

Chapter 2: Commissioner of Deeds

§ 2-01 Qualifications.

To become a Commissioner of Deeds, an individual:

- (a) must be a citizen of the United States of America;
- (b) must be a resident of the City of New York, or be an attorney who maintains a law office within the City of New York (such attorneys are deemed residents of the City by NYS Executive Law §§ 140(5) and (5-a) for the purpose of becoming a Commissioner of Deeds);
- (c) must be at least 18 years of age;
- (d) must not have been removed from the Office of Notary Public or Commissioner of Deeds;
- (e) must be an attorney, an attorney's employee, someone serving a clerkship in a law office, or someone who has qualified for a Certificate of Fitness from the Office of the City Clerk. After the oath or affirmation is administered, the Commissioner of Deeds should place the appropriate one of the following statements (called a "jurat") after the person's signature: "Sworn to before me this _____ day of _____, 19 ____." The jurat must be followed by the signature and other information of the Commissioner of Deeds as described above.

(1) *Acknowledgements.* For the purpose of a Commissioner of Deeds, an acknowledgement is a declaration by a person that he is in fact the person who is described in a particular document and that he has executed (signed) that particular document. There is no particular form that must be used in taking an acknowledgement. For an acknowledgement to be valid, the Commissioner of Deeds must ask the person making the acknowledgement:

- (i) to identify himself to the satisfaction of the commissioner of deeds;
- (ii) whether he is the person described in the document; and
- (iii) whether it is in fact his signature on the document.

(It is not essential for the person to sign the document in the presence of the Commissioner of Deeds.)

After taking an acknowledgement, the Commissioner of Deeds must place a statement on the document or attach a statement to the document as evidence of her taking the acknowledgment. Whatever form used, the statement must recite all the matters that were required to be done, known or proved on the taking of the acknowledgement, together with the name and substance of the declaration of the person making the acknowledgement. An acceptable form of such a statement is: "On this _____ day of _____, 19 ____, before me came (person's name), to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same." This must be followed by the Commissioner's signature and other information as described above.

§ 2-02 Certificates of Fitness – Qualifications.

To qualify for a Certificate of Fitness from the Office of the City Clerk, an applicant for the office of Commissioner of Deeds:

- (a) must not have any outstanding tax bills or any unpaid traffic tickets; and
- (b) must not have been convicted of:
 - (1) any felony; or
 - (2) illegally using, carrying or possessing a pistol or other dangerous weapon; or
 - (3) making or possessing burglar's tools; or
 - (4) buying or receiving or criminally possessing stolen property; or
 - (5) unlawful entry of a building; or
 - (6) aiding escape from prison; or
 - (7) unlawfully possessing or distributing habit-forming narcotic drugs; or
 - (8) practicing or appearing as attorney-at-law without being admitted and registered (Judiciary Law § 478; former Penal Law § 270); or
 - (9) soliciting legal business on behalf of an attorney (Jud. Law § 479; former Penal Law § 270-a); or
 - (10) entering a hospital to negotiate a settlement or obtain a release statement from a patient (Jud. § 480; former Penal Law § 270-b); or
 - (11) being an employee or another attached to a hospital, police department, prison, court, or bail bond institution, who assisted or abetted the solicitation of persons or the procurement of a retainer for or on behalf of an attorney (Jud. Law § 481; former Penal Law § 270-c); or
 - (12) unlawfully practicing law (Jud. Law § 484; former Penal Law § 271); or
 - (13) purchasing claims for the purpose of commencing a lawsuit (Jud. Law § 489; former Penal Law § 275); or
 - (14) as an attorney, sharing legal fees with a non-attorney (Jud. Law § 491; former Penal Law § 271); or
 - (15) "jostling," i.e., taking certain actions designed to aid or commit pickpocketing (Penal Law § 165.30; former Penal Law § 722); or
 - (16) fraudulent accosting (Penal Law § 165.30; former Penal Law § 722); or
 - (17) aggravated harassment in the second degree via electronic, print, or other medium (Penal Law § 240.30(1); former Penal Law § 722); or
 - (18) loitering for the purpose of engaging another in deviate sexual intercourse or other deviate sexual behavior (Penal Law § 240.35(3); former Penal Law § 722); or
 - (19) violation of §§ 550; 551, or 551-a of the former Penal Law; or
 - (20) vagrancy or prostitution.

(c) must, if applying on or after January 1, 1990, have earned a grade of at least 65 percent on a written examination to be administered by the Office of the City Clerk in accordance with 51 RCNY § 2-03 of these Rules.

§ 2-03 Certificates of Fitness – Application and Examination.

(a) Commencing January 1, 1990, the City Clerk will not issue a Certificate of Fitness to any applicant for the Office of Commissioner of Deeds until and unless the applicant has earned a grade of at least 65 percent on a written examination administered by the Office of the City Clerk.

(b) Applicants shall take the examination prior to submitting their application and fees. An application shall not be considered complete unless the applicant has earned a grade of at least 65 percent on the written examination prior to the submission of the application form.

(c) The written examination shall be administered by the Office of the City Clerk in accordance with a schedule and in such places as shall be set and announced from time to time by the City Clerk.

(d) The written examination shall be of a format type as shall be set and announced by the City Clerk from time to time. Examples of formats include, but are not limited to, short answer, essay question, multiple choice, true/false, or any combination thereof; open book; or closed book.

(e) The examination shall be based solely on information contained in the City Clerk's rules for the Office of Commissioner of Deeds.

(f) All earned grades shall be final. Applicants who do not earn a passing grade shall be free to try again to earn a passing grade at any and all future, regular test administrations by the Office of the City Clerk.

§ 2-04 Applications.

(a) Obtain and complete the appropriate application form as per the instructions.

(b) Have the application notarized.

(c) Applicants serving clerkships in the offices of attorneys, and whose clerkship certificates are on file with the proper officials, shall submit an affidavit to that effect. (First-time applicants only.)

(d) Other employees of attorneys shall submit an affidavit, sworn to by a member of the law firm, stating that the applicant is a proper and competent person to perform the duties of a Commissioner of Deeds. (First-time applicants only.)

(e) Submit a certified check or money order for the appropriate amount. Upon being notified of appointment, the applicant must appear in person at the Office of the City Clerk and take an oath of office. In so doing, the applicant must swear or affirm that: he is a citizen of the United States, and a resident of the State of New York, the City of New York and the county of (name of the county); that he will support the constitutions of the State of New York and of the United States, and that he will faithfully discharge the duties of the Office of Commissioner of Deeds.

§ 2-05 Term of Office.

The term of office for a Commissioner of Deeds is two years, commencing from the date of appointment.

(a) For individuals who are residents of the City of New York: Any Commissioner of Deeds who ceases to be a resident of New York City automatically gives up his or her office of Commissioner of Deeds. When any Commissioner of Deeds ceases to be a resident of New York City he or she must immediately notify the Office of the City Clerk.

(b) For attorneys who are deemed "residents" of the City of New York by virtue of having law offices within City: Any Commissioner of Deeds who ceases to maintain a law office within New York City automatically gives up his or her office of Commissioner of Deeds. When any Commissioner of Deeds ceases to maintain a law office within New York City he or she must immediately notify the Office of the City Clerk.

§ 2-06 Procedures for Exercising the Powers of a Commissioner of Deeds.

(a) *Required information.* On each document sworn to, acknowledged, or proved before him, a Commissioner of Deeds must affix, in black ink,

(1) his signature;

(2) his printed, typewritten, or stamped name;

(3) his office title;

(4) his official number; and

(5) the date when his term expires. An example of the form to be followed is:

(signature) Jane Sample Commissioner of Deeds, New York City 123456789 Term Expires: (date)

A Commissioner of Deeds must sign the name under which she was appointed; she may use no other. When a Commissioner of Deeds marries during the term of office, the Commissioner must continue to use any pre-marriage surname when signing as a Commissioner of Deeds. However, if the Commissioner wishes to include a new, marriage surname, the Commissioner must use the pre-marriage surname in the Commissioner's signature and printed name, and then add the marriage surname in parentheses after the signature. When the term of office expires, the Commissioner's renewal application may be made either under the pre-marriage or the marriage surname. When the renewal is granted the Commissioner must perform all functions solely under the name used on the renewal application. A Commissioner of Deeds must immediately notify the Office of the City Clerk concerning any changes of address. It is optional to have an official stamp or seal. A Commissioner of Deeds appointed in the City of New York may administer oaths and take acknowledgements or proofs of deeds and other documents in any part of the City of New York.

(b) *Administering oaths and taking acknowledgement or proofs.*

(1) *Oaths.* For the purpose of a Commissioner of Deeds, an oath is a person's verbal pledge that her statements contained in a document are true. An affirmation is the equivalent of an oath and may be administered to anyone who objects to taking an oath as a matter of principle. Oaths and affirmations must be administered in legally acceptable forms. An acceptable form for administering an oath is: "Do you solemnly swear that the contents of the statement made and subscribed by you are true and correct?" An acceptable form for administering an affirmation is: "Do you solemnly, sincerely, and truly, declare and affirm that the statements made and subscribed by you are true and correct?" When an oath or affirmation is administered, the person swearing or affirming must express assent to the oath or affirmation by the words "I do" or words of like meaning. For an oath or affirmation to be valid, whatever form is used, it is necessary that:

(i) the person swearing or affirming be personally present before the Commissioner of Deeds;

(ii) the person unequivocally swears or affirms that what she states is true;

(iii) the person swears or affirms as of that moment; and

(iv) the person consciously and conscientiously takes upon herself the obligation of an oath or affirmation.

(2) *Proofs.*

(i) A proof is used in place of an acknowledgement on certain instruments. A proof is a formal declaration by a person who witnessed the signing of an instrument and who himself signed as a subscribing witness, which declaration sets forth:

- (A) the witness' place of residence;
- (B) that the witness knew the individual who is described in and who executed (signed) the instrument; and
- (C) that the witness actually saw the individual sign the instrument.

(ii) As with acknowledgements, there is no prescribed form for taking a proof. For a proof to be valid, the commissioner of deeds must be satisfied that:

- (A) the witness is who she claims to be;
- (B) the witness is stating her correct place of residence;
- (C) the witness does in fact personally know the individual who executed the instrument; and

(D) the witness actually saw the individual execute the instrument. When a proof is taken, the Commissioner of Deeds must place a statement on the document or attached thereto as evidence of her having taken the proof. Whatever form is used, the statement must recite all the matters that were required to be done, known, or proved on the taking of the proof, together with the name, place of residence, and substance of the declaration of the person giving proof. An acceptable form of the statement is: "On this _____ day of _____, 19 ____, before me came (person's name), to me known to be the individual who subscribed as witness the foregoing instrument and declared that she resides at (house and street), (town or city), (state), that she knows personally (person's name), that she knows the person to be the individual described in and who executed the foregoing instrument, and that (the person) executed the foregoing instrument in her presence." This statement must be followed by the Commissioner's signature and other information described above.

(3) *Fee.* The fee for administering an oath or taking an acknowledgement or proof is twenty-five cents.

(c) *Authentication.* "Authentication" in this case involves a County Clerk affirming the genuineness of a certificate of acknowledgement, proof, or oath taken before a Commissioner of Deeds. The significance of authentication is as follows: When an instrument or paper is sworn to, proved, or acknowledged before a Commissioner of Deeds within the City of New York, it can be recorded and read in evidence in any office of any County Clerk within the City of New York or in the Office of the Register of the City of New York without the need for further proof. However, for such an instrument to be read into evidence, without the need for further proof, anywhere in New York outside the five boroughs of the City, it is necessary that the instrument first be authenticated by one of the County Clerks in the City of New York. To permit people to have instruments authenticated, a Commissioner of Deeds may file his autograph signature and certificate of appointment in the office of any County Clerk in New York City. Certificates of appointment may be obtained from the Office of the City Clerk.

§ 2-07 Restrictions.

(a) A Commissioner of Deeds must be and remain a resident of New York City. If a Commissioner of Deeds ceases to be a New York City resident he vacates his office and must immediately notify the City Clerk.

(b) A Commissioner of Deeds appointed within the City of New York cannot perform official functions anywhere except within the five boroughs of the City of New York.

(c) A Commissioner cannot certify any document to a transaction in which the Commissioner has an interest (financial) or to which the Commissioner of Deeds is a party.

(d) A Commissioner of Deeds cannot charge a fee for administering oaths of office to: a member of the legislature; any military officer; an inspector of election; a clerk of the poll; or any other public officer or public employee.

(e) The powers of a Commissioner of Deeds are personal and cannot be delegated to anyone.

(f) A Commissioner of Deeds who is an employee or stockholder of a corporation may take the acknowledgement or proof of any party to a written instrument executed by the corporation, or may administer an oath to any other officer, employee, or stockholder of the corporation, except when the Commissioner of Deeds himself is one of the parties executing the instrument either as individual or as a representative of the corporation.

(g) A Commissioner of Deeds has no power to protest a negotiable instrument (e.g., a promissory note or bill of exchange).

(h) A Commissioner of Deeds cannot take an acknowledgement or proof of the execution of a will.

§ 2-08 Professional Conduct.

(a) *General.* A Commissioner of Deeds is a public officer, and is so regarded under the laws of the State of New York. As such, a high standard of professional conduct is required and expected of each individual having an appointment as a Commissioner of Deeds. Moreover, the care with which a Commissioner of Deeds performs her duties can often be the only thing that ensures the integrity of a particular document. In performing the functions of his or her office, a Commissioner of Deeds must:

(1) take an acknowledgement or proof, or administer an oath, only when the individual is personally present (taking proofs or acknowledgements, or administering oaths, over the telephone or otherwise is absolutely illegal);

(2) always satisfy himself as to the true identity of the individual giving the acknowledgement or taking an oath; and

(3) always follow the appropriate forms when administering oaths, issuing certificates, etc. In addition to the prohibition against the careless performance of the duties of the office of Commissioner of Deeds, there are strict legal proscriptions against the deliberate abuse of the office:

(b) *Official misconduct.* A public servant is guilty of official misconduct when, with intent to obtain a benefit or to injure or deprive another person of a benefit:

(1) he commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

(2) he knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a Class A misdemeanor.

(NYS Penal Law § 195.00.)

(c) *Issuing a false certificate.* (Falsely stating that someone took an oath or gave an acknowledgement of proof.) A person is guilty of issuing a false certificate when, being a public servant authorized by law to make or issue official certificates or other official written instruments, and with intent to defraud, deceive or injure another person, he issues such an instrument, or makes the same with intent that it be issued, knowing that it contains a false statement or false information.

Issuing a false certificate is a Class E felony.

(NYS Penal Law § 175.40.)

(d) *Forgery in the second degree.* A person is guilty of forgery in the second degree when, with intent to defraud, deceive, or injure another, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

- (1) a deed, will codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate or otherwise effect a legal right, interest, obligation or status; or
- (2) a public record, or an instrument filed or required or authorized by law to be filed in or with a public office or public servant; or
- (3) a written instrument officially issued or created by a public office, public servant or governmental instrumentality.

Forgery in the second degree is a Class D felony.

(NYS Penal Law § 170.10.)

(e) *Fees.* A public officer or other person who charges a fee for his service which is greater than the amount allowed by statute, or which charges a fee for services that were not actually rendered, is liable, in addition to the punishment prescribed by law for the criminal offense, to an action on behalf of the person aggrieved, in which the plaintiff is entitled to treble damages. (Outline of NYS Pub. Off. Law §§ 67(2), (3), (4).)

(f) *Fraud in office.* A Commissioner of Deeds who, in the exercise of the powers, or in the performance of the duties of such office, shall practice any fraud or deceit, the punishment for which is not otherwise provided for by this act, shall be guilty of a misdemeanor. (NYS Exec. Law § 135-a(2).)

(g) *Acting without authority.* Anyone who holds himself out to the public as being entitled to act as a Commissioner of Deeds or conveys the impression that he is a Commissioner of Deeds, without having been appointed a Commissioner of Deeds, is guilty of a misdemeanor. (NYS Exec. Law § 135-a(1).)

(h) *Penalties.* In addition to the criminal and civil penalties outlined above, any kind of misconduct in office by a Commissioner of Deeds is punishable by removal from office. Section 140 of the New York State Executive Law vests the Office of the Mayor with the power to remove a Commissioner of Deeds from office for cause shown. Commissioners have the right to answer charges brought against them. (NYS Exec. Law § 140(12).) Removal from office as a Commissioner of Deeds of the City of New York disqualifies an individual from ever again being appointed to that office. In addition, that individual is disqualified from becoming a Notary Public. Anyone removed from office as a Commissioner of Deeds who, after learning of such removal, continues to perform the functions of that office, shall be guilty of a misdemeanor.