the witness objects to raising his or her hand, he or she may be permitted to use any other form or ceremony, so long as he or she "[P]rofesses to believe [it] more binding upon the conscience."<sup>32</sup>

The language generally used for swearing in a witness under oath in New Hampshire is as follows:

"Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?"

The language generally used for a witness making an affirmation rather than an oath is as follows:

"Please raise your right hand. Do you under the pains and penalties of perjury affirm to tell the truth, the whole truth and nothing but the truth?"<sup>33</sup>

Since any person admitted to the practice of law in New Hampshire may administer an oath or affirmation for the purpose of taking oral testimony, an attorney present at a deposition could also administer the oath or affirmation to the deponent.

RSA 456-B:3, IV.

### **Signing of the Deposition under Oath**

After a deposition is taken and, if necessary, transcribed, the deponent generally reviews the deposition for accuracy. After completing the review, the deponent must sign the deposition under oath. The wording of this oath is provided for by law. The deponent is required to swear that the deposition:

“[C]ontains the truth, the whole truth and nothing but the truth relative to the cause for which it was taken.”

A Notary Public or other authorized notarial officer must take the written oath for the transcript of the deposition. Members of the bar who not also notarial officers are not permitted to take this oath because they are limited to taking oaths for oral testimony *only*.

RSA 456-B:3, IV, 517:7.

### **Certification of a Deposition**

The certification of a deposition must include the following:

- (a) The time and place of taking the deposition;
- (b) The case and court in which the deposition is to be used;
- (c) Whether the adverse party was present or not;
- (d) Whether the adverse party was notified or not; and,
- (e) Whether the adverse party objected or not.

RSA 517:8.

### **Fees for Depositions**

For services related to the taking of depositions, a Notary Public is entitled to a fee of at least five dollars but no more than fifty dollars. The notary can vary the fee depending upon the amount the notary feels is sufficient payment for the deposition services. In addition to the fee, a notary is entitled to twenty cents per mile as mileage to swear witnesses.

RSA 517:19.

## **A NOTARY PUBLIC IS DISQUALIFIED FROM TAKING A DEPOSITION IN CERTAIN CIRCUMSTANCES.**

A Notary Public cannot take a deposition if he or she:

- (a) Is a party to the action;
- (b) Is a relative, employee, or attorney of a party to the action;
- (c) Has a financial interest in the action or its outcome;
- (d) Has entered into an arrangement to provide exclusive deposition transcribing or recording services for a person or entity which has a financial interest in the action or its outcome;  
or,
- (e) Is employed by, or is an independent contractor working for, a person or entity which has entered into an arrangement to provide exclusive deposition transcribing or recording services for a person or entity which has a financial interest in the action or its outcome.

RSA 517:3.

In addition to the above statutes, there are other statutes and rules governing depositions which notaries who choose to do this type of work must familiarize themselves with, including the remainder of RSA Chapter 517 entitled “Depositions.”

### **(5) WITNESSING OR ATTESTING A SIGNATURE**

A Notary Public is authorized to witness a signature. Witnessing a signature is also referred to as attesting a signature. In order for a Notary Public to witness a signature, the person named in the document must appear before the notary *and* sign the document in the notary’s presence. The notary’s certification that he or she witnessed a signature provides evidence that the document was actually signed on the date of the certification. This is different from an acknowledgement, which may have been signed on a date prior to the person appearing before the notary to acknowledge the signature.

As is required for all notarial acts, the Notary Public must confirm the identity of the person appearing before him or her. Before witnessing a signature, a notary must determine that the person signing the document is the person named in the document. Please see the “Identity of the Person Seeking Notarization” section beginning on page six of this manual for a complete description of the identification process.

RSA 456-B:2, III, VI.

### **Sample Certification for Witnessing or Attesting a Signature**

The statutory short form for a certification for witnessing or attesting a signature is as follows:

State of New Hampshire  
County of \_\_\_\_\_

Signed or attested before me on \_\_\_\_day of\_\_\_\_by \_\_\_\_\_(name(s) of person(s)).

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any)

Notary Public, State of New Hampshire

My commission expires\_\_\_\_\_

RSA 456-B:8, IV.

### **(6) CERTIFYING OR ATTESTING A COPY**

Certifying a copy, also referred to as attesting a copy, is a notarial act in which a Notary Public, or other authorized official, certifies that a photocopy, or other type of copy, of a document is a true and accurate reproduction of the original document. In certifying or attesting a copy of a document, the Notary Public must determine that the proffered copy is a full, true, and accurate transcription or reproduction of the one that is copied.

RSA 456-B:2, IV.

#### **Document Copy Certification**

To have a copy of a document certified, a person must appear before the Notary Public with the original document. The person may either also bring the copy to be certified, or a copy may be made in the notary's presence. In either case, the notary must check the entire copy to be sure it is a full, true, and accurate reproduction of the original. Once the notary has determined that the entire document has been accurately copied, the notary can certify that the document is a true and accurate reproduction of the original. The copy certification jurat must be used, it is not sufficient for the Notary Public to just sign his or her name on the copy.

As a practical matter, for long or complex documents, it will typically be necessary for the copy to be made in the presence of the notary using equipment the notary reasonably believes to make accurate copies. Otherwise, it would be necessary to make a word for word comparison of the original to the copy before a notary could certify that the copy is a true copy. Even where the notary makes or personally witnesses a copy being made by standard copying equipment, the notary should conduct a visual page by page comparison and inspection of each page to ensure that the copy is complete and accurate.

## ***Documents that Cannot be Copy Certified***

- (a) Vital Records;
- (b) Apostille Records;
- (c) Naturalization and Citizenship Certificates; and,
- (d) Recorded instruments.
- (e)

### **(a) *Vital Records***

A vital record is a certificate or report of a vital event. Vital events include, birth, adoption, death, fetal death, marriage, divorce, legal separation, and civil annulment. Pursuant to RSA 5-C:98, I, a vital record may not be “duplicated” or “notarized” by any persons other than the division of vital records or clerks of towns and cities. While the statute does not prohibit copying of vital records in the public domain, it does strictly prohibit anyone other than the state registrar or the clerks of cities and towns from ***certifying a copy*** of a vital record. RSA 5-C:98, II goes on to clearly state that “Certified copies of vital records shall be issued to the public only by the state registrar or a clerk of a town or city in accordance with this chapter.”

RSA 5-C:1, XXXVI-VII, 5-C:98.

### **A NOTARY PUBLIC MUST NEVER CERTIFY A COPY OF A VITAL RECORD.**

If a person requests a copy certification of a vital record, a notary must refuse. RSA 5-C:98, III provides that a “[W]ritten application for a certified copy of a vital record shall be made by mail or in person at the division or at the office of a clerk of a town or city.”

### **(b) *Apostille Records***

Notaries public are similarly prohibited from copy certifying an apostille record. An apostille record is a vital record document which contains the certification as provided for in the 1961 Hague Convention and which is recognized in the United States and other certifying countries as a certified document. New Hampshire law provides that a copy of an apostille record may only be copy certified in the same manner as other vital records. It is important to note that copy certifying a document ***after*** it receives an apostille, which is forbidden, is different from taking an acknowledgement of a document ***before*** it receives an apostille, which is permitted as described above in the acknowledgements section on pages 5 of this manual.

RSA 5-C:99.

### **(c) *Naturalization and Citizenship Certificates***

A naturalization certificate is a document “[I]ssued by U.S. Citizenship and Immigration Service (USCIS) since October 1, 1991 and the Federal Courts or certain State Courts on or before September 30, 1991 as proof of a person obtaining U.S. citizenship through naturalization (a legal process to obtain a new nationality).”<sup>34</sup> A citizenship certificate is a document “[I]ssued by U.S. Citizenship and Immigration Service as proof of a person having obtained U.S. citizenship through derivation or acquisition at birth (when born outside of the United States).”<sup>35</sup>

**A NOTARY PUBLIC MAY NOT COPY CERTIFY A NATURALIZATION OR CITIZENSHIP CERTIFICATE.**

Under federal law, only the United States Citizenship and Immigration Service (“USCIS”) can copy certify a certificate of naturalization or citizenship.<sup>36</sup> Such documents are referred to as “Certified True Copies” by the USCIS.<sup>37</sup> In addition, only the United States Attorney General, and a clerk of court upon order of the court, are permitted to make certifications of naturalization and citizenship certificates or any part of the naturalization records of any court.<sup>38</sup> For further information see the USCIS web page at [www.dhs.gov](http://www.dhs.gov).

**(d) Recordable Instruments**

Each county in New Hampshire has an elected official known as the Register of Deeds and maintains an office, usually at the county seat, where deeds and similar legal documents are recorded and available for public inspection. Recordable instruments are documents that are required by law to be recorded at the registry of deeds. All deeds and other conveyances of real estate and all court orders and other instruments affecting title to any interest in real estate, except probate records and tax liens which are by law exempt from recording, are considered recordable instruments.<sup>39</sup> The register of deeds in each county is the only person with statutory authority to issue certified copies of instruments that have been recorded at the registry of deeds.

RSA 477:3-a, 478:4.

**Item Copy Certification**

In addition to document copy certification, the law on copy certification refers to the certifying or attesting a copy of “other” items. Examples of other items that could be copy certified include maps, diagrams, graphs, etc.

<p>When copy certifying any item, the notarial officer must still determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied. If the notary is unable to be certain that the copy is exactly the same as the original, he or she should refuse to make the certification. The National Notary Association recommends limiting copy certification of "other items" to those objects that may readily be photocopied.</p>
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***Sample Copy Certification for a Document***

The statutory short form for a copy certification of a document is as follows:

State of New Hampshire  
County of \_\_\_\_\_

I certify that this is a true and correct copy of a document in the possession of \_\_\_\_\_ (name of person).

Dated \_\_\_\_\_

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(Signature of notarial officer)

(Seal, if any)

Notary Public, State of New Hampshire

My commission expires \_\_\_\_\_

RSA 456-B:8, V.

## **(7) NOTING A PROTEST**

A protest of a negotiable instrument is a written statement by a Notary Public that, “upon presentment, a negotiable instrument was neither paid nor accepted.”<sup>40</sup>

### **History of Noting a Protest**

Historically, banking relied nearly completely on the process of “presenting” a bill of exchange, note, or order to a financial institution for payment. This involved actual presentment of a paper note or bill for payment. It is out of this process that protest, dishonor, and noting a protest arose. When a person or financial institution presented a bill or note for payment and the payor refused to make the payment, it was said to be “dishonored.” In order to prove that a bill or note had been dishonored a Notary Public would be required to “note the protest.”

In reality today, actual presentment rarely occurs. Under the UCC, a protest is no longer necessary to establish liability for payment. As a result, the reasons for a Notary Public to note a protest have all but been eliminated. However, there are certain circumstances in modern commercial practice where noting a protest may be required. First, as noted in section 3-505(a)(1), a document complying with 3-505(b) that purports to be a protest is admissible in court and creates a presumption of dishonor. Second, the law in some other countries occasionally requires protest in circumstances similar to former Article 3.<sup>41</sup> For example, the law of another country might require protest before going after drawers for drafts payable outside that country.<sup>42</sup> While the concept of protest still exists for these limited purposes, it rarely comes up.<sup>43</sup>

### **Evidence of Dishonor**

When a person or party refuses to pay or accept a negotiable instrument that is properly presented, he or she is said to have “dishonored” it.

In New Hampshire, a Notary Public is required to determine whether there is evidence of dishonor before noting a protest. Section 3 of the Uniform Commercial Code (UCC) outlines the evidence a Notary Public must consider in determining whether he or she can note a protest. Specifically, pursuant to RSA 382-A:3-505, a Notary Public must determine whether any of the following evidence of dishonor exists:

(a) A certificate of dishonor made by a United States consul or vice consul, or a Notary Public or other person authorized to administer oaths by the law of the place where dishonor

occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by non-acceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties;

(b) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor; or,

(c) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

If a Notary Public determines that any of the above three pieces of evidence exist, the notary may “note the protest.”

A “drawee” is the person or entity, usually a bank, that a draft is directed to and that is requested to pay the amount stated on it.<sup>44</sup> A “payor bank” is a bank that is requested to pay the amount of a negotiable instrument and, on the bank’s acceptance, is obliged to pay that amount.<sup>45</sup> A “presenting bank” is a non-payor bank that presents a negotiable instrument for payment.<sup>46</sup>

RSA 382-A:3-505, 456-B:2, V.

### **Protest as Evidence**

The protest of a bill of exchange, note, or order, which a Notary Public has duly certified, is considered evidence of the facts stated in the protest and of the notice given to the drawer or endorsers.

RSA 455:4.

<p><b>The National Notary Association strongly recommends that no notary perform a protest unless familiar with the procedures or under the direct supervision of an appropriately experienced attorney or bank officer.</b></p>
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### **(8) SAFE DEPOSIT BOXES**

In the State of New Hampshire, a Notary Public must be present for the opening of any safe deposit box, vault, or other receptacle opened due to unpaid rent. State law permits a safe deposit box, vault, or other such receptacle, to be opened by a domestic corporation that leases it if:

- (a) The rent has not been paid for at least 6 months; and,
- (b) The corporation has provided written notice of the failure to pay the rent to the person in whose name the receptacle is leased; and,
- (c) The rent is not paid within 60 days from the date of the notice.

A Notary Public *and* an officer of the corporation must be present any time a safe deposit box, vault, or other such receptacle is opened.

**A NOTARY PUBLIC PRESENT FOR THE OPENING OF A SAFE DEPOSIT BOX MUST NOT BE AN EMPLOYEE OF THE LEASING CORPORATION.**

The role of the Notary Public at such an event is to:

- (a) Remove the contents of the receptacle;
- (b) Make a list of the contents;
- (c) Seal up the contents in a package; and,
- (d) Mark on the package the name and address of the person in whose name the receptacle was leased (this information should be taken from the books of the corporation.)

*In the presence of the Notary Public*, the package must be placed in one of the storage vaults of the corporation. The Notary Public is then required to make a record of the proceeding in the book kept by the corporation for that purpose. This record must be written in the notary's own handwriting. The record must include, at a minimum, the list of the contents of the receptacle, and the notary's estimate of the value of the contents. The notary's entry on the book must be under his or her official seal.

RSA 385:1, 2.

The contents must be maintained in the storage vault for 5 years. After 5 years, the corporation must sell all the articles of value at public auction, public sale, or nationally recognized internet auction according to certain statutory requirements. The proceeds of the sale are presumed abandoned. From the proceeds, the corporation is permitted to deduct its charges for rental up to the time of opening the box, the cost of opening, the cost of safekeeping the contents, and any costs of the sale. The net cash proceeds must be held by the corporation, subject to the provisions of RSA 471-C. The corporation is required to maintain a statement of all charges deducted from the proceeds. The statement must be signed by an officer of the corporation and verified before a notary or Justice of the Peace. After deduction of allowable costs, remaining funds are deposited in the general fund of the State.

RSA 385:4; 471-C:18, 25.

**COMPETENCY TO ACT AS A NOTARY PUBLIC**

The following are special circumstances where a Notary Public has specific statutory authority to act or specific statutory limitations on acting.

***A Notary Public who is a Stockholder, Director, or Employee of a Bank or other Corporation.***

The competency statutes refer to the types of notarial acts a Notary Public may perform when they are an employee, stockholder, or director of a bank or corporation. Pursuant to statute, a Notary Public who is a stockholder, director, or employee of a bank or other corporation may:

- (1) Take the acknowledgement of any party to any written instrument executed to or by the corporation;
- (2) Administer an oath to any other stockholder, director, officer, employee, or agent of the corporation; and,
- (3) Protest for non-acceptance or nonpayment bills of exchange, drafts, checks, notes, or other negotiable instruments which may be owned or held for collection by the corporation.

There are some limitations on a notary's actions when the notary is affiliated with a bank or other corporation. Notaries public may not:

- (1) Take the acknowledgment of any party to any written instrument executed to or by the corporation of which the notary is a stockholder, director, officer or employee, where the notary or other officer is a party to the instrument, either individually or as representative of the corporation; or,
- (2) Protest any negotiable instrument owned or held for collection by the corporation, where the notary or other officer is individually a party to the instrument.

***All Notaries Public***

**A NOTARY PUBLIC MUST NEVER NOTARIZE HIS OR HER OWN SIGNATURE.**

While good practice would dictate that a Notary Public should not notarize his or her own signature, the competency statutes expressly prohibit it.

RSA 455:2-a

**REAPPOINTMENT**

Applications for reappointment, also referred to as "renewals," are mailed to all notaries public about 2 months prior to the expiration of their five-year commission. If a Notary Public moves during the 5-year commission, the Secretary of State's office should be notified. Failure to notify the Secretary of State's office will result in the notary not receiving the application for reappointment automatically.

If a Notary Public does not receive a renewal application, one may be requested by:

- 1) Calling 603-271-3242; or,
- 2) Faxing a request to 603-271-6316; or,

- 3) Mail to Secretary of State's Office, 107 North Main Street, State House Room 204, Concord, NH 03301
- 4) Emailing a request to [elections@sos.state.nh.us](mailto:elections@sos.state.nh.us)

The process and fees for reappointment are the same as for the initial appointment.

## **JUSTICES OF THE PEACE**

Like notaries public, justices of the peace are public officials appointed by the Governor, with the advice and consent of the Executive Council. The official duties of justices of the peace include all of the duties of notaries public, as well as the power to issue arrest warrants, and to perform marriage and civil union ceremonies. It is because of these additional duties, that there are additional requirements to become a Justice of the Peace, including the requirement that an applicant have been a registered voter in New Hampshire for at least three (3) years prior to applying.

Justices of the peace have long held an important and respected position in the history of New Hampshire. The office of Justice of the Peace has existed since this State was established and the role of the Justice of the Peace is repeatedly mentioned in the State's Constitution. While the official duties have changed over time, the importance of having persons of integrity fill the role of Justice of the Peace has remained.

The duties of the office of Justice of the Peace are truly significant. They include performing acts that are fundamental both to our State and to its citizens, including issuing arrest warrants. For these reasons, the term of office for a Justice of the Peace is constitutionally limited, "[I]n order that the people may not suffer from the long continuance in place of any Justice of the Peace who shall fail in discharging the important duties of his office with ability and fidelity..."<sup>47</sup>

### **QUALIFICATIONS**

A person who wishes to apply to be a Justice of the Peace must:

- (1) Be at least 21 years of age;
- (2) Be a New Hampshire resident;
- (3) Have been a registered voter in New Hampshire for at least three (3) years prior to the date of the application; and,
- (4) Be endorsed by two New Hampshire justices of the peace and a person registered to vote in New Hampshire.

The endorsement by two New Hampshire justices of the peace and a person registered to vote requires more than just the endorsers' signatures on the application. The endorsement referred to in the statute requires that the endorser actually give his or her approval and support to the applicant.<sup>48</sup> Such approval requires that the endorser, at a minimum, personally know the applicant and believe that he or she is of a character consistent with the honesty and integrity required of a Justice of the Peace.

RSA 455-A:2.

In addition to the above qualifications, it is within the discretion of the Governor and Executive Council to find particular criminal convictions as disqualifying. Given that all applicants are statutorily required to provide a criminal background by signing a written statement under oath regarding their criminal history, this information is relevant to the appointment process and may be taken into consideration by the Governor and Executive Council during consideration of an application.

The qualifications a person must have in order to be appointed a Justice of the Peace differ from those required for a Notary Public. Historically, both offices required that the applicant have been a registered voter in the State of New Hampshire for at least three years immediately preceding the date of the application. In 1989, the Governor and executive council requested the opinion of the New Hampshire Supreme Court as to whether the registered voter requirement was unconstitutional.<sup>49</sup> In its' Opinion, issued on February 10, 1989, the Supreme Court held that an applicant to become a Justice of the Peace could not be appointed if he or she had not been a registered voter in the state for at least three years immediately preceding the date of his or her application. However, the Court concluded that the same registered voter requirement could not be imposed on an applicant to become a Notary Public. In reaching its' conclusion, the Court reasoned that the additional powers of a Justice of the Peace, including issuing arrest warrants and other judicial functions, increased the State's interest in the qualifications of individuals chosen for the office.<sup>50</sup> This heightened interest in the qualifications of applicants to become a Justice of the Peace justifies the additional registered voter requirement.<sup>51</sup> However, a Notary Public does not have these additional "judicial" functions. Given the limited duties of notaries public, the Court reasoned that the discrimination created by the voter registration requirement does not bear a "substantial relation" to any legitimate legislative goal.<sup>52</sup> As a result, an applicant to become a Notary Public cannot be required to have been a registered voter for the three years preceding the application.<sup>53</sup>

## APPLICATION

The application process is handled by the Secretary of State's office. In order to apply to become a Justice of the Peace, a person must:

- (1) Obtain an application and criminal release form from the Secretary of State's office by:
  - a) Calling (603) 271-3242; or,
  - b) Mailing a request in writing to: Secretary of State's, 107 North Main Street, State House, Room 204, Concord, N.H. 03301; or,
  - c) Emailing a request to [elections@sos.state.nh.us](mailto:elections@sos.state.nh.us); or,
  - d) Downloading an application and criminal release form from the Secretary of State's website at <http://www.sos.nh.gov/Justice%20application.pdf> and <http://www.sos.nh.gov/Criminal%20Release%20Form.pdf>.
- (2) Complete the application and have it endorsed by two justices of the peace and a person registered to vote in New Hampshire. These should be individuals who know the

applicant and are able to “endorse” the applicant’s suitability to be entrusted with the authority of a Justice of the Peace;

(3) Sign a written statement under oath as to whether he or she has ever been convicted of a crime that was not annulled by a court, other than minor traffic violations; and,

(4) Pay a seventy-five dollar fee to the secretary of state.

The completed application, criminal release form, and the fee, must be mailed or delivered to the Secretary of State’s office at the above address.

### **APPLICANTS MUST NOT MAKE A FALSE REPRESENTATION ON THE APPLICATION.**

A person applying to become a Justice of the Peace must not:

(1) Negligently make a material false representation on the application to become a Justice of the Peace;

(2) Recklessly make a material false representation on the application to become a Justice of the Peace; or,

(3) Purposefully or knowingly make a material false representation on the application form.

Any person who negligently or recklessly makes a material false representation on the application form is subject to a civil penalty of up to one thousand dollars *per violation*. These penalties are paid to the Secretary of State for deposit into the general fund. Any person who purposefully or knowingly makes a material false representation on the application form is guilty of a class A misdemeanor.

RSA 5:10, 455:A-2.

### **APPOINTMENT**

Historically, justices of the peace have been considered judicial officers. Since 1784, the New Hampshire Constitution has provided that all judicial officers, including justices of the peace, must be nominated and appointed by the governor and council. No appointment is permitted unless a majority of the Executive Council approves the nomination. The Constitution requires that the nomination of a Justice of the Peace be made at least three days prior to such appointment.

More recently, the appointment of justices of the peace has been provided for by statute, similar to the appointment of notaries public. As a result, the appointment procedures described below are essentially the same as the procedures for appointment of notaries public despite the fact that justices of the peace are still considered judicial officers.

Upon receipt of a completed application, the Secretary of State’s office submits it to the Governor and Executive Council for nomination. If, after review of the application and criminal record, the applicant is nominated to become a Justice of the Peace, the application is once again

submitted by the Secretary of State's office, to the Governor and Council, this time for appointment. The Governor, with the advice and consent of the Executive Council, then makes the appointment. This process generally takes eight to ten weeks.

A Justice of the Peace's commission begins on the date the Governor and Council confirms the appointment. The date of appointment will be indicated on the commission.

Approximately one week after appointment by the Governor and Council, a newly appointed Justice of the Peace will receive his or her commission in the mail, along with the oath of office, index card, and other information from the Secretary of State's office. The information provided should be reviewed and kept by the Justice of the Peace. The oath, commission, and index card need further action as described below.

New Hampshire Constitution, Part 2, Article 46; RSA 455-A:1.

## **TERM**

A Justice of the Peace's term lasts five years from the date of his or her appointment. The term is limited to five years both by statute and the New Hampshire Constitution. In designating the length of the term, the Constitution emphasizes the importance of the duties performed by justices of the peace and provides insight into the reason for the length of the term as follows:

“[I]n order that the people may not suffer from the long continuance in place of any Justice of the Peace who shall fail in discharging the important duties of his office with ability and fidelity, all commissions of Justice of the Peace shall become void at the expiration of five years from their respective dates, and upon the expiration of any commission, the same may if necessary be renewed or another person appointed as shall most conduce to the well being of the state.”<sup>54</sup>

NH Constitution, Part 2, Article 75; RSA 455-A:1.

## **OATH OF OFFICE AND COMMISSION**

After receiving the oath of office and commission in the mail, a Justice of the Peace must:

- (1) Sign and take the oath of office before the authorized officials listed below; and,
- (2) Have those who sign the oath also sign the commission. Keep the signed commission for your records; and,
- (3) Return the oath to the Secretary of State's office as soon as possible. Unless the oath is on file at the Secretary of State's office, the office cannot certify that you are qualified as a justice.

Official oaths must be certified by the same persons who administered them.

**A PERSON CANNOT ACT AS A JUSTICE OF THE PEACE UNTIL HE OR SHE HAS TAKEN THE OATH OF OFFICE.**

**OFFICIAL OATH**

No person appointed to hold a public office where an oath is required, including justices of the peace, is permitted to exercise such office or perform any act of the office until he or she makes and subscribes the oath required by the New Hampshire Constitution.

RSA 92:2.

The official oath may be administered to a newly appointed Justice of the Peace by any 2 members of the council, or by any member of the council with a Justice of the Peace, or by any 2 justices of the peace, or by any Justice of the Peace with any Notary Public.

The New Hampshire Constitution prescribes the language of the official oath of office for public officials as follows:

“[I], A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitution thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all duties incumbent on me as [a Justice of the Peace], according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God.”<sup>55</sup>

The person taking the oath substitutes his or her name as it is written on the commission for “A.B.”

If a person who has been appointed a Justice of the Peace has a religious objection to taking an oath or for other reasons is opposed to taking an oath, he or she is permitted to make an affirmation instead. The New Hampshire Constitution provides that for such persons, the language of the above oath may be altered to omit the word “swear” and the words “So help me God,” and to instead say “This I do under the pains and penalties of perjury.” A person whose beliefs do not allow him or her to either swear or affirm faith and true allegiance to the United States of America and the State of New Hampshire is not entitled to hold the position of Notary Public, an office of that government.

**The oath of office is intended to be more than just ceremony and should be taken seriously. Any Justice of the Peace who violates his or her oath after taking it shall be dismissed from office.**

A sample commission and oath of office are included in the sample forms and notices section of this manual.

N.H. Constitution, Part II, Art. 84; RSA 92:5.

## INDEX CARD

Along with the commission, a newly appointed Justice of the Peace will receive an index card in the packet from the Secretary of State's office. The index card must be completed *after* the Justice of the Peace has taken his or her oath. The justice's name, address, and signature are required to be on the card. The justice's signature on the card provides a sample of his or her signature for the record. In addition, the Justice of the Peace must include the date the oath of office was taken, and the date of his or her commission on the card.

### *Sample Index Card*

_____NAME
_____ADDRESS
I took my oath as a Justice of the Peace on _____ My commission is dated _____
_____ Your Signature
Mail to Clerk of Superior Court for your County

After the index card has been filled out, the Justice of the Peace must mail it to the Clerk of the Superior Court of the county in which he or she resides. A list of the superior courts and the address for each is included in appendix to this manual.

## NO SEAL REQUIRED

Unlike a Notary Public, a Justice of the Peace is not required to have a seal. When signing any document or instrument a Justice of the Peace must:

- (1) Type, print, or stamp his or her name; and,
- (2) State the expiration date of his or her commission.

Failure to meet these requirements does not invalidate the legal effect of the notarial act.

While state law permits justices of the peace to use a rubber stamp, it may not be sufficient for certain purposes. For example, federal passport regulations may require a raised seal. A Justice of the Peace should consider whether the rubber stamp is sufficient for the type of notarial act being performed,

RSA 455-A:3.

## **FEES**

Justices of the peace are entitled to a fee of up to ten dollars for each oath, witness, service, or certification, with two exceptions. For depositions, a justice is entitled to a fee of at least five dollars but no more than fifty dollars. The fee can be varied depending upon the amount the justice feels is sufficient payment for the services. A fee may not be charged for administering and certifying oaths of office of town officers. Justices are entitled to a minimum fee of five dollars from those joined in marriage or civil union.

RSA 457:33; 517:19.

## **JOURNAL**

While not required by law, it is recommended that a Justice of the Peace maintain a journal of all notarial acts performed. To be useful, the journal should include, at a minimum, the following information:

1. The notarial act performed;
2. The date of the notarial act;
3. The identifying information of the person swearing before the Justice of the Peace;  
and;
4. Any other details the Justice of the Peace believe would be useful in referring back to the act.

A journal will provide a record of the details of each notarial act that the Justice of the Peace can refer to if called upon to verify the act.

## **CHANGE OF NAME**

A Justice of the Peace should notify the Secretary of State's office any time his or her name changes during a commission. When notifying the Secretary of State, the Justice of the Peace must include his or her former name, and new name, as well as any change of address.

In addition to notifying the Secretary of State's office, a Justice of the Peace who has a name change during his or her commission should request a new commission reflecting the new name. The fee for a new commission is five dollars payable by cash or check to the Secretary of State's Office.<sup>56</sup>

If the Justice of the Peace is within 6 months of the end of his or her 5-year commission, it is the practice of the Secretary of State's office to permit the Justice of the Peace to continue to sign official documents using both the old and new names. For example, if Jane Smith changes her name to Jane Jones, she can still sign as Jane (Smith) Jones rather than requesting a new commission.

## **CHANGE OF ADDRESS**

The Secretary of State's office should be notified any time a Justice of the Peace has a change of address during his or her 5-year commission. Failure to notify the Secretary of State's office will result in the Justice of the Peace not receiving an application for reappointment.

## **POWERS AND DUTIES**

Once commissioned, a Justice of the Peace has the power to perform a number of official acts within the State of New Hampshire. Justices of the peace have the power to:

- (1) Administer oaths and affirmations;
- (2) Take verifications upon oath or affirmation;
- (3) Acknowledge instruments;
- (4) Witness or attest a signature;
- (5) Certify or attest a copy;
- (6) Note a protest of a negotiable instrument;
- (7) Take depositions;
- (8) Perform marriage ceremonies;
- (9) Perform civil unions; and,
- (10) Issue warrants.

RSA 5-C:41; 92:5; 455-A:3; 457:31; 457-A; 516:4; 592-A:5, A:8 .

A Justice of the Peace is performing one of the listed acts, therefore, a Justice of the Peace may not sign a blank document or jurat. The Justice of the Peace must witness the act being notarized or performed, by witnessing the signature, or oath, or directly verifying the accuracy of a copy being certified, conducting the marriage or civil union or issuing a warrant.

**A NEW HAMPSHIRE JUSTICE OF THE PEACE IS NOT AUTHORIZED TO PERFORM THESE OFFICIAL ACTS OUTSIDE OF THE STATE.**

***What if a person cannot sign his or her own name?***

A Justice of the Peace may still perform a notarial act for a person who is unable to sign his or her name due to a physical disability or other inability to write. Some accommodation should be made to allow a person with this type of disability to have a document notarized. While the notarial laws do not specifically address this issue, other statutes do. For example, in the context of the Uniform Commercial Code (RSA 382-A:1-201), the word "signed" is defined to include any symbol executed or adopted by a party with present intention to authenticate a writing. Best practice would be to permit the person to sign the document by marking an "X" or other symbol on the signature line. If the person is unable to make any mark at all and has a signature stamp, this may also be permitted. The Justice of the Peace should exercise considerable caution in making sure the signature, whether a symbol or stamp, is the true signature of the person before him or her. Having a witness in addition to the Justice of the Peace is recommended.

If another person needs to make the mark or signature for the person, the notary should add a statement to the notarial certificate stating what actually occurred at the notarization. For example if a notary is notarizing a document for John Doe, who is a quadriplegic, and Jane Doe, his wife, signs his name after he communicates to the notary his intent that the document be signed, the notary could write: "Notarized in the presence of John Doe, who was unable to sign his name due to a disability. Mr. Doe communicated his intent to sign this document and his wife Jane Doe signed his name in my presence."

**(1) ADMINISTERING AN OATH OR AFFIRMATION**

A Justice of the Peace is authorized to administer oaths and affirmations. An oath is "a solemn declaration or promise made with an appeal or sense of responsibility towards God for the truth of what is being stated."<sup>57</sup> For example, "I, [name of declarant], do solemnly swear that [statement] is true, so help me God." An affirmation is "a pledge equivalent to an oath but without reference to a supreme being or to swearing..."<sup>58</sup> If a person has a religious or other objection to taking an oath, he or she is permitted to make an affirmation instead. For such persons, the language of the oath may be altered to omit the word "swear" and replace it with the word "affirm" and to omit the words "So help me God," and to instead say "This I do under the pains and penalties of perjury." For example, "I, [name of declarant], do solemnly affirm, that [statement] is true, under the pains and penalties of perjury."

NH Constitution Part II, Art. 84; RSA 455-A:3, 516:19, 20.

When administering an oath or affirmation, no particular ceremony is necessary other than that the declarant hold up his or her right hand.<sup>59</sup> "[A]ny other form or ceremony may be used which the person to whom the oath is administered professes to believe more binding upon the conscience."<sup>60</sup> An oath (or affirmation) is properly administered when the declarant "knows that his statement is sworn and given under oath in the presence of an oathtaker."<sup>61</sup> The purpose of the oath (or affirmation) is to emphasize the declarant's legal obligation to tell the truth.<sup>62</sup> "[A] sworn document requires the affiant to swear to the truth of the document under oath, an oath may be administered without any affirmative act by an oathtaker."<sup>63</sup> A notary must accommodate any person who, due to disability, cannot hold up his or her right hand, and may use any reasonable means of ensuring the person taking the oath understands the seriousness of the act.

## **Swearing in a Witness During Court Proceedings**

When swearing in a witness during court proceedings, a Justice of the Peace should request the witness to raise his or her right hand before making the oath. If the witness objects to raising his or her hand, he or she may be permitted to use any other form or ceremony, so long as he or she “[P]rofesses to believe [it] more binding upon the conscience.”<sup>64</sup>

The language generally used for swearing in a witness under oath in New Hampshire is as follows:

“Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?”

The language generally used for a witness making an affirmation rather than an oath is as follows:

“Please raise your right hand. Do you affirm to tell the truth, the whole truth and nothing but the truth this you do under the pains and penalties of perjury?”<sup>65</sup>

### ***Attorneys***

In the State of New Hampshire, any person admitted to the practice of law in New Hampshire may administer an oath or affirmation for the purpose of taking oral testimony.<sup>66</sup>

*See* RSA 92:3.

## **(2) OATHS OF OFFICE FOR PUBLIC OFFICIALS**

Persons appointed to hold public offices are statutorily required to take an official oath of office. No person chosen or appointed to any public office or to any position where an oath is required can exercise such office or position or perform any act therein until he or she has taken the oath. Any person who violates his or her oath after taking it shall be dismissed from the office or position involved.

RSA 92:2.

### ***Justices of the Peace May Administer Official Oaths.***

Justices of the peace are authorized to administer official oaths as follows:

- (a) To the clerk of any court, by any 2 justices of the peace;
- (b) To all military officers above the rank of field officers, and to all other officers appointed by the governor and council, by any member of the council with a Justice of the Peace, or by any 2 justices of the peace, or by any Justice of the Peace with any Notary Public;
- (c) To all other officers, by any Justice of the Peace within his or her county;
- (d) To town officers other than during town meeting, by a Justice of the Peace; and,

(e) To officers of school districts, by a Justice of the Peace.

RSA 92:5.

***Language of Official Oaths***

The language for the oath a public official must make is prescribed by part 2, article 84 of the constitution of New Hampshire as follows:

“[I], A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitution thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all duties incumbent on me as ....., according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God.”<sup>67</sup>

The name of the person taking the oath is substituted for “A.B.” above and the office the person will perform is inserted in the blank.

If a person does not wish to swear, the word “*affirm*” in the oath may be substituted for “*swear*,” and the words “*This you do under the pains and penalties of perjury*,” may be substituted for “*So help you God*.” Such affirmation shall, for all purposes, be and constitute an oath.

N.H. Constitution, Part II, Art. 84; RSA 92:3.

***Ceremony Required for Official Oaths***

The person taking the oath is required to hold up his or her right hand. No other ceremony is necessary.

RSA 92:4.

***Certification and Recording of Official Oaths***

An official oath must be certified *by the person administering it* and returned immediately to the recording officer of the body making the election or appointment.

The oaths that must be recorded at the Secretary of State’s office include, but are not limited to the following: Notaries Public, Justices of the Peace, Commissioners of Deeds, the Attorney General, Deputy Attorney General, Assistant Attorneys General, State Representatives, State Senators, the Governor, all commissioners, board members, and department and division heads appointed by Governor and Council, Elected County Officers.

The oaths that must be recorded with the town clerk include any officials appointed by the town.

The oaths that must be recorded with the recording officer for the school district include, but are not limited to the following: Treasurer of the school board, and members of the school budget committee.

NH Constitution, Part II, Art. 84; RSA 92:6, 195.

### **(3) TAKING A VERIFICATION UPON OATH OR AFFIRMATION**

A verification upon oath or affirmation is a declaration by a person under oath or affirmation, made in front of a Justice of the Peace, that his or her written statement is true. The Justice of the Peace's certification that a person has made a verification upon oath or affirmation is referred to as a jurat. A jurat is required anytime a person must swear to the truth of the contents of a document, such as for an affidavit and certain court documents. In executing a jurat, a Justice of the Peace is confirming that the person appeared before the justice, was given an oath or affirmation by the justice, attested to the truthfulness of the document, and signed the document in the justice's presence.

An example of the wording that a Justice of the Peace may use in taking a verification upon oath or affirmation is "Do you solemnly swear that the contents of this [name of document] signed by you are true and correct, so help you God?" or "Do you swear and affirm under the pains and penalties of perjury that the contents of this [name of document] signed by you are true and correct?"

As with all notarial acts, it is very important that the Justice of the Peace identify the person making the verification upon oath or affirmation. The Justice of the Peace must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before him or her and making the verification is the person whose true signature is on the statement verified. Please see the "Identity of the Person Seeking Notarization" section beginning on page six of this manual for a complete description of the identification process. Proper identification is especially important for verifications because the Justice of the Peace is certifying that the signer attested to the truthfulness of the document. However, a jurat on a document does not prove that the contents of the document are true, it simply establishes that the signer has sworn that the contents are true.

RSA 456-B:1, III, B:2, II.

#### ***Certification of a Verification Upon Oath or Affirmation (Jurat)***

The statutory short form for a certification (jurat) for a verification of an oath or affirmation is as follows:

State of New Hampshire  
County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me on the \_\_day of \_\_\_\_\_, \_\_\_\_\_ by  
\_\_\_\_\_ (name(s) of person(s) making statement).

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any)

Justice of the Peace, State of New Hampshire

My commission expires \_\_\_\_\_

RSA 456-B:8, III.

#### **(4) TAKING AN ACKNOWLEDGEMENT**

An acknowledgment is a declaration by a person, in front of a Justice of the Peace or other authorized official, that the person has signed a document for the purposes stated in the document. Acknowledgements are generally executed on deeds and other documents that will be publicly recorded by a county official.

For an acknowledgment, the document may have been signed on a date prior to the person appearing before the Justice of the Peace to acknowledge the signature. This differs from witnessing a signature, which requires that a document actually be signed in the presence of the Justice of the Peace.

The purpose of an acknowledgment is to confirm that the signature on the document is authentic.<sup>68</sup> In order to make certain that the signature is authentic, the Justice of the Peace must determine that the person appearing before him or her and making the acknowledgment is the person whose signature is on the document. Please see the “Identity of the Person Seeking Notarization” section of this manual for a complete description of the identification process.

RSA 456-B:1, II; RSA 456-B:2, I.

#### **Acknowledgements - Individual or Representative Capacity**

An acknowledgment may be made in an individual capacity or in a representative capacity. If an acknowledgment is made in an individual capacity it means that the person appearing before the Justice of the Peace is acknowledging the document and signature on his or her own behalf. If an acknowledgment is made in a representative capacity it means that the person appearing before the Justice of the Peace is appearing on behalf of some other person or entity.

A person may be appearing in a representative capacity in one of the following four ways:

- (a) For or 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.

When a person makes an acknowledgement in a representative capacity, the person is declaring that he or she signed the instrument with proper authority, and executed it as the act of the person or entity represented and identified in the document. The Justice of the Peace must still determine the identity of the person appearing before him or her, as described above, for acknowledgements made in a representative capacity. The Justice of the Peace is certifying that the person represented him or herself to the notary as having authority to act in the representative capacity. The notary does not have a duty to determine if the person in fact and law does have authority to represent the other person or entity. The jurat establishes only that the representation was made, not that the authority to represent the other person or entity exists in fact and law.

One common form of representative capacity is a Power of Attorney. A Power of Attorney is a document that a person (commonly referred to as the "principal") completes and signs granting another person (the "agent") authority to manage some aspect of the principal's property, finances, or health, among other things. This power can be broad or general depending on what the principal decides to authorize the agent to do. When the agent is signing a document in his or her capacity as power of attorney, he or she will typically sign his or her own name followed by "power of attorney for" and the name of the principal. The Justice of the Peace must determine the identity of the person appearing before him or her (the agent), not the person being signed for (the principal). Best practice for a Justice of the Peace in notarizing a document for a person using a power of attorney would be to require the agent to provide a certified copy of the power of attorney document evidencing that the agent has the authority to acknowledge the document for the principal.

If the notarized document is one that must be recorded or filed with a court, typically attorneys will include a copy the power of attorney document with the notarized document. For example, when recording a deed that is signed by a person with a power of attorney, the attorney would include a certified copy of the power of attorney document with the deed documents to be recorded.

RSA 456-B:1, II;IV; 506, 5-7.

#### ***Sample Procedure for Taking an Acknowledgement***

The Justice of the Peace should request the signer to raise his or her right hand and ask, "Do you swear and acknowledge that the signing of this document is your voluntary act and deed?" The signer must give an affirmative response before the Justice of the Peace can complete the certification.<sup>69</sup>

#### **Certification of an Acknowledgement**

After the Justice of the Peace is satisfied that the person appearing before him or her is the person whose signature is on the document, a certification must then be completed. In the certification, the Justice of the Peace certifies that the individual appeared before him or her and acknowledged the document on the date indicated. The certification is not considered part of the document, and does not affect its validity. The certification a notary uses will vary depending upon whether the acknowledgement is made in an individual or representative capacity.

***Sample Certification for an Acknowledgement Made in an Individual Capacity***

The statutory short form for a certification of an acknowledgment in an individual capacity is as follows:

State of New Hampshire  
County of \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_ (name(s) of person(s)).

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any)

Justice of the Peace, State of New Hampshire

My commission expires: \_\_\_\_\_

RSA 456-B:8, I.

***Sample Certification for an Acknowledgement Made in a Representative Capacity***

The statutory short form for a certification of an acknowledgement made in a representative capacity is as follows:

State of New Hampshire  
County of \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ 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)

Justice of the Peace, State of New Hampshire

My commission expires: \_\_\_\_\_

RSA 456-B:8, II.

The difference between an acknowledgement and a verification upon oath or affirmation is that for an acknowledgement a person is swearing that he or she is the person who signed the document while for a verification, in addition to swearing that he or she signed the document, the person is swearing that the contents of the document are true.

### **Taking an Acknowledgement for a Document That Needs an Apostille**

An apostille is a certification on a document that the signature of a public official on the document is authentic. An apostille certifying a notarization by an official commissioned by the State of New Hampshire can only be obtained from the Secretary of State's office. Before a document can receive an apostille from the Secretary of State's office, it must have the original signature of a Notary Public or Justice of the Peace witnessing the signature of the person executing the document. As a result, a Justice of the Peace may be asked to take an acknowledgement of a document that will need an apostille. One common example of a requirement for an apostille is the requirement in many foreign countries that the documents necessary for a United States citizen to adopt a child born in that foreign country be notarized and that an apostille certify that the Justice of the Peace's signature is legitimate.

Foreign countries generally require evidence that the signatures of public officials on documents from other countries are authentic. Since the Hague Convention in 1961, many countries accept an apostille to certify the authenticity of the signature of a public official on a document being sent to another country. Prior to the Hague Convention, all documents going from the United States to a foreign country had to be "legalized." Essentially, legalization required the United States to produce diplomatic or consular agents to certify the authenticity of the signature on the document, the capacity in which the person signing the document acted, and the identity of the seal or stamp it bore.<sup>70</sup> The result of the Hague Convention was to eliminate this cumbersome requirement and replace it with a much simpler process that still ensured the legitimacy of the document. This simpler process is referred to as an apostille.<sup>71</sup> It is important to note that the apostille process established by the Hague Convention only applies to countries that have chosen to be parties to the Convention

Prior to the Hague Convention in 1961, all documents going from the United States to a foreign country had to be "legalized." Essentially, legalization required the United States to produce diplomatic or consular agents to certify the authenticity of the signature on the document, the capacity in which the person signing the document acted, and the identity of the seal or stamp it bore.<sup>72</sup> The result of the Hague Convention was to eliminate this cumbersome requirement and replace it with a much simpler process that still ensured the legitimacy of the document. This simpler process is referred to as an apostille.<sup>73</sup> It is important to note that the apostille process established by the Hague Convention only applies to countries that have chosen to be parties to the Convention or that have since formally adopted the process. A list of these countries is available from the Secretary of State.

### ***Getting an Apostille***

Any document that will be sent to a country that has adopted the apostille process must have an apostille on it. In New Hampshire, an apostille can only be issued by the Secretary of State's Office.

Under State law, a vital record with an apostille must contain the following:

- (1) The signature of the state registrar or the clerk of the town or city;
- (2) The notarized acknowledgement of the state registrar or clerk; and,
- (3) The acknowledgement of the document by the Secretary of State, including his signature and seal.

RSA 5-C:99

**BEFORE A DOCUMENT WILL BE GIVEN AN APOSTILLE BY THE SECRETARY OF STATE'S OFFICE, IT MUST HAVE AN ORIGINAL NOTARY PUBLIC OR JUSTICE OF THE PEACE SIGNATURE WITNESSING THE SIGNATURE OF PERSON SWEARING TO OR AFFIRMING THE DOCUMENT.**

The Secretary of State cannot certify signatures of town and city clerks, county or state registrars or other state officials. The signatures must be those of a Notary Public or Justice of the Peace for the State of New Hampshire. If signed by a notary, the notary's seal must be on the document. When the Secretary of State's Office attaches the apostille, it is certifying that the signature of the Notary Public or Justice of the Peace, *not person swearing to or affirming the document*, is authentic.

#### ***Fee for Apostille***

The Secretary of State's office charges a ten dollar fee per certificate. The fee is payable by cash or check to the State of New Hampshire. In addition to the regular fee, there is an expedited fee to receive apostilles on ten or more documents the same day the request for them is made. Currently, there is no expedited fee for less than ten documents. The expedited fee for ten to twenty documents is twenty-five dollars, for twenty to thirty documents is fifty dollars, and for thirty to forty documents is seventy-five dollars.

RSA 5:10.

**ONCE AN APOSTILLE HAS BEEN ATTACHED TO A DOCUMENT, A JUSTICE OF THE PEACE CANNOT COPY CERTIFY IT.**

Certifying a copy is a notarial act in which a notarial officer certifies that a copy of a document is a true and accurate reproduction of the original. Under New Hampshire law, an apostille is considered to be a vital record document and cannot be copy certified by a Notary Public or Justice of the Peace.

RSA 5-C:98-99.

#### **(5) DEPOSITIONS**

A deposition is a written record of a witness's out-of-court testimony that is reduced to writing for later use in court or for discovery purposes in a legal action.<sup>74</sup> In New Hampshire, depositions must be taken before a Justice of the Peace, or other authorized notarial officer. Generally, a deposition of a party or a witness is requested by the adverse party. The person being deposed is commonly referred to as the "deponent." The attorney for the party requesting

the deposition has the opportunity to ask the deponent questions first. This is usually followed by questions from the attorney for the deponent. If there are multiple parties to the legal action, the attorneys for each party are also given the opportunity to question the deponent.

RSA 516:4, 517:2.

### **Notice of Deposition**

A Justice of the Peace may issue a notice for witnesses to appear before himself or herself, or any other justice or notary, to give depositions in any matter in which a deposition may be lawfully taken. A notice of deposition must be in writing and must contain the day, hour, and place of taking the deposition. The notice must be signed by the Justice of the Peace.

RSA 517:4.

### **Deposition Testimony is Given Under Oath**

Prior to the start of the deposition, the deponent must take an oath or affirmation that his or her testimony will be truthful. The Justice of the Peace may administer this oath or affirmation in the same manner as a witness is sworn in during court proceedings. A Justice of the Peace should request the witness to raise his or her right hand before making the oath or affirmation. If the witness objects to raising his or her hand, he or she may be permitted to use any other form or ceremony, so long as he or she “[P]rofesses to believe [it] more binding upon the conscience.”<sup>75</sup>

The language generally used for swearing in a witness under oath in New Hampshire is as follows:

“Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?”

The language generally used for a witness making an affirmation rather than an oath is as follows:

“Please raise your right hand. Do you under the pains and penalties of perjury affirm to tell the truth, the whole truth and nothing but the truth?”<sup>76</sup>

Since any person admitted to the practice of law in New Hampshire may administer an oath or affirmation for the purpose of taking oral testimony, an attorney present at a deposition could also administer the oath or affirmation to the deponent.

RSA 456-B:3, IV.

### **Signing of the Deposition under Oath**

After a deposition is taken and, if necessary, transcribed, the deponent generally reviews the deposition for accuracy. After completing the review, the deponent must sign the deposition under oath. The wording of this oath is provided for by law. The deponent is required to swear that the deposition:

“[C]ontains the truth, the whole truth and nothing but the truth relative to the cause for which it was taken.”

A Justice of the Peace or other authorized notarial officer must take the written oath for the transcript of the deposition. Members of the bar who are not also notarial officers are not permitted to take this oath because their authority to take oaths is limited to oaths for oral testimony *only*.

RSA 456-B:3, IV, 517:7.

### **Certification of a Deposition**

The certification of a deposition must include the following:

- (a) The time and place of taking the deposition;
- (b) The case and court in which the deposition is to be used;
- (f) Whether the adverse party was present or not;
- (g) Whether the adverse party was notified or not; and,
- (h) Whether the adverse party objected or not.

RSA 517:8.

### **Fees for Depositions**

For services related to the taking of depositions, a Justice of the Peace is entitled to a fee of at least five dollars but no more than fifty dollars. The Justice of the Peace can vary the fee depending upon the amount the Justice of the Peace feels is sufficient payment for the deposition services. In addition to the fee, a Justice of the Peace is entitled to twenty cents per mile as mileage to swear witnesses.

RSA 517:19.

### **A JUSTICE OF THE PEACE IS DISQUALIFIED FROM TAKING A DEPOSITION IN CERTAIN CIRCUMSTANCES.**

A Justice of the Peace cannot take a deposition if he or she:

- (a) Is a party to the action;
- (b) Is a relative, employee, or attorney of a party to the action;
- (c) Has a financial interest in the action or its outcome;

- (f) Has entered into an arrangement to provide exclusive deposition transcribing or recording services for a person or entity which has a financial interest in the action or its outcome; or,
- (g) Is employed by, or is an independent contractor working for, a person or entity which has entered into an arrangement to provide exclusive deposition transcribing or recording services for a person or entity which has a financial interest in the action or its outcome.

RSA 517:3.

In addition to the above statutes, there are other statutes and rules governing depositions which justices of the peace who choose to do this type of work must familiarize themselves with, including the remainder of RSA Chapter 517 entitled “Depositions.”

**(6) WITNESSING OR ATTESTING A SIGNATURE**

A Justice of the Peace is authorized to witness a signature. Witnessing a signature is also referred to as attesting a signature. In order for a Justice of the Peace to witness a signature, the person named in the document must appear before the justice *and* sign the document in the justice’s presence. The justice’s certification that he or she witnessed a signature provides evidence that the document was actually signed on the date of the certification. This is different from an acknowledgement, which may have been signed on a date prior to the person appearing before the Justice of the Peace to acknowledge the signature.

Prior to witnessing a signature and before making the certification, a Justice of the Peace must determine that the person signing the document is the person named in the document. Please see the “Identity of the Person Seeking Notarization” section of this manual for a complete description of the identification process.

RSA 456-B:2, III, VI.

***Sample Certification for Witnessing or Attesting a Signature***

The statutory short form for a certification for witnessing or attesting a signature is as follows:

State of New Hampshire  
 County of \_\_\_\_\_

Signed or attested before me on \_\_\_\_ day of \_\_\_\_, \_\_\_\_ by \_\_\_\_\_(name(s) of person(s)).

\_\_\_\_\_  
 (Signature of notarial officer)

(Seal, if any)

Justice of the Peace, State of New Hampshire

My commission expires \_\_\_\_\_

RSA 456-B:8, IV.

## **(7) CERTIFYING OR ATTESTING A COPY**

Certifying a copy, also referred to as attesting a copy, is a notarial act in which a Justice of the Peace or other authorized official certifies that a photocopy, or other type of copy, of a document is a true and accurate reproduction of the original document. In certifying or attesting a copy of a document, the Justice of the Peace must determine that the proffered copy is a full, true, and accurate transcription or reproduction of the one that is copied.

RSA 456-B:2

### **Document Copy Certification**

To have a copy of a document certified, a person must appear before the Justice of the Peace with the original document. The person may either also bring the copy to be certified, or a copy may be made in the Justice of the Peace's presence. In either case, the Justice of the Peace must check the entire copy to be sure it is a full, true, and accurate reproduction of the original. Once the Justice of the Peace has determined that the entire document has been accurately copied, he or she can certify that the document is a true and accurate reproduction of the original. The copy certification jurat must be used, it is not sufficient for the Justice of the Peace to just sign his or her name on the copy.

As a practical matter, for long or complex documents, it will typically be necessary for the copy to be made in the presence of the Justice of the Peace using equipment the justice reasonably believes to make accurate copies. Otherwise, it would be necessary to make a word for word comparison of the original to the copy before a Justice of the Peace could certify that the copy is a true copy. Even where the Justice of the Peace makes or personally witnesses a copy being made by standard copying equipment, the justice should conduct a visual page by page comparison and inspection of each page to ensure that the copy is complete and accurate.

### ***Documents that Cannot be Copy Certified***

- (a) Vital Records;
- (b) Apostille Records;
- (c) Naturalization and Citizenship Certificates; and,
- (d) Recorded instruments.

#### **(a) *Vital Records***

A vital record is a certificate or report of a vital event. Vital events include, birth, adoption, death, fetal death, marriage, divorce, legal separation, and civil annulment. Pursuant to RSA 5-C:98, I, a vital record may not be "duplicated" or "notarized" by any persons other than the division of vital records or clerks of towns and cities. While the statute does not prohibit copying of vital records in the public domain, it does strictly prohibit anyone other than the state

registrar or the clerks of cities and towns from *certifying a copy* of a vital record. RSA 5-C:98, II goes on to clearly state that “Certified copies of vital records shall be issued to the public only by the state registrar or a clerk of a town or city in accordance with this chapter.”

RSA 5-C:1, XXXVI-VII, 5-C:98.

### **A JUSTICE OF THE PEACE MUST NEVER CERTIFY A COPY OF A VITAL RECORD.**

If a person requests a copy certification of a vital record, a Justice of the Peace must refuse. RSA 5-C:98, III provides that a “[W]ritten application for a certified copy of a vital record shall be made by mail or in person at the division or at the office of a clerk of a town or city.”

#### **(b) Apostille Records**

Justices of the peace are similarly prohibited from copy certifying an apostille record. An apostille record is a vital record document which contains the certification as provided for in the 1961 Hague Convention and which is recognized in the United States and other certifying countries as a certified document.<sup>77</sup> New Hampshire law provides that an apostille record may only be copy certified in the same manner as other vital records.<sup>78</sup> It is important to note that copy certifying a document *after* it receives an apostille, which is forbidden, is different from taking an acknowledgement of a document *before* it receives an apostille, which is permitted as described above in the acknowledgements section of this manual.

#### **(c) Naturalization and Citizenship Certificates**

A naturalization certificate is a document “[I]ssued by U.S. Citizenship and Immigration Service (USCIS) since October 1, 1991 and the Federal Courts or certain State Courts on or before September 30, 1991 as proof of a person obtaining U.S. citizenship through naturalization (a legal process to obtain a new nationality).”<sup>79</sup> A citizenship certificate is a document “[I]ssued by U.S. Citizenship and Immigration Service (USCIS) as proof of a person having obtained U.S. citizenship through derivation or acquisition at birth (when born outside of the United States).”<sup>80</sup> For further information visit the Department of Homeland Security web site at [www.dhs.gov](http://www.dhs.gov).

### **A JUSTICE OF THE PEACE MAY NOT COPY CERTIFY A NATURALIZATION OR CITIZENSHIP CERTIFICATE.**

Under federal law, only United States Citizenship Service (“USCIS”) officials can copy certify a certificate of naturalization or citizenship. Such documents are referred to as “Certified True Copies” by the USCIS.<sup>81</sup> In addition, only the United States Attorney General, and a clerk of court upon order of the court, are permitted to make certifications of naturalization and citizenship certificates or any part of the naturalization records of any court.<sup>82</sup>

#### **(d) Recordable Instruments**

Each county in New Hampshire has an elected official known as the Register of Deeds and maintains an office, usually at the county seat, where deeds and similar legal documents are recorded and available for public inspection. Recordable instruments are documents that are

required by law to be recorded at the registry of deeds. All deeds and other conveyances of real estate and all court orders and other instruments affecting title to any interest in real estate, except probate records and tax liens which are by law exempt from recording, are considered recordable instruments.<sup>83</sup> The register of deeds in each county is the only person with statutory authority to issue certified copies of documents that have been recorded at the registry.<sup>84</sup>

### **Item Copy Certification**

In addition to document copy certification, the law on copy certification refers to the certifying or attesting a copy of “other” items. Examples of other items that could be copy certified include maps, diagrams, graphs, etc.

When copy certifying any item, the notarial officer must still determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied. If the notary is unable to be certain that the copy is exactly the same as the original, he or she should refuse to make the certification. The National Notary Association recommends limiting copy certification of "other items" to those objects that may readily be photocopied.

### ***Sample Document Copy Certification***

The statutory short form for a copy certification for a document is as follows:

State of New Hampshire  
County of \_\_\_\_\_

I certify that this is a true and correct copy of a document in the possession of  
\_\_\_\_\_ (name of person).

Dated \_\_\_\_\_

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any)

Justice of the Peace, State of New Hampshire

My commission expires \_\_\_\_\_

RSA 456-B:8, V.

### **(8) NOTING A PROTEST**

A protest of a negotiable instrument is a written statement by a Justice of the Peace or Notary Public that, “upon presentment, a negotiable instrument was neither paid nor accepted.”<sup>85</sup>

## **History of Noting a Protest**

Historically, banking relied nearly completely on the process of “presenting” a bill of exchange, note, or order to a financial institution for payment. This involved actual presentment of a paper note or bill for payment. It is out of this process that protest, dishonor, and noting a protest arose. When a person or financial institution presented a bill or note for payment and the payor refused to make the payment, it was said to be “dishonored.” In order to prove that a bill or note had been dishonored a notarial officer would be required to “note the protest.”

In reality today, actual presentment rarely occurs. Under the UCC, a protest is no longer necessary to establish liability for payment. As a result, the reasons for a Justice of the Peace to note a protest have all but been eliminated. However, there are certain circumstances in modern commercial practice where noting a protest may be required. [First, as noted in section 3-505(a)(1), a document complying with 3-505(b) that purports to be a protest is admissible in court and creates a presumption of dishonor. Second, the law in some other countries occasionally requires protest in circumstances similar to former Article 3. For example, the law of another country might require protest before going after drawers for drafts payable outside that country. While the concept of protest still exists for these limited purposes, it rarely comes up.

## **Evidence of Dishonor**

When a person or party refuses to pay or accept a negotiable instrument that is properly presented, he or she is said to have “dishonored” it.

In New Hampshire, a Justice of the Peace is required to determine whether there is evidence of dishonor before noting a protest. Section 3 of the Uniform Commercial Code (UCC) outlines the evidence that must be considered in determining whether the notarial officer can note a protest. Specifically, pursuant to RSA 382-A:3-505, a Justice of the Peace must determine whether any of the following evidence of dishonor exists:

- (a) A certificate of dishonor made by a United States consul or vice consul, or a Notary Public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by non-acceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties;
- (b) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor; or,
- (c) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

If a Justice of the Peace determines that any of the above three pieces of evidence exist, he or she may “note the protest.”

A “drawee” is the person or entity, usually a bank, that a draft is directed to and that is requested to pay the amount stated on it.<sup>86</sup> A “payor bank” is a bank that is requested to pay the amount of a negotiable instrument and, on the bank’s acceptance, is obliged to pay that amount. *Id.* at 58. A “presenting bank” is a nonpayor bank that presents a negotiable instrument for payment. *Id.*

### **Protest as Evidence**

The protest of a bill of exchange, note, or order, which a Justice of the Peace has duly certified, is considered evidence of the facts stated in the protest and of the notice given to the drawer or endorsers.

RSA 455:4

**The National Notary Association strongly recommends that no Justice of the Peace perform a protest unless familiar with the procedures or under the direct supervision of an appropriately experienced attorney or bank officer.**

### **(9) MARRIAGE**

In the State of New Hampshire, justices of the peace are authorized to perform marriage ceremonies.<sup>87</sup> In order to be married in this State, a couple is required to apply for a marriage license from the clerk of any town or city in the State. If granted, this license is valid for up to ninety days.

#### **A JUSTICE OF THE PEACE MUST NEVER PERFORM A MARRIAGE CEREMONY WITHOUT HAVING FIRST RECEIVED THE MARRIAGE LICENSE.**

Before joining any persons in marriage, a Justice of the Peace *must* receive the license issued by the clerk of a New Hampshire city or town. The marriage license is the form that is used to record that the marriage ceremony has taken place and to record who solemnized the marriage. The license is completed by the bride, the groom, and the Justice of the Peace, or other authorized official, who performs the ceremony. The bride and groom must review the information on the marriage license for completeness and accuracy *prior* to signing it.

No particular ceremony is required for a marriage in New Hampshire.

The Justice of the Peace must record the following on the marriage license *after* the marriage has taken place:

- (a) Certification that he or she is duly authorized to solemnize the marriage in accordance with RSA 457;
- (b) His or her status as a Justice of the Peace commissioned by the State of New Hampshire, pursuant to RSA 457:31;

- (c) The date of the marriage ceremony;
- (d) The city, town or location and county where the couple were married;
- (e) Certification that the bride and groom were married by the officiant in conformance with RSA 457 and that the information noted is correct to the best of his or her knowledge;
- (f) The signature of the Justice of the Peace;
- (g) The justice's typed or printed name;
- (h) The justice's title and address; and,
- (i) An indication of whether the ceremony was religious or civil.

The Justice of the Peace must then place his or her certification on the marriage license.

RSA 5-C:41

**A JUSTICE OF THE PEACE MAY NOT SERVE AS AN OFFICIANT AT HIS OR HER OWN MARRIAGE, AND MAY NOT CERTIFY HIS OR HER OWN MARRIAGE CERTIFICATE.**

#### **Reporting the Marriage Ceremony**

A Justice of the Peace reports the fact that a marriage has taken place by forwarding the completed license to the clerk of the town or city that issued the license. Failure to report a marriage is a violation.

RSA 5-C:49.

**THE COMPLETED LICENSE MUST BE MAILED OR DELIVERED BY THE JUSTICE OF THE PEACE TO THE CLERK WITHIN SIX DAYS OF THE CEREMONY.**

The date the license is received by the clerk is recorded on the marriage certificate as the date the marriage registration is filed. The marriage license is then signed by the clerk and forwarded to the division of vital records administration. The marriage license then becomes the official copy of the certificate of marriage.

**A JUSTICE OF THE PEACE IS REQUIRED TO REPORT THE FACT THAT A MARRIAGE HAS TAKEN PLACE EVEN IF THE BRIDE AND GROOM ASK HIM OR HER NOT TO.**

RSA 5-C:49

## **Penalty for Performing a Marriage Ceremony Without A Valid License**

When a Justice of the Peace performs a marriage ceremony without having first received the marriage license, or performs a marriage ceremony after receiving a marriage license which the Justice of the Peace knows to be invalid, he or she will be fined \$60 for each offense.

RSA 457:34.

### **Fee for Marriage**

For solemnizing a marriage, a Justice of the Peace is entitled to a fee of at least five dollars from the persons joined in marriage.

RSA 457:33.

## **(10) CIVIL UNION**

On May 31, 2007, New Hampshire passed legislation that permits same gender couples to enter civil unions and have the same rights, responsibilities, and obligations as married couples.<sup>88</sup> The effective date of the legislation is January 1, 2008. As a result, beginning on January 1, 2008, justices of the peace are authorized to perform civil unions. Because much of the law on civil unions is established by the civil union statute's reference to the law on marriage, a great deal of the information related to justices of the peace addressed in this section is the same as the information covered in the section of this manual dealing with marriages.

The civil union legislation added a statutory chapter, RSA 457-A, entitled "Civil Unions." RSA 457-A provides that civil unions shall be performed and entered into pursuant to the analogous provisions of the statutes on marriage. By adopting much of the marriage law, the civil union law establishes the same legal process for creating a civil union as for creating a marriage. Of relevance to justices of the peace is the adoption of the statutory section regarding who may solemnize a marriage. RSA 457:31, the language of which is adopted entirely in the civil union statute, provides that, "[M]arriage may be solemnized by a Justice of the Peace as commissioned in the state...", among others. As a result, a civil union may be solemnized by a Justice of the Peace commissioned in New Hampshire. The civil union statute provides that a minister or clergyman or clergywoman is not *required* to solemnize or perform a civil union.<sup>89</sup>

A civil union takes place between one man and another man or one woman and another woman, both of whom must be at least 18 years of age, unmarried, and not in another civil union.<sup>90</sup> Civil unions are prohibited between certain family members.<sup>91</sup> In order to create a civil union in this State, a couple is required to apply for a civil union license from the clerk of any town or city in the State. If granted, this license is valid for up to ninety days.

RSA 457-A.

## **A JUSTICE OF THE PEACE MUST NEVER PERFORM A CIVIL UNION CEREMONY WITHOUT HAVING FIRST RECEIVED THE CIVIL UNION LICENSE.**

Before joining any persons in civil union, a Justice of the Peace *must* receive the license issued by the clerk of a New Hampshire city or town. The license is the form that is used to record that the civil union has taken place and to record who solemnized the civil union. The license is

completed by the couple and the Justice of the Peace, or other authorized official, who performs the ceremony. The couple must review the information on the civil union license for completeness and accuracy *prior* to signing it.

No particular ceremony is required for a civil union in New Hampshire.

The justice must record the following on the civil union license *after* the union has taken place:

- (a) Certification that he or she is duly authorized to solemnize the civil union in accordance with RSA 457;
- (b) His or her status as a Justice of the Peace commissioned by the State of New Hampshire, pursuant to RSA 457:31;
- (c) The date of the civil union ceremony;
- (d) The city, town or location and county where the civil union took place;
- (e) Certification that the couple were joined in civil union by the officiant in conformance with RSA 457-A and that the information noted is correct to the best of his or her knowledge;
- (f) The signature of the Justice of the Peace;
- (g) The justice's typed or printed name;
- (h) The justice's title and address; and,
- (i) An indication of whether the ceremony was religious or civil.

The Justice of the Peace must then place his or her certification on the civil union license.

RSA 5-C:41

**A JUSTICE OF THE PEACE CANNOT SERVE AS OFFICIANT AT HIS OR HER OWN CIVIL UNION, AND CANNOT CERTIFY HIS OR HER OWN CIVIL UNION CERTIFICATE.**

### **Reporting the Civil Union Ceremony**

A Justice of the Peace reports the fact that a civil union has taken place by forwarding the completed license to the clerk that issued the license. Failure to report a civil union is a violation.

RSA 5-C:49.

**THE COMPLETED LICENSE MUST BE MAILED OR DELIVERED BY THE JUSTICE OF THE PEACE TO THE CLERK WITHIN SIX DAYS OF THE CEREMONY.**

The date the license is received by the clerk is recorded on the civil union certificate as the date the civil union registration is filed. The civil union license is then signed by the clerk and forwarded to the division of vital records administration. The civil union license then becomes the official copy of the certificate of civil union.

**A JUSTICE OF THE PEACE IS REQUIRED TO REPORT THE FACT THAT A CIVIL UNION HAS TAKEN PLACE EVEN IF THE COUPLE ASK HIM OR HER NOT TO.**

RSA 5-C:49

**Penalty for Performing a Civil Union Ceremony Without A Valid License**

When a Justice of the Peace performs a civil union ceremony without having first received the civil union license, or performs a civil union ceremony after receiving a license which the Justice of the Peace knows to be invalid, he or she will be fined \$60 for each offense.

RSA 457:34.

**Fee for Solemnizing a Civil Union**

For solemnizing a civil union, a Justice of the Peace is entitled to a fee of at least five dollars from the persons joined in civil union.

RSA 457:33.

**Duty to Perform a Civil Union or Marriage**

A Justice of the Peace is authorized to perform marriages and civil unions, but the statutes do not establish an obligation to perform either type of ceremony. A Justice of the Peace is a public official who has a general legal duty to perform his or her public duties in a non-discriminatory fashion. A Justice of the Peace may decline to perform marriages or civil unions generally and may also decline to perform particular marriages or civil unions for non-discriminatory reasons, such as an inconvenient time or location. RSA 457-A:5 explicitly provides: "Nothing in this chapter shall be construed to require a minister or clergyman or clergywoman to solemnize or perform a civil union." No such statutory exemption is provided for Justices of the Peace. A Justice of the Peace who chooses to perform some marriages but who is disinclined to perform any civil unions should consult with his or her private legal counsel regarding what his or her legal obligations are.

**(11) ARREST WARRANTS**

Historically, justices of the peace functioned both as judicial and notarial officers. Certain judicial matters could be presided over by a Justice of the Peace and, until the first half of the twentieth century, justices of the peace had the authority to issue both search warrants and arrest warrants. Today, much of the judicial authority the office of Justice of the Peace once had has been eliminated. However, a remnant of this judicial function remains in a Justice of the Peace's

authority to issue arrest warrants. New Hampshire justices of the peace are authorized by RSA 592-A:5 and RSA 592-A:8 to issue arrest warrants for the arrest of a person for any offense committed in any county.

Law enforcement officials have limited authority to make warrantless arrests as set forth in RSA 594:10. Generally, when law enforcement officials are conducting a criminal investigation and want to make an arrest, they need to obtain an arrest warrant. To enter the home of the person to be arrested to make an arrest, Part I, Article 19 of the New Hampshire Constitution and the Fourth Amendment to the federal Constitution require law enforcement to obtain an arrest warrant.<sup>92</sup> Arrest warrants must be obtained in other cases as well. For example, an arrest warrant is necessary to arrest someone for a misdemeanor that wasn't committed in the presence of a law enforcement officer. An arrest warrant is also necessary to make an arrest for violation of a protective order in excess of 12 hours after the incident. In addition, law enforcement officers will often seek a warrant even when they have the authority to make a warrantless arrest, simply because there is a judicial preference for a warrant, and if there's a challenge to probable cause, it's more likely to be upheld if the officer obtained a warrant.

In pertinent part, Part I, Article 19 of the New Hampshire Constitution provides that all warrants to arrest a person for examination or trial in prosecutions for criminal matters must be supported by oath or affirmation and must be accompanied with an identification of the person to arrest. Further, no warrant “ought to be issued; but in cases and with the formalities, prescribed by law.”<sup>93</sup>

### **Probable Cause is Required to Issue an Arrest Warrant.**

In order for an arrest warrant to be issued, a determination of probable cause must be made by the Justice of the Peace or other authorized magistrate.<sup>94</sup> The law enforcement officer seeking an arrest warrant will generally bring a sworn complaint, and supporting affidavits signed under oath or affirmation describing the facts supporting the request for an arrest warrant, as well as an unsigned arrest warrant. The officer may also provide oral testimony under oath or affirmation. If the officer provides information orally to supplement what is in the affidavit, the Justice of the Peace should document that information and attach it to the arrest warrant application. It is very important that the oral testimony of the officer is documented by the Justice of the Peace. If it is not documented and the validity of the arrest warrant gets challenged in court, the reviewing judge will not have the benefit of that additional information which was considered in making the probable cause determination.

The Justice of the Peace must then determine whether probable cause to sign the arrest warrant exists. Probable cause to arrest exists “where the facts and circumstances within the officer’s knowledge or of which he has reasonably trustworthy information would warrant a man of ordinary caution to believe that the arrestee has committed or is committing a crime.”<sup>95</sup> Only the probability, and not a prima facie showing, of criminal activity is required to establish probable cause.<sup>96</sup> In making the determination of probable cause, the Justice of the Peace may consider the facts contained in the affidavits as well as any additional information the law enforcement officer provides.

To make a probable cause finding, a Justice of the Peace also needs to have some knowledge of the criminal statute(s) involved. Consequently, along with the review of the affidavit, the Justice of the Peace should review the statutory definition of the crime, which should be identified by

name and statute number in the arrest warrant application. Such a review will enable the Justice of the Peace to determine whether the information establishes probable cause to believe that the suspect committed or is committing acts that would amount to the alleged crime.

### *Neutral and Detached Magistrate*

An arrest warrant must be obtained from a detached, disinterested magistrate, after a determination of probable cause.<sup>97</sup> Essential to the protection of the Fourth Amendment is that the determination of probable cause be made “[B]y a neutral and detached magistrate instead of being judged by the officer...” directly involved in the investigation of the crime.<sup>98</sup> Accordingly, while justices of the peace have statutory authority to issue arrest warrants, a Justice of the Peace should never issue an arrest warrant in any particular matter unless he or she can function as a neutral and detached magistrate.<sup>99</sup> Some things a Justice of the Peace should consider when deciding whether he or she can function as a neutral and detached magistrate are whether he or she has already formed an opinion about the issue, and whether he or she has any personal or business ties to the arrestee or others that might influence his or her decision. This determination is critical because an arrest warrant may be invalidated if the Justice of the Peace or other authorized official issuing it is not a neutral and detached magistrate.

### **Identification of the Individual to be Arrested**

The arrest warrant must clearly identify the individual to be arrested. The minimum requirement for identification of the individual in an arrest warrant is the individual's name.<sup>100</sup> The name alone is a sufficient description of the person.<sup>101</sup>

### **Who the Warrant Should be Directed To**

The arrest warrant may be directed to the sheriff of any county or his deputy or to any constable or police officer of any town in the state. The statutes regarding the authority of a Justice of the Peace to issue warrants make a distinction between justices of the peace “throughout the state” and a Justice of the Peace within a town or district.<sup>102</sup> Historically, there were justices of the peace who had authority throughout the state and those who had authority limited to a smaller area. Today, that distinction no longer exists. As a result, a Justice of the Peace may issue a warrant for the arrest of a person for any offense committed in any county in the state.

### **Where the Arrest Warrant Must be Returned To**

Arrest warrants historically required that the offender be brought before the Justice of the Peace issuing it, if the offense was one over which he had jurisdiction, or to a district or municipal court or some Justice of the Peace especially designated for trial or examination. Once again, the statute from which this requirement comes refers to the historical authority a Justice of the Peace had as a judicial officer to preside over the hearings for certain offenses. Today a Justice of the Peace no longer has that jurisdiction. Accordingly, this provision in the statute is outdated and generally, the warrant must require that the offender to be brought to a district or municipal court.<sup>103</sup> However, if the arrest warrant is issued for any offense committed in a town or city where there is a district or municipal court, the warrant must be made returnable before that district or municipal court, and not elsewhere.<sup>104</sup>

RSA 592-A:5, 8-10.

## **COMPETENCY TO ACT AS A JUSTICE OF THE PEACE**

The following are special circumstances where a Justice of the Peace has specific statutory authority to act or specific statutory limitations on acting.

### ***(1) A Justice of the Peace who is a Stockholder, Director, or Employee of a Bank or other Corporation.***

The competency statutes refer to the types of notarial acts a Justice of the Peace may perform when they are an employee, stockholder, or director of a bank or corporation. Pursuant to statute, a Justice of the Peace who is a stockholder, director, or employee of a bank or other corporation may:

- (a) Take the acknowledgement of any party to any written instrument executed to or by the corporation;
- (b) Administer an oath to any other stockholder, director, officer, employee, or agent of the corporation; and,
- (c) Protest for non-acceptance or nonpayment bills of exchange, drafts, checks, notes, or other negotiable instruments which may be owned or held for collection by the corporation.

There are some limitations on a Justice of the Peace's actions when the Justice of the Peace is affiliated with a bank or other corporation. Justices of the peace may not:

- (a) Take the acknowledgment of any party to any written instrument executed to or by the corporation of which the Justice of the Peace is a stockholder, director, officer or employee, where the Justice of the Peace or other officer is a party to the instrument, either individually or as representative of the corporation; or,
- (b) Protest any negotiable instrument owned or held for collection by the corporation, where the Justice of the Peace or other officer is individually a party to the instrument.

### ***(2) All Justices of the Peace***

## **A JUSTICE OF THE PEACE MUST NEVER NOTARIZE HIS OR HER OWN SIGNATURE.**

While good practice would dictate that a Justice of the Peace should not notarize his or her own signature, the competency statutes expressly prohibit it.

RSA 455:2-a

## **REAPPOINTMENT**

Applications for reappointment, also referred to as “renewals,” are mailed to all justices of the peace about 2 months prior to the expiration of his or her five-year commission. If a Justice of the Peace moves during the 5-year commission, the Secretary of State’s office should be notified. Failure to notify the Secretary of State’s office will result in the Justice of the Peace not receiving an application for reappointment automatically.

If a Justice of the Peace does not receive a renewal application, one may be requested by:

- (1) Calling 603-271-3242; or,
- (2) Faxing a request to 603-271-6316; or,
- (3) Mail to Secretary of State’s Office, 107 North State Street, State House Room 204, Concord, New Hampshire 03301
- (4) Emailing a request to [elections@sos.state.nh.us](mailto:elections@sos.state.nh.us)

The process and fees for reappointment are the same as for the initial appointment.

# COMMISSIONERS OF DEEDS

## COMMISSIONERS OF DEEDS APPOINTED BY THE GOVERNOR

Commissioners of deeds are public officials appointed by the governor, with the advice and consent of the executive council. Because commissioners perform many of the same duties as notaries public and justices of the peace, this manual briefly addresses their role and duties.

Please note that the commissioners referred to in this section are distinct from the commissioners appointed by the courts to manage property that the court has taken control of and from those who are the executive heads of state departments.

Commissioners are appointed to a five-year term. After appointment, a commissioner is required to take and subscribe an oath before a justice of some court of record that he or she will well and faithfully perform all the duties of the office. The oath must be filed by the commissioner with the office of the New Hampshire Secretary of State within three months after it is taken.

Commissioners function much like justices of the peace. The primary difference between the two officials is that commissioners may be appointed in each state, district, and territory of the United States, and in each foreign country to which the United States sends a representative. As a result, commissioners may perform their duties both within and outside of the State of New Hampshire while justices of the peace can only perform their duties within the State.

Commissioners are authorized to perform the following notarial acts “with the same effect as a Justice of the Peace of this state may do within the state”:

- (1) Administer oaths;
- (2) Take depositions and affidavits to be used in the State of New Hampshire and notify parties of the time and date thereof; and,
- (3) Take the acknowledgement of deeds or instruments to be used or recorded in this state.

Please see the detailed description above of the powers and duties of justices of the peace for more information.

RSA 455:12-14.

## COMMISSIONERS OF DEEDS APPOINTED BY THE COURTS

Commissioners may also be appointed by the supreme or superior court or any justice thereof. Commissioners so appointed have the same power as justices of the peace to administer oaths and affirmations, to issue writs of summons to a witness, to proceed against a witness who fails to appear and give a deposition, and in all proceedings under his commission.

RSA 455:15, 517:15-17.

## **COMMISSIONERS FOR OTHER STATES**

Other states may appoint commissioners to act within the State of New Hampshire. Commissioners for other states are authorized to take depositions, administer oaths and affirmations and take the acknowledgment of deeds within this state, *to be used in their own state*. These commissioners have the same power as justices of the peace in this state to administer oaths and affirmations, to issue writs of summons to a witness, to proceed against witnesses who fail to appear to give a deposition, and in all proceedings under his commission.

RSA 455:15.

## **UNLAWFUL ACTS**

Commissioners have the same responsibilities as other notarial officers to perform their duties with integrity and honesty. The unlawful acts described above for both notaries public and justices of the peace are similarly unlawful for commissioners. Please see the Notary Public Unlawful Acts section above for a detailed description of the unlawful acts and penalties.

## **ADMINISTRATION OF OATHS AND NOTARIAL ACTS BY THE MILITARY**

In the State of New Hampshire, in addition to notarial officers, certain members of the military are authorized to perform the following notarial acts:

Commissioned and warrant officers of the New Hampshire national guard and state guard have the power to administer oaths. This power is strictly limited by statute to be used for the purposes of the administration of military justice and for other purposes of military administration.

Commissioned and warrant officers of the armed forces of the United States, in addition to those named above, may administer enlistment oaths to those enlisting or re-enlisting in the New Hampshire national guard.

Judge advocates and paralegals, serving in the militia, have the general powers of a notary public in the performance of all notarial acts to be executed by any member of the militia or United States armed forces and other persons eligible for legal assistance services by law or regulation.

RSA 110-B:64, I.

## **SIGNATURE AND TITLE AS EVIDENCE**

The signature of the military person acting as a notary, together with the title of that person's office, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act.

RSA 110-B:64, II.

**STATUTORY FORM FOR NOTARIZATIONS BY MEMBERS OF THE MILITARY**

Notarizations or acknowledgments performed by members of the military pursuant to RSA 110-B:64 should follow the form below:

I, (name of military official), certify that the foregoing instrument was subscribed and (sworn)(affirmed) before me this (day of the month) day of (month), (year) by (name of person making statement), (Armed Forces service number/SSN), and who is known to me to be (a member of the New Hampshire national guard) (the spouse of a national guard member).

NOTARIZATIONS BY MEMBERS OF THE MILITARY PURSUANT TO RSA 110-B:64 ARE NOT REQUIRED TO BE UNDER OFFICIAL SEAL.

**FEE**

Members of the military acting pursuant to the grant of authority in RSA 110-B:64 are not entitled to any fee for the performance of notarial acts.

RSA 110-B:64, II.

## ETHICS

As public officials who take depositions, acknowledge deeds, and administer oaths, it is very important that notarial officers be persons of integrity and honesty. A notarial officer must be very cautious to perform his or her duties as required by the law.

### CONFLICTS OF INTEREST

All notarial officers addressed in this manual have both a statutory and common law duty to avoid conflicts of interest in the performance of their duties. Statutes addressing conflicts of interest generally describe relationships that, when they exist between the notarial officer and the party seeking the notarial act, constitute a prohibited conflict of interest. For example, notaries public are prohibited by statute from taking the acknowledgment of any party to any written instrument executed by a corporation of which the notary is a stockholder, director, officer or employee, where the notary is a party to the instrument.<sup>105</sup> See the Special Circumstances section above for a detailed description of additional statutes prohibiting certain relationships. To the observer, such relationships create doubt as to the integrity of the act. The statutes addressing conflicts of interest seek to eliminate any doubt about the integrity of notarial acts by forbidding notarial officers from performing notarial acts where such relationships exist.

In addition, there are a number of statutes that address conflicts arising from the actions of a public servant or a member of the public. First, as a public servant, a notarial officer is explicitly prohibited by statute from soliciting, accepting, or agreeing to accept a bribe.<sup>106</sup> A bribe is any pecuniary benefit from another, received by a public servant, knowing or believing the other's purpose is to influence the public servant's action, decision, opinion, recommendation, vote, nomination, or other exercise of the public servant's discretion.<sup>107</sup> A pecuniary benefit means "any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain."<sup>108</sup> Pecuniary benefit does not include "economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally."<sup>109</sup> For purposes of this and the following statutes, a notarial officer is considered a public servant upon his or her appointment.<sup>110</sup>

**A PUBLIC OFFICIAL WHO, SOLICITS, ACCEPTS, OR AGREES TO ACCEPT A BRIBE IS GUILTY OF A CLASS B FELONY PUNISHABLE BY UP TO 7 YEARS IN PRISON.**

Second, as a public servant, a notarial officer is required by statute to report to a law enforcement officer any conduct by another designed to improperly influence the notarial officer's official action, decision, opinion, recommendation, nomination, vote or other exercise of discretion.<sup>111</sup> Such conduct includes threats of harm and private addresses to the public official. The statutory meaning of "harm" includes "any disadvantage or injury, to person or property or pecuniary interest, including disadvantage or injury to any other person or entity in whose welfare the public servant, party official, or voter is interested."<sup>112</sup> However, harm does not include the exercise of any conduct protected under the First Amendment to the United States Constitution or any provision of the federal or state constitutions.<sup>113</sup> Failure to report such conduct to law enforcement is also a class B felony.<sup>114</sup>

Third, the law expressly forbids a public servant from accepting compensation even for a *past* official action.<sup>115</sup> A public servant is guilty of a misdemeanor if he or she “solicits, accepts or agrees to accept any pecuniary benefit in return for having given a decision, opinion, recommendation, nomination, vote, otherwise exercised his discretion, or for having violated his duty.”<sup>116</sup> In other words, even if the pecuniary benefit is not given, sought, or even suggested until *after* the official act has already been completed, a notarial officer is still forbidden to accept it. This statute does not prevent a Notary Public, Justice of the Peace, or commissioner of deeds from accepting fees for notarial acts, performing marriages or civil unions, or other acts for which fees are authorized by statute.

Finally, no public servant may solicit, accept, or agree to accept money or any other pecuniary benefit as compensation for his or her endorsement of any person for a position as a public servant.<sup>117</sup> This provision is particularly applicable to notarial officers, who may be asked to endorse an applicant to be a Notary Public or Justice of the Peace. A Notary Public should only endorse a person who is applying to be a notarial officer if the Notary Public believes the applicant is of a character that makes him or her suitable for commissioning as a notarial officer. A notarial officer is guilty of a misdemeanor if he or she solicits, accepts, or agrees to accept a pecuniary benefit in return for his or her endorsement.<sup>118</sup>

In addition to the aforementioned statutes, common law addresses conflicts of interest in the public official context. “As a general rule, courts will find that there is a conflict of interest when a public officer is involved in a matter in which he has a direct personal and pecuniary interest.”<sup>119</sup> For public officials, like notarial officers, who do not serve the state on a full-time basis, the courts have recognized that the public office may only be a limited part of the official’s life.<sup>120</sup> As a result, to constitute a conflict of interest, the pecuniary interest must be immediate, definite, and capable of demonstration.<sup>121</sup> In general, a public official must never act in his or her own interest in performing official acts, official acts must always be done solely in the interest of the public.<sup>122</sup>

Common law, like the conflict of interest statutes, also addresses conflicts that arise from relationships between the parties to an official act. For example, in case law directly applicable to notarial officers, the New Hampshire Supreme Court found that a conflict of interest existed where a deposition was taken before a Justice of the Peace who was the uncle of the plaintiff in the related litigation.<sup>123</sup> The conflict of interest prevented the use of the deposition at the trial.<sup>124</sup> Case law provides a notarial officer with guidelines as to when a conflict of interest might exist. However, it is incumbent upon the notarial officer, before performing a notarial act, to consider each requested act on a case by case basis to determine if a conflict of interest might exist. Whether explicitly prohibited by statute or barred by common law, notarial officers must take special care to avoid conflicts of interest during the performance of all notarial acts.

### Notary Code of Professional Responsibility

To provide some guidance as to how to handle difficult situations that a notarial officer may encounter, the Notary Public Code of Responsibility - Guiding Principles, published by the National Notary Association, follows. The Guiding Principles were written solely for notaries public. However, many of the principles apply to all notarial officers.

# NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY

## Guiding Principles

### I

The Notary shall, as a government officer and public servant, serve all of the public in an honest, fair, and unbiased manner.

### II

The Notary shall act as an impartial witness and not for profit or gain from any document or transaction requiring a notarial act, apart from the fee allowed by statute.

### III

The Notary shall require the presence of each signer and oath-taker in order to carefully screen each for identity and willingness, and to observe that each appears aware of the significance of the transaction requiring a notarial act.

### IV

The Notary shall not execute a false or incomplete certificate, nor be involved with any document or transaction that is false, deceptive or fraudulent.

### V

The Notary shall give precedence to the rules of law over the dictates or expectations of any person or entity.

### VI

The Notary shall act as a ministerial officer and not provide unauthorized advice or services.

### VII

The Notary shall affix a seal on every notary document and not allow this universally recognized symbol of office to be used by another or in an endorsement or promotion.

### VIII

The Notary shall record every notarial act in a bound journal or other secure Recording device and safeguard it as a public record.

### IX

The Notary shall respect the privacy of each signer and shall not divulge or use personal or proprietary information disclosed during execution of a notarial act for other than an official purpose.

### X

The Notary shall seek instruction on notarization, and keep current on the laws, practices and requirements of the notarial office.

## UNLAWFUL ACTS

The legislature has outlined a number of acts that notarial officers are specifically prohibited by statute from committing, including:

Making a notarial act that is false;

Making a notarial act for a person without first requiring the person to establish his or her identity as described in the Uniform Law section of this manual ;

Making a notarial act purporting to have witnessed the maker's signing of the document or purporting to have received the oath or affirmation of the person, when the notarial officer did not actually witness the maker's signing of the document or did not actually receive the oath or affirmation of the person;

Making a notarial act knowing he or she is not authorized to do; and,

Notarizing his or her own signature.

RSA 455:16

In addition to the above unlawful acts, a notarial officer, as a public servant, is prohibited by statute from using his or her public office to commit "Official Oppression."<sup>125</sup> For notarial officers, any unauthorized act, which purports to be a notarial act, done for the purpose of benefiting the notarial officer or another, or to harm another, constitutes official oppression. Official oppression also includes knowingly refraining from performing a notarial duty imposed by law or clearly inherent in the nature of the office. Any public servant who commits official oppression is guilty of a misdemeanor.

RSA 643:1.

A notarial officer is similarly forbidden by statute from misusing information he or she acquires by virtue of his or her office or from another public servant. Misuse of information includes:

- (1) Acquiring or divesting himself or herself of a pecuniary interest in any property, transaction or enterprise which may be affected by such action or information; or
- (2) Speculating or making a wager on the basis of such action or information; or
- (3) Knowingly aiding another to do any of the foregoing.

Misuse of information is also a misdemeanor offense.

RSA 643:2.

Finally, except for the subsequent addition of the expiration date of the notarial officer's commission as authorized by RSA 456-B:7, I, subsequent alterations to other items on the certificate should not be made. Alteration of other items on the certificate could, in certain

circumstances, constitute a crime pursuant to RSA 541:7, entitled “Tampering With Public Records or Information.”

## **PENALTIES FOR UNLAWFUL ACTS**

Under New Hampshire law, there are specific penalties for the commission of unlawful acts by applicants or by those who have already been appointed notarial officers.

A notarial officer who negligently or recklessly commits any of the first three unlawful acts listed above is subject to a civil penalty of up to one thousand dollars *per violation*. These penalties are paid to the secretary of state for deposit into the general fund.

A notarial officer who purposefully or knowingly commits *any* of the above listed acts is guilty of a class A misdemeanor.

A notarial officer who makes a notarial act knowing he or she is not authorized to do so is also guilty of a class A misdemeanor.

New Hampshire law authorizes the attorney general to notify a suspected violator of the state's intention to seek a civil penalty and may negotiate a settlement with the suspected violators without court action. The Secretary of State then will deposit any civil penalty paid as settlement into the general fund.

RSA 455:16

**A person who wishes to file a complaint against a notarial officer should contact the Attorney General’s office, in writing at 33 Capitol Street, Concord, NH, or by telephone at 1-866-868-3703.**

## DEFINITIONS

All of the definitions in this section are drawn from Black's Law Dictionary (8<sup>th</sup> Ed. 2004) unless otherwise noted.

**Acknowledgement** – A declaration 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. RSA 456-B:1, II.

**Affirmation** – A pledge equivalent to an oath but without reference to a supreme being or to “swearing.”

**Apostille** - A certification on a document that the signature of a public official on the document is authentic in the form prescribed by the Hague Convention of October 5, 1961. An Apostille conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office. RSA 5-C:99, 456-B:6, II.

**Commission** - A warrant or authority from the government or a court, that empowers the person to execute official acts.

**Competency** - The capacity of an official to do something.

**Credible** – The quality that makes something (or someone) worthy of belief.

**Deponent** – One who testifies by deposition.

**Deposition** - A deposition is a written record of a witness's out-of-court testimony that is reduced to writing for later use in court or for discovery purposes in a legal action.

**Dishonor** – To refuse to accept or pay a negotiable instrument when presented.

**Drawee** – The person or entity that a draft is directed to and that is requested to pay the amount stated on it.

**Foreign notarial act** - A notarial performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multi-national or international organization by a Notary Public or Notary; judge, clerk, or deputy clerk of a court of record; or any other person authorized by the law of that jurisdiction to perform notarial acts.. RSA 456-B:6, I.

**Negotiable Instrument** – A written instrument signed by the maker or drawer that includes an unconditional promise or order to pay a specified sum of money and is payable on demand or at a definite time to the bearer.

**Notarial act** - Any act that a Notary Public 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. RSA 456-B:1, I.

Notarial officer - A Notary Public, Justice of the Peace, or other officer authorized to perform notarial acts.

Noting a protest – A Notary Public’s written statement that, upon presentment, a negotiable instrument was neither paid nor accepted.

Oath – A solemn declaration, accompanied by a swearing to God or a revered person or thing, that one’s statement is true or that one will be bound to a promise.

Payor bank – A bank that is asked to pay the amount of a negotiable instrument, and, on the bank’s acceptance, is obliged to pay that amount.

Personal knowledge – Knowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said.

Power of attorney – An instrument granting someone authority to act as agent or attorney-in-fact for the grantor.

Presenting bank – A nonpayor bank that presents a negotiable instrument for payment.

Prima facie – Sufficient to establish a fact or raise a presumption unless disproved or rebutted.

Purported – Reputed; rumored.

Reasonable care - The degree of care that a prudent and competent person engaged in the same endeavor would exercise under similar circumstances. Reasonable care is a test of liability for negligence.

Recordable instruments - Documents that are required by law to be recorded at the registry of deeds. RSA 478:4.

Representative Capacity - Acting (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. RSA 456-B:1, IV.

Satisfactory evidence of identity – When a person is personally known to the notarial officer, is identified upon the oath or affirmation of a credible witness personally known to the notarial officer, or is identified on the basis of identification documents. RSA 456-B:2, VI.

Verification upon oath or affirmation - A declaration that a statement is true made by a person upon oath or affirmation. RSA 456-B:1, III.

Vital record - a certificate or report of a vital event. RSA 5-C:1, XXXVII.

Vital events - Birth, adoption, death, fetal death, marriage, divorce, legal separation, civil union, termination of a civil union, and civil annulment. RSA 5-C:1, XXXVI.

## **APPENDIX**

### **HAGUE CONVENTION MEMBERS**

The Members of the Hague Conference on Private International Law can be obtained from the Secretary of State at <http://www.sos.nh.gov/>. Please see also [http://www.hcch.net/index\\_en.php?act=states.listing](http://www.hcch.net/index_en.php?act=states.listing).

## **LIST OF SUPERIOR COURTS**

### **Belknap Superior Court**

64 Court Street  
Laconia, NH 03246

### **Sullivan Superior Court**

22 Main Street  
Newport, NH 03773

### **Carroll County Courthouse**

96 Water Village Road - Box 3  
Ossipee, NH 03864

### **Cheshire Superior Court**

12 Court Street  
Keene, NH 03431-0444

### **Coos Superior Court**

55 School Street, Suite 301  
Lancaster, NH 03584

### **Grafton Superior Court**

3785 Dartmouth College Highway  
North Haverhill, NH 03774

### **Hillsborough County Superior Court North**

300 Chestnut Street  
Manchester, NH 03101

### **Hillsborough County Superior Court South**

30 Spring Street; P. O. Box 2072  
Nashua, NH 03061-2072

### **Merrimack Superior Court**

163 North Main Street  
P.O. Box 2880  
Concord, NH 03302-2880

### **Rockingham Superior Court**

Rockingham County Courthouse  
10 Route 125  
Brentwood, NH

### **Strafford Superior Court**

Strafford County Justice & Administration Building  
279 County Farm Road  
P.O. Box 799  
Dover, NH 03820-0799

# PERTINENT NEW HAMPSHIRE STATUTES

## CHAPTER 455 NOTARIES PUBLIC AND COMMISSIONERS Notaries Public

**RSA 455:1 Appointment.** – Notaries public shall be appointed by the governor, with advice and consent of the executive council, and shall be commissioned for 5 years.

**RSA 455:2 Application.** – Any person applying to be a Notary Public shall be a resident of this state. The applicant shall sign a written statement under oath as to whether the applicant has ever been convicted of a crime that has not been annulled by a court, other than minor traffic violations. The applicant shall be endorsed for appointment by 2 notaries public and a registered voter of this state.

**RSA 455:2-a Competency.** – It shall be lawful for any Notary Public or any other officer authorized to administer an oath or take an acknowledgment or proof of an instrument or make protest, who is a stockholder, director, officer or employee of a bank or other corporation, to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee or agent of such corporation, or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such corporation; provided it shall be unlawful for any Notary Public or other officer authorized to administer an oath or take an acknowledgment or proof of an instrument or make protest, to take the acknowledgment of an instrument executed by or to a bank or other corporation of which he is a stockholder, director, officer or employee, where such notary or other officer is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary or other officer is individually a party to such instrument. No person acting in the capacity of Notary Public shall notarize his or her own signature. This section shall not be construed to imply that the acts herein made lawful may heretofore have been unlawful, and no instrument heretofore acknowledged or notarized before a Notary Public or other officer who would have been competent to act under the terms hereof shall hereafter be impugned or invalidated on the grounds that such Notary Public or other officer was incompetent to act.

**RSA 455:3 Powers.** – Every Notary Public, in addition to the usual powers of the office, shall have the same powers as a Justice of the Peace in relation to depositions and the acknowledgment of deeds and other instruments and the administering of oaths. All acknowledgments made by a Notary Public shall be either under an official seal or shall carry the legible imprint of an official rubber stamp stating the name of the notary, the words ""Notary Public, New Hampshire" and the expiration date of the Notary Public's commission.

**RSA 455:4 Protest as Evidence.** – The protest of a bill of exchange, note, or order, duly certified by a Notary Public, shall be evidence of the facts stated in the protest and of the notice given to the drawer or endorsers.

## Notarial Fees

**RSA 455:11 Notarial Fees.** – Notaries public shall be entitled to a fee of up to \$10 for each oath, witness, service, or certification with the following exceptions:

I. For services related to the taking of depositions, the Notary Public shall be entitled to the same fees as justices are entitled to receive pursuant to RSA 517:19.

II. No fees shall be allowed for administering and certifying oaths of office of town officers.  
Commissioners

**RSA 455:12 Appointment.** – The governor, with advice and consent of the executive council, may appoint, in each state, district, and territory of the United States, and in each foreign country to which the United States sends a representative, a commissioner or commissioners of deeds, to continue in office 5 years.

**RSA 455:13 Oath.** – Before any commissioner of deeds shall perform any duty of his or her office, he or she shall take and subscribe an oath, before a judge of some court of record, that he or she will well and faithfully perform all the duties of the office, which oath shall be filed by him or her in the office of the secretary of state within 3 months after taking the same.

**RSA 455:14 Powers.** – Such commissioner of deeds may, both within and without this state, administer oaths, take depositions and affidavits to be used in this state and notify parties of the time and place thereof, and take the acknowledgment of deeds or instruments to be used or recorded in this state, in the same manner and with the same effect as a Justice of the Peace of this state may do within the state.

**RSA 455:15 For Other States; By Court Appointment.** – Any commissioner for any other state who is authorized to take depositions, administer oaths and affirmations and take the acknowledgment of deeds within this state, to be used in such other state, and any commissioner appointed by the supreme or superior court or any justice thereof, shall have the power to administer oaths and affirmations, to issue writs of summons to a witness, to proceed against such witness upon his neglect to appear and give his deposition, and in all proceedings under his commission, that is vested in justices of the peace in like cases.

## Enforcement

**RSA 455:16 Misconduct, Penalties.** –

I. A person shall be subject to a civil penalty not to exceed \$1,000 if such person:

(a) When applying for a commission as a Notary Public, negligently or recklessly makes a material false representation on the application form;

(b) Holding a commission as a Notary Public or Justice of the Peace, negligently or recklessly makes a notarial act that is false;

(c) Holding a commission as a Notary Public or Justice of the Peace, negligently or recklessly makes a notarial act for a person not personally known by the notary without first requiring the person to establish his or her identity; or

(d) Holding a commission as a Notary Public or Justice of the Peace, negligently or recklessly makes a notarial act purporting to have witnessed the maker's signing of the document or purporting to have received the oath or affirmation of the person, when the notary did not actually witness the maker's signing of the document or did not actually receive the oath or

affirmation of the person.

II. A person shall be guilty of a class A misdemeanor:

(a) If such person purposefully or knowingly commits any of the acts listed in paragraph I.

(b) If such person makes a notarial act, as defined by RSA 456-B:1, I, knowing he or she is not a person authorized by RSA 456-B:3 to perform a notarial act.

III. (a) The court, upon petition of the attorney general, may levy upon any person who violates the provisions of paragraph I a civil penalty in an amount not to exceed \$1,000 per violation. All penalties assessed under this paragraph shall be paid to the secretary of state for deposit into the general fund.

(b) The attorney general shall have authority to notify suspected violators of this section of the state's intention to seek a civil penalty, to negotiate, and to settle with such suspected violators without court action, provided any civil penalty paid as settlement shall be paid to the secretary of state for deposit into the general fund.

**RSA 455:17 Notary Public, Justice of the Peace Manual, Education, Enforcement. –**

I. The secretary of state, with the advice and approval of the attorney general, shall prepare or cause to be prepared an up-to-date manual on the privileges, duties, and responsibilities of notaries public and justices of the peace in New Hampshire. The manual shall be written in non-technical language. The manual shall be distributed to each person commissioned a Notary Public, commissioner of deeds pursuant to RSA 455:12, and Justice of the Peace. The manual shall be available to the public free of charge. The manual shall be updated within 6 months following the end of any session of the legislature that amends the statutes affecting the privileges, duties, or responsibilities of notaries public, commissioners, or justices of the peace. The first edition of the manual shall be prepared by September 1, 2007.

II. The secretary of state may use the funds from the portion of the fees paid by applicants for commissions as a Notary Public or a Justice of the Peace deposited into the fund established in RSA 660:31 for the preparation, printing, and distribution of a Notary Public/Justice of the Peace manual, other education of notaries public/justices of the peace, or both, and the acquisition, development, and maintenance of electronic records systems that will enhance the efficiency of the management of public records maintained by his or her office and to enhance the ease of submitting applications and renewals. The secretary of state shall enter into an agreement with the attorney general to provide funds from the fund established in RSA 660:31 for the use of the attorney general for legal services related to the Notary Public/Justice of the Peace manual and for the enforcement of laws relating to Notary Public or Justice of the Peace misconduct.

**CHAPTER 455-A**  
**JUSTICES OF THE PEACE**

**RSA 455-A:1 Appointment.** – Justices of the peace shall be appointed by the governor, with the advice and consent of the executive council, and shall be commissioned for 5 years, as provided in the New Hampshire constitution.

**RSA 455-A:2 Application.**

I. Any person applying to be a Justice of the Peace shall indicate on the application whether he or she has been a registered voter in this state for at least 3 years immediately preceding the date of application. The applicant must sign a written statement under oath stating whether the applicant has ever been convicted of a crime that has not been annulled by a court, other than minor traffic violations. The applicant shall be endorsed for appointment by 2 justices of the peace and a registered voter of this state.

II. A person shall be subject to a civil penalty not to exceed \$1,000 if he or she negligently or recklessly makes a material false representation on the application form when applying for a commission as a Justice of the Peace. A person is guilty of a class A misdemeanor if he or she purposefully or knowingly makes a material false representation on the application form when applying for a commission as a Justice of the Peace. The civil penalty shall be imposed in the same manner as set forth in RSA 455:16.

**RSA 455-A:3 Powers.** – Every Justice of the Peace shall have the power to administer oaths, perform marriage ceremonies, acknowledge instruments, and any other power prescribed by law. A Justice of the Peace signing an acknowledgment or jurat on any document or instrument shall type, print, or stamp the name of the Justice of the Peace and state the expiration date of his or her commission on the document or instrument. However, failure to meet these requirements shall not impair the legal validity of any acknowledgment or jurat.

**CHAPTER 456-B**  
**UNIFORM LAW ON NOTARIAL ACTS**

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 14.

**RSA 456-B:1 Definitions.** –

I. "Notarial act" means any act that a Notary Public 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.

II. "Acknowledgment" means a declaration 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.

III. "Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation.

IV. "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.

V. "Notarial officer" means a Notary Public, Justice of the Peace, or other officer authorized to perform notarial acts.

**RSA 456-B:2 Notarial Acts.** – I. 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.

II. 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.

III. 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.

IV. 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.

V. In making or noting a protest of a negotiable instrument the notarial officer must determine the matters set forth in RSA 382-A:3-505.

VI. A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is personally known to the notarial officer, is identified upon the oath or affirmation of a credible witness personally known to the notarial officer, or is identified on the basis of identification documents.

**RSA 456-B:3 Notarial Acts in This State.** –

I. A notarial act may be performed within this state by the following persons:

(a) A Notary Public of this state;

(b) A judge, marital master, clerk, deputy clerk, register of probate, or deputy register of probate of any court of this state; or

(c) A Justice of the Peace of this state.

II. Notarial acts performed within this state under federal authority as provided in RSA 456-B:5 have the same effect as if performed by a notarial officer of this state.

II. The signature, official seal or the legible imprint of an official rubber stamp stating the name of the notary, and the words "Notary Public, New Hampshire" and the expiration date of the Notary Public's commission of a person performing a notarial act or for a Justice of the Peace the name of the justice and the expiration date of his or her commission typed, printed, or stamped on the document are prima facie evidence that the signature is genuine and that the person holds the designated title.

IV. Any person admitted to the practice of law in this state may administer an oath or affirmation for the purpose of taking oral testimony.

**RSA 456-B:7 Certificate of Notarial Acts.** –

I. 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 of the notarial officer 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 in the military service of the United States, it must also include the officer's rank.

II. A certificate of a notarial act is sufficient if it meets the requirements of paragraph I and it:

(a) Is in the short form set forth in RSA 456-B:8;

(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.

III. By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by RSA 456-B:2.

## ENDNOTES

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- <sup>1</sup> RSA 455:17, I.
- <sup>2</sup> Commissioner's Prefatory Note to the draft Uniform Law on Notarial Acts, National Conference of Commissioners on Uniform State Laws (1982).
- <sup>3</sup> N.H. RSA 455:14
- <sup>4</sup> N.H. RSA 110-B:64, I.
- <sup>5</sup> RSA 310-A:181
- <sup>6</sup> 32 J. Marshall L. Rev. 1003, 1013 (1999).
- <sup>7</sup> *Id.*
- <sup>8</sup> *Id.*
- <sup>9</sup> Black's Law Dictionary (8<sup>th</sup> Ed. 2004).
- <sup>10</sup> *Id.*
- <sup>11</sup> *Villanueva v. Brown*, 103 F.3d 1128, 1137 (3d Cir. 1997)
- <sup>12</sup> American Heritage Dictionary
- <sup>13</sup> N.H. Constitution, Part II, Art. 84.
- <sup>14</sup> RSA 92:2.
- <sup>15</sup> RSA 5:10.
- <sup>16</sup> N.H. Election Procedure Manual: 2004-2005, §IX, p. 77.
- <sup>17</sup> NH Manual for Notaries Public and Justices of the Peace, §4.1 (2<sup>ND</sup> Edition 1999), p.11.
- <sup>18</sup> Black's Law Dictionary (8<sup>th</sup> Ed., 2004).
- <sup>19</sup> RSA 516:20; *See also*, NH Constitution Part II, Art. 84.
- <sup>20</sup> RSA 516:19.
- <sup>21</sup> *Appeal of State of New Hampshire*, 144 N.H. 85, 89 (1999).
- <sup>22</sup> *Id.* (citation omitted).
- <sup>23</sup> *Id.* (citation omitted).
- <sup>24</sup> RSA 516:19
- <sup>25</sup> *See* RSA 92:3; RSA 517:7.
- <sup>26</sup> New Hampshire Constitution, Part II, Art. 84.
- <sup>27</sup> Black's Law Dictionary, (8<sup>th</sup> Ed. 2004).
- <sup>28</sup> *See* NH Manual for Notaries Public and Justices of the Peace, §4.1 (2<sup>ND</sup> Edition 1999), p.16-17.
- <sup>29</sup> Article 2, Hague Convention Abolishing The Requirement of Legalization For Foreign Public Documents, 10/5/61  
[http://www.hcch.net/index\\_en.php?act=conventions.text&cid=41&zoek=Apostille](http://www.hcch.net/index_en.php?act=conventions.text&cid=41&zoek=Apostille).
- <sup>30</sup> Hague Convention on Private International Law, Apostille Section, (Visited March 25, 2007)  
< [http://hcch.e-vision.nl/index\\_en.php?act=text.display&tid=37](http://hcch.e-vision.nl/index_en.php?act=text.display&tid=37) <
- <sup>31</sup> Black's Law Dictionary (8<sup>th</sup> Ed. 2004).
- <sup>32</sup> RSA 516:19
- <sup>33</sup> *See* RSA 92:3; RSA 517:7.
- <sup>34</sup> United States Citizenship and Immigration Service website, (visited March 19, 2007) < <http://USCIS.gov>.
- <sup>35</sup> *Id.*
- <sup>36</sup> 8 U.S.C. § 1454, INA Sec.343.
- <sup>37</sup> *Id.*
- <sup>38</sup> *Id.*
- <sup>39</sup> RSA 477:3-a.
- <sup>40</sup> Black's Law Dictionary, (8<sup>th</sup> Ed. 2004).
- <sup>41</sup> E-mail from Neil B. Cohen, Jeffrey D. Forchelli Professor of Law, Brooklyn Law School, (Apr. 20, 2007).
- <sup>42</sup> *Id.*
- <sup>43</sup> *Id.*
- <sup>44</sup> Black's Law Dictionary (8<sup>th</sup> Ed. 2004).
- <sup>45</sup> *Id.*
- <sup>46</sup> *Id.*
- <sup>47</sup> NH Constitution, Part II, Article 75.
- <sup>48</sup> American Heritage Dictionary.
- <sup>49</sup> *See Opinion of the Justices*, 131 N.H. 443 (1989).
- <sup>50</sup> *See id.* at 448.

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- <sup>51</sup> *Id.*
- <sup>52</sup> *Id.* at 447.
- <sup>53</sup> *Id.*
- <sup>54</sup> N.H. Constitution, Part II, Art. 75.
- <sup>55</sup> N.H. Constitution, Part II, Art. 84.
- <sup>56</sup> RSA 5:10.
- <sup>57</sup> NH Manual for Notaries Public and Justices of the Peace, §4.1 (2<sup>ND</sup> Edition 1999), p.11.
- <sup>58</sup> Black's Law Dictionary (8<sup>th</sup> Ed. 2004).
- <sup>59</sup> RSA 516:19.
- <sup>60</sup> *Id.*
- <sup>61</sup> *Appeal of State of New Hampshire*, 144 N.H. 85, 89 (1999).
- <sup>62</sup> *Id.* (citation omitted).
- <sup>63</sup> *Id.* (citation omitted).
- <sup>64</sup> RSA 516:19.
- <sup>65</sup> *See e.g.* RSA 517:7.
- <sup>66</sup> RSA 456-B:3, IV.
- <sup>67</sup> New Hampshire Constitution, Part II, Art. 84.
- <sup>68</sup> Black's Law Dictionary, (8<sup>th</sup> Ed. 2004).
- <sup>69</sup> *See* NH Manual for Notaries Public and Justices of the Peace, §4.1 (2<sup>ND</sup> Edition 1999), p.16-17.
- <sup>70</sup> Article 2, Hague Convention Abolishing The Requirement of Legalization For Foreign Public Documents, 10/5/61  
(visited March 25, 2007) [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=41&zoek=Apostille](http://www.hcch.net/index_en.php?act=conventions.text&cid=41&zoek=Apostille).
- <sup>71</sup> Hague Conference on Private International Law, Apostille Section (visited March 25, 2007)  
< [http://hcch.e-vision.nl/index\\_en.php?act=text.display&tid=37](http://hcch.e-vision.nl/index_en.php?act=text.display&tid=37).
- <sup>72</sup> Article 2, Convention Abolishing The Requirement of Legalization For Foreign Public Documents, 10/5/61,  
(visited March 25, 2007) [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=41&zoek=Apostille](http://www.hcch.net/index_en.php?act=conventions.text&cid=41&zoek=Apostille).
- <sup>73</sup> Hague Conference on Private International Law, Apostille Section (visited March 25, 2007)  
< [http://hcch.e-vision.nl/index\\_en.php?act=text.display&tid=37](http://hcch.e-vision.nl/index_en.php?act=text.display&tid=37).
- <sup>74</sup> Black's Law Dictionary (8<sup>th</sup> Ed. 2004).
- <sup>75</sup> RSA 516:19
- <sup>76</sup> *See* RSA 92:3; RSA 517:7.
- <sup>77</sup> RSA 5-C:99.
- <sup>78</sup> *Id.*
- <sup>79</sup> United States Citizenship and Immigration Service website (visited 3/19/07) <<http://www.USCIS.gov>.
- <sup>80</sup> *Id.*
- <sup>81</sup> *Id.* (Visited April 29, 2007).
- <sup>82</sup> 8 U.S.C. § 1454, INA § 343.
- <sup>83</sup> RSA 477:3-a.
- <sup>84</sup> RSA 478:4.
- <sup>85</sup> Black's Law Dictionary, (8<sup>th</sup> Ed. 2004).
- <sup>86</sup> Black's Law Dictionary (8<sup>th</sup> Ed. 2004).
- <sup>87</sup> RSA 457:31.
- <sup>88</sup> 2007 New Hampshire House Bill 437 – Final Version.
- <sup>89</sup> RSA 457-A:5.
- <sup>90</sup> RSA 457-A: 1-2.
- <sup>91</sup> RSA 457-A:3, 457-A:4.
- <sup>92</sup> *State v. Ricci*, 144 N.H. 241, 243 (1999).
- <sup>93</sup> New Hampshire Constitution, Part I, Article 19.
- <sup>94</sup> *State of New Hampshire v. Jones*, 127 N.H. 515, 522 (1985).
- <sup>95</sup> *State of New Hampshire v. Doe*, 115 N.H. 682, 686 (1975).
- <sup>96</sup> *Id.* (citations and quotations omitted).
- <sup>97</sup> *Jones*, 127 N.H. at 522.
- <sup>98</sup> *Johnson v. U.S.*, 333 U.S 10 (1948).
- <sup>99</sup> *State v. Kellenbeck*, 124 N.H. 760, 764 (1984).
- <sup>100</sup> *Reeves v. Cox*, 118 N.H. 271, 274 (1978) (citations and quotations omitted).
- <sup>101</sup> *Id.*
- <sup>102</sup> RSA 592-A:5,8.

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- <sup>103</sup> RSA 582-A:10.  
<sup>104</sup> RSA 592-A:9.  
<sup>105</sup> RSA 455:2-a.  
<sup>106</sup> RSA 640:2, I(b).  
<sup>107</sup> *Id.*  
<sup>108</sup> RSA 640:2, II(c).  
<sup>109</sup> *Id.*  
<sup>110</sup> RSA 640:2, II(a).  
<sup>111</sup> RSA 640:3, I(c).  
<sup>112</sup> RSA 640:3, II.  
<sup>113</sup> *Id.*  
<sup>114</sup> RSA 640:3, I.  
<sup>115</sup> RSA 640:4, I.  
<sup>116</sup> *Id.*  
<sup>117</sup> RSA 640:7.  
<sup>118</sup> *Id.*  
<sup>119</sup> 13 P. Loughlin, *New Hampshire Practice, Local Government Law* sec 17, at 448.  
<sup>120</sup> *Id.* at 463.  
<sup>121</sup> *Id.* at 461.  
<sup>122</sup> *Id.* (citation omitted).  
<sup>123</sup> *Id.* (citation omitted).  
<sup>124</sup> *Id.*  
<sup>125</sup> RSA 643:1.