

ASSEMBLY, No. 3754

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED MAY 19, 2016

Sponsored by:

Assemblyman ERIK PETERSON

District 23 (Hunterdon, Somerset and Warren)

SYNOPSIS

Provides procedures for attorney notarized documents.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning attorneys, amending R.S.41-7, R.S.46:14-2.1,
2 and P.L.1979, c.460 and supplementing Title 52 of the Revised
3 Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7 1. R.S.41:1-7 is amended to read as follows:

8 41:1-7. Seal not necessary to validity of oath or affidavit

9 It shall not be necessary to the validity or sufficiency of any
10 oath, affirmation or affidavit, made or taken before any of the
11 persons named in **[section] R.S.41:2-1 [of this title]**, that the same
12 shall be certified under the official seal of the officer before whom
13 made.

14 Notwithstanding the provisions of this section, an attorney-at-
15 law, who is authorized to take an oath, affirmation or affidavit
16 pursuant to R.S.41:2-1, may affix a seal to validate an oath,
17 affirmation or affidavit taken before him provided the attorney files
18 a Certificate of Good Standing with the State Treasurer pursuant to
19 P.L. , c. (C.) (pending before the Legislature as this bill).
20 The seal shall contain the attorney's name, the words "Attorney-at-
21 Law" and "State of New Jersey."

22 (cf: R.S.41:1-7)

23

24 2. R.S.46:14-2.1 is amended to read as follows:

25 46:14-2.1. Acknowledgment and proof. a. To acknowledge a
26 deed or other instrument the maker of the instrument shall appear
27 before an officer specified in R.S.46:14-6.1 and acknowledge that it
28 was executed as the maker's own act. To acknowledge a deed or
29 other instrument made on behalf of a corporation or other entity, the
30 maker shall appear before an officer specified in R.S.46:14-6.1 and
31 state that the maker was authorized to execute the instrument on
32 behalf of the entity and that the maker executed the instrument as
33 the act of the entity.

34 b. To prove a deed or other instrument, a subscribing witness
35 shall appear before an officer specified in R.S.46:14-6.1 and swear
36 that he or she witnessed the maker of the instrument execute the
37 instrument as the maker's own act. To prove a deed or other
38 instrument executed on behalf of a corporation or other entity, a
39 subscribing witness shall appear before an officer specified in
40 R.S.46:14-6.1 and swear that the representative was authorized to
41 execute the instrument on behalf of the entity, and that he or she
42 witnessed the representative execute the instrument as the act of the
43 entity.

44 c. The officer taking an acknowledgment or proof shall sign a
45 certificate stating that acknowledgment or proof. The certificate
46 shall also state:

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (1) that the maker or the witness personally appeared before the
2 officer;

3 (2) that the officer was satisfied that the person who made the
4 acknowledgment or proof was the maker of or the witness to the
5 instrument;

6 (3) the jurisdiction in which the acknowledgment or proof was
7 taken;

8 (4) the officer's name and title;

9 (5) the date on which the acknowledgment was taken.

10 d. The seal of the officer taking the acknowledgment or proof
11 need not be affixed to the certificate stating that acknowledgment or
12 proof. Notwithstanding the provisions of this subsection, an
13 attorney-at-law may affix to the certificate a seal to validate the
14 deed or instrument provided the attorney files a Certificate of Good
15 Standing with the State Treasurer pursuant to P.L. , c. (C.)
16 (pending before the Legislature as this bill). The seal shall contain
17 the attorney's name, the words "Attorney-at-Law" and "State of
18 New Jersey."

19 (cf: P.L.1991, c.308, s.1)

20

21 3. Section 2 of P.L.1979, c.460 (C.52:7-11) is amended to read
22 as follows:

23 2. a. The State Treasurer shall appoint so many notaries public
24 as the State Treasurer shall deem necessary to commission, who
25 shall hold their respective offices for the term of five years, but may
26 be removed from office at the pleasure of the State Treasurer.

27 b. A person desiring to be appointed and commissioned a
28 notary public shall make application to the State Treasurer on a
29 form prescribed by the State Treasurer and endorsed by a member
30 of the Legislature. Renewals thereof shall be made in the same
31 manner as the original application.

32 The application form shall provide a notice to the applicant that a
33 notary public who is not licensed as an attorney-at-law shall not use
34 or advertise the title of lawyer or attorney-at-law, or equivalent
35 terms, in the English language or any other language, which mean
36 or imply that the notary public is licensed as an attorney-at-law in
37 the State of New Jersey or in any other jurisdiction of the United
38 States. The application form shall also state that a notary public
39 who advertises his services in the English language or any other
40 language is required to provide with such advertisement a notice
41 which contains the following statement: "I am not an attorney
42 licensed to practice law and may not give legal advice about
43 immigration or any other legal matter or accept fees for legal
44 advice."

45 c. The fee to be collected by the State Treasurer for that
46 appointment or renewal shall be \$25.00.

47 d. An attorney-at-law, who by virtue of his license to practice
48 law, performs notary duties shall be exempt from the requirement of

1 applying for commission under the provisions of this section
2 provided the attorney files a Certificate of Good Standing with the
3 State Treasurer pursuant to section 4 of P.L. , c. (C.)
4 (pending before the Legislature as this bill).
5 (cf: P.L.2014, c.48, s.3).

6
7 4. (New section) a. Notwithstanding any other provision of law
8 to the contrary, an attorney-at-law, who is authorized to take an
9 oath, affirmation or affidavit pursuant to R.S.41:2-1 or who is
10 authorized to prove a deed or instrument under R.S.46:14-6.1, or
11 otherwise performs notary duties may register with the State
12 Treasurer by filing a Certificate of Good Standing with the State
13 Treasurer in order to authorized to affix a State approved seal to
14 documents acknowledging the attorney's notarial duties. The
15 Certificate of Good Standing is issued by the Board of Bar
16 Examiners. The registration shall be valid for a period of five
17 years. An attorney-at-law shall file a Certificate of Good Standing
18 with the State Treasurer every five years.

19 b. An attorney-at-law who has filed the Certificate of Good
20 Standing may, in addition to subscribing his signature upon the
21 administration of any oath or the taking of any acknowledgement or
22 proof, affix a seal to validate an oath, affirmation, affidavit, deed or
23 other instrument. The seal shall contain the attorney's name, the
24 words "Attorney at Law" and "State of New Jersey."

25 c. The State Treasurer shall notify the Clerk of the Supreme
26 Court when an attorney-at-law has registered with the State
27 Treasurer pursuant to this section. The Clerk of the Supreme Court
28 shall notify the State Treasurer when an attorney-at-law who has
29 registered with the State Treasurer has been disbarred.

30 d. The fee for filing a Certificate of Good Standing with the
31 State Treasurer shall be \$10.00 which shall be deposited in the
32 General Fund.

33

34 5. This act shall take effect immediately.

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STATEMENT

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39 This bill would allow an attorney-at-law who notarizes
40 documents to affix a seal to any document he validates provided he
41 complies with certain registration requirements.

42 Under the provisions of R.S.41:2-1 attorneys-at-law, along with
43 notaries, judges, mayors, commissioners, sheriffs, clerk of the court,
44 legislators, and certified court reporters, are statutorily authorized to
45 administer oaths, or validate affidavits and affirmations. In addition,
46 attorneys are authorized to acknowledge or prove a deed or other
47 instrument pursuant to R.S.46:14-2.1. Under current law, a seal is
48 not required to validate an oath, affidavit, or affirmation nor is it

1 required to acknowledge or prove a deed or other instrument
2 pursuant to R.S.41:1-7 and R.S.46:14-2.1, respectively.

3 Nevertheless, a document notarized by a notary public who
4 affixes a seal to that document is honored without question.
5 However, this may not be the case for documents notarized by New
6 Jersey attorneys for persons unfamiliar with the State's practice.

7 It is the sponsor's intent to rectify this administrative dilemma
8 for attorneys by providing an attorney with the option of obtaining a
9 seal for the purposes of validating documents. The bill would not
10 require an attorney to use a seal.

11 The bill amends the "Notaries Public Act of 1979," P.L.1979, c.
12 460 (C.52:7-10 et seq.) and Titles 41 and 46 of the Revised Statutes
13 concerning notarized documents to clarify the procedures for
14 attorneys who wish to obtain a seal for the purposes of notarizing
15 documents.

16 Currently, the State Treasurer is authorized to commission a
17 notary public, who holds his office for five years. Under the bill, an
18 attorney who, by virtue of his license to practice law, performs
19 notary duties may affix a seal to his documents provided he
20 registers with the State Treasurer. In so doing, the attorney is
21 providing notice to the State agency which regulates such activity.

22 Under the bill, the attorney would file a Certificate of Good
23 Standing with the State Treasurer. The certificate is issued by the
24 Board of Bar Examiners. The bill requires an attorney to file a
25 Certificate of Good Standing with the State Treasurer every five
26 years. Once an attorney has filed with the State Treasurer, the State
27 Treasurer would notify the Clerk of the Supreme Court of the
28 attorney's registration. In addition, the bill would also require the
29 Clerk of the Supreme Court to notify the State Treasurer when an
30 attorney who has registered with the State Treasurer has been
31 disbarred.