



**INFORMATION
AND
INSTRUCTIONS**

**For
Notaries Public**

This guide is prepared to assist Notaries Public. It is not legal advice. If you are in need of legal advice, please consult a lawyer. If anything in this booklet is inconsistent with the *Notaries and Commissioners Act* or the *Notaries Public Regulation*, the act and regulation govern.

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Definitions

Affidavit

A written statement formally confirmed by swearing an oath or affirming before a competent authority, such as a Notary Public. Affidavits are often used as evidence in court. Affidavits can only be used when a statute or regulation authorizes the use of an affidavit.

Affirmation

A solemn statement that is not religious that has the same effect as an oath. An affirmation can be used instead of an oath.

Attest

To affirm the truth of a statement or bear witness to something.

Deponent

A person who gives evidence in writing. The person who makes an affidavit is the deponent.

Exhibit

Evidence in the form of records or other documents that are meant to support a person's affidavit. Exhibits are frequently found annexed, or attached to, affidavits.

Jurat

Describes when, where, and before whom an affidavit was sworn or affirmed. The jurat appears at the end of the document and must be completed by the Notary Public.

Oath

A solemn statement accompanied by swearing to a Supreme Being or something sacred to the person taking the oath.

Statutory Declaration

A formal declaration made in a prescribed form that has legal force similar to an oath or affirmation. Statutory declarations are used when no law authorizes the use of an affidavit.

The Role and Responsibilities of Notaries Public

Notaries Public perform important functions in our society. They are expected to comply with the highest standards of behaviour as set out in the *Notaries and Commissioners Act* and the *Notaries Public Regulation*. The regulation includes a Code of Conduct that is reproduced in this booklet.

What Notaries Public Can Do

Notaries public in the Province of Alberta:

- Administer oaths and take affidavits, affirmations or declarations
- Attest oaths, affidavits, affirmations or declarations
- Certify and attest true copies of documents
- Witness or certify and attest the execution of documents

A person may be a Notary Public by virtue of office (*ex officio*), as set out in the *Notaries and Commissioners Act*.

A Notary Public may also be appointed. A person may apply to be appointed as a Notary Public if they:

- Are at least 18 years old,
- A Canadian citizen or permanent resident, and
- Reside in Alberta or in the part of the City of Lloydminster that is located in Saskatchewan.

The work of Notaries Public must be authorized by the *Notaries and Commissioners Act*. Section 7 of that Act provides that anyone who acts as a Notary Public without authorization can be liable for a fine of up to \$5,000.

Lay Notaries Public are not authorized to do types of work usually done by lawyers, such as conveyancing. The *Legal Profession Act* prohibits anyone who is not a lawyer or member of the Law Society of Alberta

from practising law or from representing themselves as a lawyer. Anyone who performs the work of a lawyer when they are not authorized to do so contravenes these provisions and may be prosecuted.

Only judges and lawyers have the authority to:

- Witness or certify and attest deeds, contracts and commercial instruments
- Issue a certificate under the *Guarantees Acknowledgment Act*

Affidavits and Statutory Declarations

Affidavits are written statements that are formally confirmed by oath or affirmation. The deponent (person making the affidavit) must swear the oath or affirm before a person with the power to administer affidavits, such as a Notary Public. An affidavit must be authorized by legislation (a statute or a regulation) which allows or requires the proof of certain facts by way of an affidavit.

Statutory declarations are another type of statement of facts, similar to affidavits. They are used when no statute or regulation authorizes the use of an affidavit. Statutory declarations are made pursuant to the *Canada Evidence Act* or the *Alberta Evidence Act*. A person making a statutory declaration must solemnly declare that those statements are true before a person with the power to administer statutory declarations.

Affidavits and statutory declarations are used to establish legal rights. If they are not properly made, problems can arise in establishing these rights. For an affidavit or statutory declaration to be legally valid the oath, affirmation or solemn declaration must be administered properly. If you are unsure about the format of an affidavit or statutory declaration, what it can be used for, or how to complete it, please consult a lawyer.

The importance of affidavits and statutory declarations is reflected in the *Criminal Code*. A person who makes a false affidavit or statutory declaration can face a maximum penalty of 14 years imprisonment.

A Notary Public May be Called to Give Evidence

A Notary Public may be called into court to establish that an oath, affirmation or solemn declaration was administered properly. To be prepared for this possibility, the Notary Public must follow proper procedure every time.

Notaries should establish a consistent procedure from which they do not deviate. This will assist you should you be called upon to testify, as you can indicate what procedure you consistently use even if you cannot recall that particular occasion.

Criminal Liability of a Notary Public

The *Criminal Code* places a high degree of responsibility on persons who administer oaths, affirmations and declarations. Section 138 of the *Criminal Code* provides that anyone who signs an affidavit or statutory declaration representing that it was sworn or declared before them when it in fact was not is guilty of an offence and is liable to imprisonment for two years.

A Spouse's Oath, Affirmation or Declaration

Notaries Public should not take their spouse's oath, affirmation or declaration. Sections of the *Canada Evidence Act* and the *Alberta Evidence Act* protect spouses from giving evidence against one another. If a Notary Public takes their spouse's oath, affirmation or declaration, this can lead to problems in the proof of affidavits in court. It can also create problems in the prosecution of *Criminal Code* offences involving perjury and the swearing of false affidavits.

Documents that are Legally Ineffective or Obviously Irregular

Before notarizing any document, a Notary Public must carefully review it to make sure that it is not legally ineffective or obviously irregular. Notarizing these documents could lead a person to believe that they have legal force when they in fact do not.

If you are a lay Notary Public and you have any concern that a document might be legally ineffective and/or obviously irregular, you should not notarize that document and the requesting party should be referred to a lawyer.

The Minister of Justice and Solicitor General may take disciplinary action against a Notary Public who notarizes legally ineffective or obviously irregular documents, up to and including revocation of their appointment.

Taking Affidavits or Statutory Declarations

How to Administer an Oath to a Person Making an Affidavit

An **oath** is a solemn statement accompanied by swearing to a Supreme Being or something sacred to the person taking the oath. The oath should be administered in the following way:

1. Ensure that the words in the introduction to the affidavit read “make oath and say.”
2. Ask the person appearing before you whether he or she is the individual named in the affidavit as the person making the affidavit. If you know the person, it is not necessary to confirm their identity.

3. Ask the person to sign the affidavit. If the affidavit has already been signed, ask the person if the signature on the affidavit is theirs.
4. Hand the person a Bible or any other religious text they consider binding on their conscience. Alternatively, you may ask the person if they would like to swear with uplifted hand.
5. Say to the person:

"Do you swear that the contents of this your affidavit are true and this oath is binding on your conscience. So help you God."
6. The person responds by saying "I do" while holding the Bible or the appropriate text in his or her uplifted hand or while holding his or her hand uplifted.
7. You must then complete the jurat (see instructions below).

A person can be sworn in a different way that is sanctioned by their own religion. What is important is that they consider the oath to be binding on their conscience.

How to Administer an Affirmation to a Person Making an Affidavit

An affirmation is a solemn statement that is not religious. A person may give an affirmation instead of an oath.

The affirmation should be administered in the following way:

1. Before administering the affirmation, you must amend the words "make oath and say" in the introduction to the affidavit to read "solemnly affirm".

2. Ask the person appearing before you whether she or he is the individual named in the affidavit as the person making the affidavit. If you know the person, it is not necessary to confirm their identity.
3. Ask the person to sign the affidavit. If the affidavit has already been signed, ask the person if the signature on the affidavit is theirs.
4. Ask the person:

“Do you promise that the contents of this your affidavit contain the truth, the whole truth and nothing but the truth and solemnly affirm that this promise is binding on your conscience?”
5. The person responds by saying "I do".
6. You must then complete the jurat (see instructions below).

How to Administer a Solemn Declaration to a Person Completing a Statutory Declaration

A **solemn declaration** is a promise to tell the truth that is used for statutory declarations. The *Canada Evidence Act* and the *Alberta Evidence Act* prescribe this form for statutory declarations:

I, _____, solemnly declare that (state the fact or facts declared to), and I make this solemn declaration conscientiously believing it to be the truth, the whole truth and nothing but the truth and knowing that it is of the same force and effect as if made under oath or affirmation.

Declared before me at _____ this _____ day of _____, 20____.

The solemn declaration should be administered in the following way:

1. Ask the person appearing before you whether he or she is the individual named in the statutory declaration as the person making the statutory declaration. If you know the person, it is not necessary to confirm their identity.
2. Ask the person to sign the statutory declaration. If the statutory declaration has already been signed, ask the person if the signature on the statutory declaration is theirs.
3. Ask the person:

"Do you make this solemn declaration conscientiously believing it to be the truth, the whole truth and nothing but the truth and knowing that it is of the same force and effect as if made under oath or affirmation?"
4. The person responds by saying "I do".
5. You must then complete the jurat (see instructions below).

Alterations

If there are changes on an affidavit or statutory declaration, including the jurat, you must authenticate them. If changes are not authenticated the affidavit or statutory declaration may not be accepted in court proceedings.

To authenticate the changes, place a check mark at the beginning and end of each of the changes and then write your initials beside each change.

Example:

A.B. v fifth v February A.B.
I did on the fourth day of January, 1976.

The Jurat

The **jurat** describes when, where, and before whom the document was sworn, affirmed or declared. It appears at the end of the document and must be completed by the Notary Public.

The jurat must include:

- The date of swearing, affirming or declaring, and
- The place where the document was sworn, affirmed or declared

In the case of an oath, it should include the words: “Sworn before me”

In the case of an affirmation, it should include the words: “Affirmed before me”

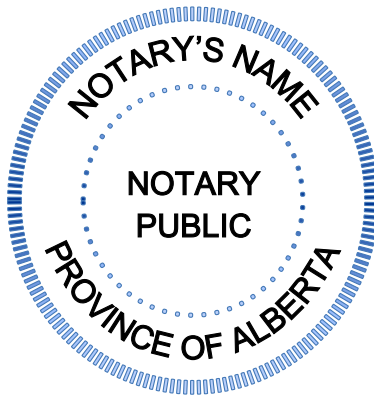
In the case of a declaration, it should include the words “Declared before me”

The ordinary form of jurat for an affidavit is:

Sworn (or affirmed) before me at
. Province of Alberta, this
. day of 20
.
A Notary Public in and for Alberta

Seal, Name and Appointment Expiry Date or Office

Before exercising the powers of a Notary Public you must obtain a seal. Your name, the words “Notary Public” and “Province of Alberta” must appear on this seal. Your seal must be placed on each document that you attest to in your capacity as a Notary Public. The design and nature of a notarial seal is not mandated by statute. The Notary Public can choose a metal or rubber seal as best suits their requirements. Notarial seals can be purchased at most stationary or business supply stores.



On each document you attest to by your seal and signature, you must also legibly print or stamp in legible printing:

- Your name,
- If you are appointed, the date your appointment expires, and
- If you are a Notary Public by virtue of office, your office

If you do not place your seal, name, appointment expiry date or office on a document you attest to you can be found guilty of an offence and liable to a fine of up to \$1,000.

Exhibits

Often an affidavit or statutory declaration will refer to other documents that are attached or annexed as **exhibits**. An exhibit might be evidence in the form of records or other documents that are meant to support the person's affidavit or declaration.

Exhibits must be identified by you. Each exhibit should be marked in this way:

This is Exhibit referred to in
the affidavit (or statutory declaration) of (name of
person) sworn (or affirmed or declared) before me
this day of, 20
.

A Notary Public in and for Alberta

When a Person is Visually Impaired or Unable to Read

If the person making the affidavit or statutory declaration is unable to read you must read the document, or cause it to be read, to the person and then ask the person if they understood it. You may only administer the oath, affirmation or solemn declaration if you are satisfied that the person has in fact understood what was read.

In those cases, the ordinary form of jurat must be amended. Insert the following before your signature:

As (name of person) is visually impaired (or unable to read), this affidavit (or statutory declaration) was read to her (or him) in my presence, she (or he) seemed perfectly to understand it, and she (or he) made her (or his) signature (or mark) in my presence.

When a Person Does not speak English

If the person making the affidavit or statutory declaration does not understand the English language, a person competent to interpret the

contents of the affidavit or statutory declaration must first be sworn or affirmed. Use the following or similar forms:

“Do you swear that you well understand (the language of the person), that you will well and truly interpret the contents of this affidavit (or statutory declaration) to (name of person) and that you will well and truly interpret to him (or her) the oath (or affirmation or solemn declaration) about to be administered to him (or her). So help you God.”

After the interpreter has interpreted the contents of the document, you must administer the oath, affirmation or solemn declaration to the person through the interpreter. The person should respond by saying "I do" through the interpreter.

The ordinary form of jurat must be amended by inserting the following before your signature:

As (name of person) does not understand the language of the affidavit (or statutory declaration), this affidavit (or statutory declaration) was, in my belief, interpreted to him (or her) by (name of interpreter) who first swore (or affirmed) that he (or she) well understands (the language of the person) and that he (or she) would well and truly interpret the oath (or affirmation or solemn declaration) about to be administered.

When a Person is Hearing Impaired

If the person making the affidavit or statutory declaration has a hearing impairment but that person is capable of reading, read the declaration or affidavit, and appeared to perfectly understand it, and signed his or her name, then an interpreter is not required. Here is a sample of the jurat that can be used:

Sworn (or affirmed/declared) before me)
at the _____ of _____ in the)
Province of Alberta, this _____)
day of _____ A.D., 20 _____)
by the above named _____, who)
being hearing and speech impaired)
but capable of reading, read over) _____
the above the written instrument,) (Signature of the Deponent)
when he (she) appeared perfectly to)
understand it, and signed his (her))
name in my presence.)

A Notary Public in and for Alberta

If the person is hearing and speech impaired and incapable of reading, a person competent to interpret the document in the sign language known to the person must first be sworn or affirm. Use the following or similar forms:

“You swear that you well understand (the sign language known to the person) and that you will well and truly interpret the contents of this affidavit (or statutory declaration) to (name of person) and that you will well and truly interpret to her (or him) the oath (or affirmation/solemn declaration) about to be administered to her (or him). So help you God.”

After the interpreter has interpreted the contents of the documents, you must administer the oath, affirmation or solemn declaration to the person through the interpreter. The person should respond by saying "I

do" through the interpreter. In those cases the ordinary form of jurat must be amended by inserting the following before your signature:

As (name of person) being hearing and speech impaired and incapable of reading, this affidavit (or statutory declaration) was in my belief, interpreted to her (or him) by (name of interpreter) who first swore (or affirmed) that he (or she) well understands (the sign language known to the person) and that he (or she) would well and truly interpret the contents of this affidavit (or statutory declaration) and that he (or she) would well and truly interpret the oath (or affirmation/solemn declaration) about to be administered.

Notary Public Title

Printed forms that contain a jurat often show the words "Commissioner for Oaths" only, or both "Commissioner for Oaths/Notary Public", as the person who administers the oath.

When a Notary Public completes a jurat, they must substitute for the words "A Commissioner for Oaths" the words "A Notary Public", or strike out "Commissioner for Oaths" where both terms are used. The change must be authenticated in the manner set out in the "Alterations" section above.

Documents for Use Outside Alberta

When an affidavit or statutory declaration is intended to be used outside Alberta, the law in that jurisdiction must be followed. Other jurisdictions may require different formalities. Very often other jurisdictions require that the documents be completed by a Notary Public rather than a Commissioner for Oaths.

Authentication/Legalization

Documents executed and attested before a Notary Public in Alberta are not usually acceptable in other countries, including the United States, unless accompanied by a Certificate of Authentication. This certificate is

signed by an official of the Deputy Provincial Secretary's Office, who authenticates the appointment, signature and seal of the Notary Public.

Please refer to the Alberta Justice and Solicitor General Website for more information about the authentication process:

http://justice.alberta.ca/programs_services/official/Pages/authentication.aspx

Additional Information for Appointed Notaries Public

Re-appointment of a Notary Public

A notice will be sent to Notaries Public a few months before their appointment expires. An application form and review criteria will be included so the Notary Public can apply for re-appointment should they wish to do so.

Every Notary Public must ensure that they do not act after the expiry date of their appointment.

Change of Employment or Address

If a Notary Public changes their employment or address during their appointment this must be reported to the Department of Justice at the following address:

Official Documents & Appointments
Rm. 111, 9833 - 109 Street
Edmonton, Alberta T5K 2E8

Inquiries about the Appointment of Notaries Public

Inquiries about the appointment of Notaries Public may be made to Official Documents & Appointments, at the address shown above or by telephoning (780) 427-5069.

Statute and Regulation

The work of Notaries Public in Alberta is governed by the *Notaries and Commissioners Act* and the *Notaries Public Regulation*. Both can be accessed on the Alberta Justice and Solicitor General website:

http://justice.alberta.ca/programs_services/official/Pages/notary_public.aspx

The regulation includes a Code of Conduct for Notaries Public, which is included below.

Code of Conduct for Notaries Public

1 A notary public must

- (a) discharge all of the notary public's responsibilities with honesty, dignity and integrity;
- (b) treat all persons fairly, courteously and with respect;
- (c) provide services in a professional, ethical and responsible manner;
- (d) comply with the terms and conditions of the notary public's appointment;
- (e) comply with
 - (i) the *Notaries and Commissioners Act*,
 - (ii) the applicable regulations under the *Notaries and Commissioners Act*,
 - (iii) any other law or directives that govern the conduct of notaries public in the discharge of their responsibilities, and
 - (iv) any direction issued to the notary public under section 10 of the Act;
- (f) act in a manner that maintains and upholds the honour and reputation of the office of notary public;
- (g) maintain up-to-date knowledge on the law and directives governing the duties and conduct of notaries public;
- (h) hold in strict confidence all information of a confidential nature that comes to the notary public's knowledge, except as is required to perform the services of the notary public or as otherwise required by law.

- 2 A notary public must not
 - (a) mislead or attempt to mislead anyone in the discharge of the notary public's responsibilities;
 - (b) notarize or participate in the preparation or delivery of any document that is false, incomplete, misleading, deceptive or fraudulent;
 - (c) notarize or participate in the preparation or delivery of any document that
 - (i) has the appearance of being validly issued by a court or other legitimate authority but is not,
 - (ii) is intended to or has the effect of deceiving any person, or
 - (iii) is otherwise lacking valid legal effect.

SAMPLE – Affidavit

CANADA

PROVINCE OF ALBERTA

TO WIT

AFFIDAVIT

I, _____ of the City of _____ in

the Province of Alberta, MAKE OATH AND SAY:

1. THAT

SWORN (or Affirmed) before me

At

this day of

20

(Signature of the Deponent)

A Commissioner for Oaths/Notary
Public in and for
Alberta

(PRINT OR STAMP NAME HERE)

SAMPLE – Statutory Declaration

STATUTORY DECLARATION

CANADA

PROVINCE OF ALBERTA

In the Matter of

TO WIT:

I, _____ of _____ in the Province of Alberta, do solemnly declare as follows:

And I make this solemn declaration conscientiously believing it to be true and knowing that it is

of the same force and effect as it made under oath.

DECLARED before me

At

this _____ day of _____

20____

(Signature of the Deponent)

A Commissioner for Oaths/Notary
Public in and for
Alberta

(PRINT OR STAMP NAME HERE)

MY APPOINTMENT EXPIRES _____