

A moment in history...

Col. John C. Coolidge, father of President Calvin Coolidge, was for many years a Vermont Notary Public, as well as a storekeeper, selectman, deputy sheriff, state representative, state senator and a member of the military staff of the Governor of Vermont.

On the night of August 2, 1923, Col. Coolidge first brought word to his son that President Harding had passed away. This news was followed by a telegram from Attorney General Harry Daugherty, urging Coolidge to take the oath of office as President immediately. The son quickly consulted the Constitution and asked his father to administer the oath of office in his capacity as a Notary Public. The Colonel administered the oath at 2:47 a.m., across a marble-topped table, by the light of oil lamps, using his late wife's Bible. Then the new President returned to bed, to await the morning.

On reaching Washington, Calvin Coolidge was administered a second oath by a Justice of the Supreme Court of the District of Columbia, on the advice of Attorney General Daugherty. The Attorney General had questioned the validity of the original oath, explaining that a Vermont Notary was empowered to swear in only officers of the State.

The memory and the charm of that ceremony in a small Vermont town lives on so forcefully today, however, that the second oath-taking no longer seems important.

February 6, 2007



To The Reader:

I am pleased to offer you this updated Short Guide for Vermont Notaries

Public.

This handbook outlines the laws that govern Vermont Notaries Public. It includes information on how to become a notary public and the term of office, as well as a description of the responsibilities of this office. There is also a short discussion of issues of conflict of interest and potential liability for improperly performing the duties of the office.

This guide is also available on our web site for your convenience at www.sec.state.vt.us. Please let us know what you think! Call us at (802) 828-2148.

A handwritten signature in black ink, which reads "Deborah Markowitz". The signature is fluid and cursive.

Deborah Markowitz
Secretary of State

HOW TO BECOME A NOTARY PUBLIC

To become a notary public, you must be appointed by the judges of the superior court of the county in which you reside, unless you are an ex-officio notary public. Ex-officio notaries must still apply and take the oath of office but these notaries are notaries by virtue of the public office they hold and their fee is waived. For more information on ex-officio notaries, see *Ex-Officio Notaries Public*.

Fill out the application (<http://www.vermontjudiciary.org/eforms>) and take the oath of office before a current notary public or other officer as prescribed by law. This officer may be a justice of the supreme court, superior judge, assistant judge, justice of the peace, judge of the district court, or the presiding officer, secretary or clerk of either house of the general assembly or the governor. If the officer is a notary public, that notary need not affix his or her official seal to the certificate of an oath. County clerks and clerks of the district court may certify the oaths administered by them under the seal of the court. 12 V.S.A. §§5852, 5854. You must then sign the oath form, and have it signed by the officer administering the oath.

You must then present the completed application, along with the \$20 fee, to the county clerk ([County Court Contact Information](#)) in the county in which you reside, for filing and recording. This may be done in person or by mail. Your notary commission will become active as soon as your application is approved and filed.

The oath of office is as follows:

You do solemnly swear (or affirm) that you will be true and faithful to the State of Vermont, and that you will not, directly or indirectly, do any act or thing injurious to the Constitution or Government thereof. (If an oath) So help you God. (If an affirmation) Under the pains and penalties of perjury.

You do solemnly swear (or affirm) that you will faithfully execute the office of notary public for the county of _____ and will therein do equal right and justice to all persons, to the best of your judgment and ability, according to law. (If an oath) So help you God (If an affirmation) Under the pains and penalties of perjury.

EX-OFFICIO NOTARIES PUBLIC

If you are a clerk of the supreme court, county clerk, district court clerk, family court clerk, justice of the peace, town clerk, assistant town clerk, or what the law calls their deputies, you are an ex-officio notary public. 24 V.S.A. §441. We assume deputy here means a duly appointed assistant to any of these officials. In spite of the ex-officio nature of the position, you must still apply (<http://www.vermontjudiciary.org/eforms>), and take the oath of office, as any other notary, for each new term you are elected or appointed to that position. You need not pay the \$20.00 fee, but once you resign from one of these offices, or in any way are no longer qualified to serve, your ex-officio status as a notary public will cease.

You are also an ex-officio notary public if you are a state police officer, municipal police officer, fish and game warden, sheriff or deputy sheriff, motor vehicle inspector, or liquor inspector. You will not be assessed the \$20.00 fee, but again, you must complete the application process. 32 V.S.A. §1403(b), 7 V.S.A. §561.

In every case, your certificate of appointment is then duly attested by the county clerk and recorded in the office of the county clerk and the office of the secretary of state. The secretary of state's office is the only location in the state where all Vermont notary public certificates may be found.

One final word on ex-officio notaries: under Vermont law, any officer of the armed forces of the United States of the rank of captain or of superior rank is authorized to administer oaths of office, oaths to an affidavit, deposition or other written instrument or an acknowledgment of a deed, lease, conveyance, release or other written instrument. In performing these acts, the officer must state his or her rank or title and authority. 12 V.S.A. §5855. No notary appointment is necessary in this case. Notarial acts by these officers are not necessarily limited to services performed for military personnel.

TERM OF OFFICE

A notary public takes office on the day the certificate of appointment is recorded in the office of the county clerk and serves until ten days after the expiration of the term of office of the judges of the superior court. 24 V.S.A. §441. Although rarely exercised, there is presumably an inherent right within the office of the judges of the superior court to revoke this appointment at any time.

Notaries taking office on February 1, 2007 will serve full four-year terms. The law then allows a ten-day grace period before a notary is automatically removed from office by law on February 10, 2011. There is no prohibition against reapplying for further terms, however. Reapplication is your responsibility; no notice will be sent to you to remind you of the renewal date.

NON-RESIDENTS

If you are a non-resident, you may be appointed as a Vermont notary if you reside in New Hampshire, Massachusetts or New York and maintain or are regularly employed in a place of business in Vermont. You should apply to the county clerk of the county in which the business is located. As a non-resident notary, you are required to inform the superior court judges of any change of residence or place of employment. 24 V.S.A. §441a.

RESPONSIBILITIES OF A NOTARY PUBLIC

There are a variety of duties that may be performed by a notary public in Vermont. You may take acknowledgments, administer oaths and affirmations, certify copies of original documents, notarize affidavits and depositions and issue protests under seal. Each of these responsibilities is treated separately below.

Acknowledgments

Acknowledgment means to admit, affirm, declare, testify, avow, confess or own as genuine. Notaries as notaries do not acknowledge; they take acknowledgments, meaning that they certify that an individual has acknowledged that an act of signing a document is his or her free act and deed.

The most common form of acknowledgment is during the conveyance of property. Deeds and other conveyances of land, or of an estate or interest in land, must be signed by the party granting the interest and acknowledged by the grantor before a town clerk, notary public, master, county clerk or judge or register of probate, and recorded at length in the clerk's office of the town in which the lands lie. Acknowledgments of this type before a notary public do not require that a notary seal be affixed to the notary's signature. 27 V.S.A. §341.

The same procedural steps are required for a deed of bargain and sale, a mortgage or other conveyance of land in fee simple or for term of life, or a lease for more than one year from the date of the making of the lease. 27 V.S.A. §342.

The same process also applies to mortgages by deed of machinery attached to or used in a shop, mill, quarry, mine, printing office or factory. 27 V.S.A. §441.

Any document may be acknowledged, but many do not require acknowledgment. Among these are wills, which are attested to by three or more credible witnesses in the presence of the testator and of each other. 14 V.S.A. §5. Similarly, corporate charters are not required to be acknowledged under Vermont law.

While Vermont law does not presently require a particular form for acknowledgment, the following is offered as typical:

STATE OF _____)
COUNTY OF _____)ss.

On this ____ day of _____, 20____,
before me personally appeared _____ (name of person
acknowledging) to me known to be the person
who executed the foregoing instrument, and he
(she) thereupon duly acknowledged to me that
he (she) executed the same to be his (her)
free act and deed.

(Notary signs here)

Oaths and Affirmations

An oath or affirmation is defined as a form of attestation by which a person signifies that he or she is bound in conscience to perform an act faithfully and truthfully. The most common form of oath or affirmation administered by notaries public in Vermont, other than the voter's oath, is the oath of office.

State law permits notaries to administer oaths and affirmations of office. 12 V.S.A. §5851. A notary may administer an oath or affirmation to any state or local officer. Local offices requiring oaths or affirmations include justices of the peace, town clerks, selectpersons, constables, listers, grand jurors and fence viewers. 24 V.S.A. §831; 4 V.S.A. §491. Copies of these oaths or affirmations should be filed, with the signature of the officer and the notary, in the town clerk's office.

An affirmation is a legal substitute for an oath. State law provides that, in the administration of an oath, the word "swear" may be omitted, and the word "affirm" substituted, when the person to whom the obligation is administered is religiously scrupulous of swearing, or taking an oath in the prescribed form. In this case, the words "so help you God" may be omitted, and the words "under the pains and penalties of perjury" substituted; and a person so affirming shall be considered, for every legal purpose of privilege, qualification or liability, as having been duly sworn. 12 V.S.A. §5851.

The pains and penalties of perjury, by the way, may include imprisonment for not more than 15 years and a fine of not more than \$10,000.00, or both. 13 V.S.A. §§2901, 2904.

The oath or affirmation of public office is set out above under the section "How to become a notary public."

Whenever a public official begins a new term of office, even if he or she has taken an oath or affirmation of office before, a new oath or affirmation should be administered before the official begins his or her official duties.

A notary may also administer the voter's oath to applicants to a town checklist. The notary administers the oath, which appears on the voter application form, and after the applicant signs, the notary subscribes his or her name and title on the application. It is the applicant's duty to deliver the completed application to the town clerk. 17 V.S.A. §2124.

There is no requirement in Vermont that a Bible be used in the administration of

oaths or affirmations, and no legal prohibition against administration on a Sunday. Asking an individual to raise his or her right hand is also not technically required by law, but the practice is so ingrained in tradition that it is advisable. A notary may examine a person to see if he or she comprehends the meaning of the oath or affirmation, and may decline to administer it if not satisfied.

Oaths and affirmations may not be administered over the telephone or by proxy. It is good practice to keep a record of all oaths and affirmations administered, as well as information on the date, time and place of these official acts, for future reference.

Certification of Copy

A notary may certify that a copy of an original document is a true copy. 24 V.S.A. §445. This applies to any document of a personal nature. It does not apply to vital records, such as birth, marriage, death or divorce records. No particular form is established for certified copies, however, the following is typical:

"This will certify that the attached document(s) is a true copy of (description of document copied, including number of pages).

Certified this ___ day of _____, 20__

Notary Signature

Title

Affidavits and Depositions

Notarization of affidavits and depositions is within the authority of notaries public in Vermont, but these duties are more likely to be handled by notaries who are also attorneys or paralegals or those who have specialized training. What appears below is a brief outline of the subject and is not meant to be comprehensive. Notaries untrained or inexperienced in these duties should proceed with caution into this field.

An affidavit is a sworn or affirmed written statement or declaration of facts made voluntarily by an individual (affiant). The oath or affirmation that confirms the truth of an affidavit may be taken before a notary public in Vermont. 12 V.S.A. §5854.

An oath or affirmation should be taken (see the following oath form) and a jurat completed at the end of the affidavit, reading "Subscribed and sworn to before me this _____ day of _____, 20__," and signed by the notary following this

statement. The affiant should also sign the document.

Similarly, depositions in civil matters may be taken before a notary public, who by law has the power to administer oaths and take testimony. V.R.C.P. 28(a). The oath required of one about to be deposed is as follows:

You solemnly swear (or affirm) that the evidence you shall give, relative to the cause now under consideration, shall be the whole truth and nothing but the truth. (If an oath) So help you God. (If an affirmation) Under the pains and penalties of perjury.

The Rules of Civil Procedure require that the notary certify on the deposition that the witness was duly sworn by him or her, and that the deposition is a true record of the testimony given by the witness. Then, unless the court orders something else to be done, the notary should securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (name of witness here)" and promptly file it with the court or send it by registered or certified mail to the clerk of that court. V.R.C.P. 30(f).

Once again, good record keeping of notarial acts will always repay the time it takes to note down what you did as a notary on a particular day.

A notary is also allowed to issue subpoenas for attendance of witnesses, production of documentary evidence and for taking depositions. V.R.C.P. 45(a).

Protests

A protest is a formal notarial act in writing and under seal made at the request of a holder of a note or bill, in which the holder declares that the bill or note was presented for payment or acceptance and that payment or acceptance was refused. It is rarely used today, and then almost exclusively in the case of foreign drafts.

Under Vermont law, a protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment. It may also certify that notice of dishonor has been given to all parties or to specified parties. 9A V.S.A. §3-509.

Again, notaries who are unfamiliar with protests should proceed with extreme caution into this field.

JURISDICTION

Under Vermont law, your authority to act as a notary extends statewide, in spite of the fact that you are appointed by the superior judges of one county. 24 V.S.A. §441.

In 1994, 27 V.S.A., §379 was added to provide that "Acknowledgments for deeds and other conveyances, and powers of attorney for the conveyance of lands, which are taken out of state before a proper officer of this state, shall be valid as if taken within the state." This applies only to documents that will be returned to Vermont for recording and is the only case where your notary commission may cross state lines.

SEAL

Vermont law does not require the use of seals by notaries. This requirement was repealed in 1984 (No. 194, Adj. Sess., §2). For documents leaving the state you may need a seal, but within the state no seal is required.

CONFLICT OF INTEREST

When the Communist Party candidate for U.S. Representative appeared in the office of the Secretary of State in Montpelier in 1940, carrying his certificates for nomination, Secretary Myrick refused to accept and file them, on the grounds that the oaths of the signers (that they were legal voters) had been administered by the candidate himself, who happened to be a notary public. The Vermont Supreme Court ultimately supported the decision of the Secretary of State. *Schrimer v. Myrick*, 111 Vt. 255 (1940).

The court explained that "[a]lthough the administration of an oath is a ministerial act, it has been generally held that, whether ministerial or quasijudicial in nature, public policy forbids it to be done by one who has either a financial or a beneficial interest in the proceeding." *Id.* at 257. The court included among its list of disqualifying interest the acknowledgment of a deed by one with a beneficial interest in the conveyance.

Avoid raising the issue of a conflict of interest. If you have any doubt about your beneficial or financial interest in a transaction to which you are being asked to exercise notarial powers, decline.

The only exception is as a stockholder in or employee of a corporation in Vermont, where the law expressly permits you as a notary public to take acknowledgments to an

instrument to which a corporation is a party.
11 V.S.A. §231.

LIABILITIES

In 1968, a California notary public notarized the signature of a woman who appeared before him with what appeared to be a valid driver's license. The signature later was challenged as a forgery and the allegation made that the woman was not the person she claimed to be. When the notary was sued to be held liable for repayment of a loan which was granted in part by relying on the forged document, the court held that a notary could be found negligent by relying solely on third party introductions or identification papers such as passports or drivers' licenses. The court focused on the need for personal knowledge of the identity of the signer by the notary.

Vermont law is not as explicit as California's, and yet there is good reason for every Vermont notary to set high standards for identification before performing notarial acts. A notary is liable to the person involved for all damages caused by his or her official misconduct. 24 V.S.A. §446. Vermont law does not require a bond for notaries, and, although many states do require a bond, the list of claims made against those bonds is convincing evidence that creditors and others who have relied on notarization as a protection against false claims will indeed seek to hold notaries liable for their actions. We have not heard of such suits in Vermont, but the potential for them is always present.

To that end, we recommend utmost prudence in the performance of notarial acts. Your greatest vulnerability comes from acknowledgments of signatures by signers you don't know personally. If you don't know the person to be who he or she claims to be, you have three choices. You may refuse to act. You may rely on a credible witness, who is personally known to you. Or, to be most prudent, you can insist that a credible witness personally known to you takes and signs a written oath, administered by you as a notary, that he or she personally knows the signer. As a notary, you are then testifying to the witness's oath. This oath could be satisfied by the following language:

"I (the witness) do solemnly swear (or affirm) that I know this person (the signer) to be (place signer's name here)."

You should then complete a jurat following this oath, as found on page 7 of this booklet.

Keeping a journal of your notarial acts is also not required by Vermont law, as it is in many other states, but it is a good idea. Buy a notebook or journal, and enter the date, names of the parties who sign the documents, the type of document and the time and have the signers sign their names in your book as well, for your greatest protection as a notary.

FEES

Vermont law does not establish fees notaries may charge except for protests under seal (\$2.00 per protest) and certificates under seal (\$.50 per certificate). 32 V.S.A. §1759. If you are a notary public ex-officio, the law requires that you perform notarial services without charge or fee. 32 V.S.A. §1403(b).

APOSTILLES; FOREIGN AUTHENTICATION

Occasionally a notary public is asked to notarize documents destined for use in foreign countries. Prior to October 15, 1981, there was a cumbersome process in place for legalization of these documents, but on that date the United States formally entered the *Hague Convention on Abolishing the Requirement of Legalization for Foreign Documents*. Now all documents originating in Vermont, properly certified by a notary public, will be admissible in certain foreign countries without any further certification, by the following process.

The document, with proper notarization, must be brought or sent to the Secretary of State's office in Montpelier. There the notary's signature will be verified by comparing it to the notary appointment form on file and a simple document called an Apostille filled out and signed by either the Secretary of State or the Deputy Secretary of State. The Apostille then is embossed with the seal of the Secretary of State. A \$2.00 fee per document should accompany the request. Once the process is completed, the document is then considered legalized in the following countries:

Andorra	Croatia
Angola	Cyprus
Anguilla	Czech Republic
Antigua & Barbuda	Djibouti
Argentina	Dominica
Armenia	El Salvador
Aruba	Estonia
Australia	Falkland Islands
Austria	Fiji
Bahamas	Finland
Barbados	France
Belarus	French Polynesia
Belgium	Germany
Belize	Gibraltar
Bermuda	Greece
Bosnia & Herzegovina	Grenada
Botswana	Guernsey (Bailiwick of)
British Virgin Islands	Hong Kong
Brunei	Hungary
Bulgaria	Ireland
Cayman Islands	Isle of Man
China (Hong Kong)	Israel
China (Macau)	Italy
Colombia	Japan
Comoros Islands	Jersey

Kazakhstan	St. Christopher (Kitts)
Latvia	St. Georgia & So. Sandwich Islands
Lesotho	St. Helena
Liberia	St. Lucia
Liechtenstein	St. Pierre & Miquelon
Lithuania	St. Vincent
Luxembourg	Samoa
Macau	San Marino
Macedonia	Seychelles
Malawi	Slovakia
Malta	Slovenia
Marshall Islands	Solomon Islands
Mauritius	South Africa
Mexico	Spain
Montserrat	Suriname
Mozambique	Swaziland
Namibia	Sweden
Netherlands	Switzerland
Nevis	Tonga
New Caledonia	Trinidad & Tobago
New Zealand	Turkey
Niue	Turks & Caicos
Norway	Tuvalu
Panama	Ukraine
Portugal	United Kingdom of Great Britain
Puerto Rico	United State of America
Romania	Vanuatu
Russian Federation	Venezuela
	Yugoslavia

Please note: The above list is offered in good faith. Member countries and states are updated periodically. For the most current listing, please refer to the Hague Convention's list on the web at http://www.hcch.net/index_en.php?act=conventions.status&cid=41.