

INSTRUCTIONS
FOR
LICENSED FUNERAL DIRECTORS
ACTING UNDER THE
NOTARIES AND COMMISSIONERS ACT

June 2014

This booklet is prepared for the guidance of licensed Funeral Directors acting under the *Notaries and Commissioners Act*. It is for reference only and for the personal use of licensed Funeral Directors.

INSTRUCTIONS FOR COMMISSIONERS OF OATHS

Introduction

The *Notaries and Commissioners Act* gives all licensed funeral home directors in Nova Scotia the authority to administer oaths and take and receive affidavits, declarations and affirmations within the Province for use within the Province.

Your authority under the *Notaries and Commissioners Act* does not give you the power to perform other functions, such as certifying true copies.

Your authority under the *Notaries and Commissioners Act* is due to your status as a licensed funeral home director. If for any reason you cease to hold a funeral director license, you will no longer have the authority to take oaths and affirmations and you must ensure that you do not act.

Terms

Oath means a formal declaration or attestation in support of a pledge or promise.

Declaration means an open or formal announcement.

Declarant means a person who makes a declaration.

Deponent means a person who gives evidence, usually in writing.

Affidavit means a written declaration sworn before competent authority.

Statutory Declaration means a written declaration affirmed before a competent authority by a person conscientiously unable to take an oath.

Affirmation means a solemn declaration by a person who declines taking an oath.

Jurat means the statement at the bottom of an affidavit, requiring the name(s) of the person(s) swearing to the affidavit, and where, when and before whom it was sworn.

Taking Oaths and Affirmations

Oath or Affirmation

The *Interpretation Act* prescribes the method of taking an oath. The Commissioner of Oaths asks the person to swear that the contents of the document are true. A Commissioner may administer an oath to any person while the person holds a copy of the Old or New Testament. The person taking the oath need not kiss the Bible.

A Commissioner of Oaths may administer an oath with such ceremonies as a person may declare to be binding upon their conscience. Those taking an oath under some other ceremony will do so in accordance with that ceremony.

Those who object to being sworn may affirm. Those who affirm do so without the Bible. The Commissioner of Oaths asks them to solemnly affirm that the contents of the document are true.

It is an offence under Section 138 of the *Criminal Code* of Canada to sign a document, purporting to be an affidavit or statutory declaration, sworn or declared before you when it was not. The party to the oath must be present and appear before you when the oath is taken.

Identifying the Person

Whether you are administering an oath, or taking an affidavit, declaration or affirmation, you must be satisfied that you know the identity of the witness or deponent.

If it is someone you do not know personally, you should require the person to produce some reliable means of identification.

Making Sure They Understand

You have a special duty when you are dealing with anyone:

- whose first language is not the language used in the material;
- who cannot read;
- who is very young;
- who is very old.

You must be sure that the person understands the meaning and significance of both the document and of the oath or affirmation.

If a person who cannot read is swearing to or affirming a document, it must be read to the person, in your presence. Then you have to certify that it was read to the deponent in your presence and that the deponent appeared to understand the material.

If it seems to you that the person who is swearing to or affirming a document, does not understand the language of the document (usually English), then the document must be interpreted to the deponent by a competent interpreter. The interpreter must certify on the document itself that the material has been interpreted to the deponent.

Taking the Oath or Affirmation

(a) Method

An oath [affirmation or statutory declaration] must be taken by the deponent in the presence of the Commissioner of Oaths, who must be satisfied of the genuineness of the signature of the deponent or declarant. Once you have satisfied yourself of the genuineness of the signature, ask the person to hold a copy of the New or Old Testament (*or uplifted arm only*) and repeat the following:

"Do you, (A.B.), swear that the contents of this affidavit are true to the best of your knowledge, information, and belief, so help you God."

The person must then answer:

"yes", "I do", or "so help me God".

If a person requests a different form of ceremony binding on their conscience, the Commissioner of Oaths should follow that form.

A person who wishes to affirm instead of taking an oath should be asked the following:

"Do you, (A.B.), declare that the contents of this declaration are true to the best of your knowledge, information, and belief, knowing that it is of the same force and effect as if made under oath."

(b) Illiterate or Blind Deponent or Declarant

The contents of the affidavit or statutory declaration should first be read aloud by the Commissioner of Oaths. The form of jurat should be as follows:

Sworn (affirmed or declared) before me, at the City (or Town) of (e.g. Halifax) in the Province of Nova Scotia, this _____ day of _____, 2____ having first been read over and explained by me to the deponent (or declarant), who, being incapable of reading the contents of the affidavit or declaration, appeared to understand the same and (choose one):

- (i) signed their signature in my presence; or
- (ii) made their mark in my presence; or
- (iii) verbally indicated their understanding of the affidavit or declaration.

(Signature of Commissioner)
John Doe
(print or type name of Commissioner)
A Commissioner of Oaths
for Nova Scotia,
being a funeral director

(c) Two or More Deponents or Declarants

The word "severally" should be placed at the beginning of the jurat as follows:

Severally sworn (affirmed or declared) before me, etc.

"Severally" means that each deponent separately swears to the oath or made the declaration as they would if doing it alone.

(d) Physically Incapacitated Deponent or Declarant

The form of jurat in this case should be as follows:

Sworn (affirmed or declared) before me, etc., by the deponent (or declarant), who being incapable of writing his/her name (choose one):

- (i) made their mark in my presence; or
- (ii) verbally indicated their understanding of the affidavit or declaration.

(Signature of Commissioner)
John Doe
(print or type name of Commissioner)
A Commissioner of Oaths
for Nova Scotia,
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(e) Foreign Language

If the deponent or declarant speaks only a foreign language, and an interpreter is used, the form of the translated jurat should be as follows:

Sworn (affirmed or declared) before me, at the City (or Town) of (e.g. Halifax) in the Province of Nova Scotia, this _____ day of _____, 2__ through the interpretation of (e.g. John Doe) in the Province of ___ said name of interpreter having been first sworn truly and faithfully to interpret the contents of this affidavit (affirmation or declaration) to the deponent (or declarant), and truly and faithfully, to interpret the oath about to be administered to them (or declaration about to be taken by them).

(Signature of Commissioner)
John Doe
(print or type name of Commissioner)
A Commissioner of Oaths
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Before the interpreter proceeds to interpret they should be sworn (or should affirm) as follows:

Do you, (A.B.), swear (or solemnly and sincerely affirm) that you will truly and faithfully, and to the best of your ability, interpret and translate the contents of this affidavit (or declaration) to the deponent (or declarant) and the oath about to be administered to them (or declaration about to be taken by them) out of the English language into the language of the deponent (or declarant), and also in like manner interpret and translate the oath (or declaration) taken by them out of the language of the deponent (or declarant) into the English language (so help you God.)

Alterations

If there are any interlineations, alterations, or erasures on an affidavit or statutory declaration (including the jurat), you should place a check mark at the beginning and end of each of the changes and then write your initials beside each change. **UNLESS CHANGES ARE AUTHENTICATED BY YOUR INITIALS, THE AFFIDAVIT OR STATUTORY DECLARATION MAY NOT BE ACCEPTED IN COURT PROCEEDINGS.** The following is an example of this procedure:

√fifth√ John Doe, √February√ John Doe,
Comm. of Oaths Comm. of Oaths
I did on the fourth day of January, 1997.

Jurat

Once the person has been sworn or has affirmed. The Commissioner of Oaths must complete the jurat in the manner set out below. The jurat must include the name(s) of the person(s) swearing to the affidavit, the time when, and the place where the affidavit

is sworn, including the name of the city, town, province, and country. The jurat should be written at the end of the affidavit but not on a separate page. You must print or type your name below your signature.

Sample Format

Sworn, (affirmed or declared) before me at)
_____ (city) _____, in the County of)
_____ (county) _____, in the Province of)
Nova Scotia, this ____ day of _____,)
2____.)
)
)
) (Signature of Deponent or)
) _____ Declarant)
)
) _____)
) (Signature of Commissioner)
) John Doe)
) (print or type name)
) of Commissioner)
) A Commissioner of Oaths)
) for Nova Scotia,)
) being a funeral director)

Exhibits

If the affidavit or statutory declaration refers to other documents that are annexed as exhibits, each exhibit should be marked as follows:

This is Exhibit (letter or number) referred to in the affidavit (or statutory declaration) of (name of person) sworn (affirmed or declared) before me this _____ day of _____, 2____ .

_____)
) (Signature of Commissioner)
) John Doe)
) (print or type name of Commissioner)
) A Commissioner of Oaths)
) for Nova Scotia,)
) being a funeral director)

Commissioners Interested in a Matter

Oaths, affidavits, declarations or affirmations concerning a matter taken by a Commissioner of Oaths who is a party or the employee of a party, cannot be introduced as evidence in a proceeding unless all the other parties to the proceeding consent or the judge orders it.

Criminal Code

We bring to your attention Section 138 of the *Criminal Code* which provides:

138. Every one who

(a) signs a writing that purports to be an affidavit or statutory declaration and to have been sworn or declared before him when the writing was not so sworn or declared or when he knows that he has no authority to administer the oath or declaration,

(b) uses or offers for use any writing purporting to be an affidavit or statutory declaration that he knows was not sworn or declared, as the case may be, by the affiant or declarant or before a person authorized in that behalf, or

(c) signs as affiant or declarant a writing that purports to be an affidavit or statutory declaration and to have been sworn or declared by him, as the case may be, when the writing was not so sworn or declared,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

Fee

Because your authority arises from your status as a licensed funeral director, you are not entitled to charge a fee for administering an oath.

Stamp

If you wish to have a stamp made for your use, it should be approximately 1/2" x 2" in size and should contain your name and beneath your name the words "A Commissioner of Oaths for Nova Scotia, being a funeral director".