THE CLERKS AUTHORITY

Georgia Superior Court Clerks' Cooperative Authority

Notary Public or "Near" Notary, Here's What You Need To Know (well…some of it)

Charles Baker

Hall County Clerk of Superior Court

Gainesville, GA · March 10, 2016

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It's N-O-T-A-R-Y (pause) P-U-B-L-I-C

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A notary's primary responsibility is…

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To Prevent

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Notary Journal?

While Georgia law does not require a notary to keep a journal, which documents each notarial act in detail, it is **strongly** recommended that a journal be maintained.

- The journal serves as an archive of each notarial act
- Elements of the act, including name of signer, signer's address, signer's signature, signer's telephone number, date and time of notarization, type of ID presented by signer, elements of the ID, date of document, type of document presented for notarization, and a comment section are essential to maintaining a journal.

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Signer's Printed Name: Joel Dickes Shell

Signer's Signature: [redacted]

Signer's Complete Address: [redacted] Lenox GA [redacted]

Signer's Business Phone: (912) [redacted]

Signer's Home Phone: (912) [redacted]

Notarial Service: ☐ Jurat ☑ Acknowledgment ☐ Oath ☐ Other: _____ ☐ Fee: $ _____

(if other describe):

Type of Document: [redacted]

Date Notarized: 10-26-99

Time of Notarization: 9:45 ☑ AM ☐ PM

Date of Document: 10-26-99

Personally Known: ☐

Produced ID: ☑ Type of ID: GA DL [redacted] Expiration: 8-6-03

Comments, Special observations:

Top of ThumbPrint (when applicable)

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Signer's Printed Name: Manas M. Javadi

Signer's Signature: [redacted]

Signer's Complete Address: [redacted] Marietta GA

Signer's Business Phone: [redacted]

Signer's Home Phone: [redacted]

Notarial Service: ☐ Jurat ☑ Acknowledgment ☐ Oath ☐ Other: _____ ☐ Fee: $ N/A

(if other describe):

Type of Document: Copy Acknowledgment

Date Notarized: 10-26-99

Time of Notarization: 11:40 ☑ AM ☐ PM

Date of Document: 10-26-99

Personally Known: ☐

Produced ID: ☑ Type of ID: GA DL # [redacted] Expiration: 3-18-01

Comments, Special observations:

Top of ThumbPrint (when applicable)

How much do you know about notary public procedures and law?

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1. _____ A notary public is commissioned by the county Board of Commissioners' Chairman.

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1. _____ A notary public is commissioned by the county Board of Commissioners' Chairman.

FALSE - A Georgia notary public is appointed and commissioned by the Clerk of Superior Court in the county where the notary resides.

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2. _____ A Georgia notary public may perform official acts anywhere in the United States.

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2. _____ A Georgia notary public may perform official acts anywhere in the United States.

FALSE - Georgia notaries may only perform notarial acts within the geographical boundaries of this state. In other words, they have statewide jurisdiction and may perform their official duties in any county in Georgia.

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3. _____ A notary's primary function is to explain legal documents and witness signatures.

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3. _____ A notary's primary function is to explain legal documents and witness signatures.

FALSE - While notaries do witness signatures, their primary function is to **prevent and deter fraud**. They do this by always requiring the personal appearance of the signer, identifying the signer, and performing the notarial act requested for the execution of the document. Unless the notary is an attorney licensed to practice law in Georgia, the notary may not explain the contents or the effects of a document or give any legal advice.

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4. _____ When the document signer is not present, the notary is permitted to notarize the signer's signature if the notary verifies the signature via electronic communications (email, text, telephone, etc.).

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4. _____ When the document signer is not present, the notary is permitted to notarize the signer's signature if the notary verifies the signature via electronic communications (email, text, telephone, etc.).

FALSE - A notary may never notarize when the signer is not physically present before the notary, face-to-face in the same room at the same time, even if the notary personally knows the signer and recognizes his/her signature. There are no exceptions!

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5. _____ A notary may not certify a photocopy of a birth certificate or a deed.

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5. _____ A notary may not certify a photocopy of a birth certificate or a deed.

TRUE - Georgia law prohibits a notary from making a certified copy of any public record or publicly recordable documents. Birth certificates and deeds are just two examples of documents in these categories.

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6. _____ A Social Security card and a library card are not acceptable forms of identification for a notarization.

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6. _____ A Social Security card and a library card are not acceptable forms of identification for a notarization.

TRUE - Georgia law specifies that a notary must rely on personal knowledge or satisfactory evidence to identify a signer. A Social Security card and a library card would not be reliable because they don't contain a photo to assist in determining positive identification.

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7. _____ When performing a notarial act, the notary should indicate in the notarial certificate the state and county of the notary's residence (State of Georgia, County of ____).

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7. _____ When performing a notarial act, the notary should indicate in the notarial certificate the state and county of the notary's residence (State of Georgia, County of ____).

FALSE - The notation in the notarial certificate that indicates "State of Georgia, County of ___" is called the venue, which is the location where the notarization actually takes place, not the county in which the notary is commissioned.

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8. _____ A notary may notarize his sister's signature on a power of attorney giving him the authority to care for her minor child.

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8. _____ A notary may notarize his sister's signature on a power of attorney giving him the authority to care for her minor child.

FALSE - The notary would be a party to the power of attorney, therefore, is forbidden by Georgia law from performing the notarial act. [O.C.G.A. 45-17-8(c)(2)]

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9._____ Georgia law allows notaries to charge any amount that is reasonable for a notarization.

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9._____ Georgia law allows notaries to charge any amount that is reasonable for a notarization.

FALSE - The law allows a maximum fee of $2 per notarial act. (O.C.G.A. 45-17-11)

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10._____ A notary may notarize the signature mark of a person when that person cannot make a “normal” signature.

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10._____ A notary may notarize the signature mark of a person when that person cannot make a “normal” signature.

TRUE - A mark is considered a legal signature if the person making that mark designates the mark as his/her signature. Georgia law does not provide a specific procedure for notarizing the mark of a person, but the notary should exercise caution when performing this special notarization.

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11._____ If the document signer is visually impaired, the notary should read the document to the signer prior to notarization.

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11._____ If the document signer is blind, the notary should read the document to the signer prior to notarization.

TRUE - The notary, as an impartial officer, should read the entire document to the signer who is blind before notarization. This recommendation is designed to protect the person with a sight disability by ensuring that the signer knows exactly what he/she is signing. However, the non-attorney notary may not explain the contents or effects of the document to the signer.

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12._____ The law allows notaries to keep copies of the documents they notarize in order to protect themselves in the event a complaint of misconduct is filed against them.

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12._____ The law allows notaries to keep copies of the documents they notarize in order to protect themselves in the event a complaint of misconduct is filed against them.

FALSE - Nothing in Georgia law authorizes notaries to keep copies of the documents they notarize, and doing so may be a violation of a person's privacy. If the transaction is related to the notary's employment, the employer may keep a copy of the transaction documents for the business file. If a notary wants personal protection, he/she should carefully document each notarial act in a permanently bound recordbook especially designed for this purpose.

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13._____ A notary public may be held personally liable for any financial loss caused by the notary's failure to properly perform his/her official duties.

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13._____ A notary public may be held personally liable for any financial loss caused by the notary's failure to properly perform his/her official duties.

TRUE - A notary has unlimited personal liability for any loss caused by official misconduct. The notary could be sued, which may result in a court judgment against the notary for the amount of the loss.

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Please Don’t !

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Give it some thought

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Easy to read !

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Multiple Signers

- As the notary, you are ONLY concerned with the signer(s) before you
- If document has places for multiple signers and all are not present, that's OK!
- The journal entry will be the proof of who or whom signed before you
- You can only prevent fraud that's in front of you. Altered documents after the fact are not your responsibility. Keep journal!

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Multiple Signers

- Imprint seal in close proximity
- If multiple signers are present, notary must sign and imprint seal for each notarial act

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Seal Over Signature Isn't "More Official"

State of Georgia

County of Fannin

Signed and sworn to (or affirmed) before me on Aug. 20, 2014
Date

by Rachel Rice,
Printed name(s) of individual(s) making statement

who proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

✓ Personally Known
or
____ Produced Identification

Type and # of ID (last 4 digits) _____

ID Expiration Date _____

Michael V. Smith
Signature of notary

MICHAEL V SMITH
Fulton County
My Commission Expires
January 31, 2017

Michael V. Smith
(Name of notary, typed, stamped or printed)

Notary Public State of Georgia

Stamp/Seal

BOO!

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The Proper Way To Affix Seal

Acknowledgment in an Individual Capacity

State of Georgia

County of DeKalb

This record was acknowledged before me on August 20, 2014
Date

by Rachel Rice,
Printed name(s) of individual(s) signing document

who proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

✓ Personally Known
or
____ Produced Identification

Type and # of ID (last 4 digits) _____

ID Expiration Date _____

[redacted]
Signature of notary public

Michael V. Smith
(Name of notary, typed, stamped or printed)

Notary Public State of Georgia

My commission expires: Jan. 31, 2017

YAY!

Stamp/Seal

STATE OF GEORGIA NOTARY PUBLIC
MICHAEL V SMITH
Fulton County
My Commission Expires
January 31, 2017

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§45-17-2 Qualifications of notaries

(a) Any individual applying for appointment to be a notary public shall:

(1) Be at least 18 years old;

(2) Be a United States citizen or be a legal resident of the United States;

(3) Be a legal resident of the county from which such individual is appointed;

(4) Have, and provide at the time of the application, the applicant's operating telephone number; and

(5) Be able to read and write the English language.

(b) The qualification of paragraph (3) of subsection (a) of this Code section shall not apply to any nonresident individual applying for appointment as a notary public under the provisions of Code Section 45-17-7.

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§45-17-7. Commissioning of nonresidents as notaries; powers and duties

(a) Any person who is a resident of a state bordering on the State of Georgia and who carries on a business or profession in the State of Georgia or who is regularly employed in the State of Georgia may be commissioned as a notary public by the clerk of the superior court of the county in which the person carries on said profession, business, or employment.

(b) Such person wishing to be commissioned as a notary public must meet all the requirements of Code Section 45-17-2, as it applies to this Code section.

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§ 45-17-2.3. Grant or denial of commission or recommission; grounds; unauthorized practice of law

(a) After an applicant submits to the clerk of superior court of the county the application, endorsements, and declaration of applicant as required in Code Section 45-17-2.1, the clerk of superior court shall either grant or deny a commission or recommission as a notary public within ten days following the applicant's submission of the necessary documents.

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§ 45-17-2.3. Grant or denial of commission or recommission; grounds; unauthorized practice of law

b) The clerk of superior court may in his or her discretion deny a commission or recommission to an applicant based on any of the following grounds:

(1) The applicant's criminal history;

(2) Revocation, suspension, or restriction of any notary commission or professional license issued to the applicant by this or any other state;

(3) The commission in this or any state of any act enumerated in subsection (a) of Code Section 45-17-15, whether or not criminal penalties or commission suspension or revocation resulted; or

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§ 45-17-2.3. Grant or denial of commission or recommission; grounds; unauthorized practice of law

(4) The applicant is found by the State Bar of Georgia, a court of this state, or a court of any other state to have engaged in the unauthorized practice of law.

(c) Any applicant who is denied a notarial commission or recommission by the clerk of superior court shall upon demand be allowed a hearing and adjudication before the superior court clerk with a right of de novo appeal to the superior court, such appeal to be determined by the court without the intervention of a jury.

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§ 45-17-8 Powers and duties generally

(a) Notaries public shall have authority to:

(1) Witness or attest signature or execution of deeds and other written instruments;

(2) Take acknowledgments;

(3) Administer oaths and affirmations in all matters incidental to their duties as commercial officers and all other oaths and affirmations which are not by law required to be administered by a particular officer;

(4) Witness affidavits upon oath or affirmation;

(5) Take verifications upon oath or affirmation;

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§ 45-17-8. (con't.) Powers and duties generally

6) Make certified copies, provided that the document presented for copying is an original document and is neither a public record nor a publicly recorded document certified copies of which are available from an official source other than a notary and provided that the document was photocopied under supervision of the notary; and

(7) Perform such other acts as they are authorized to perform by other laws of this state.

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§ 45-17-8. (con't.) Powers and duties generally

b) No notary shall be obligated to perform a notarial act if he feels such act is:

(1) For a transaction which the notary knows or suspects is illegal, false, or deceptive;

(2) For a person who is being coerced;

(3) For a person whose demeanor causes compelling doubts about whether the person knows the consequences of the transaction requiring the notarial act; or

(4) In situations which impugn and compromise the notary's impartiality, as specified in subsection (c) of this Code section.

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§ 45-17-8. (con't.) Powers and duties generally

(c) A notary shall be disqualified from performing a notarial act in the following situations which impugn and compromise the notary's impartiality:

(1) When the notary is a signer of the document which is to be notarized; or

(2) When the notary is a party to the document or transaction for which the notarial act is required.

(d) A notary public shall not execute a notarial certificate containing a statement known by the notary to be false nor perform any action with an intent to deceive or defraud.

(e) In performing any notarial act, a notary public shall confirm the identity of the document signer, oath taker, or affirmant based on personal knowledge or on satisfactory evidence.

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§ 45-17-8. (con't.) Powers and duties generally

(f) The signature of a notary public documenting a notarial act shall not be evidence to show that such notary public had knowledge of the contents of the document so signed, other than those specific contents which constitute the signature, execution, acknowledgment, oath, affirmation, affidavit, verification, or other act which the signature of that notary public documents, nor is a certification by a notary public that a document is a certified or true copy of an original document evidence to show that such notary public had knowledge of the contents of the document so certified.

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§ 45-17-8.1. Signature and date of notarial act

(a) Except as otherwise provided in this Code section, in documenting a notarial act, a notary public shall sign on the notarial certification, by hand in ink, only and exactly the name indicated on the notary's commission and shall record on the notarial certification the exact date of the notarial act.

(b) The requirement of subsection (a) of this Code section for recording of the date of the notarial act shall not apply to an attestation of deeds or any other instruments pertaining to real property.

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Where From Here?

HB 381 – “Revised Georgia Law On Notarial Acts of 2016”

- Significant change to current law
  - Complete a course of study
  - Successfully pass exam
  - Better defined seal requirements
  - Maintain a journal
  - Notarial acts require certificates

http://www.legis.ga.gov/legislation/en-US/Display/20132016/HB/815

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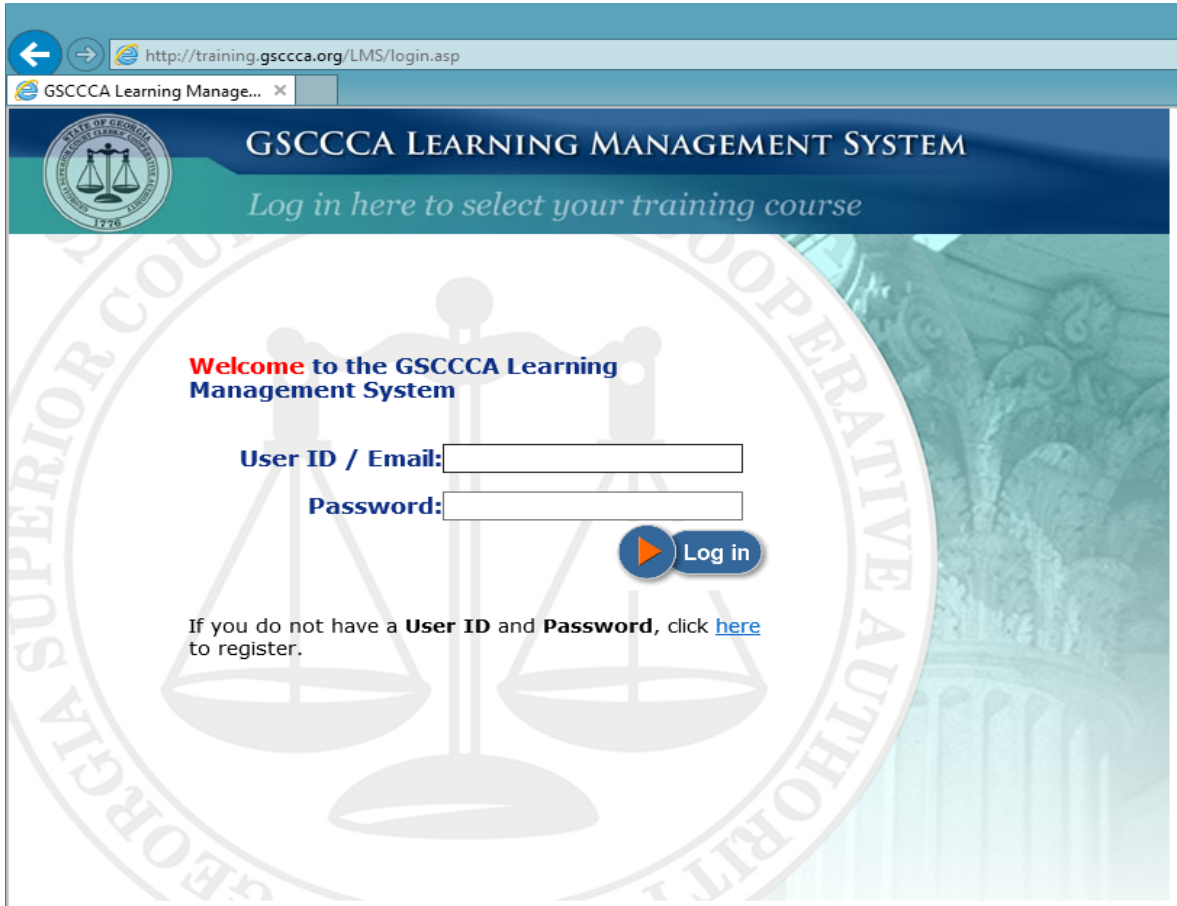

- Free online notary public training course available to everyone
- Optional exam $10

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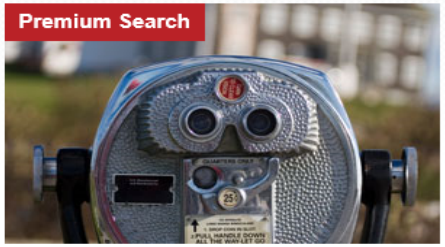

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Let's Review

- The signer MUST ALWAYS be present
- Government issued ID with photo ONLY
- Georgia notaries may notarize in any of the 159 counties of Georgia (the physical boundaries)
- Notaries are commissioned by the Clerk of Superior Court of the county in which they reside
- Notary commissions are effective for four years
- Changes of name and changes of address must be communicated in writing to the commissioning Clerk of Superior Court, with a copy to the Clerks' Authority, within 30 days
- Loss or theft of seal must be communicated in writing to the commissioning Clerk of Superior Court, with a copy to the Clerks' Authority, within 10 days of discovery
- Recommended to keep a journal
- Four elements of the seal: name as commissioned, "State of Georgia, "Notary Public," county name where commissioned
- Blue or black ink ONLY for notary's signature and seal
- Contact https://www.gsccca.org/clerks

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THANK YOU !

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