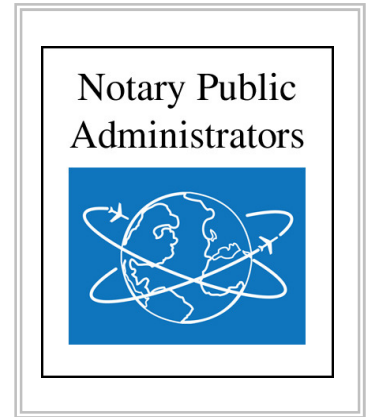


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*Mike Smith, NPA President (2012-2014)*  
*Georgia Superior Court Clerks' Cooperative Authority*  
*[Mike.smith@gsccca.org](mailto:Mike.smith@gsccca.org) | 404-327-9753*



## **BACKGROUND**

These *Apostille Issuance Guidelines* represent more than 7 years of dedicated effort to create an authoritative reference document for issuance of Apostilles by U.S. states' competent authorities.

The *Guidelines* are designed to provide **a quick reference when notary administrators are unsure whether to accept or reject a particular request for an Apostille**. The *Guidelines* cover more than 60 real-life scenarios related to Apostille requests. Each scenario comes not only with a recommendation to accept or reject the request, but also whether to sanction the notary public for improper acts evidenced by the notary's certificate on the document. Comments, references and cites are provided as well.

### ***Guidelines Development Timeline:***

#### 2006-2007

The NPA Section of the National Association of Secretaries of State commits to examining Apostille-issuance practices as an organized initiative. The Authentication Practices Workgroup is formed. Conference calls over the ensuing months result in a well-vetted "wish-list" of information to appear in any final reference handbook.

#### 2008

The *Apostille Issuance Guidelines* initiative becomes a high-priority work item on the NPA Section's annual NASS Summer Conference agenda. Representatives of the Hague Conference on Private International Law and the U.S. State Department illustrate the project's relevance by becoming regular NPA Summer Conference participants. The development team begins with a reference chart describing "25 or more real-life scenarios" encountered by competent authorities when asked to issue an Apostille. The team discusses appropriate resolution of each scenario and records conclusions in the chart.

#### 2009

In February, NPA Section member delegate Kathy Sachs (Kansas Department of State) observes and participates in the Hague Special Commission on the Practical Operation of the Apostille Convention, an international event for competent authorities around the world. These deliberations produce valuable recommendations that inform and influence the *Apostille Guidelines*.

The *Apostille Issuance Guidelines* development team analyzes specific uniformity issues related to Apostille format, design and methods of affixing them to the underlying document. During the 2009 NASS Summer Conference, the NPA Section adopts a resolution to develop "best practices" for uniform format, design and affixation of Apostilles, in order to breed conformity with the Convention, reduce rejections by receiving jurisdictions, and minimize potential for misuse.

#### 2010

At the 2010 NASS Summer Conference, the NPA Section expands upon the 2009 resolution, issuing a more comprehensive 2010 resolution in support of detailed "best practices" for format, design and affixation of Apostilles.

## 2011

The reference chart that began in 2008 with 25 or so scenarios that notary public administrators commonly encounter when issuing Apostilles has expanded to more than 60 common scenarios. All require exacting review and debate, which continues at the 2011 NASS Summer Conference.

The workload has become so large that the *Apostille Issuance Guidelines* development team meets in Kansas City later that year for another 3-day work session.

## 2012

The development team once again dedicates a multi-day work session to the *Apostille Issuance Guidelines*, meeting this time in Williamsburg, Virginia. **This work session results in completion of the *Guidelines* chart detailing issuance scenarios and recommended actions.**

In November, NPA Section delegate Maureen Ewing (Rhode Island Department of State) observes and participates in the latest renewal of the Hague Special Commission on the Practical Operation of the Apostille Convention. Conclusions and recommendations of the Special Commission will be discussed in a future NPA Section meeting and incorporated, if applicable, into the *Notary Public Administrators' Handbook on Apostilles and Authentications*.

## 2013

With development of the *Apostille Issuance Guidelines* chart complete, the NPA Section now moves forward with these objectives:

- a) to secure adoption of the support resolution by the Secretaries of State in attendance at the 2013 NASS Summer Conference, in order to promote widespread use of the *Apostille Issuance Guidelines*; and
- b) to expand on the *Guidelines* by compiling a complete handbook to serve as a comprehensive reference manual on all matters related to Apostilles and authentications.

# **APOSTILLE ISSUANCE GUIDELINES | VERSION 1.0 | JULY 2013**

## **ASSUMPTIONS:**

**1 Best Practice Document.** This document reflects the experience and advice of the Notary Public Administrators (NPA), a staff section of the National Association of Secretaries of State (NASS), with considerable guidance and assistance from the U.S. Department of State, the Permanent Bureau of the Hague Conference on Private International Law, the National Notary Association, the Pennsylvania Association of Notaries, and the American Society of Notaries. It is intended to identify Best Practices, not necessarily what is currently a majority practice among states. In many cases, you will find an indicated action that is precisely the opposite of your current practice. The NPA has extensively discussed and reviewed each item in these guidelines, and come to the conclusions reflected herein. We strongly recommend these guidelines for your consideration, because it is in the best interests of all to adopt a uniform practice among the states wherever possible.

**2 Public Document.** [The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents \(Apostille Convention\)](#) applies to public documents only. For the purposes of these guidelines, the term "public document" refers to a document that under domestic law is appropriate for authentication.

**3 Notarization.** A notarization must include all of the formal elements required under the state law under which it is executed, including document execution, properly completed notarial certificate, and appropriate dates. The notary's signature and a seal alone does not constitute a notarization.

## ASSUMPTIONS – CONTINUED

**4 Notarial Certificate.** A notarial certificate must be compliant with state law. It must meet state requirements and not exceed the authority of a notary in that state. A notarial certificate must be attached, but it is not the duty or responsibility of the notary or competent authority to determine the type of certificate, i.e., whether the notarial act should have been an acknowledgment, jurat, etc.

**5 Seal Requirement.** The term "seal" refers to either a rubber stamp or embossed seal. If the jurisdiction does not require a seal, then the requirement is met even without a seal.

**6 Effect of an Apostille.** The only effect of an Apostille is to certify the authenticity of the signature, the capacity in which the person signing the document has acted, and where appropriate, the identity of the seal or stamp which the document bears. The Apostille does not relate to the content of the underlying document, i.e., the apostillized document. (2003 Special Commission Conclusions and Recommendations - No. 22) (2009 Special Commission Conclusions and Recommendations - No. 82) (2012 Special Commission Conclusions and Recommendations – No. 13).

**7 State-Specific Provisions Prevail.** These guidelines are intended to guide all states in the issuance of apostilles. However, it recognizes that, where specific state law contradicts these guidelines, the state law and practice based thereon prevail.

**8 Alternatives to Rejection.** Depending on your state law, there may be alternatives available for documents that should be rejected, according to these guidelines. For example, although you may not be able to issue an apostille for a Statement of Existence executed by a notary, an affidavit of fact witnessed by a notary could be apostillized. Sometimes, a certified copy of a document - where state law allows - may be substituted for an original that cannot be notarized itself, such as a vital record from a foreign country.

## FREQUENT REQUEST SCENARIOS, APOSTILLE & AUTHENTICATION ISSUANCE

### QUICK LINKS (GUIDELINES BEGIN ON NEXT PAGE):

1. Original Certified Copy of a Vital Record Signed by a Proper Government Agent. Not Notarized.
2. Notary Certified Records, True and Correct Copy - Birth, Death, or Other Vital Record.
3. Notary Certified Records, Notarized on Actual Document - Birth, Death, or Other Vital Record.
4. Notarized Affidavit Attached to Original Vital Records - Birth, Death, or Other Vital Record.
5. Notary Error
6. Date Error
7. Signature Problem
8. Stamp/Seal Problem
9. No Document
10. Notarial Acts Under Federal Authority
11. Notarial Acts Under State and Other Authority
12. Notarial Act Under Native American Jurisdiction
13. Destination Country
14. Non Member Jurisdiction
15. Irrational or Offensive Statements
16. Non-original Documents
17. Multiple Transactions
18. Sealed Documents
19. Foreign Language
20. True and Correct Copy
21. No Record of Notary
22. Certificate problem
23. Extra Formalities

<b>1. Original Certified Copy of a Vital Record Signed by a Proper Government Agent. Not Notarized.</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. The certificate is not recent and the competent authority does not have a copy of the signature of the registrar on file. The record is not notarized. The certified copy appears to be valid.		X		Either obtain signature specimen; contact current registrar for verification of signature or direct customer to obtain new certificate.

<b>2. Notary Certified Records, True and Correct Copy - Birth, Death, or Other Vital Record.</b>				
<i>From My State</i>	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. My state does not permit a copy of a birth certificate.		X	X	See Assumption 7.
B. My state does not address copies of vital records.	X			
<i>From Another State</i>				
C. The certificate clearly states that it is a violation of state law to certify a photocopy.		X	X	See Assumption 7.
D. The certificate does not address whether it is a violation of state law to photocopy.	X			See Assumption 7.

<b>3. Notary Certified Records, Notarized on Actual Document - Birth, Death, or Other Vital Record.</b>				
<i>From My State</i>	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. My state does not permit a notary to certify a copy of a vital record.		X	X	See Assumption 7.
<i>From Another State</i>				
B. The certificate clearly states that it is a violation of state law to certify a copy of a vital record.		X	X	See Assumption 7.

<b>4. Notarized Affidavit Attached to Original Vital Records - Birth, Death, or Other Vital Record.</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
From my state	X			The Apostille is not certifying the vital record; it is certifying the public document, which is the notarization. See Assumption 2.
From another state	X			

<b>5. Notary Error</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. No notarial certificate, just a seal and notary signature.		X	X	See Assumption 2.
B. No seal, just notary signature and notarial certificate.		X	X	See Assumptions 2, 3, and 4.
C. No notary signature, just a seal and notarial certificate.		X	X	See Assumptions 2, 3, and 4.
D. No notarial certificate or seal, just a notary signature.		X	X	See Assumptions 2, 3, and 4.
E. No notarial certificate or signature, just a seal.		X	X	See Assumptions 2, 3, and 4.
F. Incomplete acknowledgment or other notarial act.		X	X	See Assumptions 2, 3, and 4. A purported notarial act is a public document only if all required components of the notarial act are present; therefore an incomplete notarial act is not a public document.
G. Notary performs an act that exceeds statutory authority. The notarization is therefore improper, but the seal and signature are correct.		X	X	See Assumptions 2, 3, and 4. A purported notarial act is a public document only if that act is authorized by state law; therefore an act that exceeds statutory authority is not a public document.

<b>6. Date Error</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. The date on the notarial certificate is prior to the date the signer signed the document.		X	X	See Assumption 3; an improperly completed notarial certificate is not a public document.
B. The expiration date of the seal reflects a commission that expired prior to the act.		X	X	See Assumption 3; an improperly completed notarial certificate is not a public document.
C. The seal has an expiration date from a commission that has not yet begun.		X	X	See Assumption 3; an improperly completed notarial certificate is not a public document.

<b>7. Signature Problem</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. The notary signature on the document does not appear to match the signature on file.		X	X	See Assumption 6; signature is verified against the official signature on record.
B. The document contains a notarial certificate that contains the particulars of the notarial act but lacks the notary's signature.		X	X	See Assumption 6; signature is verified against the official signature on record. See Assumption 3; an improperly completed notarial certificate is not a public document.
C. The document contains a completed notarial certificate, but the document has not been signed by the signing party.		X	X	See Assumption 3; a notarial act includes the execution (principal) signature, if applicable.
D. The document contains a certificate but has neither a signing party signature nor notary signature.		X	X	See Assumption 6; signature is verified against the official signature on record. See Assumption 3; a notarial act includes the execution (principal) signature, if applicable.
E. The document contains only a notary seal (no notarial certificate and no notarial signature).		X	X	See Assumption 6; signature is verified against the official signature on record. See Assumption 3; a document without a notarial certificate is not a public document.

<b>8. Stamp/Seal Problem</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. The seal on the document does not match the seal for the commission in effect at the time of the notarization.		X	X	See Assumption 6; the seal is verified against the official record. See Assumption 3; a notarial act includes the official seal.
B. The seal is not legible.		X	X	See Assumption 6; the seal is verified against the official record.
C. No seal on document.		X	X	See Assumption 6; the seal is verified against the official record. See Assumption 3; a notarial act includes the official seal.
D. The seal does not appear in its entirety on the notary certificate.		X	X	See Assumption 6; the seal is verified against the official record. See Assumption 3; a notarial act includes the official seal.
E. The seal is not affixed in full on the notarial certificate, but fanned over multiple pages.		X	X	See Assumption 6; there must be at least one legible, complete seal impression on the notarial certificate.

<b>9. No Document</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. Customer asks for an apostille on a particular notary, but does not have a document to attach.		X		Article 4, Apostille Convention; Numbers 16 and 17, Conclusions and Recommendations 2003. There must be a public document that evidences the notarial act.

**10. Notarial Acts Under Federal Authority**

State law allows an official other than a notary to perform notarial acts. These acts have the same effect under the law in that they are prima facie evidence that a person with the indicated title has authority to perform notarial acts. Should the Apostille be attached?

	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. Federal judge		X		In all situations unless the competent authority is granted authority through enabling legislation.
B. Clerk or deputy clerk of a court of record		X		
C. A commissioned officer on active duty		X		
D. Any other person authorized by law		X		
E. Ex-officio notary		X		

**11. Notarial Acts Under State and Other Authority**

Your state law allows an official other than a notary to perform notarial acts. You know these acts have the same effect under the law and that they are prima facie evidence that a person with the indicated title has authority to perform notarial acts. Can you attach an Apostille?

	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. Judge		X		In all situations unless the competent authority is granted authority through enabling legislation.
B. Clerk or deputy clerk of a court of record		X		
C. A commissioned officer on active duty		X		
D. County clerk		X		
E. Any other person authorized by law		X		
F. An attorney		X		
G. Ex-officio notary		X		

**12. Notarial Act Under Native American Jurisdiction**

	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. A document is presented that was notarized or certified by a person acting under the authority of a Native American tribe.		X		See Assumption 8. Subject to further review by US Department of State.

**13. Destination Country**

	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. Customer submits a notarized document and requests an Apostille without providing the country to which the document is being sent.	X			Article 1, Apostille Convention.
B. Customer identifies the country of use as United States.		X		Article 1, Apostille Convention. Attach authentication/certification.
C. The customer states that the document is for use in a subscribing jurisdiction, but the contents of the document strongly imply that the document is intended for use in the United States.	X			Article 1, Apostille Convention. However, your state may have laws that require rejection.

<b>14. Non Member Jurisdiction</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. The customer provides the destination country but the subscribing jurisdiction is not listed on the Hague website. This information is related to the customer who continues to insist their request is correct. The customer is advised the request cannot be performed for a non-participating jurisdiction.		X		Article 1, Apostille Convention. The state is the authority competent to judge if an apostille is appropriate to issue. The apostille is not for use in the U.S.; it is only for use in another state where the convention is in force. If you intend to produce your document in a state that is not party to the convention, contact the embassy of that state in Washington, DC for information regarding additional requirements.

<b>15. Irrational or Offensive Statements</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. False Statements - The underlying document contains statements that, on the face of it, appear to be false. The notarization is properly executed.	X			Unless the competent authority is granted authority to reject through enabling legislation.
B. Obscenities - The underlying document contains offensive language that would be considered foul or offensive speech by prevailing standards. The notarization is properly executed.	X			Unless the competent authority is granted authority to reject through enabling legislation.
C. Sovereign Citizen/Strawman Rhetoric - The underlying document contains language that is commonly associated with rhetoric that is often used to attempt to commit fraud. The notarization is properly executed.	X			Unless the competent authority is granted authority to reject through enabling legislation. See U.S. Department of Justice definition, "Sovereign Citizen Use of Documents to Further Fraudulent Schemes: Reference Guide." [Feb. 2012]
D. Inflammatory Statements - The underlying document contains language that appears to be intentionally inflammatory to either an individual or an organization. The notarization is properly executed.	X			Unless the competent authority is granted authority to reject through enabling legislation.
E. The notarial certificate states that the attached is a true and correct copy. The notarization is properly executed, but no document is attached.		X	X	Assumption 3; the certified copy is not attached to evidence the notarial act. (Use discretion in sanctioning; notary may not be directly responsible for this circumstance. Look for evidence that the notary attached the certificate to the document.)



<b>16. Non-original Documents</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. The notarial certificate (paper only) document is clearly not an original.		X		State and federal rules of evidence, unless specifically allowed by state law.
B. The notarial certificate (paper only) appears to be a copy, but the customer insists it is an original.		X		State and federal rules of evidence, unless specifically allowed by state law. It is the responsibility of the competent authority to determine if the document is original.

<b>17. Multiple Transactions</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. Customer requests that two clearly separate documents, notarized by the same notary public, be authenticated together with one apostille.		X		NASS Resolution of July 20, 2010. Conclusions and Recommendations, Number 17, 2003. Per recommendations, an apostille should be affixed to each signature/certificate page – or attach to the first signature/certificate page (customer may direct).
B. Customer presents one document with two (or more) distinct notarizations and requests two (or more) distinct apostilles.	X			Customer may request two (or more) apostille certificates.

<b>18. Sealed Documents</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. A notarized school transcript and diploma for authentication are submitted with the requirement that an apostille be affixed to each document. However, the notarized documents are sealed in an envelope that states "if opened not valid."	X			Article 1, Apostille Convention. Open envelope and affix.

<b>19. Foreign Language</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. The notarial certificate is in a language the competent authority cannot read / comprehend.		X		Refer to state law. States may choose to authenticate notarial certificates written in languages in which they are competent.
B. The notarization is in English, but the document is in another language.	X			Refer to state law. State law may require translation. See Assumption 6.

<b>20. True and Correct Copy</b>				
	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. The notary has attested that the document is a true and correct copy but it is apparent that the document is an original.	X			It is not the responsibility of the competent authority to determine whether the underlying document is a copy or an original.

**21. No Record of Notary**

	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. The notary name listed on the seal or certificate does not exactly match the name on the record of the competent authority at the time of notarization.		X	X	See Assumption 6; notary name is verified against the official name on record.

**22. Certificate problem**

	<i>Attach</i>	<i>Reject</i>	<i>Sanction</i>	<i>Citations and Comments</i>
A. The notarial certificate includes language for an act that exceeds the authority of a notary public under state law. For example, "I certify that this is an accurate translation"; "The principal is a qualified CPA"; etc.		X	X	Refer to state law. Assumption 4; language of the notarial certificate must not require the notary to perform an act that exceeds the notary's authority.

**23. Extra Formalities**

	<i>Only issue and attach Apostille in your normal manner</i>	<i>Adhere to country request</i>	<i>Citations and Comments</i>
A. The destination country is requiring more than the convention requires.	X		2003 Special Commission Conclusions and Recommendations - Numbers 16 and 18. 2009 Special Commission Conclusions and Recommendations - Numbers 87 and 92. 2012 Special Commission Conclusions and Recommendations – Number 27. Provide copy of information note by the Permanent Bureau.