



STATE OF ALABAMA
DEPARTMENT OF FINANCE
Division of Risk Management



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MEMORANDUM

TO: All State of Alabama Agencies
FROM: Pam Watkins, Underwriting Manager
RE: New Legislation for Notary Public Bonds
DATE: August 30, 2023

New legislation will become effective September 1, 2023, regarding Notary Bonds. The actual bill is included in our website information for review. In summary, training will be required for all new notary public applicants as well as renewal applicants. The training will be provided on the Alabama Probate Judge Association's website at no charge. A probate judge must deny an application if the applicant cannot satisfy six requirements. A notarized document must contain an oath, acknowledgement, signature of each party, and signature, including seal, of the notary public. Allegations and criminal charges for notaries are also detailed as well as signature acknowledgments. The notary term will remain four years and all probate judges will continue reporting appointments to the Alabama Secretary of State.

As in the past, all state employee notary public bond letters for new and renewing Notaries Public will be issued directly from the Division of Risk Management (DORM). The State Agency requesting the notary bond must currently have Fidelity Bond coverage with DORM. Our bond letter provides proof of coverage that conforms to new statutory mandates. It will be the notary applicant's responsibility to make sure all other requirements are met. To request a letter, email the employee's name as it appears or will appear on the notary seal, agency, position, and county he/she will be applying or renewing to Deborah Barrett at deborahh.barrett@finance.alabama.gov. Once the request has been received, we will endeavor to email it back to you within three business days. Please note that the bond coverage provided by the Division of Risk Management for notaries employed by the State of Alabama extends **only** to their actions taken within the line and scope of their assigned duties and responsibilities. Private or other similar actions taken by such persons cannot be covered.

I am including an article written by Gabe Tucker and Karleigh Heitschmidt (Attorneys Insurance Mutual of the South). This is an excellent article that provides additional details of the changes in the new bill.

 AIM  · Aug 22 · 5 min read

Notary Law Changes Pursuant to Alabama Act 2023-548

Updated: 21 hours ago

By: [Gabe Tucker & Karleigh Heitschmidt](#)



Beginning on September 1, 2023, individuals who are commissioned as notaries public (or, “notaries”) in Alabama will have a different statutory landscape to navigate and comply with. This is due to the newly enacted Alabama Act 2023-548 (the “Act”), which amends Alabama’s current notary law found in Section 36-20-70, et seq., Code of Alabama (1975), as amended (the “Notary Law”).

In short, and as further described in this article, the Act amends several sections of the Notary Law to:

1. Provide uniform application requirements for notary commissions throughout Alabama,
2. Standardize the requirements for notarial acts on publicly recorded instruments,
3. Increase fees related to notary applications, commissions, and actions,
4. Clarify the rules for notaries acknowledging signatures, and
5. Revise how the Notary Law permits enforcing its requirements.

1. Notary Public Application

One change to the Notary Law—and potentially the most important change—is that there is now mandatory training for notary public applicants.^[1] The Act requires the Alabama Probate Judge Association (“APJA”) and the Alabama Law Institute (“ALI”) to develop the training program.

Prior to a probate judge approving a notary public application, the applicant must complete the training within 30 days of submitting his or her notary application.^[2] For notaries already commissioned as of September 1, 2023, the Act requires them to complete the training when they renew their expired commissions. The training will be provided on APJA’s website without charge.

In addition to the mandatory training, a probate judge is *required* to deny a potential notary's application if the applicant cannot satisfy any of the six (6) requirements. The requirements are that the applicant:

1. must be an Alabama resident;
2. must apply to a probate judge in the applicant's county of residence;
3. cannot have a prior conviction for a felony or crime of moral turpitude;
4. cannot currently be a debtor in a bankruptcy proceeding;
5. cannot currently be adjudicated as incapacitated; and
6. cannot provide false information in his or her application.

2. Notary Certificate Language

The Act adds requirements related to the form and content of a notarial act on an instrument that is publicly recorded. A notarial act on a publicly recorded instrument must contain:

1. an oath;
2. acknowledgment;
3. the signature, or mark, of each party to the instrument; and
4. the signature and seal of the notary public.

3. Fees And Bonds

The Act also imposes additional or increased fees related to notary commissions. Among these fee changes are a new \$10.00 application fee (whether the application is for a potential notary's initial application or a current notary's renewal application) and an increase in the commission fee from \$10.00 to \$25.00.

Not only does the Act change the fees payable by a notary applicant to apply for and receive his or her commission, but it also increases the amount that a notary is allowed to charge for performing a notarial act. Notaries will now be permitted to charge up to \$10.00 per notarial act, an increase of \$5.00 from the previous fee cap. State, county, and municipal employees, however, will not be permitted to charge a fee for performing a notarial act during and as part of his or her public service.

Further, the Act increases the surety bond value that notaries are required to obtain from \$25,000.00 to \$50,000.00, while also requiring all bonds obtained for the purpose of becoming a notary to be obtained from an Alabama licensed producer of such bonds.

4. Signature Acknowledgments

Physical Presence Method

By adding a new subsection to Ala. Code § 36-20-73.1, the Act clarifies that the general rule for notaries acknowledging signatures is that the signatory must physically appear before the notary in Alabama. The notary must be physically present with the signatory at the time of the execution and acknowledgment. Moreover, the notary must positively identify the signatory by examining a government-issued photo ID or through the notary's personal knowledge.

Remote Method [3]

Although a signatory physically appearing before a notary is preferred, a signatory and notary may utilize a "remote" (or, "virtual") acknowledgment method.[4] With this method, the signatory can appear before a notary public using two-way audio-video communication technology.[5] Importantly, even though a notary can virtually witness a signatory execute his or her signature with this method, all documents used during the virtual acknowledgment must be provided to the notary for his or her authentication and original, wet signature.

To use the remote method in compliance with the statute, the notary must be physically located in Alabama, the virtual communication must be recorded, and the recording must be maintained by the notary for 7 years.

The recording must contain the following 6 elements:

1. the date and time of the recorded signature acknowledgment;
2. a description of the relevant documents for the signature acknowledgment;
3. the notary public's attestation that he or she is physically located in Alabama;
4. a description of how the notary verified the signatory's identity;
5. if applicable, a clear image of any government-issued ID used to identify the signatory's identity; and
6. a clear image of the signatory signing the applicable document observed by the notary.

For the identification requirement, the notary can verify the signatory's identity through the notary's personal knowledge or by the signatory presenting 2 forms of a government-issued ID. One of the IDs must include the face and signature of the signatory. If the notary verifies the signatory's identity with IDs, then the notary must also verify the signatory's identity by reviewing public or private data sources.

5. Allegations and Criminal Charges

Finally, the Act specifies acts for which a notary, an individual impersonating a notary, or an individual aiding and abetting a notary, are guilty of a Class C misdemeanor or Class D felony. The Act also creates a new process through which allegations may be filed against notaries.

To enforce the Notary Law, allegations of violations of the Notary Law may be submitted by parties to, or attorneys involved in, the applicable transaction by submitting an affidavit to the Alabama Secretary of State or the probate judge who commissioned the notary. The Secretary of State or probate judge must then forward the affidavit to the Alabama Law Enforcement Agency, which must investigate the violation alone or in coordination with local law enforcement. Founded investigations must then be referred to the appropriate district attorney for prosecution.

Additionally, probate judges who issue notary commissions are empowered to hold notaries accountable for unlawful actions. Probate judges may issue warnings to notaries or restrict, suspend, or revoke their commissions. Probate judges may also order injunctive relief against any individual who violates the Notary Law.

Other important changes to the Notary Law include that a notary losing his or her commission (whether through expiration or termination) does not automatically terminate or preclude an investigation into the notary's conduct. A Secretary of State, probate judge, or law enforcement agency may continue such an investigation and make it a matter of public record that the former notary's conduct would have been grounds for disciplinary action.

Conclusion

The Act amends several portions of the Notary Law, but it should be noted that the notary public term remains 4 years and probate judges must still report appointments to the Alabama Secretary of State. As a result of the Act providing uniformity and guidance for notaries throughout Alabama, it is important for notaries, and parties that utilize notaries for transactions, to become familiar with the Act.

[1] Licensed attorneys who are commissioned as notaries public are exempt from this requirement.

[2] The 30-day deadline may be extended by a probate judge upon a showing of good cause.

[3] The requirements for this method were established in 2021 and remain the same.

[4] An exception is that remote notarization may not be used to notarize an absentee ballot application or an absentee ballot affidavit, or for any purpose related to voting.

[5] This is technology that allows two people to communicate with each other by sight and sound (i.e., Zoom).