

CHAPTER 137

AUTHENTICATIONS

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ELECTRONIC SIGNATURES

SUBCHAPTER I

NOTARIES AND COMMISSIONERS OF DEEDS

137.01 Notaries. (1) NOTARIES PUBLIC WHO ARE NOT ATTORNEYS. (a) The governor shall appoint notaries public who shall be United States residents and at least 18 years of age. Applicants who are not attorneys shall file an application with the secretary of state and pay a \$20 fee.

(b) The secretary of state shall satisfy himself or herself that the applicant has the equivalent of an 8th grade education, is familiar with the duties and responsibilities of a notary public and, subject to ss. 111.321, 111.322 and 111.335, does not have an arrest or conviction record.

(c) If an application is rejected the fee shall be returned.

(d) Qualified applicants shall be notified by the secretary of state to take and file the official oath and execute and file an official bond in the sum of \$500, with a surety executed by a surety company and approved by the secretary of state.

(e) The qualified applicant shall file his or her signature, post-office address and an impression of his or her official seal, or imprint of his or her official rubber stamp with the secretary of state.

(f) A certificate of appointment as a notary public for a term of 4 years stating the expiration date of the commission shall be issued to applicants who have fulfilled the requirements of this subsection.

(g) At least 30 days before the expiration of a commission the secretary of state shall mail notice of the expiration date to the holder of a commission.

(h) A notary shall be entitled to reappointment.

(2) NOTARIES PUBLIC WHO ARE ATTORNEYS. (a) Except as provided in par. (am), any United States resident who is licensed to practice law in this state is entitled to a permanent commission as a notary public upon application to the secretary of state and payment of a \$50 fee. The application shall include a certificate of good standing from the supreme court, the signature and post-office address of the applicant and an impression of the applicant's official seal, or imprint of the applicant's official rubber stamp.

(am) If a United States resident has his or her license to practice law in this state suspended or revoked, upon reinstatement of his or her license to practice law in this state, the person may be entitled to receive a certificate of appointment as a notary public for a term of 4 years. An eligible notary appointed under this paragraph is entitled to reappointment for 4-year increments. At least 30 days before the expiration of a commission under this paragraph the secretary of state shall mail notice of the expiration date to the holder of the commission.

(b) The secretary of state shall issue a certificate of appointment as a notary public to persons who qualify under the requirements of this subsection. The certificate shall state that the notary commission is permanent or is for 4 years.

(c) The supreme court shall file with the secretary of state notice of the surrender, suspension or revocation of the license to practice law of any attorney who holds a permanent commission

as a notary public. Such notice shall be deemed a revocation of said commission.

(3) NOTARIAL SEAL OR STAMP. (a) Every notary public shall provide an engraved official seal which makes a distinct and legible impression or official rubber stamp which makes a distinct and legible imprint on paper. The impression of the seal or the imprint of the rubber stamp shall state only the following: "Notary Public," "State of Wisconsin" and the name of the notary. But any notarial seal in use on August 1, 1959, shall be considered in compliance.

(b) The impression of the notarial seal upon any instrument or writing or upon wafer, wax or other adhesive substance and affixed to any instrument or writing shall be deemed an affixation of the seal, and the imprint of the notarial rubber stamp upon any instrument or writing shall be deemed an affixation of the rubber stamp.

(4) ATTESTATION. (a) Every official act of a notary public shall be attested by the notary public's written signature or electronic signature, as defined in s. 137.04 (2).

(b) All certificates of acknowledgments of deeds and other conveyances, or any written instrument required or authorized by law to be acknowledged or sworn to before any notary public, within this state, shall be attested by a clear impression of the official seal or imprint of the rubber stamp of said officer, and in addition thereto shall be written or stamped either the day, month and year when the commission of said notary public will expire, or that such commission is permanent.

(c) The official certificate of any notary public, when attested and completed in the manner provided by this subsection, shall be presumptive evidence in all cases, and in all courts of the state, of the facts therein stated, in cases where by law a notary public is authorized to certify such facts.

(5) POWERS. Notaries public have power to act throughout the state. Notaries public have power to demand acceptance of foreign and inland bills of exchange and payment thereof, and payment of promissory notes, and may protest the same for nonacceptance or nonpayment, may administer oaths, take depositions and acknowledgments of deeds, and perform such other duties as by the law of nations, or according to commercial usage, may be exercised and performed by notaries public.

(5m) CONFIDENTIALITY. (a) Except as provided in par. (b), a notary public shall keep confidential all documents and information contained in any documents reviewed by the notary public while performing his or her duties as a notary public and may release the documents or the information to a 3rd person only with the written consent of the person who requested the services of the notary public.

(b) Deposition transcripts may be released to all parties of record in an action. A notary public may not release deposition transcripts that have not been made part of the public record to a 3rd party without the written consent of all parties to the action and the deponent. When a deposition transcript has been made part of the public record, a notary public who is also a court reporter may, subject to a protective order or agreement to the contrary, release the deposition transcript or sell the transcript to 3rd parties without

the consent of the person who requested the services of the notary public.

(c) Any notary public violating this subsection shall be subject to the provisions of sub. (8) and may be required to forfeit not more than \$500.

(6) AUTHENTICATION. (a) The secretary of state may certify to the official qualifications of any notary public and to the genuineness of the notary public's signature and seal or rubber stamp.

(c) Any certificate specified under this subsection shall be presumptive evidence of the facts therein stated.

(6m) CHANGE OF RESIDENCE. A notary public does not vacate his or her office by reason of his or her change of residence within the United States. Written notice of any change of address shall be given to the secretary of state within 10 days of the change.

(7) OFFICIAL RECORDS TO BE FILED. When any notary public ceases to hold office, the notary public, or in case of the notary public's death the notary public's personal representative, shall deposit the notary public's official records and papers in the office of the secretary of state. If the notary or personal representative, after the records and papers come to his or her hands, neglects for 3 months to deposit them, he or she shall forfeit not less than \$50 nor more than \$500. If any person knowingly destroys, defaces, or conceals any records or papers of any notary public, the person shall forfeit not less than \$50 nor more than \$500, and shall be liable for all damages resulting to the party injured. The secretary of state shall receive and safely keep all such papers and records.

(8) MISCONDUCT. If any notary public shall be guilty of any misconduct or neglect of duty in office the notary public shall be liable to the party injured for all the damages thereby sustained.

(9) FEES. A notary public shall be allowed the following fees:

(a) For drawing and copy of protest of the nonpayment of a promissory note or bill of exchange, or of the nonacceptance of such bill, \$1 in the cases where by law such protest is necessary, but in no other case.

(b) For drawing and copy of every other protest, 50 cents.

(c) For drawing, copying and serving every notice of nonpayment of a note or bill, or nonacceptance of a bill, 50 cents.

(d) For drawing any affidavit, or other paper or proceeding for which provision is not herein made, 50 cents for each folio, and for copying the same 12 cents per folio.

(e) For taking the acknowledgment of deeds, and for other services authorized by law, the same fees as are allowed to other officers for similar services, but the fee per document shall not exceed 50 cents.

History: 1971 c. 213 s. 5; 1977 c. 29, 449; 1979 c. 221; 1981 c. 380; 1981 c. 391 s. 211; 1993 a. 482; 1997 a. 27, 306; 1999 a. 77, 166; 2001 a. 16, 102.

The residency requirement under subs. (1) and (2) is constitutional. 74 Atty. Gen. 221.

Protecting the Privacy of Notary Public Records. Closen & Orsinger. Wis. Law. March 2002.

Notary Public Title Incurs Responsibility. Nelson. Wis. Law. June 2002.

137.02 Commissioners of deeds. (1) The governor shall have power to appoint one or more commissioners in any of the United States, or of the territories belonging to the United States and in foreign countries, who shall hold office for a term of 4 years unless sooner removed. Every commissioner appointed under this subsection shall take the official oath before a judge or clerk of one of the courts of record of the state or territory or country in which the commissioner shall reside. The commissioner shall file the oath, with an impression of the commissioner's seal of office and a statement of the commissioner's post-office address, in the office of the secretary of state. The commissioner shall at the same time pay into the treasury the sum of \$5, at which time the commissioner's commission shall issue.

(2) A commissioner appointed under sub. (1) shall have authority to take the acknowledgment and proof of the execution

of deeds, conveyances and leases of any lands lying in this state, or written instruments relating thereto, or of any contract or any other writing, sealed or unsealed, to be used or recorded in this state; to administer oaths required to be used in this state; to take and certify depositions to be used in the courts of this state, either under a commission, by consent of parties or on notice to the opposite party; and all such acts done pursuant to the laws of this state and certified under the commissioner's hand and seal of office shall be as valid as if done by a proper officer of this state.

History: 1993 a. 482; 1997 a. 254.

"All the damages" in sub. (8) incorporates the American rule of damages that attorney fees are not recoverable by a prevailing party unless certain exceptions apply. Bank One, Wisconsin v. Koch, 2002 WI App 176, ___ Wis. 2d ___, 649 N.W.2d 339.

SUBCHAPTER II

ELECTRONIC SIGNATURES

137.04 Definitions. In this subchapter:

(1) "Authenticate" means to validate a document in such a manner that the identity of the person who originates the document is incontrovertible and the information contained in the document is identical to that originated by the person.

(2) "Electronic signature" means any combination of words, letters, symbols or characters that is attached to or logically associated with an electronic record and used by a person for the purpose of authenticating a document that has been created in or transformed into an electronic format.

(3) "Governmental unit" means any association, authority, board, commission, department, independent agency, institution, office, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor and the courts, and any political subdivision of the state or body within one or more political subdivisions which is created by law or by action of one or more political subdivisions.

History: 1997 a. 306.

137.05 Submission of written documents. Unless otherwise prohibited by law, any document that is required by law to be submitted in writing to a governmental unit and that requires a written signature may be submitted by transforming the document into electronic format, but only with the consent of the governmental unit that is to receive the document.

History: 1997 a. 306.

137.06 Electronic signature. (1) Unless otherwise prohibited by law, any document that requires a manual, facsimile or other form of signature or that is given effect with a manual, facsimile or other form of signature may be signed or given effect with an electronic signature if the electronic signature meets all of the following requirements:

(a) The electronic signature is unique to the person using it.

(b) The electronic signature is capable of verification.

(c) The electronic signature is under the sole control of the person using it.

(d) The electronic signature is linked to the document to which it is attached or associated in such a manner that, if the document is altered after the electronic signature is created, the electronic signature is invalidated.

(e) For documents submitted to the department of financial institutions, the electronic signature conforms to any rules promulgated by the department of financial institutions.

(2) An electronic signature that satisfies all of the requirements specified in sub. (1) has the same force and effect as a manual, facsimile or other form of signature.

History: 1997 a. 306.