

NOTARY PUBLIC – STUDY GUIDE

R.C. 147.01 Appointment of notaries public; revocation

(A) The secretary of state may appoint and commission as notaries public as many persons who meet the qualifications of division (B) of this section as the secretary of state considers necessary.

(B) In order for a person to qualify to be appointed and commissioned as a notary public, the person must satisfy both of the following:

(1) The person has attained the age of eighteen years.

(2) One of the following applies:

(a) The person is a legal resident of this state who is not an attorney admitted to the practice of law in this state by the Ohio supreme court.

(b) The person is a legal resident of this state who is an attorney admitted to the practice of law in this state by the Ohio supreme court.

(c) The person is not a legal resident of this state, is an attorney admitted to the practice of law in this state by the Ohio supreme court, and has the person's principal place of business or the person's primary practice in this state.

(C) A notary public shall be appointed and commissioned as a notary public for the state. The secretary of state may revoke a commission issued to a notary public upon presentation of satisfactory evidence of official misconduct or incapacity.

R.C. 147.02 Certificate of qualifications

(A) Before the appointment of a notary public is made, the applicant shall produce to the secretary of state a certificate from a judge or justice of the court of common pleas, court of appeals, or supreme court that contains the following:

(1) A statement that the applicant is of good moral character;

(2) If the applicant is not an attorney admitted to the practice of law in this state by the Ohio supreme court, a statement that the applicant is a citizen of the county in which the applicant resides;

(3) If the applicant is an attorney admitted to the practice of law in this state by the Ohio supreme court, a statement that the applicant is possessed of sufficient qualifications and ability to discharge the duties of the office of notary public.

(B) No judge or justice shall issue a certificate required by division (A) of this section until the judge or justice is satisfied from personal knowledge that the applicant possesses the qualifications necessary to a proper discharge of the duties of the office or until the applicant has passed an examination under any rules that the judge or justice may prescribe.

(C) If the applicant is a citizen of this state who is an attorney admitted to the practice of law in this state by the Ohio supreme court, the judge or justice also shall certify this fact in the certification required by division (A) of this section.

(D) If the applicant is not a citizen of this state but is an attorney who is admitted to the practice of law in this state by the Ohio supreme court and whose principal place of business or primary practice is in this state, the judge or justice also shall certify these facts in the certification required by division (A) of this section.

(E) For the purposes of sections 147.03, 147.04, 147.05, and 147.13 of the Revised Code, the county in which an attorney who is not a citizen of this state and who is a notary public has the attorney's principal place of business or the attorney's primary practice shall be deemed the county in which the attorney resides.

R.C. 147.03 Term of office; bond; oath; removal

Each notary public, except an attorney admitted to the practice of law in this state by the Ohio supreme court, shall hold office for the term of five years unless the commission is revoked. An attorney admitted to the practice of law in this state by the Ohio supreme court shall hold office as a notary public as long as the attorney is a resident of this state or has the attorney's principal place of business or primary practice in this state, the attorney is in good standing before the Ohio supreme court, and the commission is not revoked. Before entering upon the duties of office, a notary public shall take and subscribe an oath to be endorsed on the notary public's commission.

A notary public who violates the oath of office required by this section shall be removed from office by the court of common pleas of the county in which the notary public resides, upon complaint filed and substantiated in the court, and the court, upon removing a notary public from office, shall certify the removal to the secretary of state. The person so removed shall be ineligible for reappointment to the office of notary public.

R.C. 147.04 Seal and register of notaries public

Before entering upon the discharge of his duties, a notary public shall provide himself with the seal of a notary public. The seal shall consist of the coat of arms of the state within a circle one inch in diameter and shall be surrounded by the words "notary public," "notarial seal," or words to that effect, the name of the notary public and the words "State of Ohio." The seal may be of either a type that will stamp ink onto a document or one that will emboss it. The name of the notary public may, instead of appearing on the seal, be printed, typewritten, or stamped in legible, printed letters near his signature on each document signed by him. A notary public shall also provide himself with an official register in which shall be recorded a copy of every certificate of protest and copy of note, which seal and record shall be exempt from execution. Upon the death, expiration of term without reappointment, or removal from office of any notary public, his official register shall be deposited in the office of the county recorder of the county in which he resides.

R.C. 147.05 Commission to be recorded; fee; change of name; resignation of commission

(A) Before entering upon the duties of the office of notary public, a notary public shall leave the notary public's commission with the oath endorsed on the commission with the clerk of the court of common pleas of the county in which the notary public resides. The clerk shall record the commission in a book kept for that purpose. The clerk shall endorse on the margin of the record and on the back of the commission the time that the clerk received the commission for record and make a proper index to all commissions so recorded. For recording and indexing a commission, the fee of the clerk shall be as provided in division (R) of section 2303.20 of the Revised Code.

(B) The secretary of state shall maintain a record of the commissions of each notary public appointed and commissioned by the secretary of state under this chapter and make a proper index to that record.

The governor's office shall transfer to the secretary of state's office, on or after June 6, 2001, the record of notaries public formerly kept by the governor's office under section 107.10 of the Revised Code. The secretary of state's office shall maintain that record together with the record and index of commissions of notaries public required by this division.

(C) If a notary public legally changes the notary public's name or address after having been commissioned as a notary public, the notary public shall notify the secretary of state and the appropriate clerk of courts within thirty days after the name or address change. Notification to the secretary of state shall be on a form prescribed by the secretary of state.

(D) A notary, other than an attorney, who resigns the person's commission shall deliver to the secretary of state, on a form prescribed by the secretary of state, a written notice indicating the effective date of resignation.

R.C. 147.07 Powers; jurisdiction

A notary public may, throughout the state, administer oaths required or authorized by law, take and certify depositions, take and certify acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments of writing, and receive, make, and record notarial protests. In taking depositions, he shall have the power that is by law vested in judges of county courts to compel the attendance of witnesses and punish them for refusing to testify. Sheriffs and constables are required to serve and return all process issued by notaries public in the taking of depositions.

147.08 Fees of notaries public

A notary public is entitled to the following fees:

(A) For the protest of a bill of exchange or promissory note, one dollar and actual necessary expenses in going beyond the corporate limits of a municipal corporation to make presentment or demand;

(B) For recording an instrument required to be recorded by a notary public, ten cents for each one hundred words;

(C) For taking and certifying acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments of writing, and for taking and certifying depositions, administering oaths, and other official services, the same fees as are allowed by section 2319.27 of the Revised Code or by law to clerks of the courts of common pleas for like services;

(D) For taking and certifying an affidavit, one dollar and fifty cents.

R.C. 147.09 Protests are evidence

The instrument of protest of a notary public appointed and qualified under the laws of this state or of any other state or territory of the United States, accompanying a bill of exchange or promissory note, which has been protested by such notary public for nonacceptance or for nonpayment constitutes prima-facie evidence of the facts therein certified. Such instrument may be contradicted by other evidence.

R.C. 147.10 Notary public acting after commission expires or notary resigns

No notary public shall do or perform any act as a notary public knowing that the notary public's term of office has expired or that the notary public has resigned the notary public's commission.

R.C. 147.11 Forfeiture

A person appointed notary public who performs any act as such after the expiration of the person's term of office or after the person resigns the person's commission, knowing that the person's term has expired or that the person has resigned, shall forfeit not more than five hundred dollars, to be recovered by an action in the name of the state. Such act shall render the person ineligible for reappointment.

R.C. 147.12 Acts done by notary public after term valid

An official act done by a notary public after the expiration of the notary public's term of office or after the notary public resigns the notary public's commission is as valid as if done during the notary public's term of office.

R.C. 147.13 Removal for receiving excess fees

A notary public who charges or receives for an act or service done or rendered by the notary public a fee greater than the amount prescribed by law, or who dishonestly or unfaithfully discharges any official duties as notary public, shall be removed from office by the court of common pleas of the county in which the notary public resides, upon complaint filed and substantiated in the court. The court shall certify the removal to the secretary of state. The person so removed shall be ineligible for reappointment to the office of notary public.

R.C. 147.14 Removal from office for certifying affidavit without administering oath

No notary public shall certify to the affidavit of a person without administering the appropriate oath or affirmation to the person. A notary public who violates this section shall be removed from office by the court of common pleas of the county in which a conviction for a violation of this section is had. The court shall certify the removal to the secretary of state. The person so removed shall be ineligible to reappointment for a period of three years.

R.C. 147.53 Contents of acknowledgment

The person taking an acknowledgment shall certify that:

(A) The person acknowledging appeared before him and acknowledged he executed the instrument;

(B) The person acknowledging was known to the person taking the acknowledgment, or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

R.C. 147.54 Form of certificate of acknowledgment

The form of a certificate of acknowledgment used by a person whose authority is recognized under section 147.51 of the Revised Code shall be accepted in this state if:

(A) The certificate is in a form prescribed by the laws or regulations of this state;

(B) The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or

(C) The certificate contains the words "acknowledged before me," or their substantial equivalent.

R.C. 147.541 Certificate of acknowledgment

The words "acknowledged before me" means that:

(A) The person acknowledging appeared before the person taking the acknowledgment;

(B) He acknowledged he executed the instrument;

(C) In the case of:

(1) A natural person, he executed the instrument for the purposes therein stated;

(2) A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated;

(3) A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated;

(4) A person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated;

(5) A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated; and

(D) The person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

R.C. 147.55 Statutory short forms of acknowledgment

The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any section of the Revised Code. The forms shall be known as "statutory short forms of acknowledgment" and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(A) "For an individual acting in his own right:

State of _____

County of _____

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged.)

(Signature of person taking acknowledgment) (Title or rank) (Serial number, if any)"

(B) "For a corporation:

State of _____

County of _____

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place or incorporation) corporation, on behalf of the corporation.

(Signature of person taking acknowledgment) (Title or rank) (Serial number, if any)"

(C) "For a partnership:

State of _____

County of _____

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(Signature of person taking acknowledgment) (Title or rank) (Serial number, if any)"

(D) "For an individual acting as principal by an attorney in fact:

State of _____

County of _____

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of person taking acknowledgment) (Title or rank) (Serial number, if any)"

(E) "By any public officer, trustee, or personal representative:

State of _____

County of _____

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of person taking acknowledgment) (Title or rank) (Serial number, if any)"

R.C. 147.99 Penalties

(A) Whoever violates section 147.10 of the Revised Code shall be fined not more than five hundred dollars.

(B) Whoever violates section 147.14 of the Revised Code shall be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

R.C. 2319.27 Fees for taking depositions; lien

Except as section 147.08 of the Revised Code governs the fees chargeable by a notary public for services rendered in connection with depositions, the fees and expenses chargeable for the taking and certifying of a deposition by a person who is authorized to do so in this state, including, but

not limited to, a shorthand reporter, stenographer, or person described in Civil Rule 28, may be established by that person subject to the qualification specified in this section, and may be different than the fees and expenses charged for the taking and certifying of depositions by similar persons in other areas of this state. Unless, prior to the taking and certifying of a deposition, the parties who request it agree that the fees or expenses to be charged may exceed the usual and customary fees or expenses charged in the particular community for similar services, such a person shall not charge fees or expenses in connection with the taking and certifying of the deposition that exceed those usual and customary fees and expenses.

The person taking and certifying a deposition may retain the deposition until the fees and expenses that he charged are paid. He also shall tax the costs, if any, of a sheriff or other officer who serves any process in connection with the taking of a deposition and the fees of the witnesses, and, if directed by a person entitled to those costs or fees, may retain the deposition until those costs or fees are paid.

CIVIL LIABILITY – SEE ATTACHED CASE

Westlaw.

375 N.E.2d 1256

54 Ohio App.2d 128, 375 N.E.2d 1256, 8 O.O.3d 243

(Cite as: 54 Ohio App.2d 128, 375 N.E.2d 1256)

C

Court of Appeals of Ohio, Fifth District, Fairfield County.

KECK, Appellant,

v.

KECK et al., Appellees.[FN*]

FN* A motion to certify the record was overruled by the Supreme Court of Ohio, October 7, 1977.

June 29, 1977.

Husband of woman who misrepresented to notary public that signer of title was her husband brought action against notary public claiming he was negligent in acknowledging purported but forged signature of plaintiff. The Common Pleas Court held notary public was not negligent, and husband appealed. The Court of Appeals, Fairfield County, Putman, J., held that failure of notary public to get some evidence independent of stranger's representation that man was her husband was negligence as a matter of law.

Reversed and remanded.

West Headnotes

[1] Acknowledgment 12 ↪48

12 Acknowledgment

12II Taking and Certificate

12k48 k. Liability of Officer Defectively or Falsely Certifying Acknowledgment. Most Cited Cases

Notary public was negligent as matter of law by failing to require satisfactory evidence of identity for man who woman represented was her husband where the man was brought in to sign automobile title immediately after notary refused to permit woman to sign on behalf of her "ill husband." R.C. § 147.53.

[2] Acknowledgment 12 ↪48

12 Acknowledgment

12II Taking and Certificate

12k48 k. Liability of Officer Defectively or Falsely Certifying Acknowledgment. Most Cited Cases

Notary public is liable for damages to persons proximately resulting from an incorrect certification he makes absent satisfactory evidence required by statute. R.C. § 147.53.

[3] Acknowledgment 12 ↪48

12 Acknowledgment

12II Taking and Certificate

12k48 k. Liability of Officer Defectively or Falsely Certifying Acknowledgment. Most Cited Cases

In husband's action claiming notary public was negligent in acknowledging purported but forged signature of husband on title to station wagon, record, which did not include evidence of value of car at the time of recovery, was insufficient to permit court to enter final judgment as to amount of dollars owing. R.C. § 147.53.

****1256 Syllabus by the Court**

A notary public is liable for damages to persons proximately resulting from an incorrect certification he makes under R.C. 147.53 absent the satisfactory evidence therein required.

****1257 *128 John Beringer Banks, Canal Winchester, for appellant.**

Michael Allarding, Lancaster, for appellees.

PUTMAN, Judge.

This is an appeal in a civil case from the refusal of the Common Pleas Court to grant a money judgment against a notary public who acknowledged a purported but forged signature of the plaintiff on the title to his 1974 Ford station wagon. The signature was forged by an unidentified man. The plaintiff's wife (a total stranger to the notary public) misrepresented to the notary public that the signer was her husband, Lawrence O. Keck (the plaintiff-appellant here).

The trial court held the notary public was not negligent. We reverse. A notary public in taking an acknowledgement is required by the provisions of R.C. 147.53 as follows:

"147.53. Taking an acknowledgment. The person taking an acknowledgment shall certify that:

"(A) The person acknowledging appeared before him and acknowledged he executed the instrument;

"(B) The person acknowledging was known to the person taking the acknowledgment, or that the person taking *129 the acknowledgement had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument." (Emphasis added.)

In this case, the notary public totally failed to get any evidence that the person executing the instrument was the person he was represented to be under circumstances which would make any reasonable person suspicious. Appellee, Gerald Benson, the notary public, admitted on cross-examination as follows:

"Q. Are you also a notary public?

"A. Yes.

"Q. Were you on December 21, 1974, a notary public?

"A. Yes.

"Q. On December 21, 1974, did you notarize the signature of Lawrence O. Keck on this title?

"A. Yes.

"Q. Do you recall what happened that day as far as who came to see you about this and what was said? Did Mrs. Keck come in earlier that day?

"A. There was a lady came in and had the title that she wanted to sign her husband's name on transferring the vehicle from him to her. She stated that he was ill and that they wanted this vehicle transferred. I wouldn't allow her to sign his name. I told her either she had to bring him in or a notary would have to go to the house. She then left and some time later came back with a person who stated that he was Lawrence O. Keck. I notarized that signature and they then left.

"Q. What identification did you ask for?

"A. None.

"Q. You asked for no identification.

"A. No. When he signed that and swore to it to me that indicated that he was that person.

"Q. Now, the person that signed that title is he sitting here?

"A. I can't * * * I don't remember what the person looked like.

"Q. But you can't testify this is the person.

"A. I can't testify that is or is not.

*130 "Q. Are you aware that there is a statute in Ohio requiring you as a notary public prior to taking an acknowledgement that you certify that the person * * * or that this person was known to you or that you had evidence that the person signing was the person described and the person who executed the instrument?

"A. Would you rephrase that again?

"Q. Let me put it in simpler terms. Are you aware that there is a statute in Ohio that requires that you either know the identity of the person or require the person who is identified in that instrument and signing **1258 the instrument requiring him to provide identification?

"A. I know that now, but I did not at that time."

[1] A reasonable person in the position of the notary public should have at least been suspicious when a stranger tried to sign her husband's name on the representation that she wanted to do so because her husband was ill. The obvious inference was that he was too ill to accompany her. When she thereafter, upon the notary's refusal to take her signature for his, immediately produced a man whom she represented to be her husband the notary public in the exercise of ordinary care should have taken or required some satisfactory evidence of his identity. Moreover, he is required to do so by positive mandate of R.C. 147.53. We hold as a matter of law that the failure of the notary public to get some evidence independent of a stranger's representation that the man was her husband was negligent as a matter of law. The statute quoted above mandates the taking of "satisfactory evidence." We hold, as a matter of law, that the representation of a stranger that the man she brought in was her husband when she had just previously stated that her husband was ill, was not under all the circumstances satisfactory evidence.

[2][3] Moving now to the question of damages, it was represented during oral argument on appeal that the husband had since recovered the car in conformance with the court's order. There is a stipulation as to the National Automobile Dealers Association average retail value as \$4,325. However, there is no evidence of the value of the car as of *131 the time of recovery for the reason that when the case went to trial he had not yet recovered it. It was in Georgia. There is testimony that it needs \$300 worth of repairs and that there are accumulated storage charges at the rate of either \$2 or \$3 per day as of August 19, 1976, and at that time the car had been held for nine months.

This record is insufficient to permit us to enter a final judgment as to the amount of dollars owing. For that reason this cause will be remanded to the Court of Common Pleas for further proceedings according to law including the determination of the amount of damages proximately caused to this plaintiff by the negligence of the notary public.

For the foregoing reasons both assigned errors are sustained, the judgment of the Court of Common Pleas of Fairfield County is reversed and this cause is remanded to that court for further proceedings according to law consistent with this opinion.

RUTHERFORD, P. J., and DOWD, J., concur.

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