



**THE SOCIETY OF NOTARIES PUBLIC OF BRITISH COLUMBIA**

# **RULES OF THE SOCIETY**

NOTE: Latest revisions to these Rules have been made as approved by the Board of Directors on April 8, 2011.

**SOCIETY OF NOTARIES PUBLIC OF BRITISH COLUMBIA**  
**RULES**

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## 1. INTERPRETATION

- 1.01 The interpretation sections of the *Notaries Act* (RSBC 1996) Chapter 334 and the government approved **Bylaws** of the Society shall apply to these rules.
- 1.02 "Accredited financial institution" means:
- (a) a bank included in Schedule I or II to the *Bank Act* (Canada);
  - (b) a trust company which is insured by the Canada Deposit Insurance Corporation and has not been declared by the Society as unacceptable for use by a Member; and
  - (c) a credit union approved by the Credit Union Deposit Insurance Corporation of B.C. for the receipt of trust funds.
- 1.03 (a) "Self-Audit Report" means the written report prepared once a year by each Member, confirming the activities of all of the Member's trust accounts during the prior year; and
- (b) "Deficiency Report" means the written report of an auditor appointed by the Society to conduct an audit on the trust accounts of a Member.
- 1.04 "Board" means the Board of Directors of The Society of Notaries Public of British Columbia.
- 1.05 "Client" includes a person or a body of persons corporate or incorporate, on whose behalf a Member received money to be held in trust for the client or a third party in connection with the Member's practice.
- 1.06 "Completion of Registration", for the purposes of these Rules only, means evidence that a satisfactory post-filing index search has been made in Land Title Registry or that a registration number has been granted by the Manufactured Home Registry or the Personal Property Registry or any other public agency.
- 1.07 "Money" means and includes currency, government or bank notes, cheques, orders drawn on a credit union, drafts, post office, express or bank money orders and negotiable securities.
- 1.08 "Rule" means a rule made by the **Board** under the authority of *Section 55 (2)* of the *Act*, the **Constitution** or the **Bylaws** of the Society.
- 1.09 "Trust Account" means a trust account maintained by a Member with an **accredited financial institution** under *Section 23(2)* of the *Act* for monies received in trust.



## 2. MEMBERSHIP<sup>1</sup>

- 2.01 Admission to Membership shall be subject to the **Membership and Credential Rules and Policy Guidelines**, approved by the **Board** and published by the Membership Committee.
- 2.02 **REPEALED**<sup>i</sup>
- 2.03 Every Member shall in the public interest actively and independently pursue the Member's profession and maintain an office accessible to the public during reasonable business hours, always bearing in mind that the Member was commissioned as a Notary Public to serve the public. Members who have been classified as Roving Members are exempt from this requirement; however, such Members are subject to the conditions of Roving Member status.
- 2.04 **REPEALED**<sup>ii</sup>
- 2.05 **REPEALED**<sup>iii</sup>
- 2.06 **REPEALED**<sup>iv</sup>
- 2.07 **REPEALED**<sup>v</sup>
- 2.08 No Member shall resign from the Society without the consent of the **Board**, which may attach conditions to the granting of its consent.
- 2.09 Every Member, upon attaining the age of 70 years may be required to participate in and pass a refresher course, as prescribed by the Society.
- 2.10 **REPEALED**<sup>vi</sup>
- 2.11 **REPEALED**<sup>vii</sup>
- 2.12 To ensure the reliability of the register of Members kept by the Secretariat, each Member shall forthwith advise the Secretary of any change of business address and contact information.<sup>2</sup>
- 2.13 **REPEALED**<sup>viii</sup>

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<sup>1</sup> Section revised January 2008

<sup>2</sup> Section 2.12 wording revised, as approved by the Board on July 24, 2009 at the recommendation of the Legislation & Bylaws Committee.

2.14 Any Member shall after resignation, and upon payment of an annual fee to be set by the **Board** from time to time, be entitled to be placed on the "Retired Members' Roll" and to be known as "Associate Member".<sup>3</sup>

Associate Members shall be entitled to all the privileges of other Members of the Society, save the right to vote or to hold office, or to carry on a notarial practice and shall be exempt from the obligation to pay other regular dues, fees and assessments.

2.15 **MANDATORY EDUCATION**

A. Education Credits

To maintain Membership in good standing in The Society in each practice year, a Member must complete qualified continuing education as follows:

	Total Number of Credits of Qualified Continuing Education and Training
Members with 5 years* of practice experience or less	12 credits
Members with greater than 5 years* of practice experience	9 credits
Members enrolled as Roving Notaries	6 credits

\* Based on date of commission

**Education programs or courses such as the following will qualify for credit:**

- a) Spring Seminar programs;
- b) Fall Seminar programs;
- c) Other Education programs sponsored by the Society;
- d) Courses and programs offered by Continuing Legal Education Society;
- e) Dye & Durham programs and courses;
- f) Technology courses offered by community colleges; private training centres such as Adobe, Word, Windows and Outlook; and other Data Management software and programming courses;
- g) Accounting courses and programs;
- h) Management courses and programs; and
- i) Marketing courses and programs.

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<sup>3</sup> Rule 2.14 revised by deleting “who attains the age of 65 years or who has been a Member of the Society in good standing for not less than 10 consecutive years (April 8, 2011)



## NOTES

- a) Up to 4 credits will be granted for any Member presenting to notarial students or at a Notary-sponsored seminar;
- b) The Secretary or his/her delegate will determine the courses and programs that qualify for credit and the number of credits that will be awarded a qualifying course or program;
- c) The Member shall be responsible for keeping an adequate record of his/her credits and for submitting his/her accredited education courses to the Society; and
- d) Education credits must be earned and reported to the Society annually during the Membership year of July 1<sup>st</sup> to June 30<sup>th</sup>.

### B. Continuing Education Requirements<sup>4</sup>

A Member who fails to comply with the continuing education requirements as set out herein, will be considered to be in compliance if the Notary does all of the following on or before March 1<sup>st</sup> of the following year:

1. Complete the remainder of the required number of education credits;
2. Provides the Executive Director with the required proof of completion; and
3. Pays a late fee in the amount of \$225.00

#### Note:

*Required mandatory education credits completed before March 1<sup>st</sup> that are applied to the requirement for the previous year, cannot be applied toward the requirement for the calendar year in which they are completed.*

### C. Failure to Complete Professional Development<sup>5</sup>

A BC Notary who fails to comply by March 1<sup>st</sup> of the following year, is suspended until all required education credits are completed.

The Executive Director must provide:

- 60 days' notice to the Notary of the date on which the suspension will take effect;
- Reason(s) for the suspension; and
- the required number of education credits for the Notary to be reinstated.

Under special circumstances, the Executive Director or his/her delegate may at his/her discretion order the Notary not be suspended or a suspension be delayed for a specified period of time.

The appeal provisions set out in *Rule 15* will apply.

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<sup>4</sup> New section added, as approved by the Board on July 24, 2009 at the recommendation of the Legislation & Bylaws Committee.

<sup>5</sup> New section added, as approved by the Board on July 24, 2009 at the recommendation of the Legislation & Bylaws Committee.



### 3. NOTARIAL CHAPTERS

- 3.01 The **Board** may establish Chapters of the Society in areas of the Province as they see fit from time to time.
- 3.02 Each Chapter shall have a Chair and Secretary/Treasurer elected as hereinafter provided and shall perform such duties as are hereinafter set forth.
- 3.03 The Chair and Secretary/Treasurer shall be elected for each Chapter for a two-year term of office commencing on the first day of July in each odd numbered year.
- 3.04 **CHAPTER MEMBERSHIP**
- (a) Every Member having a primary registered address within a Chapter area shall be a Member of that Chapter; and
  - (b) If in addition to being a Member of the Chapter area where the Member has an office address registered with the Society; and the Member chooses to belong to any other Chapter, then the Member must also pay the annual Chapter dues, if any, for that Chapter.<sup>6</sup>
- 3.05 **THE CHAIR AND SECRETARY/TREASURER OF A CHAPTER SHALL:**
- (a) encourage and co-ordinate the dissemination of educational material to Chapter Members;
  - (b) develop and maintain liaison with local Professional organizations;
  - (c) encourage and promote the development of professionalism within the Society; and
  - (d) make recommendations to the **Board** on any subject of local or provincial interest.
- 3.06 **FINANCIAL AFFAIRS OF CHAPTERS**
- (a) The fiscal year of each Chapter shall coincide with that of the Society;
  - (b) Every Member of a Chapter shall pay such Chapter annual dues as may be determined by the **Chapter**;
  - (c) Annual dues shall be collected as provided for in **Section 4** of the **Bylaws** of the Society; and
  - (d) Chapter dues collected from Chapter Members shall be used for the maintenance of the Chapter and to pay for its work.

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<sup>6</sup> Rule 3.04(b) revised to add ``where a Member has an office address registered with the Society``, as approved by the Board on April 8, 2011.

3.07 **OPERATION OF CHAPTERS**

- (a) The **Board** may prescribe such policies, not inconsistent with these **Rules**, relating to the establishment and functioning of the Chapters as it deems expedient; and
- (b) Chapters shall comply with these **Rules** and with such Policies as may be prescribed by the **Board** from time to time.

**4. TRUST ACCOUNTS**<sup>7</sup>

- 4.01 Every Member shall keep, in connection with the Member's notarial practice, records showing and readily distinguishing:
- (a) all **money** received for and/or paid on behalf of others and the true balance of **money** held on behalf of others at any given time; and
  - (b) **money** received and paid on the Member's own behalf.
- 4.02 Every Member with the exception of a Roving Notary<sup>8</sup> and a Member who provides notarial services exclusively as an employee of a notarial corporation or Notary Member<sup>9</sup>, shall maintain at least one **trust account** with an **accredited financial institution** and so designated in the records of the Member and the institution. Each Member shall:
- (a) within one month of opening a **trust account** that will contain trust funds received from more than one **client**, inform the Society in writing that said account has been opened;
  - (b) in compliance with *Section 54(3)* of the *Act*, instruct the financial institution to pay interest to The Notary Foundation on such **trust account** by providing the institution with an authorisation letter of direction in the form supplied by the Society; and
  - (c) file an annual report with each bank or trust company for each "pooled" **trust account** maintained by the Member in accordance with *Section 3(3)* of the Schedules to the *Canada Deposit Insurance Act* so that each **client's** funds, rather than the account itself, are insured up to the limit of CDIC Insurance.
- 4.03 No Member shall deposit **money** in excess of \$2,500.00 received in trust in a general **trust account** unless such **money** consists of guaranteed institutional draft(s), electronic transfer of funds by the financial institution, certified cheque(s)<sup>10</sup>; or trust cheque(s) issued by a notary, solicitor or licensed real estate agent.<sup>ix</sup>

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<sup>7</sup> Rule 4 revised in 2005 and 2006

<sup>8</sup> Rule 4.02 was revised by the Bylaws Committee in September 2010 to include "with the exception of a Roving Notary".

<sup>9</sup> As approved by the Board on February 4<sup>th</sup>, 2011, Rule 4.02 was revised to add "*and a Member who provides notarial services exclusively as an employee of a notarial corporation or Notary Member*,"

<sup>10</sup> Cheques certified by Members themselves. Rule 4.03 was revised on May 7, 2010 by the Legislation & Bylaws Committee and approved by the Board of Directors on July 23, 2010.



- 4.04 Cheques or drafts given to a Member in trust shall not be endorsed by the Member and passed on to a third party but must clear through the Member's **trust account**.
- 4.05 With the exception of mortgage funds received on behalf of others which cannot be deposited until after completion, every Member shall, not later than the next banking day following receipt, pay into the Member's **trust account**:
- (a) all **monies** received on behalf of others; and
  - (b) **money**, a part of which belongs to others and is held on behalf of others and part of which belongs to the Member.<sup>11</sup>
- 4.06 Every Member shall ensure that each trust transaction required to be recorded in the Member's trust books, records and accounts shall be promptly entered and properly posted therein and in any event not later than one week after the date of the transaction.
- 4.07 All cheques drawn on a Member's **trust account** shall be signed by the Member, or by a person appointed under a Power of Attorney or Representation Agreement, provided that such person is a Member in good standing of The Society of Notaries Public of British Columbia or The Law Society of British Columbia. A facsimile or rubber stamp signature of a Member is not permitted on **trust account** cheques.
- A Notary may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer using the Electronic Filing System of the Land Title Branch for the purpose of the payment of Property Transfer Tax on behalf of a client.
- 4.08 All cheques drawn on a Member's **trust account** shall be clearly marked: "**trust account**". Such cheques, other than for fees or commissions, payable to a notary or a solicitor, shall be made out to the payee "in trust". All Trust account Bank Statements shall be clearly marked "trust account".
- 4.09 **No money** shall be withdrawn from a Member's **trust account** except:
- (a) **money** payable to a **client** or to be paid on behalf of a **client** to a third party from funds on deposit in the Member's **trust account** to the **client's** credit;
  - (b) **money** required to pay the Member for services rendered to the Member's **client** or to reimburse the Member for disbursements made on behalf of a **client**;
  - (c) **money** paid into the **trust account** by mistake; and
  - (d) The Notary must retain in their files and their accounting records a printed or electronic copy of the following:<sup>12</sup>
    - (i) The electronic Payment Authorization form or forms submitted to the Electronic Filing System;
    - (ii) the Property Transfer Tax return;
    - (iii) the transaction receipt provided by the Electronic Filing system; and

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<sup>11</sup>Rule 4.05 was revised by the Legislation & Bylaws Committee and approved by the Board of Directors on July 23, 2010.

<sup>12</sup>Rule 4.09(d) amended to include "electronic" copy, as approved by the Board of Directors on July 23, 2010



- (iv) digitally sign the property transfer tax return in accordance with the requirements of the electronic filing system verify that the money was drawn from the trust account as specified in the property transfer tax return in accordance with *Rule 4.07*.

- 4.10 A Member, when paying **money** for services rendered on behalf of a **client** from the Member's **trust account** to the Member's operating account, must identify each client and each file in the Member's records prior to paying such funds from trust.
  - (a) A Member must transfer money received for services rendered on behalf of a client from their trust account to the Member's operating account no later than 60 days from the completion date of the transaction; and
  - (b) A Member may operate a "float account" in the Member's name in a pooled trust account in an amount not to exceed \$500.00.<sup>13</sup>
- 4.11 No Member shall withdraw funds from the Member's **trust account** in connection with matters requiring registration in a Land Title Registry, the Manufactured Home Registry, the Personal Property Registry, or any other public registry before **completion of registration** unless otherwise authorised in writing by the Member's **client**.

A client's signature on the property transfer tax return or such other authorization by the Notary's client to submit the Property Transfer Tax electronically shall be considered sufficient authority to meet the requirements of this section.

- 4.12 No Member shall withdraw money from the Member's **trust account** for fees earned, unless a bill for such fee has been delivered to the **client**, and subject to *Rule 4.11*. The delivery to and the acknowledgement by the **client**, of a statement of adjustments shall be deemed evidence that a proper account has been rendered.
- 4.13 A Member shall at all times maintain on deposit in the Member's **trust account** sufficient funds to meet the gross trust liability in respect of trust funds deposited in that account. If a Member, for any reason, is unable to maintain sufficient funds to meet the gross trust liability, the Member must notify the Secretary of the Society within five (5) days of becoming aware of such shortage.
- 4.14 A Member shall, at least once in every calendar month, reconcile the gross trust liability in respect of trust funds with the funds on deposit in each **trust account** operated by the Member. **Trust account** reconciliation records shall be kept for a minimum of three years.

Errors discovered must be corrected on a timely basis and no later than the next reconciliation period.<sup>14</sup>
- 4.15 Every Member negotiating a transaction in which trust funds are involved shall pay such funds into the Member's notarial **trust account**.

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<sup>13</sup> Rule 4.10(b) revised October 2006

<sup>14</sup> Rule 4.14 was revised to add second paragraph, as approved by the Board of Directors on February 4, 2011.



- 4.16 A Member who discovers a **client** trust shortage shall immediately pay funds into the account sufficient to eliminate the shortage, and where the trust shortage is greater than \$5,000.00, the Member shall immediately report the shortage and the circumstances surrounding it to the Secretary in writing.
- 4.17 A Member who discovers that the Member is or will be unable to deliver, when due, any trust funds held by the Member, shall immediately report that fact and the reasons for it to the Secretary in writing.
- 4.18 A Member who makes or authorizes the transfer of funds from a pooled **trust account** to a separate **trust account** shall ensure that the transfer is authorized in writing, signed by the Member, and further, a Member who makes or authorizes the withdrawal of funds from a separate **trust account**, shall do so by transferring the funds into the Member's pooled **trust account**.

All interest that has been earned while a client's funds have been invested in a separate interest bearing trust account must be recorded prior to the Member transferring the funds into the Member's pooled trust account.

- 4.19 All accounts paid out of general funds that are charged to **clients** as "disbursements" represent trust funds, and must be paid currently. "Disbursements", for the purpose of this rule, include the following, but are not limited to: title agent's fees, Land Title Office fees or any other Registry fees or service provider fees, courier fees, Harmonized Sales Tax<sup>15</sup>, Land Title Surveyor fees, and Trust Administration Fee. Any undue delay in payment shall be considered a misuse of trust funds.
- 4.20 A Member who has held funds in a **trust account** on behalf of a **client** whom the Member has been unable to locate for two years may pay those funds to the Society together with the following information:
- (a) full name and last known mailing address of each person on whose behalf the funds were held;
  - (b) the exact amount being paid to the Society in respect of each said person;
  - (c) the efforts made by the Member to locate each said person;
  - (d) any unfulfilled undertakings given by the Member in relation to the funds;
  - (e) the details of the transaction in respect of which the funds were deposited with the Member; and
  - (f) copies of records within the Member's possession that relate to the ownership and source of the funds.

If any of the information is unavailable, the Member shall provide reasons therefore.

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<sup>15</sup> The Harmonized Sales Tax (HST taking into effect July 1, 2010 replacing Provincial Sales Tax and Goods & Services Tax)



- 4.21 All powers accorded to the **Board** in the *Act* and the **Bylaws** concerning the auditing of a Member's trust books and accounts and the dispositions and payment of costs connected therewith and arising therefrom are also the powers of the Discipline Committee. Without restricting the generality of the foregoing, the **Board** or the Discipline Committee acting on their own motion or upon a written complaint lodged with the Secretary may at any time require an investigation to be made by:
- (a) a chartered accountant;
  - (b) a certified general accountant; or
  - (c) the Secretary or an agent of the Secretary designated by the **Board** or the Discipline Committee
- of the trust books and accounts of any Member for the purpose of ascertaining and reporting whether the provisions of the *Act*, the **Bylaws** or the **Rules** of the Society are being or have been complied with by the Member. The Member shall produce without delay to the investigating person all trust books, records, and other information required for the purpose of such audit.
- 4.22 When it is established by the auditor or other person employed by the Society that a Member's books, records and accounts concerning the Member's **trust account(s)** were not kept as required by the *Act*, and the **Rules** made thereunder, the Member audited shall bear the cost of such audit, which shall be paid to the Society within 30 days after having received the assessment notice and the Society's request for payment.
- 4.23 Every Member shall deliver to the Secretary, not later than 30 days after receipt from the Society office, the Self-Audit Report form provided by the Society Office, which form shall be completed as required thereon.
- 4.24 Every Member shall provide the Auditor employed by the Society with all account records and all accounting information requested by such Auditor at the office of the Member within seven (7) days of such request.
- 4.25 The Audit Committee shall, following a review of the reports received, when such reports note contraventions of the Act, the Bylaws or Rules:
- (a) accept the Member's explanation and reasons, in which case the Member shall be deemed to have complied with *Rule 4.23*;
  - (b) accept the Member's explanation and reasons subject to the Member fulfilling conditions specified by the Audit Committee in which case, the Member shall, upon fulfilment of these conditions, be deemed to have complied with *Rule 4.23*; or
  - (c) pass the unacceptable **Self-Audit Report or Deficiency Report** together with any explanatory letter on to the Discipline Committee for further action.



- 4.26 If a **Self-Audit Report**, except in cases where an extension has been fully granted, is not received by the Secretary by the due date, the Member shall be subject to a fine under *Rule 9* and shall stand suspended if the **Self-Audit Report** is not filed by due date, or if the Member fails to pay the assessed fine within thirty (30) days of having been assessed. Membership shall be deemed terminated if the Member's failure to file and/or pay the relevant fine continues beyond June 1st.
- 4.27 Every Member shall deliver to the Secretary a completed **Trust Administration Fee Remittance Form** on or before the last day of the month following the month of remittance declaring the total number of trust transactions on which they received funds or will be directing funds to the client.

Members are to keep a list of each trust transaction, which must be made available for audit purposes.

A trust transaction means any file where the Notary has been retained to act for a client and has received funds from the client to complete such transaction or will be directing funds to the client.

Such transaction includes but is not limited to the following:

- (a) conveyance transaction acting for a buyer;
- (b) conveyance transaction acting for a seller;
- (c) conveyance transaction involving a mortgage refinance; and
- (d) any other transaction that involves the receipt of funds to be “held in trust.”

In unusual and individual cases, a Member may apply to the Secretary to decide if a particular transaction qualifies as a trust transaction.

The Trust Administration Fee is \$10.00 per individual trust transaction. Only one Trust Administration Fee is payable if:

- (i) the Notary acts for joint clients in a single transaction; and
- (ii) more than one Notary in a partnership or firm is involved in the same file.

A Member who does not remit the Trust Administration Fee and/or file the Trust File Administration Fee Report and Remittance Form within the prescribed period shall be subject to *Rule 9*.

A Member must record the Trust Administration Fee in accordance with *Rule 4.01*.

- 4.28 When a Member has been audited by the Society’s auditors and if he/she receives a report indicating that a re-inspection is required, the Member shall be responsible for all the costs of such re-inspection, payable upon receipt of invoice from the Society.<sup>16</sup>

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<sup>16</sup> New Rule 4.28 added, as approved by the Board on July 24, 2009 at the recommendation of the Legislation & Bylaws Committee. The use of “full” and “mini” re-inspections has been discontinued, as approved by the Audit Committee at their meeting on February 2, 2010.



## 5. BANKRUPTCY AND JUDGEMENTS

- 5.01 Upon the happening of any of the following events, a Member shall forthwith notify the Secretary of the Society:
- (a) the service of a Petition in Bankruptcy upon a Member;
  - (b) the filing of an Assignment in Bankruptcy by a Member;
  - (c) the presentation of a Proposal in Bankruptcy by a Member; and
  - (d) an Application for a Consolidation Order or Orderly Payment of Debts of a Member; and in each case, such Member shall provide to the Secretary all materials and information relevant to such proceeding. Failure by a Member to provide this notification within seven (7) days of such event shall be deemed conduct unbecoming a Member of the Society.
- 5.02 The Member shall be cited and suspended by the Discipline Committee unless leave to continue practice has been obtained from the Discipline Committee prior to the happening of the event. Suspension shall continue until such leave is obtained.
- 5.03 An application to obtain leave to continue practice may be made at any time prior to, or after, the commencement of any of the above proceedings, and the Member may appear personally or with counsel and show cause why he/she should not be suspended or continue to be suspended, as the case may be. A Member shall provide to the Society any and all information and material related to the proceedings, including financial statements, records and witnesses, if deemed to be appropriate by the Discipline Committee.
- 5.04 The Discipline Committee shall forthwith, upon such notification to the Society, order an Audit of the Member's Trust Account or Accounts and, as well as investigating his/her trust liabilities, shall instruct the auditor to segregate trust holdings and personal holdings in order to expedite "unfreezing" by the Trustee.
- 5.05 (a) Where an application to obtain leave to continue in practice is made prior to, or in anticipation of, such proceedings, the Member shall attend before a Special Committee of the Society. The Special Committee shall investigate and report the circumstances to the Discipline Committee, which may, in appropriate circumstances, decide that the Member shall not be suspended upon the occurrence of any of the said proceedings under the *Bankruptcy Act*.
- (b) Where an application to obtain leave to continue in practice is made after such proceedings have commenced and upon hearing the application, the Discipline Committee may continue, terminate or postpone suspension of the Member upon such terms and conditions with respect to the practice of the Member as the Committee may deem advisable.
- 5.06 Any order made by the Discipline Committee may continue in effect before, during, or after any disposition of the affairs of the Member pursuant to the provisions of the said Act.



- 5.07 Notwithstanding the foregoing, every Member shall notify the Secretary of the Society immediately upon the entry of any judgement or judgements against him/her remaining unpaid, whether any appeal has been entered or not.
- 5.08 Not for the purpose of Rule 5.07, "Member" shall include an applicant for Membership.
- 5.09 The Secretary shall give notice to every Member upon the happening of any of the events under *Rule 5.01* unless otherwise ordered by the Discipline Committee.
- 5.10 No undischarged bankrupt shall be eligible to be a Director of the Society.

## 6. SPECIAL FUND<sup>17</sup>

- 6.01 Any person claiming under Section 20 of the *Act* shall file with the Secretary of the Society a complaint by way of statutory declaration on the form prescribed by the Society. The Complainant shall deliver to the Secretary such reasonable evidence as the **Board** may deem necessary.
- 6.02 Upon having received the complaint form and statutory declaration, the Secretary shall forthwith report to the Insurance Committee, which shall, without delay, decide whether or not the complaint warrants an inquiry.
- 6.03 If the Insurance Committee decides that a complaint does not warrant an inquiry, it shall report its decision to the **Board** and if the decision is confirmed by the **Board**, the Secretary shall notify the complainant accordingly and no further action shall be taken.
- 6.04 If the Insurance Committee decides that a complaint warrants an inquiry, it shall proceed to inquire whether a Member has been guilty of any misappropriation or wrongful conversion by the Member of **money** or other property entrusted to the Member or received by the Member in the capacity as a Notary.
- 6.05 If the Insurance Committee finds that there has been a misappropriation or wrongful conversion, the Insurance Committee shall further inquire whether or not the complainant who claims upon the special fund has sustained pecuniary loss by reason of such misappropriation or wrongful conversion. The findings of the Insurance Committee shall upon conclusion of each inquiry be reported to the **Board**.
- 6.06 If upon receiving such report of the Insurance Committee, the **Board** decides to reimburse the complainant from the special fund, either in whole or in part, such complainant may, as a condition of such reimbursement, be required to assign to the Society the whole or any part of his/her claim against the Member.

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<sup>17</sup> Rule 6 revised to replace all references to Discipline Committee with Insurance Committee as approved by the Board of Directors on July 24, 2009 at the recommendation of the Legislation & Bylaws Committee.

- 6.07 Where a complainant has chosen to take action in a court of law, the Society shall make no payment out of the special fund until the court has made an order.
- 6.08 Any person claiming under Section 20 of the *Act*, may be required by the **Board** to obtain or furnish to them, as a condition of reimbursement, evidence of judgement obtained.
- 6.09 Any judgement obtained by a claimant must be assigned, in whole or in part, as the **Board** sees fit to request, to the Society before any payment may be made out of the special fund of the Society.
- 6.10 No monies shall be paid from the special fund for interest accrued to or any costs incurred by the claimant, except in exceptional circumstances where the **Board** deems such payment advisable.
- 6.11 No payment out of the special fund shall be made until the time for appealing from any disciplinary action of the **Board** in respect of such misappropriation or wrongful conversion has elapsed or, if an appeal has been so taken, until the appeal is dismissed.
- 6.12 Where a payment is made out of the special fund, the Secretary shall:
- (a) turn information in the case over to the local police authorities or crown counsel in the area where the offence occurred; and
  - (b) unless it has already been done, arrange for the laying of information against the Member under the appropriate provisions of the Criminal Code of Canada, save where the **Board** otherwise directs.
- 6.13 If, in any proceedings under this section, the Insurance Committee or the **Board** fails to arrive at a conclusion, the Society shall take no action but shall recommend that the complainant seek a declaratory judgement from the court.
- 6.14 All payments to be made to the special fund by Members under the assessment provisions of the *Act* [20(2)] shall become due and payable within thirty (30) days after due notice to pay the assessment has been given by the Secretary.

## **7. LIABILITY INSURANCE**

- 7.01 Every Member shall participate in the Society's liability (Errors & Omissions) group insurance plan by subscribing to the scheme of coverage approved by the **Board**.
- 7.02 Every Member so covered shall:
- a) pay within thirty (30) days any deductible that may arise as the result of a claim;
  - b) provide the Letter of Guarantee/Credit required by the **Board**; and
  - c) pay the professional liability plan fee on the due date(s) shown on the renewal notice, which shall not be less than thirty (30) days after the date this notice has been mailed or sent by courier from the Secretariat to the registered office of the Member, which is deemed to be the date on the said notice.



- 7.03 Notwithstanding any other provisions of the *Act* or these **Rules**, if any Member fails to comply with any one of *Rules 4.22, 4.23, 6.14, 7.02 or 9.01*, the Member shall stand suspended thirty (30) days after default. If the Member's failure to comply with the above Rules continues for a period of thirty (30) days commencing from the date of suspension, the Member shall cease to be a Member unless the **Board** directs otherwise.
- 7.04 Every Member shall give to the Secretary immediate notice in writing of:
- (a) any Summons, Writ, Statement of Claim or Small Claim Court Notice served upon the Member; and
  - (b) any proceeding, event or development which, in the reasonable judgement of the Member, might result in a claim against the Member's professional liability (E & O) coverage or the Special Fund of the Society.
- 7.05 Every Member shall provide to the Secretary copies of all documents received by the Member in connection with the happenings cited under *Rule 7.04 (a) and (b)* and any further information or documents deemed necessary by the Secretary.
- 7.06 Every Member shall be deemed to have authorised the Insurance Committee and/or claims manager to correspond directly with the Secretary and to disclose fully any claims against such Member's insurance to the Secretary.

## 8. DISCIPLINE

- 8.01 When a complaint is made against a Member alleging unprofessional conduct, incompetence, negligence or fraud, the complaint shall be made in writing to the Secretary who shall conduct a preliminary investigation. When and if the Secretary comes to the conclusion that the complaint has substance, the complainant may be asked, at the discretion of the Secretary and/or the Chair of the Discipline Committee, to provide a statutory declaration stating that the nature of the complaint is true in substance and in fact.
- 8.02 The Secretary shall send a copy of the complaint and the statutory declaration, if any, to the registered address of the Member against whom the complaint has been made. The Member shall reply to the complaint in writing to the Secretary within two weeks after the date of the mailing of the complaint from the office of the Secretary. At the discretion of the Secretary, and/or the Chair of the Discipline Committee, a copy of the Member's reply may be provided to the complainant.
- 8.03 The Secretary shall then lay the complaint and reply (if any) before the Discipline Committee, which shall further inquire into the complaint under the provisions of the *Act*.



## 9. FINES

- 9.01 A Member who contravenes any provisions of the *Act*, the **Bylaws** or **Rules** of the Society regarding payment of annual dues, assessments concerning the special fund or professional liability fund, or fines assessed, or fails to file a **Self-Audit Report** or a statutory declaration in lieu of **Self-Audit Report** is deemed to be guilty under *Section 28 (1)(d)* of the *Act*. Such Member shall be liable to a fine of \$100.00 for late payment or late filing, and in addition thereto, such Member shall pay a further fine of \$50.00 per diem until payment is made or the required **Self-Audit Report**, or a proper statutory declaration in lieu of **Self-Audit Report**, is filed or until the Member stands suspended under the provisions of *Rule 7.03*.
- 9.02 Notwithstanding *Rule 9.01*, the **Board** may at any time reinstate a Member suspended for any reason upon:
- a) payment by the Member of all arrears and, if applicable, delivery of the Member's **Self-Audit Report** or statutory declaration in lieu of **Self-Audit Report**;
  - b) Member's compliance with whatever terms or conditions the **Board** may impose; and
  - c) payment of the sum of \$750.00 to the Society upon reinstatement.
- 9.03 The Board shall have the power to waive assessment or fines where the circumstances permit.

## 10. UNDERTAKINGS

- 10.01 An undertaking is a written or implied absolute and irrevocable covenant and commitment to act without fail upon certain circumstances, facts, deeds or evidence. [Except in the most unusual and unforeseen circumstances (such as alleged fraud) the justification for which rests upon the Member.]
- 10.02 A Member is personally responsible for undertakings given and for the breach of any undertaking given by them, notwithstanding that the Member may carry on practice under a name that does not set out the Member's name specifically. An undertaking given by a Member can be released or altered only by the recipient of that undertaking. Consent to amend must be received in writing.
- 10.03 A Member giving an uncertified trust cheque is undertaking that such cheque will be paid by the Member.
- 10.04 In general, where a Member acting for a purchaser of real property accepts the purchase money in trust and receives a registerable conveyance from the vendor or the vendor's agent in favour of the Member's client as contemplated by the parties, then the Member is deemed to have undertaken to pay unconditionally the purchase **money** to the vendor or the vendor's agent upon **completion of registration**.

- 10.05 Notwithstanding *Rule 10.04*, when the parties have agreed in writing on a certain condition precedent the Member may withhold all or part of trust funds until advised by both parties that they have removed the subject clause or the Member's **client** advises that the condition is waived.<sup>18</sup>
- 10.06 Notary must deliver to the Secretary within five (5) business days a report in a form approved by the Board of Directors when the Notary delivers funds to:
- (a) a lender to obtain a registerable discharge of mortgage, or
  - (b) another Notary or a lawyer on the undertaking of the lawyer or other Notary to obtain and register a discharge of mortgage; and if 60 days after the closing date of the transaction giving rise to the delivery of such funds, the Notary has not received:
    - i. a registerable discharge of mortgage from the lender, or
    - ii. satisfactory evidence of the filing of a registerable discharge of mortgage as a pending application in the appropriate land title office from the other Notary or the lawyer.<sup>19</sup>
  - (c) An entry on the mortgage discharge centre within the specified time period is deemed to be in compliance with this Rule.<sup>20</sup>

## **11. PROFESSIONAL CONDUCT**<sup>21</sup>

### 11.01 GENERAL DUTY TO CLIENT

Every Member owes a duty to a client to represent that client competently and with undivided loyalty to the client. Consistent with those duties, a Member shall not act or continue to act for a client in relation to a matter:

- (a) which is beyond the lawful practice of a Notary Public or outside the competence of the Member; or
- (b) when there is or is likely to be a conflicting interest unless, after disclosure adequate to make an informed decision, the client or prospective client consents.

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<sup>18</sup> Rule 10.05 revised October 2006

<sup>19</sup> Rule 10.06(b)ii revised March 2005

<sup>20</sup> Rule 10.06 – this section added as approved by the Board on April 8, 2011

<sup>21</sup> Rule 11 rescinded and replaced with `Professional Conduct`, as approved by the Board on April 8, 2011. Copy of the repealed section is not reflected in this document but will be provided to Notary Members upon request.



## 11.02 CONFLICT OF INTEREST DEFINED

In this Rule, the terms “conflict of interest” and “conflicting interest” mean an interest:

- (a) that would reasonably be expected to adversely affect the Member’s judgement on behalf of, or undivided loyalty to, a client or prospective client; or
- (b) that a Member might reasonably be expected to prefer to the interests of a client or prospective client.

## 11.03 ACTING FOR MULTIPLE CLIENTS

Except as otherwise provided in this Rule, no Member shall act or continue to act for more than one party where there is or might reasonably be a conflict of interest between any of the parties for whom the Member acts.

## 11.04 Acting for more than One Party to a Conveyance Transaction

- (a) Where a Member is asked to act for more than one party with different interests in a conveyance transaction, the Member shall recommend that each party have independent representation;
- (b) If, after being advised to obtain independent representation, such parties continue to request that the Member represent two or more of them jointly, the Member may act for two or more such parties jointly only if:
  - (i) the transaction between vendor and purchaser is a simple conveyance involving only the assumption of one or more existing mortgages or agreements for sale where the vendor has received a release from the lender under the vendor’s covenants, and the payment of the cash balance, if any; the payment of all cash for clear title; the discharge of one or more existing mortgages or agreements for sale, and the payment of the cash balance, if any; or
  - (ii) the transaction is a simple conveyance coupled with a mortgage for an institutional lender such as bank, trust company, life insurance company or credit union; or
  - (iii) the transaction is the transfer of a leasehold interest where there are no changes to the terms of the lease.
- (c) For greater certainty, the exceptions in (b) above do not apply to:
  - (i) the sale and purchase of a business or any conveyance resulting therefrom;
  - (ii) a lease other than as set out above;
  - (iii) a conveyance where there is a mortgage back from the purchaser to the vendor, or an agreement for sale;
  - (iv) an assumption of mortgage or agreement for sale where the vendor has not been released from the personal covenant contained in the document; or
  - (v) circumstances where there is reason to believe that one or more of the parties upon whose behalf the Member is asked to act jointly is incapable of giving informed consent or vulnerable to manipulation or coercion by another party.

11.05 INFORMED CONSENT

- (a) Prior to acting for a client or clients in circumstances in which there is, or might reasonably be, a conflicting interest, the Member shall:
  - (i) fully inform the client or clients of the conflict or potential conflict;
  - (ii) advise the client to obtain independent legal representation or advice;
  - (iii) advise the client how a conflict of interest will be addressed if one arises; and
  - (iv) if the client or clients, fully informed with respect to the matter, still wish to retain the Member, obtain the written acknowledgement and consent of the client or clients.
- (b) Prior to representing more than one client in circumstances addressed in 11.04 or 11.05, the Member shall satisfy the requirements set out in (a) above and, in addition, shall:
  - (i) inform each such party in writing as soon as possible that the Member acts for more than one party and that should a conflict arise which cannot be resolved, the Member cannot act for any party and that no information received in connection with the matter from one can be treated as confidential so far as any of the others is concerned; and
  - (ii) raise all issues which may be of importance to any such party, and explain the effect and consequences of these issues to all parties.

11.06 UNREPRESENTED PARTIES

- (a) Where the Member acts for one or more parties in a matter in which one or more other parties are not represented, the Member shall advise any such unrepresented parties to obtain independent legal advice or representation;
- (b) If any such unrepresented party does not want or refuses to obtain independent representation or advice, the Member may allow the unrepresented party to execute the necessary documents in the Member's presence as a witness or officer if the Member advises the party in writing that:
  - (i) the party should obtain independent representation but has chosen not to do so;
  - (ii) the Member does not act for the party or represent the party with respect to the transaction; and
  - (iii) the Member has not advised the party with respect to the transaction but has only attended to the execution and attestation of the documents.

- (c) If the Member witnesses the execution of the necessary documents as set out in (b) above, it shall not be necessary for the Member to obtain the consent of the other party or parties for whom the Member acts.
- (d) If one party to a conveyance transaction is otherwise unrepresented but wants the Member representing another party to the transaction to act for the party to remove existing encumbrances, the Member may act for the party for those purposes only and may allow the party to execute the necessary conveyance documents in the Member's presence as witness if the Member advised the party in writing that:
  - (i) the party should obtain independent representation but has chosen not to do so;
  - (ii) the Member's engagement is of a limited nature; and
  - (iii) if a conflict of interest arises, the Member will be unable to continue to act for the party.

11.07 FINDER'S FEES

- (a) No Member acting as a Notary shall, when acting for a person introduced by the Member to any financial institution or any investor, accept from such institution or investor a finder's fee or similar remuneration unless the Member:
  - (i) makes full disclosure in writing to the client; or
  - (ii) pays the fee received over to the client or credits the finder's fee received against the Member's own account to the client.
- (b) No Member shall, by receiving or bargaining for compensation from any sources except the Member's client, compromise the Member's undivided loyalty to the client.

11.08 RESTRICTIONS ON PRACTICE

No Member shall engage in:

- (a) the practice of drafting marriage contracts or separation agreements, or witness such documents as a Notary without having successfully completed the appropriate education program as approved by the Board;
- (b) the sale of real estate unless it is in conjunction with the Member's normal practice and the sale of real estate is incidental to the services the Member provides to clients;
- (c) the duties of acting as an executor or administrator of an estate without having successfully completed the appropriate education program as approved by the Board.

## 11.09 SALE OF REAL ESTATE

Where a Member engages in the sale of Real Estate in accordance with 11.08(b),

- (a) An employee of the Member may arrange for maintenance and repairs of any property under the care and control of the Member;
- (b) An employee of the Member may place or remove signs, and other advertising material;
- (c) Any advertising with respect to real estate trading must be in the name of the Member and the name of the Member firm must be included in any advertisement or signs;
- (d) Only the Member's phone number or the firm's phone number may be on the advertisement;
- (e) Only the Member may conduct any open houses; staff and paralegals are not permitted to display or show the client's property;
- (f) An employee can attend at a property in order to unlock it and to let prospective buyers and/or real estate licensees view the property, but they may not show the property to members of the public or communicate any information about the property being accessed.

## 12. SUPERVISION OF EMPLOYEES<sup>22</sup>

### 12.01 Responsibility for All Business Entrusted to a Notary Public

A Notary Public is completely responsible for all business entrusted to him or her. The Notary Public must maintain personal and actual control and management of the Notary Public's office. While tasks and functions may be delegated to staff and assistants such as students, clerks, and legal/notarial assistants, the Notary Public must maintain direct supervision over each non-Notary staff Member.

### 12.02 Matter Requiring Professional Skill and Judgment

A Notary Public must ensure that all matters requiring a Notary Public's professional skill and judgement are dealt with by a Notary Public and that legal advice is not given by unauthorized persons, whether in the name of the Notary Public or otherwise.

### 12.03 Signing Correspondence

Letter on the letterhead of a notarial firm, when signed by a person other than a practising Notary Public, must indicate the status or designation of the signing person for the information of the recipient.

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<sup>22</sup> Rule 12 revised 2007

## 12.04 Legal/Notarial Assistants

1. Many tasks can be performed by a legal/notarial assistant working under the supervision of a Notary Public. It is in the interests of the profession and the public for the delivery of more efficient, comprehensive and better quality legal services that the training and employment of legal/notarial assistants be encouraged.
2. Subject to the rules in this section, a legal/notarial assistant may perform any task delegated and supervised by a Notary Public, but the Notary Public must maintain a direct relationship with the client and the Notary has full professional responsibility for the work.
  - 2.1 Notary Public may delegate tasks or functions to a legal/notarial assistant if:
    - a) the training and experience of the legal/notarial assistant is appropriate to protect the interest of the client; and
    - b) the provision is made for the professional legal judgment from the Notary Public to be exercised whenever it is required.
  - 2.2 A Notary Public must not permit a legal/notarial assistant to:
    - a) perform any function reserved to Notaries Public, including but not limited to giving legal advice;
    - b) give or receive undertakings;
    - c) do anything that a Notary Public is not permitted to do;
    - d) act finally and without reference to the Notary Public in matters involving professional legal judgment; and
    - e) be held out as a Notary Public, or be identified other than as a legal/notarial assistant when communicating with clients, Notaries Public, lawyers, public officials, or with the public generally.
  - 2.3 A Notary Public who employs a legal/notarial assistant must ensure that the assistant is adequately trained and supervised for the tasks and functions delegated to the assistant.

The following are examples of tasks and functions that legal/notarial assistants may perform with proper training and supervision:

- a) Attending to all matters of routine administration;
- b) Drafting or conducting routine correspondence;
- c) Drafting documents, including closing documents and statements of accounts;
- d) Drafting documentation and correspondence relating to security instruments and contracts of all kinds, including closing documents and statements of account;
- e) Collecting information and drafting documents, including Wills;
- f) Attending to registrations;
- g) Researching legal questions; and
- h) Preparing memoranda

The following are examples of tasks and functions to which a Notary Public personally must attend and that legal/notarial assistants must **not** perform. This list illustrates, but does not limit, the general effect of Rule 2.2 above:

- a) Attending on the client to advise;
- b) Taking instruction on all substantive matters;
- c) Reviewing title search reports;
- d) Reviewing documents before signing;
- e) Attending on the client to review documents;
- f) Reviewing and signing the title opinion and/or reporting letter to the client following registration;
- g) Reviewing all written material prepared by the legal/notarial assistant before it leaves the Notary Public's office, other than documents and correspondence relating to routine administration; and
- h) Signing all correspondence except as permitted herein.

## 13. WILLS

The right and power of Members to draw and supervise the execution of Wills is set forth in *Section 18* the *Act*. Every Member shall always bear in mind that a Notary's capacity to draw Wills is limited as provided under the *Act*.

## 14. ADVERTISING<sup>23</sup>

Every Member shall comply with the advertising guidelines published by the **Board** from time to time.

### 14.01 PREAMBLE<sup>24</sup>

All forms of advertising by Members shall meet the following criteria to avoid conflict with the **Code of Ethics**. The *Advertising Guidelines* should be referred to when considering various advertising and promotional endeavours.<sup>x</sup>

It is the duty of every Member to protect the reputation, honour and integrity of our profession. Any form of advertising or promotion by a Member which fails to uphold this duty will result in disciplinary action.

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<sup>23</sup> Rule 14 revised October 2006

<sup>24</sup> Revisions were made to this Section by the Legislation & Bylaws Committee on May 7, 2010 & approved by the Board of Directors on July 23, 2010.

## 14.02 GENERAL ADVERTISING GUIDELINES<sup>25</sup>

- (a) All Members are encouraged to advertise to the public the location(s) of their practice and the fields of work performed;
- (b) Advertising and promotional material should be dignified and truthful. It should not be unethical, misleading<sup>26</sup>, sensational or flamboyant in nature;
- (c) **REPEALED**<sup>xi</sup>
- (d) Members must not describe themselves as an "Expert" in any aspect of their work. Words to indicate preference in certain particular fields, such as "Specializing in Land Transfers" or "Preferred Area of Practice: Land Conveyancing and Wills", are permissible; and<sup>xii</sup>
- (e) Any use of the designation "Notary Public" must be accompanied by the name of the Member (with the exception of exterior signs). Letterheads, brochures, newspaper and telephone advertising shall not contain a reference to a Notary Public without specifically mentioning the Member by name.

When using the Society Seal, the word "Member" must appear beneath the Society Seal.<sup>27</sup>

(A reference such as "Notary Public on premises" is not permissible.). If a Member (or Members) uses a commercial firm name (i.e.: "Westside Notaries") on letterhead, the name(s) of the Member(s) must be clearly set out on the letterhead, and only Members so named or their substitute/temporary (Roving Notary)<sup>28</sup> may sign a letter on that letterhead that contains an undertaking.

## 14.03 SPECIFIC AREAS OF ADVERTISING/PROMOTION

- (a) **Telephone Directory**  
In the "white pages", bold type print is permitted to assist clients searching for your name. The Code of Ethics permits a display advertisement in the "yellow pages" intended to direct clients and advises them of the matters you handle in your practice.
- (b) **Exterior Office Signs**  
Such signs should be professional and dignified and not larger nor more prominent than is reasonably required to direct the public to your place of business.

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<sup>25</sup> Revisions were made to this Section by the Legislation & Bylaws Committee on May 7, 2010 & approved by the Board of Directors on July 23, 2010.

<sup>26</sup> Words "unethical, misleading" were added to Section 14.02(b), as approved by the Legislation & Bylaws Committee on May 7, 2010 & approved by the Board of Directors on July 23, 2010.

<sup>27</sup> This line was added to Section 14.02(e), as approved by the Legislation & Bylaws Committee on May 7, 2010 & approved by the Board of Directors on July 23, 2010.

<sup>28</sup> Reference to "substitute/temporary (Roving Notary) was added, as approved by the Legislation & Bylaws Committee on May 7, 2010.



- (c) **Interior Office Signs/Posters**  
When a Member shares accommodation with another business, promotional material must clearly indicate that a specific person is the Notary Public.
- (d) **“Handouts”**  
(Brochures, pens, calendars, etc.) Dignified and informative material is encouraged with the Notary Public clearly named.
- (e) **"Mail outs"**  
General mailings to a market area are considered unprofessional. ("Householder" mail to a specific postal walk.) Brochures or letters soliciting business from specific potential clients is permitted. Such advertising should follow the general guidelines. Letters to groups such as real estate salesmen or bank managers, encouraging these people to refer their clients to you, must closely follow the general guidelines as these will almost certainly become the object of scrutiny by your fellow notaries and Members of the legal profession.
- (f) **Inducement to do business**  
Any form of advertising or promotion offering "prizes", or any form of payment to a third party to induce such party to encourage people to use the services of a Member is unethical and expressly forbidden.
- (g) **Media Advertising**  
Professional and dignified advertisement in the printed or electronic media following the general guidelines is permitted. Classified newspaper ads should be restricted to the "Professional Services" section. Radio and T.V. spots must be cleared with the secretariat.
- (h) **REPEALED<sup>xiii</sup>**

## 15. **APPEALS**

- 15.01 Where it is alleged that any Committee of the Society or the Secretary has erred in a decision concerning a Member, an Applicant approved in principle, or a Notarial Candidate, an appeal may be made to the **Board** which shall sit as a Board of Review, provided that this appeal process does not apply to decisions involving discipline matters which rights of appeal are set out in *Section 41* of the *Act*.
- 15.02 Any five Members of the **Board** shall constitute a quorum of the Board of Review. A Member of the **Board** who is, or was, a Member of a Committee the decision of which is appealed shall not participate as a Member of the Board of Review on the consideration of the appeal.
- 15.03 The Board of Review has the powers to receive further evidence by oral presentation or by statutory declaration. The Board of Review shall hear and determine the matter in dispute *de novo* and may amend the decision appealed as may seem just.



- 15.04 An appeal arising out of a decision of a Committee or of the Secretary shall be brought within thirty (30) days. The time limit shall be calculated from the date when the decision complained of was announced to the appellant. The Board of Review, in exceptional cases, has power to grant an extension of time.
- 15.05 A notice of appeal shall be served upon the Secretary by the Member by double registered mail or prepaid courier.
- 15.06 The notice of appeal shall set out the grounds of appeal and state the nature of the changes that the appellant desires the Board of Review to make.
- 15.07 The Secretary, upon being served with a Notice of Appeal, shall within a reasonable time, advise the appellant concerning the arrangements made of time and date of the meeting of the Board of Review respecting the appeal in question.
- 15.08 On the appeal, the appellant is entitled to appear, to adduce evidence, and to be heard either in person or by counsel.
- 15.09 In case that an appellant wishes to be represented by counsel, the Member shall notify the Secretary at least twenty-four days prior to the date set for the appeal hearing, to enable the Society to retain their own counsel and to arrange the attendance of an official reporter to be present at the hearing.
- 15.10 The Member shall submit, together with any notice of appearance, a sum of \$750.00 towards the costs of and incident to the appeal. Such sum shall be forfeited to the Society if the appeal is dismissed, but it shall be returned to the appellant if the Member's appeal is allowed.<sup>29</sup>
- 15.11 Where a party appealing from a decision fails to comply with any applicable provisions of this section, the appeal may be dismissed by the Board of Review as abandoned.

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<sup>29</sup> Wording to Section 15.10 was revised, as approved by the Board on July 24, 2009 and presented to the Membership on September 19, 2009.



## 16. INCORPORATION

### 16.01 DEFINITIONS

In this Section,

- (a) “Notary Corporation” means a Company as defined under the *Business Corporations Act*.
- (b) “Secretary” includes a person designated by the Secretary to perform any of the duties assigned to the Secretary in this regard, unless the context indicates otherwise.
- (c) “Permit” means a permit issued by the Secretary to a Notary Corporation under the terms and conditions as defined in the *Notaries Act*, RSBC 1996, c. 334.

### 16.02 CORPORATION NAMES<sup>30</sup>

- A. The form of name must be similar to the Members’ commission certificate and as approved by the Secretary.
- B. A Notary Corporation shall not use a name which:
  - (a) is identical with that under which another Notary Corporation holds a valid permit under this Part;
  - (b) nearly resembles the name of another Notary Corporation which holds a valid permit under this Part that it is likely to confuse or mislead the public; or
  - (c) contravenes *Rule 14* (Advertising).

### 16.03 APPLICATION FOR CERTIFICATE RESPECTING CORPORATE NAME

- (a) Where it is intended to incorporate a Notary Corporation, a Member who intends to practise as a Notary Public on behalf of such Notary Corporation, alone or with others, shall apply to the Society, in a form approved by the **Board**, for certification that the Society does not object to the intended name of the intended Corporation; and
- (b) Upon receipt of an application under **Rule 16.03(a)**, the Secretary shall:
  - (i) issue a Certificate to the Member(s) if the Secretary is satisfied that the intended name complies with **Rule 16.02**; or
  - (ii) reject the application and notify the Member(s) in writing of the decision.

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<sup>30</sup> Housekeeping change made to Section 16.02, as approved by the Board on July 24, 2009.

16.04 REVIEW OF THE SECRETARY'S DECISION

- (a) A Member whose application is rejected under *Rule 16.03(b)(ii)* may apply in writing to the **Board** for a review.
- (b) The **Board** shall, after considering any submissions received from the Member and from the Secretary:
  - (i) direct the Secretary to issue a certificate to the Member if it is satisfied that the intended name complies with *Rule 16.02*; or
  - (ii) reject the application and notify the Member and the Secretary in writing of its decision.

16.05 APPLICATION FOR PERMIT

A Notary Corporation may apply to the Secretary for a permit to carry on the business of providing notarial services to the public by delivering to the Secretary:

- (a) a completed permit application in a form approved by the **Board**;
- (b) a true copy of the Certificate of Incorporation of the Notary Corporation and any other certificates which reflect a change in the name or status; and
- (c) the sum of \$200.00 as a fee for issuance of the permit.

16.06 ISSUANCE OF PERMIT

- (a) The Secretary shall, subject to *Section 58(1)* and *Section 63* of the *Act*, issue to a Notary Corporation which has complied with the *Act*, and these **Rules**, a permit entitling the Notary Corporation to carry on the business of providing Notarial Services to the public.
- (b) Subject to *Rule 16.07(c)* and *(d)*, a permit issued under *Rule 16.07(a)* is valid from the effective date shown on it until the 5th day of July of any given year.
- (c) Notwithstanding *Rule 16.06(b)*, a permit issued to a Notary Corporation ceases to be valid if:
  - (i) it is revoked under *Section 62(1)* of the *Act*; or
  - (ii) a Member of the Society who is a voting shareholder in the Notary Corporation dies or otherwise ceased to be a Member of the Society, and no provision is made in the articles of the Notary Corporation for immediate and automatic disposition of that person's shares in such event; or
  - (iii) another Notary Corporation which is a voting shareholder in the Notary Corporation under the *Business Corporations Act* or ceases to hold a valid permit under the *Act*, and these **Rules**, and no provision is made in the articles of the Notary Corporation for the immediate and automatic disposition of the other Notary Corporation's shares in such event; or
  - (iv) it is surrendered by the Corporation to the Secretary.



## 16.07 CHANGE OF CORPORATE NAME

- (a) A Notary Corporation which intends to change its name shall apply to the Secretary, in a form approved by the Board, for a certificate that the Society does not object to the intended name change of the Notary Corporation.
- (b) *Rules 16.02 to 16.04* apply to an application under *Rule 16.07(a)*, with the necessary changes and as long as they are applicable.
- (c) The Secretary shall issue a new permit to a Notary Corporation which:
  - (i) has received a Certificate that the Society does not object to the intended name change;
  - (ii) has delivered to the Secretary a true copy of the Certificate of the Registrar of Companies showing the change of name and the date it is effective; and
  - (iii) the sum of \$200.00 as a fee for issuance of the permit.
- (d) A permit issued under *Rule 16.07(c)* is subject to *Rule 16.06(c)*, and is valid until the date on which the replaced permit would have expired.

## 16.08 PUBLIC DISCLOSURE OF CORPORATE STATUS

- (a) A Notary Corporation which carries on the business of providing notarial services to the public shall disclose on all letterhead and billings that the notarial services are being provided by a Professional Notary Corporation.
- (b) If a Notary partnership has as a Notary Corporation as a partner and if the sole voting shareholder of that Notary Corporation is identified on the partnership's letterhead or billings, it shall also disclose that the shareholder is providing notarial services on behalf of the Professional Notary Corporation.
- (c) In *Rules 16.08(a) and (b)*, "advertising" means the use of paid space or time in a public medium, or the use of a commercial publication such as a brochure or handbill, to communicate with the general public or a segment thereof, for the purpose of promoting professional services or enhancing the image of the advertiser, in addition to the definitions as provided in *Rule 14.01*.

## 16.09 RENEWAL OF PERMIT

- (a) A Corporation which intends to continue to provide notarial services to the public shall apply to the Secretary for a renewal of the permit;
- (b) A renewal application shall include:
  - (i) a completed permit renewal application in a form approved by the **Board** at the discretion of the Secretary;
  - (ii) the sum of \$200.00 as a fee for issuance of the permit<sup>31</sup>; and

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<sup>31</sup> Section 16.09(b)(ii) fee revised from \$100.00 to \$200.00, as approved by the Board on July 24, 2009.



- (iii) a confirmation by way of providing a search and a date-stamped Annual Report proving that the Notary Corporation is in good standing with the Registrar of Companies. This provision is at the discretion of the Secretary.
- (c) The Secretary shall, subject to *Section 59* of the *Act*, issue to a Notary Corporation which has made application under *Rule 16.09(a)* and complied with the *Act* and these **Rules**, a permit entitling the Notary Corporation to carry on the business of providing notarial services to the public.
- (d) Subject to *Rule 16.09(e)*, a permit renewed under *Rule 16.09(c)* is valid until the 5th day of July of any given year.
- (e) *Rule 16.06(c)* applies to a permit which has been renewed under this section.
- (f) A Notary Corporation that has failed to pay when due the permit renewal fee under *Rule 16.09(b)(ii)*, plus any applicable taxes in respect of the fee, or any portion of it, shall be required to pay a late payment fee of \$50.00.
- (g) Where a Notary Corporation does not pay the permit renewal fee under *Rule 16.09(b)(ii)* by the date it is due, the permit ceases to be valid and the Corporation shall:
  - (i) immediately surrender its permit to the Society;
  - (ii) cease providing Notarial Services to the public, and
  - (iii) pay a \$50.00 fine. If the Notary Corporation does not pay the renewal fee within 15 days of the day that the renewal fee is due, it is liable to an assessment of an additional \$50.00 per day until payment in full is received by the Secretary.
- (h) If, after one year from the expiry of a permit, the Notary Corporation has not been renewed under *Rule 16.09(c)* for any reason, including the failure to pay the prescribed fees, and the permit is revoked, the Secretary shall notify the Registrar of Companies immediately as provided under *Section 62(3)* of the *Act*.
- (i) No permit that has been revoked shall be renewed.

## 16.10 APPLICATION FOR NEW PERMIT AFTER REVOCATION OR FAILURE TO PAY RENEWAL FEE

If a Notary Corporation which has had its permit revoked under *Section 62(3)* of the *Act*, or has been required to surrender its permit under *Section 62(3)* of the *Act* and wishes to obtain a new permit, it shall apply to the Secretary in a form approved by the Board, in which case, *Rules 16.02*, and *16.05* to *16.07* apply, with the necessary changes so far as they are applicable.

16.11 DISCLOSURE OF CORPORATE INFORMATION

All information and documents relating to a Notary Corporation which have been received by the Society under this Part are confidential, and shall not be disclosed to any person except that:

- (a) any such information and documents may be used by the Society for its governing and administering the affairs of the Society;
- (b) the following information may be disclosed upon request to any person:
  - (i) the name of the Corporation;
  - (ii) a Corporation's place of business;
  - (iii) whether a Notary Corporation has a valid permit issued under **Section 58** of the *Act*;
  - (iv) whether a specified Member of the Society is an employee or voting shareholder of a Corporation; and
  - (v) whether a specified Notary Corporation is a voting shareholder of a Notary Corporation.

16.12 NOTIFICATION OF CHANGE IN CORPORATE INFORMATION

The President of a Notary Corporation, or that person's designate shall promptly advise the Secretary in writing of any changes to the Notary Corporation regarding information contained in the permit application or renewal permit application most recently delivered to the Society.

**17. RETENTION OF DOCUMENTS**<sup>32</sup>

Minimum Retention and Disposition Schedule	
Residential Conveyance	10 years after State of Title Certificate received
Commercial Conveyance	10 years after closing (For transactions with greater complexity, a longer retention period is advisable.)
Lease/Sublease/Licence to Occupy	6 years after lease has expired, including any renewal
Foreclosure	6 years after Order Absolute, property sold, judgment satisfied, or instruction received from client to stop proceedings
Option to Purchase/Right of First Refusal	6 years after the options expire or are exercised
Easement/Right-of-Way/Restrictive Covenant	10 years after registration
Review of Title and Opinion	6 years from giving an opinion, unless opinion leads to an action
Mortgage/Debenture	6 years after expiry of mortgage term
Subdivision/Single Plan Strata Development	6 years after completion of the sale of all the property
Phased Strata Development	6 years after completion of the sale of all the property in the final phase
Real Estate Prospectus	6 years after sale of all the property covered by prospectus
Building Contract	6 years after substantial completion
Encroachment Settlement	6 years after settlement
Will Files	10 years from date of probate or 10 years from age 110 if not probated.

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<sup>32</sup> Revised September 2007

**18. PRACTICE INSPECTIONS<sup>33</sup>**

**18.01 PRACTICE INSPECTION COMMITTEE**

The President shall appoint a Practice Inspection Committee consisting of:

- a) a Chair and a Vice-Chair, both of whom must be Directors;
- b) at least one other Director; and
- c) at least one other BC Notary

The Chair of the Discipline Committee may not serve on the Practice Inspection Committee.

**18.02 OBJECTIVES**

The objectives of the Practice Inspection Committee are as follows:

- a) to develop recommended standards of practice for BC Notaries;
- b) to appoint practice inspectors to conduct practice inspections of Members;
- c) to develop and deliver a training program for practice inspectors;
- d) to identify Notaries who do not meet accepted standards of practice; and
- e) to require remedial measures to assist those Notaries in improving their practice standards.

**18.03 BASIS FOR INSPECTION**

The Practice Inspection Committee shall conduct inspections on the following basis:

- a) random inspection of Member practices on a three-year rotation;
- b) newly commissioned Notaries;
- c) as directed by the Executive Director; and
- d) re-inspection, as ordered by the Practice Inspection Committee

**18.04 INSPECTION PROCEDURE**

A Notary whose practice is being inspected under this rule must:

- a) permit the inspection and answer any inquiries;
- b) provide the practice inspector with any information, files, or records in the Notary's possession or power; and
- c) permit the practice inspector to obtain printed or electronic copy of any information as he/she deems necessary.

After completing an inspection, the practice inspector must deliver to the Practice Inspection Committee a written report of his/her findings and recommendations.

Upon receipt of the report, the Executive Director or his staff-designate must provide the Notary with a copy of the report and recommendations.

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<sup>33</sup> Section 18 of this document was added as a new Rule at the approval of the Legislation & Bylaws Committee on May 7, 2010.

The Notary shall have the right to answer the report in writing. A copy of the Notary's response shall form part of the report submitted for review to the Practice Inspection Committee.

The facts of the inspection, a list of the recommendations, and the determination of the Practice Inspection Committee review shall be posted to the Member's database, along with any written reply received from the Member.

#### **18.05 ACTION BY THE PRACTICE INSPECTION COMMITTEE**

After its consideration of a report received under this Rule, the Practice Inspection Committee shall:

- a) accept the report as satisfactory;
- b) identify deficiencies in best practices standards and may request a follow-up inspection within a stated time period;
- c) ask the Secretary to instruct the Member to enrol and to arrange a suitable education plan that will address the deficiencies outlined in the report; and/or
- d) refer the report to the Discipline Committee for review and determination.

#### **18.06 COSTS**

Where the Practice Inspection Committee requests a follow-up inspection of the Member, the Committee may:

- a) order the Notary to pay The Society the cost of follow-up inspection; and
- b) set and extend the date of payment of the inspection

A Notary ordered by the Practice Committee to pay costs must pay those costs in full by the date set or extended by the Committee.

A Notary who has not paid the amount owing by the date set or extended by the Practice Inspection Committee is in breach of these Rules and may be subject to a fine, suspension, or termination of Membership in accordance with *Rule 9*.

#### **18.07 RECORD RETENTION**

The inspection report and any follow-up reports shall be kept in the Member's file for three (3) years. Although the report shall be destroyed after three years, the following information shall be retained as a record in the Member's file:

- 1) the date that the practice inspection review took place;
- 2) the list of the recommendations provided to the Notary at that time; and
- 3) record of remedial action(s) taken by the Member

#### **18.08 APPEAL**

The appeal provisions shall apply, as set out in *Rule 15*.



## 19. REPEALED RULES

<sup>i</sup> **Rule 2.02** *(The following statement was repealed to comply with the new Notaries Act implemented in January 2009 and approved by the Society Board of Directors on July 24, 2009 at the recommendation of the Legislation & Bylaws Committee)*  
Transfer applications of Members from one to another notarial district are subject to the Transfer Guidelines, approved by the **Board** and published by the Membership Committee.

<sup>ii</sup> **Rule 2.04** *(The following statement was repealed to comply with the new Notaries Act implemented in January 2009 and approved by the Society Board of Directors on July 24, 2009 at the recommendation of the Legislation & Bylaws Committee)*  
The Secretary, upon ascertaining that a Member has not actively practised for two years in the Member's notarial district, was not readily available to the public and thus failed to serve the public shall, by registered mail, serve notice on such Member at the Member's registered address, to show cause why the Member's Membership should not be ordered terminated. The respondent shall reply to the Secretary within four weeks from the date of such notice.

<sup>iii</sup> **Rule 2.05** *(The following statement was repealed to comply with the new Notaries Act implemented in January 2009 and approved by the Society Board of Directors on July 24, 2009 at the recommendation of the Legislation & Bylaws Committee)*  
The Secretary shall, four weeks after having given this notice, forward a report on the Member and the circumstances leading to the investigation and the reply from the Member, if any, to the Membership Committee.

<sup>iv</sup> **Rule 2.06** *(The following statement was repealed to comply with the new Notaries Act implemented in January 2009 and approved by the Society Board of Directors on July 24, 2009 at the recommendation of the Legislation & Bylaws Committee)*  
The Membership Committee shall make such further investigation as it thinks necessary.

<sup>v</sup> **Rule 2.07** *(The following statement was repealed to comply with the new Notaries Act implemented in January 2009 and approved by the Society Board of Directors on July 24, 2009 at the recommendation of the Legislation & Bylaws Committee)*  
The Membership Committee shall report its findings to the **Board** together with its recommendations whether or not to order termination of the respondent's Membership.

<sup>vi</sup> **Rule 2.10** *(The following statement was repealed to comply with the new Notaries Act implemented in January 2009 and approved by the Society Board of Directors on July 24, 2009 at the recommendation of the Legislation & Bylaws Committee)*  
To assure a vigorous Membership and to allow active candidates to enter the Society and bearing in mind that the Membership strength of the Society is limited by statute, every Member, upon reaching the age of 75 years, shall retire from office and resign from Membership in the Society as undertaken upon receiving one's commission unless the Member petitions through the Secretary for an extension of Membership.

<sup>vii</sup> **Rule 2.11** *(The following statement was repealed to comply with the new Notaries Act implemented in January 2009 and approved by the Society Board of Directors on July 24, 2009 at the recommendation of the Legislation & Bylaws Committee)*  
The Membership committee shall investigate such petitions and report its findings and recommendations to the **Board**, which may approve or dismiss the petition at its uncontrolled discretion.

<sup>viii</sup> **Rule 2.13** *(The following statement was repealed to comply with the new Notaries Act implemented in January 2009 and approved by the Society Board of Directors on July 24, 2009 at the recommendation of the Legislation & Bylaws Committee)*  
Every Member who makes application for a change of name or transfer of Notarial District, resulting in the requirement for a new Commission from the Registrar of Notaries, shall provide a copy of such Commission to the Secretary forthwith upon receipt of same.

<sup>ix</sup> **Rule 4.03**  
The following sentence was deleted from Rule 4.03, as approved by the Legislation & Bylaws Committee on May 7, 2010:  
*For the purpose of this rule, money orders are not considered to be a guaranteed institutional draft.*



## <sup>x</sup> **Rule 14.01**

The following sentence was deleted off the first paragraph of this section:

*If the Member's specific proposal is unusual enough that it is not considered herein, it is strongly suggested that the Member refer his/her idea to the secretariat for direction.*

The following paragraph in Section 14.01 was deleted:

*Members should avoid at all costs the old advertising adage "let's run it up the flagpole and see which way the wind blows". The public image of the Society, and our relationship with others in the legal services field, may suffer irreparable damage by the use of ill-conceived or unconsidered promotional gimmickry.*

## <sup>xi</sup> **Rule 14.02(c)**

The nature of notarial work dictates that each task may differ from other similar matters and may therefore result in a different service fee. Fees, therefore, should not be mentioned in advertising or promotional material. (By quoting a price it is implied that complexities in a specific job would not result in a higher fee.) When quoting fee estimates, the potential client should be advised that every transaction varies and that fees may be amended if unforeseen circumstances arise;

## <sup>xii</sup> **Rule 14.02(d)**

Words that would attempt to describe a Member as a "Specialist", "Expert", "The Best" or "Superior" in any aspect of the Member's work should be avoided. Words to indicate preference in certain particular fields, such as "Specialization in Land Transfers" or "Preferred Area of Practice: 'Land Conveyancing and Simple Wills', are permissible;

## <sup>xiii</sup> **Rule 14.03(h)**

### Other Forms of Advertising

Uncounted other forms of advertising and promotion are available. Many of these are clearly "sensational" or "non-professional" and must be avoided by Members. Without limiting the foregoing, these unacceptable methods of advertising would include:

- (i) Telephone solicitation for clients;
- (ii) Signs not at your place of business; such as bus-stop shelters, bus-stop seats, bus posters, shopping centre poster ads, kiosks, taxi billboards, etc.; and
- (iii) Newspaper flyer inserts.