

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Enrolled**

### **Senate Bill 669**

BY SENATORS AZINGER, BALDWIN, BEACH, BOSO,  
CLEMENTS, HARDESTY, JEFFRIES, LINDSAY, MAYNARD,  
ROMANO, RUCKER, SMITH, TAKUBO, WELD, WOELFEL,  
AND TRUMP

[Passed March 9, 2019; in effect 90 days from  
passage]



1 AN ACT to amend the Code of West Virginia, 1931, by adding thereto a new article, designated  
2 §39-4A-1, §39-4A-2, §39-4A-3, §39-4A-4, and §39-4A-5, all relating to the appointment of  
3 commissioners to acknowledge signatures by persons residing in or out of the state of  
4 West Virginia covering deeds, leases, and other writings pertaining to West Virginia  
5 property for recordation in the state of West Virginia; authorizing the Secretary of State to  
6 appoint a qualified person as a commissioner; setting forth qualifications for appointment;  
7 establishing application requirements and procedures; authorizing the Secretary of State  
8 to deny, refuse to renew, revoke, suspend, or impose a condition on a commission;  
9 establishing application fee; establishing term of office; establishing powers and duties of  
10 commissioners; setting forth prohibited acts; authorizing rulemaking by the Secretary of  
11 State; incorporating requirements, duties, prohibitions, penalties, and procedures set forth  
12 in the Revised Uniform Law on Notarial Acts; and requiring inclusion of active  
13 commissioners in online database of notaries public.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 4A. OUT-OF-STATE COMMISSIONERS.**

**§39-4A-1. Commissioners out of state; qualifications; application fee.**

1 (a) The Secretary of State may appoint a qualified person residing within or without this  
2 state and within the United States, its territories, or possessions as a commissioner to  
3 acknowledge signatures performed in or out of this state by persons residing in or out of the state  
4 of West Virginia covering deeds, leases, and other writings pertaining to West Virginia property  
5 for recordation in the state of West Virginia.

6 (b) To be qualified for an appointment pursuant to subsection (a) of this section, a person  
7 must be commissioned as a notary public pursuant to §39-4-20 of this code.

8 (c) An individual qualified under subsection (b) of this section may apply to the Secretary  
9 of State for a commission and shall comply with and provide the information required by  
10 subsection (d) of this section and pay the requisite fee.

11 (d) Applications for appointment as a commissioner must be made in the form and manner  
12 as prescribed by the Secretary of State. The application must include the following information:

13 (1) Full name;

14 (2) Date of birth;

15 (3) Legal residential address;

16 (4) Employer, if any;

17 (5) Daytime phone number;

18 (6) Email address;

19 (7) Applicant's signature; and

20 (8) Any other information deemed necessary by the Secretary of State.

21 (e) The Secretary of State may deny, refuse to renew, revoke, suspend, or impose a  
22 condition on a commission for any act or omission that demonstrates the individual lacks the  
23 honesty, integrity, competence, or reliability to act as a commissioner, including:

24 (1) Failure to comply with this article;

25 (2) A fraudulent, dishonest, or deceitful misstatement or omission in the application for a  
26 commission submitted to the Secretary of State;

27 (3) A conviction of the applicant or commissioner for any felony or for a crime involving  
28 fraud, dishonesty, or deceit;

29 (4) A finding against, or admission of liability by, the applicant or commissioner in any legal  
30 proceeding or disciplinary action based on the applicant's or commissioner's fraud, dishonesty,  
31 or deceit;

32 (5) Failure by the commissioner to discharge any duty required of a commissioner,  
33 whether by this article, rules promulgated by the Secretary of State, or any federal or state law;

34 (6) Use of false or misleading advertising or representation by the notary public  
35 representing that the notary has a duty, right, or privilege that the notary does not have;

36 (7) Revocation, suspension, or refusal or failure to renew the commissioner's commission  
37 as a notary public pursuant to §39-4-1 *et seq.* of this code;

38 (8) Violation by the commissioner of a rule of the Secretary of State regarding a  
39 commissioner; and

40 (9) Denial, refusal to renew, revocation, suspension, or conditioning of a commission in  
41 another state.

42 (f) Before issuance of a commission, an applicant shall provide at the time of application  
43 a statement that he or she solemnly swears or affirms, under penalty of perjury, that the answers  
44 to all questions in this application are true, complete, and correct; and, if appointed and  
45 commissioned, he or she will perform faithfully, to the best of his or her ability, all acts in  
46 accordance with the law.

47 (g) A nonrefundable fee of \$500 for each commission issued shall be paid to the Secretary  
48 of State: *Provided*, That the Secretary of State shall have the authority to refund some or all of  
49 the application fee for denials resulting from good-faith mistakes made by applicants.

50 (h) All fees and moneys collected by the Secretary of State pursuant to the provisions of  
51 this section shall be deposited by the Secretary of State as follows:

52 (1) One-half shall be deposited in the state General Revenue Fund; and

53 (2) One-half shall be deposited in the service fees and collections account established by  
54 §59-1-2 of this code for the operation of the Office of the Secretary of State.

**§39-4A-2. Powers of commissioners; official seals.**

1 (a) Upon approval of a successful application, commissioners shall hold office for 10  
2 years, unless removed by the Secretary of State under the grounds set forth in §39-4A-1(e) of  
3 this code.

4 (b) When any oath may lawfully be administered, or affidavit or deposition taken, within  
5 the state, territory, or district for which any such commissioner is appointed, to be used in this  
6 state, it may be done by the commissioner.

7 (c) Each commissioner shall have an official seal, which shall be a rubber stamp and shall  
8 contain:

9 (1) The words "Official Seal";

10 (2) The words "Commissioner for West Virginia";

11 (3) The commissioner's name exactly as it is written as an official signature;

12 (4) The city and state of residence of the commissioner; and

13 (5) The words "My Commission Expires" and the date of expiration of the commission.

14 (d) A stamped imprint of the seal, together with the official signature, shall be filed in the  
15 office of the Secretary of State.

16 (e) Commissioners may take, within or any place out of the State of West Virginia, the  
17 acknowledgements of deeds and other writings to be admitted to the record in the State of West  
18 Virginia, but each acknowledgement shall reflect where the acknowledgement was taken,  
19 including, but not limited to, the state and county or territory.

20 (f) Every certificate of the commissioner shall be authenticated by his or her signature and  
21 official seal.

**§39-4A-3. Prohibited acts.**

1 Commissioners shall refrain from the following prohibited activities:

2 (1) Assisting persons in drafting legal records, giving legal advice, or otherwise practicing  
3 law;

4 (2) Acting as an immigration consultant or an expert on immigration matters; or

5 (3) Representing a person in a judicial or administrative proceeding relating to immigration  
6 to the United States, United States citizenship, or related matters.

7 (4) No provision of this section shall be construed to prohibit the practice of law by a duly  
8 licensed attorney.

**§39-4A-4. Rulemaking.**

1           The Secretary of State may propose rules for legislative approval to implement this article,  
2 in accordance with the provisions of §29A-3-1 *et seq.* of this code.

**§39-4A-5. Incorporation of Revised Uniform Law on Notarial Acts; online database.**

1           (a) All requirements, duties, prohibitions, penalties, and procedures set forth in §39-4-1 *et*  
2 *seq.* of this code that are consistent with the foregoing provisions of this article shall apply to  
3 commissioners.

4           (b) The Secretary of State shall include all active commissioners in its database of notaries  
5 public set forth in §39-4-22 of this code, which database shall clearly distinguish commissioners  
6 from notaries public.





The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2019.

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*Governor*