

MODEL CIVIL LAW NOTARY ACT

Proposed by

The National Association of Civil Law Notaries

For Adoption in United States Jurisdictions

Section 1. For purposes of this article, the following terms shall have the following meanings:

(1) Authentic Act. An instrument executed by a civil law notary referencing this article, which is imbued by the state with the legal acceptance of the certainty that comes from the presumption of truth that accompanies the document and which includes the particulars and capacities to act of transacting parties, a confirmation of the full text of any necessary instrument, the signatures or their legal equivalent thereof of any transacting parties, the signature and seal of a civil law notary, and such other information prescribed by the Secretary of State.

(2) Brevet. A private document in which the civil law notary attests to the authenticity of the signature or signatures, a fact or a contract. Brevets may be used, among other things, to certify signatures, prescribe oaths, certify a translation or a copy of a document that is not part of the civil law notary's protocol, or certify the identity of any object or thing.

(3) Civil Law Notary. A person who is admitted to the practice of law in this state, who has practiced law in a United States jurisdiction for at least five years, and who is appointed by the Secretary of State as a civil law notary.

(4) Minute. An authentic act written by a civil law notary which contains the exact narration of a finding of fact or facts influencing the rights of private parties of which the civil law notary has personal knowledge and that due to the nature of the authentic act does not constitute a contract or juridical business. Types of minutes include, but may not be limited to:

(a) General Minutes. A minute providing a certification of general facts known to the civil law notary;

(b) Minutes of Notoriety. A minute providing a certification that a fact is generally known by the people who have a direct or close relationship with the factual situation or its consequences, or who belong to the social or economic environment of the person affected by a particular fact;

(c) Minutes of Correction. A minute for the purpose of rectifying minor errors in form or omissions made by the civil law notary in prior authentic acts; or

(d) Minutes of Addition. A minute for the purpose of including a document in the civil law notary's protocol in order to provide for preservation of the document; limited memorialization of domestic private documents and/or execution of foreign legal documents.

(5) Notarial Deed. An authentic act in which contains a contract, transaction or other juridical act and which may also include the certification of facts. Notarial deeds may involve either a single party, as in the case of a will, or multiple parties, as with a contract.

(6) Protocol. A registry maintained by a civil law notary in which the acts of the civil law notary are archived.

Section 2.

(1) The Secretary of State shall have the power to appoint civil law notaries and administer this section.

(2) A civil law notary is authorized to issue brevets, minutes and notarial deeds and thereby may authenticate or certify any document, transaction, event, condition or occurrence. The contents of an authentic act and matters incorporated therein shall be presumed legal and accurate but such presumption may be rebutted in litigation upon a showing of clear and convincing evidence. A civil law notary may also administer oaths and make certificates thereof when necessary for execution of any writing or document to be attested, protested, or published under the seal of a notary public. A civil law notary may also take acknowledgments of deeds and other instruments of writing for record.

(3) The authentic acts, and oaths and acknowledgments of a civil law notary shall be chronologically recorded in the civil law notary's protocol in a manner prescribed by the Secretary of State.

(4) The civil law notary may, without prejudice to his duty to ensure professional confidentiality, issue certified copies of authentic acts to individuals who, in his or her opinion, have a legitimate interest in the contents of an authentic act. Certified copies of authentic acts shall have the same legal force and effect as the original.

(5) A civil law notary is obligated to:

(a) Draw up authentic acts in accordance with their knowledge and comprehension and such documents must clearly reflect the wishes of the contracting parties duly adapted to legal requirements necessary for the documents to have full legal force and effect.

(b) Represent the transaction itself in the creation of the authentic act. For this purpose, the civil law notary acts as an intermediary where there are multiple parties to a transaction.

(c) Use his or her best efforts to advise all parties to the transaction equally, accurately, fully and impartially regarding the nature and legal consequences of the transaction.

(d) Refrain from representing any party in any matter arising from or related to the civil law notary's authentic act.

Section 3. The Secretary of State may adopt rules prescribing:

(1) The form and content of authentic acts, oaths, acknowledgments, and signatures and seals or their legal equivalents.

- (2) Procedures for the permanent archiving of authentic acts, maintaining records of acknowledgments, and oaths, and procedures for the administration of oaths and taking of acknowledgments.
- (3) The charging of reasonable fees to be retained by the Secretary of State for the purpose of administering this article.
- (4) Educational requirements and procedures for testing applicants' knowledge of all matters relevant to the appointment, authority, duties or legal or ethical responsibilities of a civil law notary.
- (5) Procedures for the disciplining of civil law notaries, including, but not limited to, the suspension and revocation of appointments for failure to comply with the requirements of this article or the rules of the Secretary of State, or for misrepresentation or fraud regarding the civil law notary's authority, the effect of the civil law notary's authentic acts, or the identities or acts of the parties to a transaction.
- (6) Bonding or errors and omissions insurance requirements, or both, for civil law notaries.
- (7) Other matters necessary for administering this article.

Section 4.

- (1) The powers of civil law notaries include, but are not limited to, all of the powers of a notary public under the laws of this state.
- (2) This article shall not be construed as abrogating the provisions of any other act relating to notaries public, attorneys, or the practice of law in this state.

Section 5. If certification of a civil law notary's authority is necessary for a particular document or transaction, it must be obtained from the Secretary of State. Upon receipt of a written request from a civil law notary and the fee prescribed by the Secretary of State, the Secretary of State shall issue a certification of the civil law notary's authority, in a form prescribed by the Secretary of State, which shall include a statement explaining the legal qualifications and authority of a civil law notary in this state. The fee prescribed for the issuance of the certification under this section or an apostille may not exceed [twenty dollars (\$20.00)] per document. The Secretary of State may adopt rules to implement this section.

Section 6. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, the declaration shall not affect the part which remains.

Section 7. All laws or parts of laws in conflict with this act are repealed.

Section 8. This act shall become effective upon its passage and approval by the Governor, or upon its otherwise becoming a law.