

SOUTH CAROLINA SECRETARY OF STATE'S OFFICE

Notary Public Online Manual

South Carolina Secretary of State's Office
1205 Pendleton Street, Suite 525
Columbia, SC 29201
Phone 803.734.2170 • Fax 803.734.1661

State of South Carolina
Office of the Secretary of State
The Honorable Mark Hammond

Dear Citizen:

Thank you for your interest in becoming a notary public in the State of South Carolina, or for continuing your notarial duties. You are to be commended for your desire to serve the public.

As a notary public, you hold an important position in South Carolina. This booklet is provided to you to help you understand the duties of a notary and the trust which has been placed in you as a public official. The laws governing notaries are found in S.C. Code of Laws Title 26, Chapter 1 and provide further guidance and clarification on the responsibilities of a notary.

Once commissioned as a notary public, it is the responsibility of the notary public to maintain a level of education appropriate for conducting notarial duties. I encourage you to attend workshops on a yearly basis to remain informed on current issues affecting notaries in order to assist you in performing your duties correctly. We also have a Notary Public webinar available to the public on our website.

If you have any questions about your responsibilities, our notary public staff will be happy to assist you. We cannot offer you legal advice, but we can answer questions about practical or administrative issues. You may contact our notary public division at (803) 734-2512.

On behalf of the people of South Carolina, thank you for your willingness to be an involved citizen and conscientious public official.

With kind regards, I am

Sincerely,

A handwritten signature in black ink that reads "Mark Hammond". The signature is written in a cursive style with a large, stylized initial "M".

Mark Hammond
Secretary of State

Table of Contents

General Information.....	1
The Application Process.....	1
Reporting Changes in Status.....	2
Term, Jurisdiction, Title, Equipment, and Fees.....	3
Notarial Acts.....	4
Definitions of Notarial Acts	5
What a Notarization Means	6
Requirements for Notarization.....	6
Special Circumstances.....	7
Marriage Ceremonies.....	8
What Notaries Cannot Do	9
Frequently Asked Questions	11
Foreign Language Requirements	11
Authentications and Apostilles.....	12
Unauthorized Practice of Law.....	13
Forms.....	15
Contact Information.....	16
Examples	17

Notary Public

General Information

South Carolina Code of Laws §26-1-5(10) states that a notary public is a person commissioned to perform notarial acts. Notaries public are public officers of the State of South Carolina. The main purpose a notary public serves is to prevent fraud.



Qualifications:

Pursuant to S.C. Code of Laws §26-1-15, a notary public must:

1. Be registered to vote;
2. Be able to read and write in English; and
3. Submit an application with no significant misstatement or omission of fact.

The Application Process

Before a person can perform notarial acts as a notary public, he or she must receive a commission as evidence of authority to perform those acts. Notaries are appointed by the Governor and commissioned by the Secretary of State (§26-1-10). Applicants must take the oath of office found in the South Carolina Constitution, which is included in the notary public application (§26-1-40).

Applications are available online at www.sos.sc.gov. You must complete the top part of the application form and provide the requested information, including your voter registration number. If you do not know your voter registration number, you can contact your county voter registration and elections board or check online with the State Election Commission at www.scvotes.org. The application must be signed with pen and ink and the signature of the applicant must be acknowledged by a person authorized to administer oaths (§26-1-40). The date of your signature and the date of the notarization must match. You cannot notarize your own signature on the application or at any other time. The bottom part of the application is to be completed by your legislative delegation.

The application fee is \$25.00, made payable to the Secretary of State's Office. Once you have completed the application, you will mail it along with the fee to your county's legislative delegation office to be processed. If your county does not have a delegation office address, send your application to the House of Representatives. The county office addresses and the House of Representatives address are provided on the application.

IF YOUR COUNTY'S
LEGISLATIVE
DELEGATION HAS
NO OFFICE LISTED,
SEND YOUR
APPLICATION TO
THE FOLLOWING:

SC HOUSE OF
REPRESENTATIVES
P.O. BOX 11867
COLUMBIA, SC
29211-1867

The delegation office is responsible for verifying that the applicant is registered to vote. After verifying this information, the delegation sends the application to the Secretary of State's Office and a commission is issued and mailed to the newly appointed notary public. The commission states the notary's name and term expiration date. The application process can take anywhere from 2-12 weeks, depending on the county in which the applicant resides.

If you find that your name is misspelled on your notary commission, please mark out the incorrect portion, clearly write in the correction on your commission, and return it to the Secretary of State's Office. A new commission with the requested corrections will be mailed back to you.

Once you are commissioned as a notary public, you must enroll your commission with the Clerk of Court in the county where you live. Generally, you will be asked to provide photo identification and a fee when you enroll. You should enroll with the Clerk of Court within 15 days of being commissioned pursuant to S.C. Code §26-1-50; however, there is no penalty for late enrollment. If you move to a new county, you should enroll your commission with the Clerk of Court in your new county. If you change your name and receive a new commission, you must enroll your new commission with your Clerk of Court.

To renew your commission as a notary public, you will complete the same application as when you initially applied to become a notary public. The fee is \$25.00 for both new applications and renewals. There are no automatic renewals or reminders, so notaries must keep track of when to reapply. When reapplying, be sure to send in your application at least 8-12 weeks in advance of your term expiration date in order to allow time for processing by your legislative delegation and by the Secretary of State's Office.

Reporting Changes in Status

Pursuant to §26-1-130, notaries public must notify the Secretary of State's Office of any changes in name, residency, or contact information. To notify the Secretary of State's Office, a notary public must file a Change of Status and Duplicate Commission Request form, along with a \$10.00 filing fee, within 45 days of any of the following changes:

1. Address/contact information
 - a. This includes a change in residence, business, or mailing address, a change in county of residence, or a change in telephone number.
 - b. Filing a change of status related to residency or contact information does not affect the expiration date of the notary's term of service.
 - c. A notary public who files a change of status form related to residency or contact information is not required to obtain a new notary seal.

2. Name

- a. This change of status applies to legal name changes only.
- b. A notary public who files a change of name should use his or her former name until receipt of confirmation of the name change from the Secretary of State.
- c. Once the name change is confirmed and a new commission issued by the Secretary of State's Office, the notary should begin notarizing under his or her new name and destroy or deface all notary seals with the old name so they won't be misused.
- d. Filing a change of status related to a legal name change will not affect the expiration date of the notary's original term of service.

3. Duplicate Commission Request

- a. A duplicate commission may be requested on the Change of Status and Duplicate Commission Request form.
- b. If you are changing your name or your address, you will be issued a new commission and do not need to request an additional duplicate commission.

Pursuant to §26-1-140, notaries public who resign their commissions must also file a Change of Status Form - Resignation with Secretary of State. There is no filing fee for a resignation; however, the Change of Status Form - Resignation must indicate the effective date of resignation. A notary public must resign his or her commission if he or she ceases to live in South Carolina or becomes permanently unable to perform notarial duties. Furthermore, the notary must destroy or deface any notary seals upon his or her resignation so that they will not be misused.

When a notary public dies, the personal representative of the notary should notify the Secretary of State in writing of the notary's death (§26-1-150). The personal representative should also destroy or deface notary seals so they won't be misused.

Term, Jurisdiction, Title, Equipment, and Fees

In South Carolina, notaries public are appointed to terms of 10 years (§26-1-10). To find a notary's expiration date, you can search on the Secretary of State's website at www.sos.sc.gov. From the home page, choose the tab that says "Notary Search." You can find out a notary public's county of residence and expiration date through searching by name.



A notary public's jurisdiction extends throughout the State of South Carolina, but does not extend beyond its borders (§26-1-80). Jurisdiction is limited to the physical borders of South Carolina and notarial acts cannot be performed outside of the state. However, documents for use in another state may be notarized in South Carolina so long as the notarization physically takes place within the borders of the state.

South Carolina law does not allow out-of-state residents to become South Carolina notaries public, even if they are employed within the State of South Carolina.



Seals and Stamps: A seal or stamp must include the notary's name, the words "notary public" and the words "State of South Carolina." [§26-1-5(18)] The expiration date may also be included in the seal, but that is optional. A notary public's official title is not defined in statute, but it would likely need to include the words "notary public" and "South Carolina." For example, your official title could be stated as "South Carolina Notary Public."

A notary public must have a seal of office to attach to notarial acts and should indicate below his or her signature the expiration date of his or her commission (§26-1-60). Although a lack of seal or expiration date does not invalidate the notarial act if the notary's official title is attached, it is strongly encouraged that notaries public attach a seal and expiration date.

Choosing a Seal or Stamp: A notary public may use either a rubber stamp or an embosser seal when performing notarial acts. Both seals and stamps can be purchased and personalized at any office supply store. When choosing whether to use a seal or stamp, one thing to consider is that rubber stamps will show up more clearly when scanned electronically. Therefore, if you will be notarizing a lot of documents that will be scanned, you may want to use a rubber stamp rather than an embosser seal.

Travel fees [§26-1-100(C)]:

In addition to fees for notarial acts, a notary public may charge for travel if the fee is agreed upon in advance between the notary and the party requesting the notarial act, AND if the notary explains to the requesting party that the travel fee is separate from the notarial fee and is not specified or mandated by law.

Fees: Pursuant to S.C. Code of Laws §26-1-100(A), notaries public may charge up to \$5.00 per notarial act.

If a notary public does plan to charge a fee, his or her fee schedule must be conspicuously displayed [§26-1-100(B)]. However, notaries are not required to charge a fee for their notarial acts.

Notarial Acts

Pursuant to S.C. Code of Laws §26-1-90(A), notaries public can perform the following notarial acts:

1. Acknowledgements
2. Oaths and Affirmations
3. Attestations and Jurats
4. Signature Witnessing
5. Verifications
6. Any other acts authorized by law

Definitions of Notarial Acts

South Carolina Code of Laws §26-1-5 provides definitions of notarial acts and other terminology used when performing notarial acts. Examples of notarial acts are provided at the end of this manual.

1. Acknowledgement: a notarial act where the notary certifies that, at a single time and place, all the following occurred:
 - a. An individual appeared in person before the notary and presented a record;
 - b. The individual was personally known to the notary or identified by the notary through satisfactory evidence; and
 - c. The individual signed the record while in the physical presence of the notary and while being personally observed signing the record by the notary.

2. Oath: a notarial act that is legally equivalent to an affirmation and in which a notary certifies that at a single time and place, all of the following occurred:
 - a. An individual appeared in person before the notary;
 - b. The individual was personally known to the notary or identified by the notary through satisfactory evidence; and
 - c. The individual made a vow of truthfulness on penalty of perjury while invoking a deity or using a form of the word 'swear'.

3. Affirmation: a notarial act that is legally equivalent to an oath and in which a notary certifies that at a single time and place, all of the following occurred:
 - a. An individual appeared in person before the notary;
 - b. The individual was personally known to the notary or identified by the notary through satisfactory evidence; and
 - c. The individual made a vow of truthfulness on penalty of perjury, based on personal honor and without invoking a deity or using a form of the word 'swear'.

4. Attestations and Jurats:
 - a. 'Attest' or 'attestation' means the completion of a certificate by a notary who has performed a notarial act.
 - b. 'Jurat' means a notary's certificate evidencing the administration of an oath or affirmation.
 - c. 'Notarial Certificate' means the portion of a notarized record that is completed by the notary, bears the notary's signature and seal, and states the facts attested by the notary on that record.

***A complete notarial certificate must be included in every notarization. Do not notarize a document with only your signature and title. You must also include wording stating the facts attested. For example, "Sworn and Subscribed before me this ____ day of ____, 20__.**

5. Affidavit: a voluntary written statement made by a person under oath or affirmation and then notarized. They are often used in court proceedings and legal matters, but affidavits may be used for a variety of purposes.
6. Verification or Proof: a notarial act in which a notary certifies the following:
 - a. An individual appeared in person before the notary;
 - b. The individual was personally known to the notary or identified by the notary through satisfactory evidence;
 - c. The individual was not a party to or beneficiary of the transaction; and
 - d. The individual took an oath or gave an affirmation and testified that he or she is a subscribing witness and as such:
 - i. Witnessed the principal who signed the record; or
 - ii. Received the acknowledgement of the principal's signature from the principal who signed the record.

What a Notarization Means

Pursuant to S.C. Code of Laws §26-1-120(B), when a notary performs a notarial act, he or she is certifying the following:

1. That when the notarial act occurred, the notary was lawfully commissioned, serving a current term, was not suspended, performed the notarization within the State of South Carolina, and that the notarization was done according to law;
2. That the person whose signature was notarized did not appear to be incompetent, lacking understanding of the transaction requiring the notarial act, or acting involuntarily, under duress, or undue influence; and
3. That the notary was not prohibited from acting under the chapter governing notaries public.

Requirements for Notarization

The following are required elements of notarial acts under South Carolina law:

1. A notarial act must be attested by:
 - a. The notary's signature, exactly as shown on the notary's commission;
 - b. The legible appearance of the notary's name exactly as shown on the notary's commission. This can be the notary's typed or printed name near his or her signature or can be ascertained from somewhere in the notarial certificate or from the notary's seal, if legible; and

- c. The notary’s term expiration date, which may appear in the notary’s stamp or seal or somewhere in the notarial certificate.
 - d. Make sure that when you complete your application, you sign and print your name the same way so that you can meet these requirements.
2. The notary must sign by hand in ink and ***should only sign after the notarial act is performed*** (§26-1-110). The notary cannot sign using a stamp or electronic method, with the exception of notaries with disabilities that have obtained prior approval from the Secretary of State.
3. The notary must have personal knowledge or satisfactory evidence of the identity of the principal and, if applicable, the subscribing witness [(§26-1-120(A))]. “Satisfactory evidence” means identification of an individual based on one of the following:
 - a. A current identification document issued by a federal or state agency that includes a photographic image of the individual’s face and signature, as well as a physical description;
 - b. A current passport without a physical description;
 - c. The oath or affirmation of a credible witness personally known to the notary; or
 - d. The oaths or affirmations of two witnesses who present a current identification document as described in subsections (a) and (b) above.

Special Circumstances

There may be situations where a notary is asked to perform a notarial act for a principal who can only sign with a mark and not a complete signature, or who may not be able to make any mark at all. S.C. Code of Laws §26-1-90(F)-(H) provide procedures to follow in these situations.

In the case of a principal who is able to sign using a mark, the notary should use the following procedure:

1. The mark must be made in the presence of a notary;
2. The notary writes below the mark: ‘Mark affixed by (name of signer by mark) in presence of undersigned notary’; and
3. The notary notarizes the signature by performing an acknowledgement, oath or affirmation, jurat, or verification or proof.

In the case of a principal who is not able to sign at all, and who designates another person to sign on his or her behalf, the notary should use the following procedure:

1. The principal must direct the designee to sign in the presence of the notary and two witnesses who are either personally known to the notary or identified by satisfactory evidence, and who are unaffected by the record;
2. The designee signs the principal’s name in the presence of the principal, the notary, and the two witnesses;
3. Both witnesses sign their own names near the principal’s signature;

4. The notary writes below the principal's signature: 'Signature affixed by designee in the presence of (names and addresses of principal and witnesses)'; and
5. The notary notarizes the signature through an acknowledgement, oath or affirmation, jurat, or verification or proof.

In the case of a principal who is not able to sign at all, and who directs the notary to sign on his or her behalf, the notary should use the following procedure:

1. The principal directs the notary to sign the record with two witnesses present who are unaffected by the record;
2. The notary signs the principal's name in the presence of the principal and the witnesses;
3. Both witnesses sign their own names to the record near the principal's signature;
4. The notary writes below the principal's signature: 'Signature affixed by the notary at the direction of (name of principal unable to sign or make a mark) and also in the presence of (names and addresses of witnesses)'; and
5. The notary notarizes the signature through an acknowledgement, oath or affirmation, jurat, or verification or proof.

Marriage Ceremonies

Pursuant to S.C. Code of Laws §20-1-20, a person authorized to administer oaths in South Carolina may perform marriage ceremonies. This includes notaries public. Examples of wedding vows that a notary may use are provided in the appendix. Below is the procedure to follow when notarizing a marriage license:



- 1.** First, the couple applies for a marriage license with a South Carolina Probate Court, which issues 3 copies of the marriage license.
- 2.** The couple and the notary must sign all 3 copies. The spouses should sign using their legal names regardless of whether they intend to change their names after the marriage ceremony. For example, a bride who intends to change her name after the marriage ceremony should sign using her maiden name.
- 3.** The couple keeps one copy and the notary files the other two copies with the Probate Court that issued the license.

What Notaries Cannot Do

Thus far, this manual has provided information on what a notary can do. The Code of Laws also provides a list of several acts notaries are not authorized to perform as well as certain prohibitions related to how a particular notarial act is performed [see S.C. Code of Laws §26-1-90(C)-(D) & §26-1-160(A)-(E)]. South Carolina law also prohibits people who are not commissioned notaries from engaging in notarial activities. The following are a list of things a notary is not permitted to do:

1. Notarize a document for a principal or subscribing witness who is not present before the notary. This is a misdemeanor that carries a penalty of up to a \$500.00 fine or imprisonment of up to 30 days, or both.
2. Notarize a document where the principal or subscribing witness is not known to the notary and is not identified through satisfactory evidence. This is a misdemeanor that carries a penalty of up to a \$500.00 fine or imprisonment of up to 30 days, or both.
3. Perform a notarization related to an acknowledgement, verification or proof, oath or affirmation, if the notary knows it is false or fraudulent. This is a misdemeanor that carries a penalty of up to a \$500.00 fine or imprisonment of up to 30 days, or both.
4. Notarize a document when the notary signs, is party to, or benefits from the document being notarized. Limited exceptions to this include:
 - a. Court employees
 - b. Notaries who are not parties to a document, but are named in the document as:
 - i. Person to whom document will be sent after recording;
 - ii. Trustee in a deed of trust;
 - iii. Drafter of the document; or
 - iv. Attorney for a party to the document.
5. Notarize a document where the notary will directly receive a commission, fee, interest, or other consideration exceeding the permissible fees for notarial acts. Limited exceptions to this include fees or other consideration paid for services rendered by:
 - a. Licensed attorneys;
 - b. Licensed real estate brokers or salespersons;
 - c. Motor vehicle dealers; or
 - d. Bankers.
6. Notarize a document that is blank or incomplete.
7. Notarize a document without notarial certificate wording.

8. Certify or authenticate a photograph or photocopy. However, the holder of the document may sign an affidavit certifying the authenticity of a photocopy which is then notarized, except when a certified copy is available from an official source (for example, vital records).
9. Notarize a document outside the state of South Carolina.
10. Notarize your own signature.
11. Offer legal advice unless you are a licensed attorney.
12. Postdate or predate your notarial acts.
13. Certify vital records. Certification of vital records must be done by officials in the country, state, or county offices that issue and keep those records. Vital records include birth certificates, marriage licenses, death certificates, divorce decrees, and documents of that nature.

If a notary is convicted of one of these acts that constitutes a misdemeanor, he or she must forfeit his notary commission and not be issued another commission. The court that convicts a notary public of these acts must inform the Secretary of State's Office within 10 days of the conviction.

Punishment for misdemeanors involving notarial acts is a fine of up to \$500.00 or imprisonment of up to 30 days for each separate offense.

In addition, certain acts committed by a non-notary may also constitute a crime pursuant to S.C. Code of Laws §26-1-160. These actions are misdemeanors that carry a penalty of up to a \$500.00 fine or imprisonment of up to 30 days, or both. The following actions are prohibited for persons who are not notaries:

1. Performing a notarial act knowing that you are not a notary.
2. Holding oneself out to the public as a notary without a notary commission.
3. Performing a notarial act if the notary's commission is expired, suspended, or restricted.
4. Performing a notarial act before taking the oath of office.
5. Using, concealing, defacing, or destroying a notary's seal or notarial records.
6. Knowingly soliciting, coercing, or materially influencing a notary to commit official misconduct. A person who does this is guilty of aiding and abetting and is subject to the same level of punishment as the notary.

Frequently Asked Questions

Are attorneys automatically notaries?

Attorneys are not automatically notaries public. They must apply and be commissioned like any other member of the public.

Are notaries required to have a bond?

South Carolina notaries public are not required to be bonded.

Are notaries required to keep a journal of notarial acts?

South Carolina notaries public are not required to keep notary journals. However, it is STRONGLY encouraged that you keep one. It is a good idea to have a record of all notarial acts performed in case questions arise related to the execution of a document. An example of a notary journal entry is provided at the end of this manual.

Does the Secretary of State's Office investigate misconduct by notaries public?

The South Carolina Secretary of State's Office is not authorized to investigate or penalize notaries public. There are several actions prohibited that are misdemeanors. Therefore, these activities should be reported to local law enforcement. If a notary public is convicted of one of the misdemeanors set forth in Title 26, Chapter 1 of the S.C. Code of Laws, the notary public will forfeit his or her commission at that time and not be issued another commission.

Foreign Language Requirements

South Carolina Code of Laws §26-1-90(I), (L), and (M) prescribe certain requirements for notaries regarding use of foreign languages. First, a notary public cannot execute a notarial certificate in a language other than English. A foreign language translation may include a translation of the notarial certificate into that foreign language, but the notary will only execute the English language certificate.

Secondly, if you are a notary public who is not an attorney and you advertise your services as a notary in any language other than English, you must include the following notice in English and in the language used for the advertisement:

I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF SOUTH CAROLINA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.

Lastly, notaries public cannot use the term “notario publico” or its non-English equivalent in any advertisements or notices.

Authentications and Apostilles

The Office of the Secretary of State is the authority which authenticates documents to be sent to another country. The South Carolina Code of Laws addresses how to obtain an Apostille or authentication of documents to be sent to another country. An authentication and Apostille serve essentially the same function. They are certificates provided by the Secretary of State's Office and attached to documents that are being sent to foreign countries. In order for the Secretary of State's Office to authenticate a document, it must be signed by a public official whose signature is on file with the Secretary of State, which includes notaries public. Some examples of documents that are brought in for authentication or an Apostille are birth certificates, marriage licenses, school transcripts, etc.

NOTE
THE FEE TO
OBTAIN AN
APOSTILLE OR
AUTHENTICATION
FROM THE
SECRETARY OF
STATE'S OFFICE
IS \$5.00 PER
DOCUMENT.

If the destination country where the documents are to be sent is a member of the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, the Secretary of State's Office will attach an Apostille to the document(s) and the holder of the documents can then send those documents directly to the destination country. If the destination country is not a member of this Hague Convention, the Secretary of State's Office attaches an authentication to the document(s). At that point, the documents with the attached authentication must be sent to the U.S. State Department for further certification before they can be sent to the destination country. The mailing address for the U.S. State Department is as follows:

U.S. Department of State
Office of Authentications
CA/PPT/S/TO/AUT
44132 Mercure Circle
P.O. Box 1206
Sterling, VA 20166-1206

For more information, visit the State Department's website at <https://travel.state.gov>. For a listing of countries that have signed on to the Hague Convention and that will accept an Apostille, you can visit their website at: <http://www.hcch.net>. The Secretary of State's Office has this information on file and will know whether documents going to a particular country should receive an Apostille or authentication certificate.

Notaries public should be familiar with these certifications since many of the documents that are submitted for authentication or an Apostille are notarized documents for which the notary is the public official whose signature is authenticated. It is important that you include your seal with your name as commissioned on the document near your signature and that you sign your name as commissioned so that we can accurately verify your status as a notary public and provide the requested certificate. Please also include your expiration date.

Rejection of a request for authentication or Apostille:

The Secretary of State's Office may refuse to provide an authentication or Apostille if:

1. It is believed to be requested for an unlawful or improper purpose;
2. The document is in a foreign language and is not accompanied by an English translation;
3. The seal or signature on the document cannot be authenticated by the Secretary or another official;
4. The seal or signature is of an official of another state or country; or
5. The document is a photocopy or reproduction of a seal or signature.

The Secretary of State cannot include within an Apostille or authentication any statement that is not within his power to make. For example, the Secretary cannot certify that a document has been certified or executed in accordance with the law or that it is a valid document.

In addition, notaries are also prohibited from certifying that a document has been certified or executed in accordance with the law or that it is a valid document. This is beyond the scope of a notary public's authority.

Unauthorized Practice of Law

Pursuant to S.C. Code of Laws §26-1-90 (K) and (J), a notary public who is not a licensed attorney may not provide a service that would constitute the unauthorized practice of law (UPL). More specifically, a notary cannot claim to have powers, qualifications, rights or privileges that a notary does not have.

Unless you are a member of the South Carolina Bar or otherwise authorized to perform prescribed legal activities by action of the South Carolina Supreme Court, you are prohibited from the practice of law.

There are many areas where notaries public may run into the unauthorized practice of law. Some examples of UPL are:

1. Drafting or completing a record or transaction that requires a notarial act;
2. Selecting or helping a person understand a record or transaction requiring a notarial act;
3. Preparation of legal documents;
4. Giving legal advice or answering legal questions;
5. Appearing in court on behalf of someone else;
6. Performing a real estate or mortgage loan closing; and
7. Title search and preparation of title documents.

There are certain exceptions for court employees acting within the scope of employment who assist individuals with court filings, so long as the assistance does not constitute the unauthorized practice of law.

Pursuant to S.C. Code of Laws §40-5-310, a person who engages in the unauthorized practice of law is guilty of a felony and, upon conviction, must be fined not more than \$5,000 or imprisoned not more than 5 years, or both. This is the penalty per offense.

Other Types of Unauthorized Practice of Law

Notario Publico Fraud:

Notario publico fraud occurs when individuals dishonestly represent themselves as being qualified to provide legal advice or services by calling themselves “notarios publicos.” While this is a Spanish translation of notary public, many members of immigrant communities associate a different meaning to this title. In some of Latin America, a notario publico has greater legal power and authority than a notary public in South Carolina. This creates confusion and many immigrants rely on these notarios publicos for services—including counsel on immigration matters—that constitute the unauthorized practice of law.

Pursuant to the South Carolina law governing notaries, a notary cannot use the term “notario publico” in any advertisements or notices.

Pursuant to Title 43, Chapter 83 of the S.C. Code of Laws, people who are not attorneys who provide certain types of assistance in immigration matters must apply for and be granted a license from the South Carolina Department of Labor, Licensing and Regulation. For more information on whether certain activities require a license, you should contact LLR.

If you suspect that a notario public is not a notary, or if you suspect that any person who performs notarial acts is not a notary, you may check the Secretary of State’s online Notary Search database to see if he or she has been commissioned as a notary public for the State of South Carolina.

Real Estate Closings:

In South Carolina, notaries public are not permitted to conduct real estate or mortgage loan closings without an attorney present. While some states do allow for notaries to conduct a closing without an attorney, the South Carolina Supreme Court has clearly stated that an attorney must conduct all real estate and mortgage loan closings. Mortgage refinancing is also subject to this rule.

However, there is an exception for a loan modification. The South Carolina Supreme Court stated in *Crawford vs. Central Mortgage Company* (404 S.C. 39, 744 S.E. 2d 638 (2013)) that lenders do not engage in the unauthorized practice of law by preparing and mailing loan modifications to borrowers and recording the executed documents, without participation of a licensed attorney.

**IN THE STATE OF
SOUTH CAROLINA, A
REAL ESTATE OR
MORTGAGE LOAN
CLOSING MUST BE
CONDUCTED WITH
ATTORNEY
SUPERVISION.**

How to Report the Unauthorized Practice of Law:

If you suspect someone of engaging in the unauthorized practice of law or notario publico fraud, you can report it to your local Solicitor's Office or to the Attorney General's Office. You can also submit a report to the SC Bar's UPL Committee at www.scbars.org so that they can monitor the activity and assist the proper authorities.

Forms

The Change of Status form is available online at the following link:

<http://www.sos.sc.gov/forms/Notary/ChangeInStatus.pdf>

The Resignation form is available online at the following link:

<http://www.sos.sc.gov/forms/Notary/NotaryResignation.pdf>

The Notary Public application form is available online at the following link:

http://www.sos.sc.gov/forms/Notary/NP_Application.pdf

The Authentications Cover Letter is available online at the following link:

<http://www.sos.sc.gov/forms/Notary/AuthenticationsCoverLetter.pdf>

Contact Information

South Carolina Secretary of State's Office
1205 Pendleton Street, Suite 525
Columbia, SC 29201
www.sos.sc.gov

Kataria Watkins 803-734-2512
Director of Authentications, Notaries, Boards and Commissions
kwatkins@sos.sc.gov

South Carolina Attorney General's Office 803-734-3970
www.scag.gov

South Carolina Department of Consumer Affairs 803-734-4200
www.consumer.sc.gov

South Carolina Department of
Labor, Licensing & Regulation 803-896-4300
www.llr.sc.gov

UPL Committee
www.sctbar.org

HELPFUL LINKS:

SC State Government	www.sc.gov
State Law	www.scstatehouse.gov
National Notary Law Inst.	www.notarylaw.com
National Notary Association	www.nationalnotary.org
American Society of Notaries	www.asnnotary.org
American Association of Notaries	www.notarypublicstamps.com

Roster of South Carolina Clerks of Court:
<http://www.sccourts.org/clerksCourt/clerkListCoPF.cfm>

Roster of South Carolina Probate Judges:
<http://www.sccourts.org/probateCourt/probJudgeListPFbyCty.cfm>

EXAMPLES

VERIFICATION

_____ County, South Carolina

I certify that _____ personally appeared before me this day and
Name of subscribing witness
certified to me under oath or by affirmation that he or she is not a grantee or
beneficiary of the transaction, signed the foregoing document as a subscribing witness,
and either

[] witnessed _____ sign the foregoing document or
Name of principal

[] witnessed _____ acknowledge his or her signature on the
Name of principal
already-signed document.

Date: _____

(Official Seal)

Official Signature of Notary

_____, Notary Public
Notary's printed or typed name

My commission expires: _____

OATH

Do you solemnly swear that the contents of this affidavit (or other document) are known to you and that the information is true and correct, so help you God?

OR

I solemnly swear that the contents of this affidavit (or other document) are known to me and that the information is true and correct, so help me God.

AFFIRMATION

Do you solemnly affirm that the contents of this affidavit (or other document) are known to you and that the information is true and correct, under the pains and penalties of perjury?

OR

I solemnly affirm that the contents of this affidavit (or other document) are known to me and that the information is true and correct, under the pains and penalties of perjury.

JURAT STATEMENT

Sworn and Subscribed before me

On this ____ day of _____, _____

Notary Public for South Carolina

Commission Expires: _____

AFFIDAVIT

_____ County, South Carolina

_____ appearing before the undersigned notary and being duly
Name of Affiant
sworn (or affirmed), says that

1. _____
2. _____
3. _____

Name of Affiant

Sworn to (or affirmed) and subscribed before me this the _____ day of
_____, 20_____.

Official Signature of Notary

(Official Seal)

_____, Notary Public
Notary's printed or typed name

My commission expires: _____

AFFIDAVIT FOR CERTIFICATION
OF PHOTOCOPIES

State of South Carolina
County of _____

On this _____ day of _____, 20____, I, _____,
Document Holder
holder of _____, consisting of _____ pages, attest that it is
Name of Document
a true, exact, complete and unaltered photocopy of the original. To the best of my
knowledge and belief, the photocopied document is not a public record, of which
certified copies are available from an official source.

Document Holder's Signature

Sworn to (or affirmed) and subscribed before me this the _____ day of
_____, 20_____.

Official Signature of Notary

(Official Seal)

_____, Notary Public
Notary's printed or typed name

_____ County, South Carolina

My commission expires: _____

**The county listed at the top of the affidavit is the county where the notarization is taking place. The county near the notary's signature is the notary's county of residence.*

NOTARY JOURNAL ENTRIES

<p>Notary Journal Entry</p> <p>Person whose signature is notarized signs here: _____</p> <p>Date _____ Time _____ AM/PM Charge\$ _____ Date of document _____</p> <p>Type of notary act _____ Type of Document _____</p> <p>Signer's address _____</p> <p>The manner in which the signer was identified _____</p> <p>Special Comments: _____</p>
<p>Notary Journal Entry</p> <p>Person whose signature is notarized signs here: _____</p> <p>Date _____ Time _____ AM/PM Charge\$ _____ Date of document _____</p> <p>Type of notary act _____ Type of Document _____</p> <p>Signer's address _____</p> <p>The manner in which the signer was identified _____</p> <p>Special Comments: _____</p>

ACKNOWLEDGEMENT

State of South Carolina
County of _____

On this _____ day of _____, 20____, before me personally
appeared _____, who provided satisfactory evidence of her
Document Holder

identification to be the person whose name is subscribed to this instrument and she
acknowledged that she executed the foregoing instrument by her signature here.

Document Holder's Signature

Sworn to (or affirmed) and subscribed before me this the _____ day of
_____, 20_____.

Official Signature of Notary

(Official Seal)

_____, Notary Public
Notary's printed or typed name

_____ County, South Carolina

My commission expires: _____

**The county listed at the top of the acknowledgement is the county where the notarization is taking place. The county near the notary's signature is the notary's county of residence.*

Sample Marriage Vows

Example 1*:

“Welcome family, friends, and loved ones. We are gathered here together to witness the union of (Groom) and (Bride) in the (holy) bonds of matrimony. (Bride) and (Groom) thank you for joining us on this day of celebration.”

“(Groom) and (Bride), please turn and face each other as you say your vows.”
(** ASK GROOM TO REPEAT THESE WORDS**)

“I, (Groom), take you, (Bride), to be my wife, to have and to hold from this day forward, for richer, for poorer, in sickness and in health, to love and to cherish for all the days of my life. This is my solemn vow.”
(** ASK BRIDE TO REPEAT THESE WORDS**)

“ I, (Bride), take you, (Groom), to be my husband, to have and to hold from this day forward, for richer, for poorer, in sickness and in health, to love and to cherish for all the days of my life. This is my solemn vow.”

“Will you, their loved ones who have gathered with them, grant them your blessings and pledge them your love and support?”
(**PAUSE FOR ANSWER**)
(** ASK GROOM TO PLACE THE RING ON HER FINGER AND REPEAT THESE WORDS**)

“I give you this ring as a daily reminder of my love for you.”

(**ASK BRIDE TO PLACE THE RING ON HIS FINGER AND REPEAT THESE WORDS**)

“I give you this ring as a daily reminder of my love for you”

“Since you two have consented together in the presence of this company, I by the virtue of the authority vested in me by the state of South Carolina, pronounce you husband and wife. (Those whom God has joined together, let no man put asunder.)”

“You may kiss the Bride.”

“Ladies and gentlemen, it gives me great pleasure to introduce to you Mr. and Mrs. (JOHN DOE).”

**Please note that the language above is only intended to serve as guidance in conducting a marriage ceremony and that you are not required to use this particular wording.*

Sample Marriage Vows

Example 2*:

“Dearly beloved, we have come together today to witness the wedding ceremony of (Partner 1) and (Partner 2). (Partner 1) and (Partner 2) thank you for being here today and ask for your encouragement and support as they begin their marriage.

“(Partner 1) and (Partner 2), please turn and face each other as you begin your vows.”

“(Partner 1), do you take (Partner 2) to be your beloved spouse? Do you vow that you will always support (Partner 2) in sickness and in health, in joy and in sorrow, in poverty and in wealth, for as long as you both shall live?”

(**PAUSE FOR ANSWER**)

“(Partner 2), do you take (Partner 1) to be your beloved spouse? Do you vow that you will always support (Partner 1) in sickness and in health, in joy and in sorrow, in poverty and in wealth, for as long as you both shall live?”

(**PAUSE FOR ANSWER**)

“Will all of you witnessing these vows do all in your power to uphold this couple in their marriage?”

(**PAUSE FOR ANSWER**)

(** ASK PARTNER 1 TO PLACE THE RING ON THE FINGER OF PARTNER 2 AND REPEAT THESE WORDS**)

“In the presence of (God and) our family and friends, I (Partner 1) choose you (Partner 2) to be my spouse. I give you this ring as a symbol of my love, faith, and loyalty.”

(** ASK PARTNER 2 TO PLACE THE RING ON THE FINGER OF PARTNER 1 AND REPEAT THESE WORDS**)

“In the presence of (God and) our family and friends, I (Partner 2) choose you (Partner 1) to be my spouse. I give you this ring as a symbol of my love, faith, and loyalty.”

“In conformity with your mutual declaration and vows, by the virtue of the authority vested in me by the state of South Carolina, I now pronounce you married. You may seal your vows with a kiss.”

“Ladies and gentlemen, it is my privilege to be the first to present the newlyweds, (Partner 1) and (Partner 2)!”

**Please note that the language above is only intended to serve as guidance in conducting a marriage ceremony and that you are not required to use this particular wording.*