

## Chapter 82 NOTARY ACT

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**82.1-1. Implementation.** *Short Title.* This Act may be cited as the Oneida Notary Act.

82.1-2. *Purposes.*

(a) This Act shall be construed and applied to advance its underlying purposes, which are:

- (1) to promote, serve and protect the public interest;
- (2) to simplify, clarify and modernize the law governing notaries.

82.1-3. *Interpretation.* In this Act, unless the context otherwise requires, words in the singular include the plural, and words in the plural include the singular.

82.1-4. *Definitions.*

(a) As used in this Act:

- (1) "Commission" means to empower to perform notarial acts and the written authority to perform those acts.
- (2) "Copy certification" means a notarial act in which a notary certifies having made a photocopy of a document that is neither a public record nor publicly recordable.
- (3) "Jurat" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has made, in the notary's presence, a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the signed document.
- (4) "Notarial act" and "notarization" means any act that a notary is empowered to perform under Section 3-1.
- (5) "Notarial certificate" and "certificate" mean the part of, or attachment to, a notarized document for completion by the notary and bearing the notary's signature and seal.
- (6) "Notary public" and "notary" means any person commissioned to perform notarial acts under this Act.
- (7) "Oath" and "affirmation" means a notarial act, or part thereof, in which a notary certifies that a person made a vow in the presence of the notary on penalty of perjury.
- (8) "Official misconduct" means:
  - (A) a notary's performance of, or failure to perform, any act prohibited, or mandated, respectively, by this Act or by any other law in connection with notarization; or
  - (B) a notary's performance of a notarial act in a manner found by the commissioning official to be negligent or against public interest.
- (9) "Personal knowledge of identity" means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.
- (10) "Satisfactory evidence of identity" means identification of an individual based on:
  - (A) at least two (2) current documents, issued by a Tribal, state, or federal government with the individual's photograph, signature, and physical description, and

the other by an institution, business entity, or Tribal, state or federal government with at least the individual's signature; or

(B) the oath or affirmation of a credible person who is personally known to the notary and who personally knows the individual.

82.1-6. *Severability Clause.* If any provision of this Act, or its application to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of the Act are severable.

82.1-7. *Amendments.* The Oneida Business Committee is delegated the authority to amend this Act.

### **82.2-1. Commissioning.**

(a) Except as otherwise provided in subsection (c), the Tribal Secretary shall commission as a notary a qualified person who submits an application in accordance with this Act.

(b) A person qualified for a notarial commission must:

(1) be at least twenty-five (25) years of age; and

(2) lawfully reside within the exterior boundaries of the Oneida Reservation and be an enrolled member of the Oneida Nation of Wisconsin; and

(c) The Tribal Secretary may deny an application based on:

(1) the applicant's conviction for a crime involving dishonesty or moral turpitude; or

(2) revocation, suspension, or restriction of a notarial commission or professional license issued to the applicant by the Oneida Nation of Wisconsin or the state of Wisconsin or any other state; or

(3) the applicant's official misconduct as defined in Section 1-4(a)(8), whether or not disciplinary action resulted.

82.2-2. *Jurisdiction and Term.* A person commissioned as a notary by the Tribal Secretary may perform notarial acts in any part within the exterior boundaries of the reservation for a term of four (4) years, unless the commission is revoked under Section 6-21 or resigned under Section 7-4.

82.2-3. *Bond.* No notarial commission becomes effective until, within thirty (30) days after its issuance, an oath of office and one-hundred fifty (150) dollar bond has been filed with the Tribal Secretary. The bond must be executed by a licensed surety, for a term of four (4) years commencing on the commission's effective date and terminating on its expiration date, with payment of bond funds to any person conditions upon the notary's misconduct as defined in Section 1-4(a)(8).

82.2-4. *Recommissioning.* An applicant for recommissioning shall submit a new application and comply anew with the provisions of Article II with the following exception: in place of passing an exam, the applicant must sign the renewal declaration in Section 2-26.

### *Part 2.*

#### **82.2-21. Application.**

(a) Every application for a notarial commission must be made on forms provided by the Tribal Secretary and include, at least:

(1) a statement of the applicant's personal qualifications; and

(2) an examination written by the applicant; and

(3) a declaration signed by the applicant; and

(4) an application fee.

82.2-22. *Statement of Personal Qualifications.*

(a) The application must state, at least:

- (1) the applicant's age;
- (2) the applicant's residence address;
- (3) that the applicant can read and write English; and
- (4) all criminal convictions of the applicant, including any plea of admission and no contest; and
- (5) all issuances, denials, revocations, suspensions, restrictions and resignations of a notarial commission or other professional license involving the applicant within the exterior boundaries of the Oneida Reservation, or the State of Wisconsin, or any other state.

82.2-23. *Examination.* Every applicant for a notarial commission shall pass a written examination that tests the applicant's knowledge of notarial laws and procedures and is based on materials distributed by the Tribal Secretary with the application forms.

82.2-24. *Certified Declaration.* Every applicant for a notarial commission shall sign the following declaration in the presence of the Chairman of the Business Committee:

Declaration of Applicant

I, \_\_\_\_\_ (name of the applicant), solemnly swear or affirm under penalty of perjury that the personal information in this application is true, complete and correct; that I carefully have read the materials describing the duties of a notary for the Oneida Nation of Wisconsin; and that I will perform, to the best of my ability, all notarial acts in accordance with the law.

\_\_\_\_\_ (Signature of Applicant)

(Notarial certificate as specified in Section 5-4)

82.2-25 *Fees.*

(a) Every Applicant for a notarial commission shall pay to the Oneida Nation of Wisconsin a nonrefundable fee of fifteen (15) dollars.

(b) In addition, every applicant shall deposit seventy-five (75) dollars with the Tribal Secretary before receiving the notary supplies. The applicant shall receive a written receipt from the Tribal Secretary which indicates the name of the applicant, the date which the applicant received the notarial supplies and the amount the applicant deposited. The notarial supplies shall include, but not be limited to:

- (1) the notarial stamp;
- (2) at least ten (10) blank jurat certificates, ten (10) blank copy certificates and ten (10) blank oath and affirmation certificates; and
- (3) a copy of this Act.

82.2-26. *Renewal Oath.* Every applicant for notarial recommission shall sign the following declaration in the presence of the Tribal Secretary:

Renewal Declaration

I, \_\_\_\_\_ (name of Applicant), solemnly swear or affirm under penalty of perjury that I have carefully reviewed and reread the materials describing the duties of a notary for the

Oneida Nation of Wisconsin and any other legislation, laws or resolutions passed by the General Tribal Council or the Oneida Business Committee in furtherance of this Act.

I understand that I am signing this declaration in place of taking an exam and that I am fully capable of continuing to fulfill my duties as a notary for the Oneida Nation of Wisconsin.

82.2-27. *Confidentiality.* Disciplinary information in an applicant's or notary's Statement of Personal Qualifications under paragraphs (4) and (5) of Section 2-22 may be used by the Tribal Secretary and designated Tribal employees for the sole purpose of performing official duties under this Act and may not be disclosed to any other person than:

- (1) the applicant;
- (2) the applicant's authorized representative or surety;
- (3) a representative of the Oneida Nation of Wisconsin acting in an official capacity; or
- (4) a person specified by the Tribal commission order.

### *Part 3*

#### 82.2-31. *Governmental Employees.*

- (a) The Tribal Secretary may commission any number of Tribal employees to act as notaries, but notaries so empowered may perform notarial acts only in their service of their respective Tribal agencies.
- (b) Notaries empowered under this section may perform notarial acts in any part within the exterior boundaries of the Oneida Nation of Wisconsin reservation for a term of four (4) years, and shall seek recommissioning by the Tribal Secretary for the subsequent term.
- (c) An applicant for a notarial commission under this section must meet the requirements in Article II, Part 2, except the applicant shall include a written declaration signed by the applicant's governmental employer stating that the commissioning is in the public interest; and the fee in Section 2-25 is waived for employees of the Oneida Nation of Wisconsin.
- (d) The bond and costs of all notarial supplies for a notary empowered under this section must be paid from funds of the notary's governmental agency.
- (e) No fees may be charged for notarial services performed by a notary empowered under this section.
- (f) Upon leaving the employment of their Tribal agencies, notaries empowered under this section shall resign their commissions immediately under Section 7-4 and dispose of their journals under Section 7-5.
- (g) A notary empowered under this section shall comply with all provisions of this Act, unless otherwise specified in this section.

#### **82.3-0. Powers and Limitations.**

##### *Part 1*

82.3-1. *Powers.* A notary is empowered to perform the following notarial acts:

- (a) oaths and affirmations;
- (b) jurats; and
- (c) copy certifications.

82.3-2. *Disqualifications.* A notary is disqualified from performing a notarial act if the notary:

- (a) is a signer or named in the document that is to be notarized;
- (b) will receive directly from a transaction connected with the notarial act any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in Section 3-21; or
- (c) is related to the person whose signature is to be notarized as a spouse, brother, sister, mother, father, son, daughter, grandson, granddaughter, uncle, aunt, grandfather, grandmother, nephew or niece; or is related to the person by any of the foregoing designations by fact of marriage.

82.3-3 *Impartiality.*

(a) A notary may not influence a person to enter into or not to enter into a lawful transaction involving a notarial act by the notary.

(b) A notary shall perform notarial acts in lawful transactions for any requesting person who tenders the appropriate fee specified in Section 3-21.

82.3-4 *False Certificate.* A notary may not execute a certificate containing a statement known by the notary to be false or perform any official action with the intent to deceive or defraud.

82.3-5 *Testimonials.* A notary may not endorse or promote any product, service, contest or other offering if the notary's title or seal is used in the endorsement or promotional statement.

82.3-6 *Unauthorized Practice of Law.*

(a) A non-attorney notary may complete but may not select notarial certificates, and may not assist another in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.

(b) This section does not preclude a notary who is duly qualified in a particular profession from giving advice relating to matters in their professional field.

(c) A notary may not make representations to have powers, qualifications, rights, or privileges that the office of notary does not have, including the power to counsel on immigration matters.

(d) A non-attorney notary who advertises notarial services in a language other than English shall include in the advertisement, notice or sign in the same language:

(1) the statement, prominently displayed: "I am not an attorney or a paralegal or a lay advocate and have no authority to give advice on immigration or other legal matters"; and

(2) the fees for notarial acts specified in Section 3-21(a).

(e) A notary may not use the term "notario publico" in any business card, advertisement, notice or sign.

(f) A notary may use the Oneida language on any business card, advertisement, notice or sign.

*Part 2*

82.3-21. *Fees.*

(a) The maximum fees that may be charged by a notary for notarial acts are not to exceed:

(1) for oaths or affirmations without signature, fifty (50) cents per person;

(2) for jurats, fifty (50) cents per signature; and

(3) for certified copies, twenty-five (25) cents per page certified.

82.3-22 *Notice of Fees.* Notaries shall display an English-language schedule of fees for notary acts, as specified in Section 3-21(a). No part of any displayed notarial schedule may be printed smaller than 12-point type.

#### **82.4-0. Journal and Seal.**

##### *Part 1*

82.4-1. *Journal.* A notary shall keep, maintain, protect as a public record, and provide for lawful inspection a chronological, permanently bound official journal of notarial acts, containing numbered pages.

82.4-2. *Entries in Journal.*

(a) For every notarial act, the notary shall record in the journal at the time of notarization at least the following:

- (1) the date and time of day of the notarial act;
- (2) the type of notarial act;
- (3) a description of the document of proceeding;
- (4) the signature and printed name and address of each person for whom a notarial act is performed;
- (5) the evidence of identity of each person for whom a notarial act is performed, in the form of either: (i) a statement that the person is "personally known" to the notary and the number of years the notary has known the person, (ii) a description of the identification document, its issuing agency, its serial or identification number, and its date of issuance or expiration;
- (6) the fee, if any, charged for the notarial act; and
- (7) the address where the notarization was performed if not the notary's business address.
- (8) and if the notarized documents were in English or the Oneida language.

(b) A notary shall retain as an official record a duplicate photocopy of each certified copy.

(c) A notary shall record in the journal the circumstances in refusing to perform or complete a notarial act.

82.4-3. *Signatures in Journal.* At the time of notarization, the notary's journal must be signed, as applicable by:

- (a) the person for whom the notarial act is performed;
- (b) the credible witness swearing or affirming to the identity of the person for whom the notarial act is performed;
- (c) the two (2) witnesses to a signature by mark of the document that is notarized.

82.4-4. *Inspection, Copying, and Disposal of Journal.*

(a) A journal of notarial acts is an official public record that may be inspected in the notary's presence by any individual whose identity is personally known to the notary or proven on the basis of satisfactory evidence, who specifies the notarial act sought, and who signs the notary's journal.

(b) Upon request in compliance with subsection (a), the notary shall provide a photocopy of an entry in the journal at a cost of not more than twenty-five (25) cents per photocopy. If a certified copy is requested, the cost is as specified in Section 3-21.

(c) A notary shall safeguard the journal and all other notarial records as valuable public documents and never destroy them, except at the direction of the Business Committee.

(d) The journal must be kept in the exclusive custody of the notary, and may not be used by any other notary nor surrendered to an employer upon termination of employment.

(e) Upon resignation, revocation, or expiration of a notarial commission, or death of the notary, the notarial journal and records must be delivered by certified mail or other means providing a receipt or by hand to the Oneida Business Committee in accordance with Article VII.

*Part 2*

82.4-21. *Official Signature.* In completing a notarial act, a notary shall sign on the notarial certificate exactly and only the name on the notary's commission.

82.4-22. *Official Seal.*

(a) A notary shall keep an official notarial seal that is the exclusive property of the Oneida Nation of Wisconsin and that may not be used by any other person nor surrendered to an employer upon termination of employment.

(b) Upon resignation, revocation, or expiration of a notarial commission, or death of the notary, the seal must be returned to the Oneida Tribal Secretary for destruction in accordance with section seven. A new seal must be obtained for any new commission under Section 4-24.

82.4-23. *Seal Impression.*

(a) Near the notary's official signature on a notarial certificate, the notary shall affix in ink a sharp, legible, and photographically reproducible impression of a notarial seal that must include the following elements:

- (1) the notary's name exactly and indicated on the commission;
- (2) the words "Notary Public," "Oneida Tribe of Indians of Wisconsin" and "My Commission Expires (Commission Expiration Date)";
- (3) the address of the notary's business or residence; and
- (4) a border in a circular shape no larger than one and one-half (1½) inches in diameter, surrounding the required words in subsection (2).

(b) Illegible information within the seal impression may be typed or printed legibly by the notary adjacent to but not within the impression. §4-24 Obtaining a Seal.

All Seals used by the notaries of the Oneida Nation of Wisconsin shall be issued by the Business Committee after the applicant has met the requirements in Section 2-1(b).

**82.5-1. Certificates. *Jurat.*** A notary shall use a jurat certificate in the following form in notarizing as signature on an affidavit, deposition, or other sworn or affirmed written declaration:

Oneida Nation of Wisconsin

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned notary, personally appeared \_\_\_\_\_, (personally known to me) (proved to me through government-issued documentary evidence in the form of \_\_\_\_\_) to be the person(s) who signed the preceding or attached document in my presence and who swore or affirmed to me that the signature(s) (is) (are) voluntary and the document truthful.

(Official seal and signature of notary)

82.5-2. *Certified Copy.* A notary shall use a certificate in the following form in notarizing a certified copy:

Oneida Nation of Wisconsin

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, I certify that the preceding or attached document, and the duplicate retained by me as a notarial record, are true, exact, complete, and unaltered

photocopies made by me of \_\_\_\_\_, (description of document),

photocopies presented to me by the document's custodian, \_\_\_\_\_ (name of custodian)

and that, to the best of my knowledge, the photocopied document is neither a public record nor a publicly recordable document, certified copies of which are available from an official source other than a notary.

(Official seal and signature of notary)

82.5-3. *Certified Documents.* No notary may certify a publicly recordable document.

82.5-4. *Oaths and Affirmations.*

(a) A person seeking notarization or an oath or affirmation must, if he or she is able, say the oath out loud. The notary public must witness this recitation.

(b) If the person seeking notarization is unable to say the oath or affirmation aloud, he or she must read and sign a written copy of the oath or affirmation. In any case, whether the person seeking notarization is able to recite the oath or affirmation or not, a written copy of the oath or affirmation must include the following information on the document or attached to the document:

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me, the undersigned notary, personally appeared \_\_\_\_\_,

personally known to me

proved to me through government-issued documentary evidence in the form of identifications defined in Section 1-5(10) of the Oneida Notary Public Act to be the person(s) who recited the attached oath or affirmation in my presence and who swore or affirmed to me that the recitation and signature(s) are voluntary and the document truthful.

(Official seal and signature of notary)

## **82.6-0. Liability and Remedies.**

### *Part 1.*

82.6-1. *Liability of Notary, Surety, and Employer.*

(a) A notary is liable to any person for all damages proximately caused that person by the notary's official misconduct in performing a notarization.

(b) A surety for a notary's bond is liable to any person for damages proximately caused that person by the notary's official misconduct in performing a notarization, but this liability may not exceed the penalty of the bond or of any remaining bond funds that have not been expended to other claimants. Regardless of the number of claimants, a surety's total liability may not exceed the penalty bond.

(c) An employer of a notary is liable to any person for all damages proximately caused that person by the notary's official misconduct in performing a notarization related to the employer's business, if the employer directed, encouraged, consented to, or approved the notary's misconduct, either in the particular transaction or, impliedly, by previous actions in at least one similar transaction.

(d) An employer of a notary is liable to the notary for all damages recovered from the notary as a result of official misconduct that was coerced by threat of the employer, if the threat, such as of demotion or dismissal, was made in reference to the particular notarization or, impliedly, by the employer's previous action in at least one similar transaction. In addition, the employer is liable to the notary for damages caused to the notary by demotion, dismissal, or other action resulting in the notary's refusal to commit official misconduct.

(e) The Oneida Nation of Wisconsin reserves the right to collect damages paid as a result of an employee's misconduct either directly stemming from an notarial act, or as an employer coercing the notary to commit official misconduct.

*Part 2.*

82.6-21. *Revocation.*

(a) The Tribal Secretary may revoke a notarial commission on any ground for which an application for commission may be denied under Section 2-1.

(b) Resignation or expiration of a notarial commission does not terminate or preclude an investigation into a notary's conduct by the Tribal Secretary, or other official designated by the Tribal Secretary, who may pursue the investigation to a conclusion, whereupon it must be made a matter of public record whether or not the finding would have been grounds for revocation.

82.6-22. *Other Remedies.*

(a) The Tribal Secretary may deliver a written Official Warning To Cease Misconduct to any notary whose actions are judged to be official misconduct under Section 1-5.

(b) The Tribal Secretary may seek an injunction from the Oneida Appeals Commission or any other judicial body created by the Oneida Nation of Wisconsin to prevent a person from violating any provision of this Act.

82.6-23. *Civil Forfeiture.* A notary who knowingly and repeatedly performs or fails to perform any act prohibited or mandated, respectively, by this Act shall forfeit not less than \$50.00 nor more than \$500.00.

82.6-24. *Additional Remedies Not Prevented.* The remedies of this Act supplement other remedies provided by law.

*Part 3.*

82.6-31. *Impersonation.* Any person not a notary who knowingly acts or otherwise impersonates a notary shall forfeit not less than \$50.00, nor more than \$500.00.

82.6-32. *Wrongful Possession.* Any person who knowingly obtains, conceals, defaces or destroys the seal, journal or official records of a notary shall forfeit not less than \$50.00 nor more than \$500.00.

82.6-33. *Improper Influence.* Any person who knowingly solicits, coerces or in any way influences a notary to commit official misconduct shall forfeit not less than \$50.00 nor more than \$500.00.

82.6-34. *Enforcement.* Any and all of the sections of this Act may be enforced by an official designated by the Oneida Business Committee for separate issues, or for all issues.

**82.7-1. Change of Status. *Change of Address.*** Within thirty (30) days after the change of a notary's business or residence address, the notary shall deliver to the Tribal Secretary, by certified mail or other means of providing receipt or by hand, a signed notice of the change, giving both old and new addresses.

**82.7-2. *Change of Name.***

(a) A notary with a change of name shall deliver to the Tribal Secretary a signed notice of the change, giving both old and new names and the effective date of the new name.

(b) Starting on the effective date, a notary with a new name official shall sign that name on all notarial certificates, but only after the following steps have been completed:

- (1) the notice described in subsection (a) has been delivered;
- (2) a Confirmation of Notary's Name Change has been received from the Tribal Secretary;
- (3) a new seal bearing the new name exactly as in the confirmation has been issued by the Tribal Secretary; and
- (4) the surety for the notary's bond has been informed in writing.

**82.7-3. *Lost Journal or Seal.*** Within ten (10) days after the loss or theft of an official journal or seal, the notary shall deliver to the Tribal Secretary, by certified mail or other means providing a receipt or by hand, a signed notice of the loss or theft, and inform the appropriate law enforcement agency in case of theft.

**82.7-4. *Resignation.***

(a) A notary who resigns a notarial commission shall deliver to the Tribal Secretary, by certified mail or other means providing a receipt or by hand, a notice indicating the effective date of resignation.

(b) Notaries who cease to reside or work within the exterior boundaries of the reservation or who become unable to read and/or unable to write shall resign their commissions.

**82.7-5. *Disposition of Seal and Journal.***

(a) Except as provided in subsection (b), when a notarial commission is resigned, revoked or expires, the notary shall:

- (1) as soon as reasonably practicable, return the official seal to the Tribal Secretary for destruction; and
- (2) within thirty (30) days after the effective date of resignation, revocation, or expiration deliver to the Oneida Business Committee, by certified mail or other means of providing a receipt or by hand, the notarial journal and records.

(b) A former notary who intends to apply for a new commission and whose previous commission or application was not revoked or denied by the Oneida Nation of Wisconsin, need not deliver the journal and records within thirty (30) days after commission expiration, but must do so within three (3) months after expiration unless recommissioned within that period.

**82.7-6. *Death.*** If a notary dies during the term of commission, the notary's heirs or personal representative, as soon as reasonably practicable after death, shall:

- (a) return the seal to the Tribal Secretary for destruction; and
- (b) deliver by certified mail or other means providing a receipt or by hand,
  - (1) a signed notice of the date of death to the Tribal Secretary, and
  - (2) the notarial journal and records to the Oneida Business Committee.

**82.8-1. Authorization. Evidence of Authenticity of Notarial Act.**

(a) The authenticity of the official notarial seal and signature of a notary of the Oneida Nation of Wisconsin may be evidenced by:

(1) a certificate of authority from the Tribal Secretary, authenticated as necessary.

82.8-2. *Certificate of Authority.* A certificate of authority evidencing the authenticity of the official notarial seal and signature of a notary of the Oneida Nation of Wisconsin must be in the following form:

Certificate of Authority for a Notarial Act

I, \_\_\_\_\_, (name, title, jurisdiction of authenticating official) certify that (name of notary), the person named in the seal and signature on the attached document is a notary public for the Oneida Nation of Wisconsin and was authorized to act as such at the time of the document's notarization.

To verify this Certificate of Authority for a Notarial Act, I have affixed below my signature and seal of office this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

*End.*

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Adopted - GTC-7-11-94-C