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FREQUENTLY ASKED QUESTIONS ABOUT THE NEW NOTARY RULES

QUESTION 1: Why wasn't I individually notified before the new rules went into effect?

ANSWER: The new rules were adopted in accordance with the Hawaii Administrative Procedure Act, Haw. Rev. Stat. Ch. 91. Notices of the public hearing describing the new rules were published in five newspapers of general circulation on February 29, 2008 (The Garden Isle), March 2, 2008 (Honolulu Star-Bulletin, The Maui News, and West Hawaii Today), and March 9, 2008 (Hawaii Tribune-Herald) before Chapter 5-11, Hawaii Administrative Rules (HAR), went into effect. The duly noticed public hearing concerning the rules was held on April 14, 2008, at the Department of the Attorney General, 425 Queen Street, Honolulu, HI 96813. Although all legally required notice requirements were met, we apologize that our notification to notaries was not better -- it should have been better. We did some outreach, but not enough. We are currently sending each active notary an informational sheet and these questions and answers, and we are working with the Hawaii State Bar Association and various professionals and businesses that regularly use notaries to further disseminate the new requirements.

QUESTION 2: What is the effective date of the new rules? Is there also a new notary statute?

ANSWER: The new rules became effective on May 5, 2008. Act 175, Session Laws Hawaii 2008, which also concerns notaries, will become effective on January 1, 2009. We encourage you to read a complete copy of Act 175 and HAR Chapter 5-11, both of which are available at our notary website: <http://hawaii.gov/ag/notary/>.

QUESTION 3: Why do we need rules that change the way documents are notarized?

ANSWER: The Department of the Attorney General and the Legislature received complaints of fraud in connection with notarized documents, including reports of "jurat" pages being detached from their original document and then "switched" or reattached to another document for fraudulent purposes. The Legislature found that "there is an alarming increase in the alteration of notarized documents for the purpose of identity theft and fraud." One purpose of the new rules is to help prevent fraudulent use of notarized documents by, among other things, having the notary list the number of pages of each notarized document and providing an identification or description of the notarized document "in close proximity" to the jurat or acknowledgment.

QUESTION 4: I notarized documents using an acknowledgment or jurat, and my signature, seal, date, venue (City and County of Honolulu), and commission expiration date, but without separately listing some of the other information specified in the new rules, such as the number of pages in the document. Are the documents I notarized valid and validly notarized?

ANSWER: The documents are valid and validly notarized, unless the acknowledgment or jurat was fraudulent or contained a misrepresentation, or there was a defect in the document itself. We believe the law on this subject is that defects in the manner of notarization of a document do not affect the document's validity. We also believe that if you notarized a document with an acknowledgment or jurat, and your signature, seal/stamp, date, venue, and commission expiration date, the notarization is valid, and omitting newly specified information (such as the number of pages in the document or a separate description of the document) does not affect the validity of the notarization. Nor does incorrectly counting the number of pages in the document affect the validity of the notarization.

QUESTION 5: The new notary rules require that my seal or stamp have my commission number on it. Can I still use my current seal or stamp, which does not have my commission number, until I get my new one? Why is the commission number now required on all seals and stamps?

ANSWER: HAR § 5-11-5 requires that you “obtain and keep” an official seal or stamp which includes, among other information, your commission number. You should order a new seal or stamp with your commission number immediately, but we understand it may take some time before you actually obtain your new seal or stamp, and you may use your old seal or stamp until you obtain your new one. We believe that requiring the commission number on the notary seal and notary stamp, as many jurisdictions require, will help fight fraud involving notarized documents.

QUESTION 6: I notarized a document with a seal/stamp that did not have my commission number on it. Was that document validly notarized?

ANSWER: Yes, we believe it was validly notarized. Although each notary is required to comply with the new rules, and to obtain and keep a new seal or stamp, nothing in the rules states or indicates that a document notarized using an old seal or stamp was invalidly notarized.

QUESTION 7: What should I do with my old seal or stamp?

ANSWER: Neither the law nor the rules requires you to turn in your old seal or stamp, but you will need to turn it in to the Notary Public Office, along with your new seal or stamp, once you stop being a notary. If you wish, however, you may mail or hand-deliver your old seal or stamp to the Department of the Attorney General Notary Public Office, 425 Queen Street, Honolulu, HI 96813.

QUESTION 8: Do I need to submit an impression of my new seal or stamp to the Circuit Court where I reside?

ANSWER: Yes. Haw. Rev. Stat. § 456-4 requires that each notary file an impression of the notary's seal/stamp with the Circuit Court where the notary resides. You will need to file an impression of your new seal or stamp with the Circuit Court to replace the impression of your old seal or stamp that you now have on file with the Circuit Court. You should also mail or hand-deliver an impression of your new seal or stamp to the Department of the Attorney General Notary Public Office at 425 Queen Street, Honolulu, HI 96813, for our files.

QUESTION 9: What information should be in the certificate?

ANSWER: HAR § 5-11-8 states that the notary's "acknowledgment or jurat shall be evidenced by a certificate signed and dated by the notary." The information in the certificate includes the printed name of the notary, the official stamp or seal of the notary, identification of the jurisdiction in which the notarization is performed, identification or description of the document being notarized in close proximity to the acknowledgment or jurat, and the number of pages and date of the notarized document. The information can be included within the jurat/acknowledgment itself (for example, one form of a particular type of notarization could be: "This 5-page [identification or description of notarized document], dated _____, was subscribed and sworn to before me this ____ day of _____, 2008, in the First Circuit of the State of Hawaii, by John H. Doe.") The information could also be in a separate certificate. An example of a separate certificate is included on our "Important Information" page, which accompanies these questions and answers. There is not, however, only one acceptable form or format for the certificate, as long as the information specified in the rule is provided.

QUESTION 10: Do I need to apply my seal or stamp to the certificate?

ANSWER: If the certificate is separate from the jurat or acknowledgment itself, it needs to be separately sealed or stamped, as in the example on our "Important Information" page. However, as noted above, the certificate does not need to be separate from the jurat or acknowledgment, as long as the information specified in HAR § 5-11-8 is provided.

QUESTION 11: What if there is no room for the notary certificate on the page with the jurat/acknowledgment?

ANSWER: HAR § 5-11-8 states that the description of the document being notarized be "in close proximity to the acknowledgment or jurat." It is best to include the description of the document on the same page and in "close proximity" to or included in the acknowledgment or jurat. If you use a separate certificate, and there is no room for that certificate on the page on which the acknowledgment or jurat is contained, indicate on that page that there is a notary certificate on the next page, such as by typing: "Notary Certificate on next page."

QUESTION 12: Can I charge for the notary certificate, above and beyond allowed fees?

ANSWER: No, such an additional charge is not permitted.

QUESTION 13: What should I write on the certificate for the date of a document that is undated?

ANSWER: You should write "undated at time of notarization."

QUESTION 14: Does HAR Chapter 5-11 or Act 175 have other new provisions relating to notaries in addition to those discussed in these FAQs?

ANSWER: Yes. We suggest that you read HAR Chapter 5-11 and Act 175 in full.

QUESTION 15: Whom can I contact if I have more questions?

ANSWER: You may call Deputy Attorney General Shari Wong or Supervising Deputy Attorney General Deborah Emerson at 586-1180, or you may e-mail them at ATG.notary@hawaii.gov.