

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1377

S.P. 450

In Senate, April 29, 1987

Reference to the Committee on Legal Affairs suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate  
Presented by Senator MAYBURY of Penobscot.

Cosponsored by Senator ERWIN of Oxford, Representative MURPHY of Kennebunk, Representative COTE of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT to Clarify the Laws Relating to  
Notary Public.

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3

4 Be it enacted by the People of the State of Maine as  
5 follows:

6 Sec. 1. 4 MRSA §951, as amended by PL 1981, c.  
7 456, Pt. A, §7, is repealed.

8 Sec. 2. 4 MRSA §951-A is enacted to read:

9 §951-A. Definitions

10 As used in this chapter, unless the context oth-  
11 erwise indicates, the following terms have the fol-  
12 lowing meanings.

1           1. Acknowledgment. "Acknowledgment" means a no-  
2 tarial act in which a notary certifies that a signer,  
3 whose identity is personally known to the notary or  
4 proven on the basis of satisfactory evidence, has ad-  
5 mitted, in the notary's presence, having signed a  
6 document voluntarily for its stated purpose.

7           2. Commission. "Commission" means to empower to  
8 perform notarial acts and the written authority to  
9 perform those acts.

10          3. Copy certification. "Copy certification"  
11 means a notarial act in which a notary certifies hav-  
12 ing made a photocopy of a document that is neither a  
13 public record nor publicly recordable.

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

21          5. Notarial act and notarization. "Notarial  
22 act" and "notarization" means any act that a notary  
23 may perform under section 951-B.

24          6. Notarial certificate and certificate. "No-  
25 tarial certificate" and "certificate" means the part  
26 of or attachment to a notarized document for comple-  
27 tion by the notary and bearing the notary's signature  
28 or seal, or both.

29          7. Notary public or notary. "Notary public" or  
30 "notary" means any person commissioned to perform no-  
31 tarial acts under this chapter.

32          8. Oath and affirmation. "Oath" and "affirma-  
33 tion" means a notarial act or part thereof in which a  
34 notary certifies that a person made a vow in the  
35 presence of the notary on penalty of perjury, with  
36 reference made to a supreme being for an oath.

37          9. Official misconduct. "Official misconduct"  
38 means:

1 A. A notary's performance of or failure to per-  
2 form any act prohibited or mandated respectively  
3 by this chapter or by any other law in connection  
4 with a notarization; or

5 B. A notary's performance of a notarial act in a  
6 manner found by the Secretary of State to be neg-  
7 ligent or against the public interest.

8 10. Personal knowledge of identity. "Personal  
9 knowledge of identity" means familiarity with an in-  
10 dividual resulting from interactions with that indi-  
11 vidual over a period of time sufficient to eliminate  
12 every reasonable doubt that the individual has the  
13 identity claimed.

14 11. Satisfactory evidence of identity. "Satis-  
15 factory evidence of identity" means identification of  
16 an individual based on the following:

17 A. At least 2 current documents, one issued by  
18 the Federal Government or State Government with  
19 the individual's photograph, signature and physi-  
20 cal description, and the other by an institution,  
21 business entity or the Federal Government or  
22 State Government with at least the individual's  
23 signature; or

24 B. The oath or affirmation of a credible person  
25 who is personally known to the notary and who  
26 personally knows the individual.

27 Sec. 3. 4 MRSA §951-B is enacted to read:

28 §951-B. Seal; authority

29 1. Seal of office. A notary public may keep a  
30 seal of office whereon is engraved his name and the  
31 words "Notary Public" and "Maine" or its abbreviation  
32 "Me.," with the arms of state or such other device as  
33 he chooses.

34 2. Notarial acts. When authorized by the laws  
35 of this State or any other state or country to do any  
36 official act, the notary may administer any oath nec-  
37 essary to the completion or validity thereof. Spe-  
38 cifically, a notary may perform the following acts:

- 1           A. Acknowledgments;  
2           B. Oaths and affirmations;  
3           C. Jurat; and  
4           D. Copy certificates.

5           3. Disqualification. A notary is disqualified  
6 from performing a notarial act if the he:

7           A. Is a signer of or named in the document that  
8 is to be notarized;

9           B. Is related to the person whose signature is  
10 to be notarized as a spouse, sibling or lineal  
11 ascendant or descendant; and

12           C. Will receive directly from a transaction con-  
13 ected with the notarial act any commission, fee,  
14 advantage, right, title, interest, cash, property  
15 or other consideration exceeding in value the  
16 usual fees charged by the notary in those cases.

17 Any notary public who is a stockholder, director, of-  
18 ficer or employee of a bank or other corporation may  
19 take the acknowledgment of any party to any written  
20 instrument executed to or by the corporation, or may  
21 administer an oath to any other stockholder, direc-  
22 tor, officer, employee or agent of the corporation,  
23 or may protest, for nonacceptance or nonpayment,  
24 bills of exchange, drafts, checks, notes and other  
25 negotiable instruments which may be owned or held for  
26 collection by the bank or other corporation.

27           4. Impartiality. A notary:

28           A. May not influence a person to enter into or  
29 not enter into a lawful transaction involving a  
30 notarial act by the notary;

31           B. Shall perform notarial acts in lawful trans-  
32 actions for any requesting person who tenders the  
33 usual fee charged by the notary in those cases;  
34 or

1           C. May not refuse to perform notarial acts in  
2           lawful transactions because of any personal, po-  
3           litical, religious or moral belief.

4           5. False certificate. A notary may not execute  
5           a certificate containing a statement known by the no-  
6           tary to be false or perform any official action with  
7           intent to deceive or defraud.

8           Sec. 4. 4 MRSA §955-A, as amended by PL 1981, c.  
9           456, Pt. A, §10, is repealed.

10          Sec. 5. 4 MRSA §955-B is enacted to read:

11          §955-B. Reprimand; removal

12          A notary may be reprimanded or removed from of-  
13          fice according to the following procedures.

14          1. Notice. Notice of alleged misconduct must:

15          A. Be in writing to the Secretary of State;

16          B. Detail the specific behavior considered mis-  
17          conduct; and

18          C. Cite the law, if any, which appears to have  
19          been violated.

20          2. Review. The Secretary of State shall review  
21          these notices and determine what further action  
22          should be taken.

23          3. Actions. The following actions may be taken  
24          with respect to notices of misconduct.

25          A. The Secretary of State shall notify the nota-  
26          ry accused of misconduct, indicating the circum-  
27          stances of the allegations. He shall allow the  
28          notary a reasonable opportunity to reply to the  
29          allegations.

30          B. The Secretary of State may deliver a written  
31          advisory notice to clarify proper conformity to  
32          the requirements of this chapter and to indicate  
33          possible areas of misconduct.

1 C. The Secretary of State may deliver a written  
2 official warning to cease misconduct to any nota-  
3 ry whose actions he judges to be official miscon-  
4 duct.

5 D. The Secretary of State may request the De-  
6 partment of the Attorney General to investigate  
7 notices of alleged misconduct and to determine  
8 whether a particular case should be brought be-  
9 fore the Administrative Court.

10 Whenever, the Administrative Court, upon com-  
11 plaint by the Secretary of State, after due notice  
12 and hearing finds that a notary public has performed  
13 any duty imposed upon him by law in an improper man-  
14 ner or has performed acts not authorized by law, the  
15 Administrative Court may remove the notary public  
16 from office.

17 STATEMENT OF FACT

18 The purpose of this bill is to clarify certain  
19 provisions concerning notaries public and provides  
20 clearer guidelines concerning the duties and respon-  
21 sibilities of notaries public, including the require-  
22 ment of impartiality in performance of notarial acts.

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