

§ 92.7

which the notarized document will be used;

(b) That the notarial service is legally necessary and cannot be obtained otherwise than through a United States notarizing officer without loss or serious inconvenience to the applicant; and

(c) That the notarial certificate will be used solely for a well-defined purpose, as represented by the applicant for the service. (See also § 92.4(c) regarding notarial services for use in countries occupied by the United States or under its administrative jurisdiction.)

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51721, Oct. 3, 1995]

§ 92.7 Responsibility of notarizing officers of the Department of State.

(a) As a rule notarial acts should be performed at the consular office. Where required by the circumstances of a particular case and subject to the reasonableness of the request notarial acts may be performed elsewhere within the limits of the consulate subject to the assessment of the applicable fees under subheading "Services Rendered Outside of Office" of the Tariff of Fees (§ 22.1(a) of this chapter), as well as to payment by the interested party of the officer's expenses in going to the place where the service is performed and returning to his office (§ 22.1(b) of this chapter).

(b) As indicated in §§ 92.4, 92.5, and 92.6, the authority of secretaries of embassy or legation as well as consular officers to perform notarial acts is generally recognized. However, the function is essentially consular, and notarial powers are in practice exercised by diplomatic officers only in the absence of a consular officer or U.S. citizen State Department employee designated to perform notarial functions as provided in § 92.1(d). Performance of notarial acts by an officer assigned in dual diplomatic and consular capacity shall be performed in his/her consular capacity, except in special circumstances.

[27 FR 12616, Dec. 20, 1962, as amended at 60 FR 51721, Oct. 3, 1995]

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GENERAL NOTARIAL PROCEDURES

§ 92.8 Compliance with request for notarial services.

A notarizing officer should comply with all proper requests for the performance of notarial services within the limitations prescribed in this part. (See particularly §§ 92.3 to 92.7). Moreover, as a representative of the United States Government, the notarizing officer, when acting in a notarial capacity, should take great care to prevent the use of his official seal in furthering any unlawful or clearly improper purpose. (See § 92.9 regarding refusal to perform notarial services in certain cases.)

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51721, Oct. 3, 1995]

§ 92.9 Refusals of requests for notarial services.

(a) A notarizing officer should refuse requests for notarial services, the performance of which is not authorized by treaty provisions or permitted by the laws or authorities of the country in which he is stationed. (See § 92.4(a).) Also, a notarizing officer should refuse to perform notarial acts for use in transactions which may from time to time be prohibited by law or by regulations of the United States Government such, for example, as regulations based on the "Trading With the Enemy Act of 1917," as amended.

(b) A notarizing officer is also authorized to refuse to perform a notarial act if he had reasonable grounds for believing that the document in connection with which his notarial act is requested will be used for a purpose patently unlawful, improper or inimical to the best interests of the United States. Requests for notarial services should be refused only after the most careful deliberation.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.10 Specific waiver in notarial certificate.

If the notarizing officer has reason to believe that material statements in a document presented for notarization are false, and if no basis exists for refusing the notarial service in accordance with § 92.9, he may consider the advisability of informing the applicant

that he will perform the service only with a specific waiver of responsibility included in the notarial certificate. Furthermore, a notarizing officer may, in his discretion, add to the specific waiver in the notarial certificate a statement of verifiable facts known to him, which will reveal the falsity of material in the document. However, normally a notarizing officer shall exercise great caution not to limit the general privilege of a United States citizen while abroad to execute under oath any statement he sees fit to make, including mistaken, unnecessary, and even frivolous statements: *Provided*, That substantial and compelling reasons do not exist which impel restraining action on the part of the notarizing officer. On the other hand, experience has shown the desirability of including, as standard practice, a specific waiver of responsibility in all authentications (§ 92.38) executed in connection with divorce proceedings.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.11 Preparation of legal documents.

(a) *By attorneys.* When a document has been prepared by an attorney for signature, a notarizing officer should not question the form of document unless it is obviously incorrect.

(b) *By notarizing officers.* A notarizing officer should not usually prepare for private persons legal documents for signature and notarization. (However, see the provisions in § 92.24 regarding the preparation of affidavits.) When asked to perform such a service, the notarizing officer should explain that the preparation of legal forms is normally the task of an attorney, that the forms used and the purposes for which they are used vary widely from jurisdiction to jurisdiction and that he could not guarantee the legal effectiveness of any document which he might prepare. The person desiring the preparation of a legal document should be referred to such publications as Jones Legal Forms and The Lawyers Directory with the suggestion that he select or adapt the form which appears best suited to his needs. The notarizing officer may, in his discretion, arrange to have a member of his office staff type

the document. If the document is typed in the Foreign Service office, the fee for copying shall be collected as prescribed under the caption "Copying and Recording" of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.12 Necessity for certification of notarial acts.

A notarizing officer must execute a written certificate attesting to the performance of a notarial act. This certificate may be inserted on or appended to the notarized document (see § 92.17 regarding the fastening of sheets). The certificate evidences the performance of the notarial act. Failure to execute this certificate renders the notarial act legally ineffective. Each notarial act should be evidenced by a separate certificate; two or more distinct notarial acts should not be attested to by one certificate.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51721, Oct. 3, 1995]

§ 92.13 Form of notarial certificate.

The form of a notarial certificate depends on the nature of the notarial act it attests. (See §§ 92.18 to 92.48 for discussions of the various forms of notarial certificates.) Rules pertaining to venue, and signing and sealing, are common to all notarial certificates.

§ 92.14 Venue on notarial certificates.

(a) The term *venue* means the place where the certificate is executed. The venue must be shown on all notarial certificates to establish the qualifications and sphere of authority of the notarizing officer to perform the notarial act. The items characteristic of a typical venue, in the order of their appearance in the certificate, are as follows:

- (1) Name of the country (or dominion, Territory, colony, island, as appropriate);
- (2) Name of province or major administrative region (if none, this may be omitted);
- (3) Name of local community (city, town, or village);
- (4) Name of the Foreign Service post.