

CLERKS AS EX OFFICIO NOTARIES

Minnesota Statutes § 358.15 gives town clerks the power to act as ex officio notaries. An ex officio notary is a notary public; the only difference is how the person becomes a notary. Ex officio is Latin for “out of office,” meaning that through their election to their office, town clerks have the powers of a notary public, and clerks can notarize documents and administer oaths of office.

To use this power, town clerks must obtain a notarial stamp (similar to but slightly different from the standard notary public stamp) and must also inscribe their official signature when notarizing documents. **Town clerks must obtain a notarial stamp, or they will not be able to perform any duties as an ex officio notary.**

Minnesota Statutes § 359.03, subdivision 3 outlines the specifications of the notary seal:

The official notarial stamp consists of the seal of the state of Minnesota, the name of the ex officio notary, the words ... “Notarial Officer” in the case of an ex officio notary, and the words “My commission expires (or where applicable) My term is indeterminate,” with the expiration date shown on it and must be able to be reproduced in any legibly reproducible manner. The official notarial stamp shall be a rectangular form of not more than three-fourths of an inch vertically by 2-1/2 inches horizontally, with a serrated or milled edge border, and shall contain the information required by this subdivision.¹

Stamps are generally available through business supply centers. Most stamp makers should be familiar with current notary public stamps, so it should not be too difficult to find someone who will be able to print a notarial stamp that complies with these new statutory requirements. However, clerks need to consider processing and delivery times when ordering a notarial stamp so that it arrives before any applicable statutory deadline.

The statute considers town clerks elected in March and November and any person appointed to fill an elected vacant clerk’s position to serve a fixed term.

Minn. Stat. § 358.15 Ex Officio Notary Public

- (a) The following officers have the powers of a notary public within the state:
- (2) the clerks or recorders of towns, and cities ...
- (b) An officer using the powers of a notary public within the state pursuant to clauses (1) to (3) shall obtain an official stamp as specified under section 359.03, subdivisions 1, 3, and 4, with which to authenticate official acts.

¹ Examples of notarial seals that meet these specifications are in **APPENDIX A**.

I. CLERKS ELECTED IN MARCH

Clerks elected in March serve two-years terms, and the election occurs on even years.² There is no set date when clerks elected in March take office, but the terms should expire two years from the date when the clerk took the oath of office.

Clerks appointed to fill a vacancy for an elected clerk position serve until the following election, meaning the term can vary, but again it is a “determinate” term.³ A person appointed for a clerk elected in March would serve from the date appointed until the next March election. For example, if a person is appointed to fill an elected clerk position in September of 2018, the term would run from September 2018 to March 2019, when the position would be on the ballot for the one year remaining on the term.

A. Determining when the term of a March elected clerk begins:

With an election held on the second Tuesday in March, the Board of Canvass must meet within two days of the election to certify the results.⁴ Once certified, a 7-day contest period must run before the Certificate of Election is issued.⁵ Once the Certificate of Election is received, the clerk must take the oath within 10 days.⁶

II. CLERKS ELECTED IN NOVEMBER

Clerks elected in November elections assume office on the first Monday of January following their elections. They serve for four-year terms.⁷

When filling in a vacancy for a clerk elected in November, the election would occur in an even year, and then if elected, the clerk would take the oath in January (an odd year) and serve for the remainder of the term. For example, if a clerk was elected in 2016 and resigns in July of 2017 and a new clerk is appointed, the appointed clerk’s term would be on the November of 2018 ballot with the term starting in January 2019. The clerk serves for the remaining two years when the position would be on the ballot in 2020 for the full 4-years.

Notarial Acts

As a notary, you will likely perform the following:

1. Witnessing signatures
2. Attesting to copies of documents. Notaries evaluate copied documents to determine that they are complete and correct reproductions of the original documents.
3. Certifying that the document signer swears (or affirms) that the document contents are truthful.
4. Providing acknowledgments, which means certifying that the signature already appearing on the document is genuine. If individuals have signed on behalf of another person or an organization, they must also demonstrate their authority to do so.
5. Administering written oaths.
6. Administering oral oaths. Oath-takers must raise their hand and say the oath aloud.

² Minn. Stat. § 367.03, subd. 5.

³ Minn. Stat. § 367.03, subd. 6.

⁴ Minn. Stat. § 206.185

⁵ Minn. Stat. §§ 209.02, and 209.021.

⁶ Minn. Stat. § 367.25 (Generally, this will occur by the end of March, but it can vary depending on when the Certificate of Election is issued or if there is a contested election. There is not a certain date when the clerk must issue a Certificate of Election and some township officers take their oath of office at the Town Board’s April meeting.)

⁷ Minn. Stat. § 367.03, subd. 4.

III. OPTION B ADOPTED – APPOINTED CLERKS

When the town switches to Optional Plan B of town government, the clerk becomes an appointed position.⁸ When the position is strictly appointed, the clerk should use the “indeterminate” expiration language option for their stamps as they serve at the will of the town board and not for a predetermined term.

IV. STAMPS

At the beginning of any new term, a clerk must get a new stamp, including when clerks are re-elected, a new clerk is elected, or the clerk is appointed. A new clerk will have up to ninety days from the day he or she assumes office to obtain their notarial stamp. Any documents notarized without a stamp during the first ninety days after initially assuming the office are still valid.⁹ The notarization is good for the first ninety days in office or until the clerk acquires an official stamp, whichever is earlier.

The clerk should list his or her name in the manner it appears on their election certificate or certificate of appointment. If there is no certificate of appointment filed, the clerk should use the name he or she signed when filing the oath of office, for example, Lucille B. Smith vs. Lucy Smith.

Town clerks that have already registered as regular Notary Publics do not need to obtain a separate notarial officer stamp but should be sure to check into changes made to the general notary public statutes.

V. DEPUTY CLERKS

Minn. Stat. § 358.15 is silent on whether a deputy clerk is an ex officio notary.¹⁰ The statute authorizing a deputy clerk’s appointment provides that the powers they have are the same as a clerk when the clerk is absent or under disability.¹¹ MAT believes that it would be a best practice for the deputy clerk to obtain a notarial stamp, but they will need to become a regular notary public. There is a nominal fee for registering, which the township should pay. Notaries should review Minnesota Statutes chapters 357, 358, and 359 at www.leg.state.mn.us to familiarize yourself with notary requirements.

⁸ Minn. Stat. § 367.30.

⁹ Minn. Stat. § 358.15 (c).

¹⁰ Minn. Stat. § 358.15 (a)(2) “the clerks or recorders of towns, and cities.”

¹¹ Minn. Stat. § 367.12. Each town clerk may appoint a deputy, for whose acts the clerk shall be responsible, and who, in the clerk's absence or disability, shall perform the clerk's duties.

SAMPLE NOTARY SEALS

(Name)

(STATE SEAL) *(Official title,County, Minnesota)*

Notarial Officer (ex officio notary public)¹²

My term expires _____.

(or) My term is indeterminate.

OR

<p>John Smith Anytown Township Clerk, Sample County, Minnesota Notarial officer (ex officio notary public) My term expires _____ Or for the last line, "My term is indeterminate."</p>	<p>Jane Doe Clerk, Anywhere Township, Example County, Minnesota Notarial officer (ex officio notary public) My term expires _____ Or for the last line, "My term is indeterminate."</p>
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¹² Please note that the stamp must contain the full "Notarial Officer (ex officio notary public)" phrase, using both terms, in order to satisfy all statutory requirements as both terms are used in different places in state law.