

## **CHAPTER 4**

### **Notaries Public**

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#### **SUBCHAPTER I**

## General Provisions

### **§ 411. Appointment; Term; Removal; Reporting of change of status.**

(1) The High Commissioner may in his discretion appoint and commission such numbers of notaries public for the Trust Territory as he shall deem necessary for the public good and convenience.

(2) The term of office of a notary public shall be two years from the date of his commission, unless sooner removed by the High Commissioner on recommendation of the Attorney General made on findings of cause after due hearing; provided, that after due hearing the commission of a notary public may be revoked by the High Commissioner in any case where any change shall occur in such notary's office, occupation or employment which in the judgment of the High Commissioner renders the holding of such commission no longer necessary for the public good and convenience.

(3) Each notary shall, upon any change in his office, occupation or employment, forthwith report the same to the Attorney General.

**Source:** TT Code 1966 § 1075; TT Code 1970, 31 TTC 201; TT Code 1980, 31 TTC 201.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

### **§ 412. Rules and regulations.**

(1) The Attorney General, with the approval of the High Commissioner shall have power to prescribe such rules and regulations having the force and effect of law as he may deem advisable concerning the appointment and duties of notaries public and the administration of this chapter.

(2) The Attorney General shall file a copy of such rules and regulations with each district Clerk of Courts.

**Source:** TT Code 1966 § 1082; TT Code 1970, 31 TTC 202; TT Code 1980, 31 TTC 202.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

### **§ 413. Application; Qualifications; Oath.**

(1) Except as otherwise provided in this chapter, application for a commission as notary public for the Trust Territory shall be submitted to the Attorney General and must be accompanied by two letters of recommendation.

(2) Every person appointed a notary public must be, at the time of his appointment, of good character, at least 25 years of age, and a permanent resident of the Trust Territory who has resided in it for at least three years, or a United States citizen, resident in the Trust Territory and employed by the United States Government or by a contractor engaged in work for the United States Government in the Trust Territory.

(3) Every person appointed a notary public shall, before acting in that capacity, take and subscribe an oath for the faithful discharge of his duties, which oath may be taken before a District Administrator, a judge, a Clerk of Courts, or other official authorized to administer oaths. This oath shall be executed in duplicate. The original shall be filed in the Office of the Attorney General and a duplicate original filed in the Office of the Clerk of Courts for the district or districts in which said notary shall be acting.

**Source:** TT Code 1966 § 1076; TT Code 1970, 31 TTC 203; TT Code 1980, 31 TTC 203.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

**Editor's note:** Subsections (1) and (2) were originally one subsection prior to the 1982 edition of this code.

#### **§ 414. Filing and certification of commission, seal, and signature.**

(1) It shall be the duty of each person appointed and commissioned a notary public under the provisions of this chapter to forthwith file a literal or photostatic copy of his commission, an impression of his seal, and a specimen of his official signature with the Clerk of Courts of each district for and in which he decides to act. Thereafter, such Clerk, when so requested, shall certify to the official character and acts of any such notary public whose commission, impression of seal, and specimen of official signature is filed in his office.

(2) The Clerk of Courts of each district shall charge and receive a fee of one dollar for filing a copy of a commission and a fee of 25 cents for filing each certificate of authentication.

**Source:** TT Code 1966 § 1078, 1083; TT Code 1970, 31 TTC 204; TT Code 1980, 31 TTC 204.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

#### **§ 415. Official bond; Appointment of agent for service of process.**

(1) Each notary public forthwith and before entering upon the duties of his office may, at the discretion of the High Commissioner, be required to execute at his own expense, an official surety bond in a sum not exceeding \$1,000.

(2) The obligee of each bond shall be the Trust Territory and the condition contained therein shall be that the notary public will well, truly, and faithfully perform all the duties of his office which are then and may thereafter be required, prescribed, or defined by law or by any rule or regulation made under the express or implied authority of any law of the Trust Territory, and all duties and acts are undertaken, assumed or performed by the notary public by virtue or color of his office.

(3) The surety on any such bond shall be a surety company approved by the High Commissioner.

(4) The notary public by accepting his commission, and the surety company by issuing the bond, thereby agree and appoint the District Administrator of any district in which the notary public performs any official act as his agent to accept service of process on his behalf for any purpose.

(5) After approval, the bond shall be deposited and kept in the Office of the Attorney General, who will certify to the Clerk of Courts in the district in which the notary public is commissioned that the bond has been accepted and filed in proper form.

**Source:** TT Code 1966 § 1079; TT Code 1970, 31 TTC 205; TT Code 1980, 31 TTC 205.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

#### **§ 416. Liabilities of notary and surety on bond.**

For the official misconduct of a notary public or breach of any of the conditions of his official bond, he and the surety on his official bond shall be liable to the party injured thereby for all damages sustained. Such party shall have a right of action in his own name and upon such bond and may prosecute the same to final judgment and execution.

**Source:** TT Code 1966 § 1080; TT Code 1970, 31 TTC 206; TT Code 1980, 31 TTC 206.

**Case annotation:** The act of notarizing a document is in itself a verification of the identity and signature of the person who signed the document. If an affiant is not present, however, the notary cannot make the necessary verifications and should under no circumstances notarize the document, and is subject to liability for misconduct of a notary public. *Peter v. Jessy*, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

#### **§ 417. Compliance with chapter required; Penalties.**

(1) No person shall be qualified to act as a notary public or shall enter upon any of the duties of such office, or offer or assume to perform any such duties until he shall have fully complied with the requirements of this chapter.

(2) Any person willfully violating any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, such person shall be punished by a fine of not more than \$500, or by imprisonment for not more than one year, or both.

(3) Nothing in this section shall be construed to restrict or to do away with any liability for civil damages.

**Source:** TT Code 1966 § 1081; TT Code 1970, 31 TTC 207; TT Code 1980, 31 TTC 207.

## SUBCHAPTER II

### Powers and Duties

#### **§ 421. Generally.**

A notary public has the power and is authorized to administer oaths and affirmations, receive proof and acknowledgment of writings, and present and protest commercial paper. A notary public may act officially anywhere in the Federated States of Micronesia, but shall, before so acting in any State thereof, comply with the provisions of section 414, subchapter I of this chapter. A notary public who serves as an officer or employee of the Federated States of Micronesia in any embassy, representative office, consulate or liaison office may also act officially anywhere in the jurisdiction in which such embassy, representative office, consulate or liaison office is located, PROVIDED that such notary public files a literal or photostatic copy of his commission, an impression of his seal and a specimen of his official signature with the Clerk of the Supreme Court of the Federated States of Micronesia in each State thereof and, if required by law, with the clerk of any appropriate court in the jurisdiction in which the embassy, representative office, consulate or liaison office is located.

**Source:** TT Code 1966 § 1084; TT Code 1970, 31 TTC 251; COM PL 4C-27 § 2; TT Code 1980, 31 TTC 251; PL 6-36 § 1.

**Cross-reference:** The statutory provisions on the FSM Supreme Court are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

**Case annotations:** While the majority of notaries are employed by the state government, several are employed by other offices and by private entities. The duties of a notary public are the same, regardless of where they are employed. A notarization performed by a court employee carries the same weight as a notarization performed by a privately employed individual. *In re Phillip*, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notary only confirms that the person appeared before him or her, was identified by the notary, and signed the affidavit (or other document) in the presence of the notary. Identity is confirmed by personal knowledge or by appropriate documentation. The identity and signature of the person signing the affidavit are verified by the notary public, and so noted on the document. *In re Phillip*, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notary cannot and does not verify or confirm the statements in the affidavit because the notary does not have personal knowledge of those statements. *In re Phillip*, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notarized affidavit may be authenticated without the affiant's testimony, as it is presumed to be authentic so long as it is acknowledged in the manner provided for by law. A clerk of court's manner of acknowledging an affidavit is for the affiant to swear to it under oath in the clerk's presence. *Peter v. Jessy*, 17 FSM R. 163, 173-74 (Chk. S. Ct. App. 2010).

#### **§ 422. Seal.**

(1) Every notary public shall constantly keep a seal of office, which may be a rubber stamp or impression seal, whereon shall be engraved his name, and the words "Notary Public" and "Trust Territory of the Pacific Islands." He shall authenticate all of his official acts, attestations, certificates, and instruments therewith.

(2) Upon resignation, death, expiration of term of office without reappointment, removal from or abandonment of office, or change in residence from the Trust Territory, he shall immediately deliver his seal to the

Attorney General, who shall deface or destroy the same. By failing for 60 days to comply with the above requirement, the notary public, his executor or administrator, shall forfeit to the Trust Territory not more than \$200, in the discretion of the Court, to be recovered in an action to be brought by the Attorney General on behalf of the Trust Territory.

**Source:** TT Code 1966 § 1077; TT Code 1970, 31 TTC 252; TT Code 1980, 31 TTC 252.

**Case annotation:** Before a notary can apply the notary seal to an affidavit, the notary must confirm that the affiant has personally appeared to sign the affidavit before the notary, the affiant must be identified at that time by the notary, and the affiant must sign the affidavit in the notary's presence. The notary confirms the affiant's identity by personal knowledge or by reviewing appropriate documentation. When applying the notary seal, the notary notes on the affidavit that the affiant's identity and signature have been verified. *Peter v. Jessy*, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

#### **§ 423. Records; Form and effect of granted copies or certificates.**

Every notary public shall record at length in a book of records all acts, protests, depositions, and other things noted by him or done in his official capacity. All copies or certificates granted by him shall be under his hand and notarial seal, and shall be received as evidence of such transactions.

**Source:** TT Code 1966 § 1085; TT Code 1970, 31 TTC 253; TTC Code 1980, 31 TTC 253.

**Case annotation:** Notarization of a document does not establish truth to the statements made in the document: notarization only verifies the identity and signature of the person who signed the document. Consequently, notarization of a document by a court employee does not represent any court endorsement or certification of the statements made in the document. *In re Phillip*, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

#### **§ 424. Disposition of records.**

(1) The records of each notary public shall each year on the 30th of June and upon the resignation, death, expiration of term of office, removal from or abandonment of office, or change of residence from the Trust Territory be deposited with the Clerk of Courts for the Truk District.

(2) By a failure for 60 days to comply with the requirement of this section, the notary public, his executor or administrator shall forfeit to the Trust Territory not less than \$10 nor more than \$100, in the discretion of the Court, in an action brought therefor by the Attorney General on behalf of the Trust Territory.

**Source:** TT Code 1966 § 1086; TT Code 1970, 31 TTC 254; TT Code 1980, 31 TTC 254.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

#### **§ 425. Schedule of fees.**

Every notary public, except as provided in section 426 of this chapter, shall be entitled to demand and receive the following fees:

- (1) noting the protest of mercantile paper, one dollar;
- (2) each notice and certified copy of protest of mercantile paper, one dollar;
- (3) noting any protest other than of mercantile paper, two dollars;
- (4) each notice and certified copy of protest other than of mercantile paper, two dollars;
- (5) each deposition or official certificate, two dollars;
- (6) administration of oath, including the certificate of such oath, 25 cents;
- (7) affixing the certificate of such oath to each duplicate original instrument beyond four, 15 cents;
- (8) taking any acknowledgment, 50 cents for each party signing; and
- (9) affixing to each duplicate original, beyond one of any instrument acknowledged before him, his certificate of acknowledgment, 25 cents for each person making such acknowledgment.

**Source:** TT Code 1966 § 1087; TT Code 1970, 31 TTC 255; TTC 1980, 31 TTC 255.

#### **§ 426. Certain notaries not entitled to fees.**

A notary public who is also a paid employee of the United States, or the Government of the Trust Territory, or of any district administration, and is permitted to perform services as a notary public during the working hours for which he is paid by one of these Governments, shall not be entitled to demand or receive any fees for services performed as notary public during such hours or for such services performed at any other time which are in connection with or in aid of his regular employment.

**Source:** TT Code 1966 § 1088; TT Code 1970, 31 TTC 256; TT Code 1980, 31 TTC 256.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.