

NOTICES OF FINAL RULEMAKING

This section of the Arizona Administrative Register contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and

text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the Arizona Administrative Code.

NOTICE OF FINAL RULEMAKING **TITLE 2. ADMINSTRATION CHAPTER 12. OFFICE OF THE SECRETARY OF STATE**

[R18-01]

PREAMBLE

Article, Part, or Section Affected (as applicable) **Rulemaking Action**

R2-12-1102 Amend Exhibit 1 New Exhibit

Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):
Authorizing statute: A.R.S. § 41-353(B)

Implementing statute: A.R.S. §§ 41-315, 41-316(A), 41-353(B), (F)(1) through (6), and (G)

The effective date of the rule:

March 5, 2018

If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 23 A.A.R. 2118, August 4, 2017 Notice of Proposed Rulemaking: 23 A.A.R. 2115, August 4, 2017

The agency's contact person who can answer questions about the rulemaking:

Patricia A. Viverto, Director Name:

Secretary of State, Business Services Address:

1700 W. Washington St., 7th Floor

Phoenix, AZ 85007

Telephone: (602) 542-6187 (602) 542-4366 Fax: E-mail: pviverto@azsos.gov

An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

About Arizona Notaries

A notary is a public officer commissioned by the Office of the Secretary of State (Office) to perform notarial acts as defined in Arizona Revised Statutes (A.R.S). Notaries serve as independent, unbiased, neutral officers who take required steps in authenticating signatures and completing notarial transactions. Government offices, businesses and the public rely on the accuracy and integrity of notaries public to perform the required steps to authenticate signatures and ensure that all notarizations are completed properly. Notaries play an important role in preventing fraud and forgery while bolstering the authenticity of a document.

History of Arizona Fees

Until 1996, Arizona notaries were allowed to charge up to 75¢, at which time the notary fee was increased under Arizona law to \$2. The notary public could charge a person "zero" for the notarization service up to the \$2 fee allowed under the law. Laws 2000, Ch. 210, § 3 removed the fees schedule for notarizations out of A.R.S. § 41-316 and required the Office to prescribe fees in rule. At that time, the Office adopted emergency rules and renewed the emergency before adopting a permanent fee schedule in 2001



under Section R2-12-1102. The Office did not raise fees when adopting this rule, rather it kept the fees as originally established in 1996; up to \$2 per signature notarized, oath administered or page certified. Therefore, fees a notary MAY charge have not increased in 21 years. Due to the importance of a notary's function, the Office is proposing that fees be adjusted and increased to compensate for their time, effort, and assumed liability.

Under this proposed amendment, a notary still has the option to not charge a fee for a notarization. The Office has always allowed notaries public to manage fees and personally understand the potential ramifications when setting their own fee structures versus others who may charge a lower fee, or those who do not charge fees. It should be noted that the Office does not charge for notarizations, and as such, the state will not see any additional revenue on these proposed changes.

Under the proposed amendments a notary public will be required to inform consumers of the notary's fee before performing the notarial act. When quoted, the consumer will make the determination whether he or she wants to pay the fee or look elsewhere for lower-priced notarial services. Additionally, notaries public will now be required to post their fee schedule in a conspicuous loca-

- 7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
- A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state: Not applicable
- A summary of the economic, small business, and consumer impact:

Under these proposed amendments a Notary Public may request more compensation for his or her time, effort, and assumed liability up to the maximum fee posted.

Consumers may pay less than the maximum listed. Consumers will be verbally notified by the notary of the potential fee to be charged and will also be able to view the fees as conspicuously posted under Arizona law.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final <u>rulemaking:</u>

Changes were made to the language in R2-12-1102(B) as follows: removed the phrase "Once a fee is established" and changed the word "their" to "the". The changes are not substantive.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The SOS received 129 public comments via email with all in favor of the proposed notary fee increase. There were eight attendees at the oral proceeding that was held on September 14, 2017 and all in attendance were in favor of the proposed notary fee increase.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

- Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:
- Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states: Not applicable
- 13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
- 14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages: Not applicable
- 15. The full text of the rules follows:

TITLE 2. ADMINSTRATION **CHAPTER 12. OFFICE OF THE SECRETARY OF STATE**

ARTICLE 11. NOTARY PUBLIC BONDS AND FEES



Section

R2-12-1102. Notary Public Fees

ARTICLE 11. NOTARY PUBLIC BONDS AND FEES

R2-12-1102. Notary Public Fees

- A. Pursuant to A.R.S. § 38-412, a notary public shall keep posted at all times in a conspicuous location, the fee schedule listed under subsection (E)(1) through (3).
- **B.** Upon reviewing the fees schedule under subsection (E)(1) through (3), a notary shall select a standard fee, from "no charge" up to the maximum \$10 fee for a notarial act. A notary public shall be consistent when charging fees and post the fee schedule in a conspicuous location.
- C. When posting fees under subsection (A) and (B), notaries shall use the template in Exhibit 1. Notary Public Services.
- **D.** Before performing any notarial act, the notary public shall inform the requestor of the service fee if one will be charged.
- <u>E.</u> A Notaries Notary public may charge the following fees fee:
 - 1. For an acknowledgments acknowledgment or jurat, \$2 "no charge" up to \$10 per notary public signature;
 - 2. For jurats, \$2 per signature;
 - 3.2. For a copy certifications certification, \$2 "no charge" up to \$10 per page certified;
 - 4.3. For an oaths oath or affirmations affirmation without a signature, "no charge" up to \$10 per notarial act.

Exhibit 1. Notary Public Services

NOTARY PUBLIC SERVICES

(Business, Office, or Notary Name)

Fees Schedule Posted pursuant to R2-12-1102			
acknowledgment or jurat	[Example Fee] No Charge	per notary public signature	
copy certification	[Example Fee] No Charge	per page certified	
oath or affirmation	[Example Fee] No Charge	per notarial act	
Attention Customer: Fees charged by an Arizona Notary Public may vary from "no charge" up to \$10.			

An Arizona Notary Public May Charge the Following Fees:

Posted pursuant to A.R.S. § 38-412			
acknowledgment or jurat	<u>up to \$10</u>	per notary public signature	
copy certification	<u>up to \$10</u>	per page certified	
oath or affirmation	<u>up to \$10</u>	per notarial act	