Clerks as Ex Officio Notaries

Minn. Stat. § 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. By virtue of their office, town clerks have the powers of a notary public and clerks can notarize documents and administer oaths of office.

In order 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.**

Minn. Stat. §359.03, subd. 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.

(Name)
(State Seal) (Official title,........County, Minnesota)
Notarial Officer (ex officio notary public)¹
My term expires _______________.
(or) My term is indeterminate.

OR

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.”

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.”

¹ 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.
Stamps are generally available through business supply centers, and 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. Clerks, however, need to consider processing and delivery times when ordering a notarial stamp so that it arrives prior to any applicable statutory deadline.

Town clerks elected in March and November and any person appointed to fill an elected vacant clerk’s position, are considered to serve a fixed term.

**Clerks Elected in March**

Clerks elected in March serve two-years terms and the election occurs every even year.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.

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**How to determine when the term of clerk elected in March 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. Minn. Stat. § 206.185. Once certified, there is a 7-day contest period that must run before the Certificate of Election is issued. Minn. Stat. §§ 209.02 & 209.021. Once the Certificate of Election is received, the oath must be taken within 10 days. Minn. Stat. § 367.25 (Generally, this will occur by the end of March in an even year, but it can vary depending on when the Certificate of Election is issued or if there is a contested elected. There is not a date certain 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.)

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Clerks appointed when there is a vacancy for an elected clerk position serve until the next election, so the term can vary, but again it is a “determinate” term.³ A person is 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.

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² Minn. Stat. § 367.03, subd. 5.
³ Minn. Stat. § 367.03, subd. 6.
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.  

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-year term.

Option B Adopted – Appointed Clerks

Clerks who are appointed clerks under the Optional Plan B form of town government 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.

Stamps

A new stamp is required at the beginning of any new term for clerks reelected and whenever a new clerk is elected or appointed. A new clerk will have up to 90 days from the day he or she assumes office to obtain his or her notarial stamp. Any documents notarized without a stamp during the first ninety-days after initially assuming the office are still valid. The notarization is good for the first 90-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. In the case where there is no certificate of appointment filed, the clerk should use the name he or she signed when filing the oath of office. (ex. Lucille B. Smith v. Lucy Smith).

Town clerks who are already registered as a regular Notary Public 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.

Deputy Clerks

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

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4 Minn. Stat. § 367.03, subd. 4.
5 Minn. Stat. § 358.15 (c).
6 Minn. Stat. § 358.15 (a)(2) “the clerks or recorders of towns, and cities.”
7 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.