

**REPORT OF THE GOVERNMENT, MILITARY AND VETERANS  
AFFAIRS COMMITTEE OF THE NEBRASKA LEGISLATURE**

*Review of the Occupational Regulation of  
Notaries Public*

Prepared in accordance with the Occupational Board Reform Act  
(Neb. Rev. Stat. §§84-933 to 84-948)

*Submitted to the Clerk of the Legislature of the 108th Nebraska Legislature*

Committee Members:

Sen. Tom Brewer, Chair  
Sen. Rita Sanders, Vice Chair  
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## SUMMARY

Notaries Public are public officers, and the public position that they occupy predates both the State of Nebraska and the United States of America. The office of Notary Public was an evolution of the Classical Roman office of *scribae*. These scribes had broad duties as legislative and court reporters. In the first century BC, the Roman *notarius* was a scribe who adopted a new legal shorthand—referred to as *notae*—to efficiently record important proceedings for later long-hand transcription. The term came to refer exclusively to registrars serving high officials in the Roman government.<sup>1</sup>

After the collapse of the Western Roman Empire in the fifth century A.D., this office remained an important feature of many local legal systems throughout continental Europe in those countries within the Civil Law tradition.<sup>2</sup> In these legal systems influenced by the Roman legal code, notaries today are specialized lawyers with significant education and training and authority to provide a number of legal services beyond the scope of what a modern American notary public may provide.<sup>3</sup>

The English legal system first saw the use of notaries when they were appointed *ca.* 1250 A.D. by a personal representative of the Pope called a “papal legate.” In 1279, the Pope authorized the Archbishop of Canterbury to appoint notaries. Papal authority over notaries in England ended with the passage of the Ecclesiastical Licences Act of 1533, the year before the formal renunciation of all papal authority in Britain under Henry VIII.<sup>4</sup>

The legal systems in British colonies in America, being based on the British common law system, naturally inherited the office of Notary Public. The first known notary in the American colonies was Thomas Fugill, who was appointed Notary Public in the New Haven Colony in 1639. He later became Secretary of the Colony and was ultimately removed from office, excommunicated by the Church of England, and banished from the colony due to his falsification of property records for his own enrichment.<sup>5</sup>

In the State of Nebraska, the office of Notary Public was first established by “An Act to provide for the appointment of Notaries Public, and to define their duties” in the 1869 legislative session, the first regular session since statehood. At that time, obtaining a six-year notary commission

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<sup>1</sup> *Brooke's Notary*. 13th Edition. Ready, Nigel, Ed. London: Sweet & Maxwell, 2009. Ch. 1.

<sup>2</sup> *Ibid.*

<sup>3</sup> “What is a Notary Public?” National Notary Association. 2020.

<sup>4</sup> *Brooke's Notary*.

<sup>5</sup> Seth, John. E. “Notaries in the American Colonies.” 32 *J. Marshall L. Rev.* 863 (1999), p. 869.

required payment of a one dollar fee to the Secretary of State and a two dollar fee to the county clerk.<sup>6</sup>

Today, the Secretary of State still retains authority over Notaries Public. The office of these notaries is now statewide, and they are referred to as “general notaries public” or simply “notaries public.”<sup>7</sup> To be appointed as Notary Public in Nebraska, a person must be at least nineteen years old, must pass “a written examination on the duties and obligations of a notary public,” and must not have a past felony conviction or a conviction within the previous five years for a “crime involving fraud or dishonesty.”<sup>8</sup> Applicants must also file with the Secretary of State a fifteen thousand dollar bond,<sup>9</sup> pay a thirty dollar application fee, and must reside in Nebraska, unless they reside in a neighboring state and have regular employment within Nebraska.<sup>10</sup> The term of each appointment is four years<sup>11</sup> unless canceled or temporarily revoked by the Secretary of State<sup>12</sup> or terminated by notice of the appointee’s permanent removal from the state of Nebraska.<sup>13</sup>

Notaries Public in Nebraska may administer oaths and affirmations,<sup>14</sup> may notarize attestations and acknowledgments of various written instruments,<sup>15</sup> may issue summonses,<sup>16</sup> and under limited circumstances may even sign the name of a person who is physically incapable of signing or marking a document themselves.<sup>17</sup> In recent years, the Nebraska Legislature has modified Chapter 64 to authorize electronic notarial acts<sup>18</sup> and to create online notaries.<sup>19</sup>

This report concludes that the occupational regulation of Notaries Public complies with the principles set out in the Occupational Board Reform Act.

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<sup>6</sup> Laws Nebraska 1869, § 1, p. 20.

<sup>7</sup> Neb. Rev. Stat. § 64-101.

<sup>8</sup> *Ibid.*

<sup>9</sup> Neb. Rev. Stat. § 64-102.

<sup>10</sup> Neb. Rev. Stat. § 64-101.

<sup>11</sup> *Ibid.*

<sup>12</sup> Neb. Rev. Stat. § 64-113.

<sup>13</sup> Neb. Rev. Stat. § 64-112.

<sup>14</sup> Neb. Rev. Stat. § 64-107.01.

<sup>15</sup> Neb. Rev. Stat. § 64-201.

<sup>16</sup> Neb. Rev. Stat. § 64-108.

<sup>17</sup> Neb. Rev. Stat. § 64-105.02.

<sup>18</sup> See Electronic Notary Public Act (2016), codified as Neb. Rev. Stat. §§ 64-301 to 64-317.

<sup>19</sup> See Online Notary Public Act (2019), codified as Neb. Rev. Stat. §§ 64-401 to 64-420.

## **PROGRAM OPERATIONS DATA**

Since the original state legislation creating the office of Notary Public in Nebraska, notaries have been appointed and supervised by the Secretary of State. Upon this Committee's request, the Secretary's office promptly completed a survey providing general information on its administration of notaries, and also provided oral testimony at the Committee's public hearing on a related interim study resolution, held on September 22, 2023.<sup>20</sup>

The survey response indicated that there were 27,974 notaries with current appointments in Nebraska. During the five-year period for which data were provided, the Secretary's office issued 35,652 credentials. During that time, two notaries had their commissions temporarily revoked, while three notaries voluntarily surrendered their commissions in lieu of formal revocation. One applicant who was otherwise eligible for a commission was denied on the basis of an ongoing investigation.

Within the Secretary of State's office, this program is administered along with other certificate and licensure programs by a shared support staff of 4.75 full-time employees. The budget for the most recent fiscal year (2022–2023) was \$577,493.

*(The Commission's full survey response is attached below as Appendix A.)*

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<sup>20</sup> Legislative Resolution 223. 108th Nebraska Legislature. (2023)

## **COMPARISON WITH REGULATIONS IN OTHER STATES**

According to a report from the National Association of Secretaries of State, thirty-two states require completion of an application and payment of a fee to become a Notary Public. The remaining eighteen states (including Nebraska) and the District of Columbia require either completion of an educational course, an examination, or both. Terms of appointment range from two years to ten years, with Louisiana offering lifetime appointments. State notary programs are most frequently housed within the Secretary of State’s office, but some states have located these programs in the office of the governor, attorney general, lieutenant governor, courts, or in a department of licensing.<sup>21</sup>

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<sup>21</sup> “Issues and Trends in State Notary Regulation.” National Association of Secretaries of State. January 13, 2011. pp. 17–18.

## **REVIEW OF BASIC ASSUMPTIONS UNDERLYING CREATION OF THE OCCUPATIONAL REGULATIONS**

No records are available of Nebraska legislators’ discussions in 1869 of the act that first created the office of Notary Public in the State of Nebraska. However, the Secretary of State’s office in its survey response provided a rationale:

“Banking, real estate, and legal professions depend heavily on notarized documents which are often filed for public record or used in legal proceedings. The functions a notary performs, such as verifying the identity of the signer of a document and verifying that the signer actually signed the document, are extremely important in the prevention of fraud and the free flow of commerce. If notaries are no longer regulated, there would be significant concern with the potential for fraudulent documents to enter our legal and real estate titling systems. Further, the certificate of a notary public is accepted in all courts of the state as presumptive evidence of the facts certified therein. If the judicial system was no longer able to rely on the notary certificate, some other method for verification would be needed to authenticate the signature of the person signing the document. That would place an undue burden on business, real estate and legal transactions.”<sup>22</sup>

The reason for the basic personal qualifications required of notaries in Nebraska seems to be to prevent significant and foreseeable financial or legal harms from accruing to the detriment of individuals, organizations, and government offices. Because the state has vested substantial legal authority in notaries, the personal qualifications appear to be intended to mitigate the risk of the improper use of that authority.

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<sup>22</sup> Appendix A: Agency Survey Response

## **OBRA POLICY ANALYSIS**

The Occupational Board Reform Act (“OBRA”) makes several statements of policy which committees are instructed to apply as part of the regular OBRA review process.<sup>23</sup>

1. ***Does the occupational regulation protect the fundamental right of an individual to pursue a lawful occupation?***
  - a. Analysis: The personal qualifications required of applicants appear to be fairly minimal. The minimum age requirement of nineteen is aligned with state policy generally on the age of majority. The disqualification of individuals with past felony convictions and recent convictions for crimes involving fraud or dishonesty is related to the significant trust that third parties and government offices are by law incentivized to place in the integrity of notarial acts performed by a Nebraska Notary Public.
  
2. ***Does the occupational regulation use the least restrictive regulation necessary to protect consumers from undue risk of present, significant, and substantiated harms that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient and which is consistent with the public interest?***
  - a. Analysis: Because notaries are public officials with the ability to significantly harm members of the public if they engage in misconduct, the testing, bonding, and other requirements appear to be the least restrictive regulation necessary to prevent related harms.
  
3. ***Is the occupational regulation enforced only against individuals selling goods or services explicitly included in the governing statutes?***
  - a. Analysis: Occupational regulations for notaries are only applicable to notaries and those holding themselves out as notaries.
  
4. ***Is the occupational regulation construed and applied to increase opportunities, promote competition, and encourage innovation?***
  - a. Analysis: Recent legislative changes to allow for electronic and online notarial acts have promoted innovation relating to technological advancements in 21st century Nebraska.

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<sup>23</sup> See Neb. Rev Stat. §§84-946 and 84-948(7)

## APPENDIX A: AGENCY SURVEY RESPONSE

### **General Information**

<b>Committee of Jurisdiction:</b>	Government, Military and Veterans Affairs
<b>Occupation Regulated:</b>	Notary Public
<b>Occupational Board:</b>	Secretary of State
<b>Contact:</b>	David Wilson or Colleen Byelick
<b>Purpose:</b>	A notary public is authorized to administer oaths and affirmations, to take depositions, acknowledgments, and proofs of execution of deeds, mortgages, powers of attorney, and other instruments in writing. Given the significant duties performed by a notary public, statute provides for the Secretary of State to appoint and commission the number of persons to the office of notary public as he or she deems necessary. The law does not create a license, as a notary public is a public officer.
<b>Regulated Professionals:</b>	27,974
<b>Year Created:</b>	1869
<b>Year Active:</b>	1869
<b>Sunset Date:</b>	None

### **Authorization**

<b>Statutory Authorization:</b>	Chapter 64
<b>Parent Agency:</b>	Secretary of State



## Operations

<b>Support Staff:</b>	4.75
<b>Shared or Separate:</b>	Shared
<b>FY 2023-2022 Budget:</b>	577493
<b>FY 2022-2021 Budget:</b>	340760
<b>FY 2021-2020 Budget:</b>	83319
<b>FY 2020-2019 Budget:</b>	87461
<b>FY 2019-2018 Budget:</b>	83846
<b>Other Funding Sources:</b>	None
<b>Spending Authority:</b>	Neb. Rev. Stat. § 84-512

## Other

<b>Government Certificates Issued:</b>	35652
<b>Issued Certificate Descriptions:</b>	The Secretary of State's Office has issued 35,652 notary commissions, including renewals and electronic and online notary registrations over the last five fiscal years (fiscal years 2018 to 2022). The Secretary of State's Office has also issued 19,942 apostilles or authentications of notarized documents during this same time.
<b>Government Certificates Revoked:</b>	5

<p><b>Revoked Certificate Descriptions:</b></p>	<p>There were two (2) notaries who had their commissions temporarily revoked. Additionally, there were three (3) stipulation and consent orders where the notary agreed to voluntarily surrender their commission in lieu of a formal revocation proceeding.</p>
<p><b>Government Certificates Denied:</b></p>	<p>1</p>
<p><b>Denied Certificate Descriptions:</b></p>	<p>We have a record of one (1) applicant who was eligible for a commission but denied due to an ongoing investigation. Applications for a notary public commission may be returned to the applicant for a variety of reasons. Currently, we are not able to provide statistics regarding the reason the application was returned or provide statistics on applications that were returned because the applicant did not meet the qualifications to receive a notary commission.</p>
<p><b>Government Certificates Penalties Against:</b></p>	<p>0</p>
<p><b>Penalty Certificate Descriptions:</b></p>	<p>The Secretary of State’s Office does not have authority to fine or assess a monetary penalty against a commissioned notary public. We do have authority to cancel or temporarily revoke the commission of a notary public. Information regarding canceling or revoking the commission of a notary public has been reported above.</p>
<p><b>Explanation of Effectiveness:</b></p>	<p>In order to become a notary public, you must meet certain qualifications: (1) you must be 19 years of age or older, (2) you must not have been convicted of a felony or other crime involving fraud or dishonesty within the last five years, (3) you must take and pass a written examination relating to the laws, procedures, and ethics for notaries public, and (4) you must maintain a bond for the life of the commission. We receive approximately 10 complaints a year regarding the actions of notaries public. These complaints can range from minor allegations of errors in notarizing a document to significant allegations related to fraud. Given the small number of complaints that our office receives in comparison to the number of notaries in the state, we believe that the qualifications set forth in law to become a commissioned notary along with the testing requirements</p>

	<p>have been effective in preventing or decreasing errors or other inappropriate actions on the part of notaries. Further, the required bond does provide a limited means of redress for individuals who have been injured by the actions of a notary public. Additionally, the ability for the Secretary of State to permanently cancel or temporarily revoke the commission of a notary provides a mechanism to remove individuals from the office of Notary Public should they commit malfeasance in office by failing to follow the requirements and procedures for notarial acts. In order to perform online notarial acts or electronic notarial acts, you must first be a commissioned notary, and must go through a registration process which requires the notary to take a subsequent course of instruction and examination which includes the laws, procedures, technology, and the ethics of performing online or electronic notarial acts. We also review and approve providers of electronic or online notary solutions to verify that the solutions provided are consistent with state laws and regulations for electronic or online notarial acts. The regulation of electronic and online notary processes has limited abuse of those processes and in turn limited fraud while allowing technological advancements in the mediums and methods used for notarizing a document.</p>
<p><b>Potential Harm</b></p>	<p>Banking, real estate, and legal professions depend heavily on notarized documents which are often filed for public record or used in legal proceedings. The functions a notary performs, such as verifying the identity of the signer of a document and verifying that the signer actually signed the document, are extremely important in the prevention of fraud and the free flow of commerce. If notaries are no longer regulated, there would be significant concern with the potential for fraudulent documents to enter our legal and real estate titling systems. Further, the certificate of a notary public is accepted in all courts of the state as presumptive evidence of the facts certified therein. If the judicial system was no longer able to rely on the notary certificate, some other method for verification would be needed to authenticate the signature of the person signing the document. That would place an undue burden on business, real estate and legal transactions.</p>

<p><b>Regulation Comparison:</b></p>	<p>To our knowledge, all states commission or regulate notaries public. The requirements for becoming a notary vary from state to state, but generally consist of the following: (1) meeting age requirements (commonly being over 18), (2) being a resident of the state, (3) submitting an application and a filing fee, (4) obtaining training or taking an exam, and (5) maintaining a surety bond. Some states require applicants to submit to a background check or otherwise have no criminal record or no criminal record within a certain time period prior to applying for the notary commission. Additional requirements may include maintaining a journal of notarial acts. Notary terms are typically 4 years in length but can range from 4 years to 10 years. Typically, there is a separate process if the state allows notaries to perform remote or online notarizations. The National Notary Association has compiled state law summaries for every state that can be found online at State Notary Laws   NNA (nationalnotary.org). Similarly, the American Society of Notaries also has notary requirements by state on their website: <a href="https://www.asnnotary.org/?form=stateinfo">https://www.asnnotary.org/?form=stateinfo</a>.</p>
<p><b>Subject to Regulations of Act(LB407):</b></p>	<p>No</p>