

1. INTRODUCTION

The South African Institute of the Professional Accountants (SAIPA) endeavor to understand the need for the provision of updated information surrounding our members role and function as Commissioners of Oaths in the public sector. We have therefore prepared this guide which will enable you to utilize and understand this vital role.

The Justices of the Peace and Commissioner of Oaths Act No. 16 of 1963, Regulation No. 61B was amended and “Institute of Commercial and Financial Accountants of the Southern Africa”: was substituted by “Professional Accountants” and recognized as *ex officio* Commissioner of Oaths.

The Act states that the Minister may, by notice in the Gazette, designate, amend or withdraw the holder of any office as a Commissioner of Oaths for any area specified in such notice, in order for such person to become an *ex officio* Commissioner of Oaths.

With reference to Government Gazette 25137, Notice Number R.903, The Designation of Commissioners of Oaths under Section 6 of the Act was amended to our new designation Professional Accountants as Ex Officio Commissioner of Oaths. A copy of the Notice is attached hereto marked Annexure ‘A’

2. HOW TO PERFORM AN OATH OR AFFIRMATION

- 2.1 Any commissioner of oaths may, administer an oath or affirmation to or take a solemn or attested declaration from any person, provided that the person is willing to make the oath or affirmation or declaration, and provided that he/she is not prohibited to do so under the Act.
- 2.2 The person signing the declaration also referred to as the deponent must initial each page of the declaration and sign in full signature on the last page or as may be required in the document, in the presence of the Commissioner of Oaths.
- 2.3 Once signed the Commissioner of Oaths must co-initial each page of the declaration and certify by full signature on the last page, that the deponent has acknowledged that he/she knows and understands the contents of the declaration, that he/she does so of their own free-will and state the manner, date and place of taking the declaration.
- 2.4 Before a Commissioner of Oaths administers to any person the oath or Affirmation prescribed by Regulation 1, he/she must ask the deponent:

- Whether he knows and understands the contents of the declaration;
- Whether he has any objection to taking the prescribed oath; and;
- Whether he considers the prescribed oath to be binding on his conscience.

2.5 If the deponent acknowledges the above, the Commissioner of Oaths may administer the Oath. Should he/she object to taking the Oath, then an affirmation may be administered.

2.5.1 An oath is administered by causing the deponent to utter the following words: "I swear that the contents of this declaration are true, so help me God".

2.5.2 An affirmation is administered by causing the deponent to utter the following words: "I truly affirm that the contents of this declaration are true".

2.5.3 The deponent shall sign the declaration in the presence of the Commissioner of Oaths.

2.5.4 If the deponent cannot write he shall in the presence of the Commissioner of Oaths affix his mark at the foot of the declaration: Provided that the Commissioner of Oaths has any doubts as to the deponent's inability to write he shall require such inability to be certified at the foot of the declaration by some other trustworthy person.

2.6 Below the deponent's signature or mark, the Commissioner of Oaths shall certify that the deponent has acknowledged that he knows and understands the contents of the declaration and he shall state the manner, place and date of taking the declaration.

2.6.1 The commissioner of oaths shall sign the declaration and print his full name, business address and contact details below his signature and state his designation and the area for which he holds his appointment or the office held by him if he holds his appointment ex officio. All of which must appear on your stamp.

2.7. No fee can be charged for administering any oath or affirmation or attesting any declaration.

2.8. A Commissioner of Oaths cannot administer an oath or affirmation relating to a matter in which he has an interest or that he/she has produced.

3. HOW TO CERTIFY A DOCUMENT TO BE A TRUE COPY

3.1. A copy of a document which must be certified as a true copy of the original, must be compared with original document and it must be made sure that the two documents are, in fact, the same.

3.2. If the Commissioner of Oaths is sure that the copy is in fact a true copy of the original document and no unauthorized amendments have been made, the Commissioner of Oaths must write down or stamp that he/she certifies that the document is a true copy of the original document and that there are no indications that the original document has been altered by unauthorized persons;

3.3. A document can be certified to be a true copy by a commissioner of oaths by verifying the copy against the original and by affixing the words:

“I certify that this document is a true copy of the original which was examined by me and that, from my observations, the original has not been altered in any manner.”

Or,

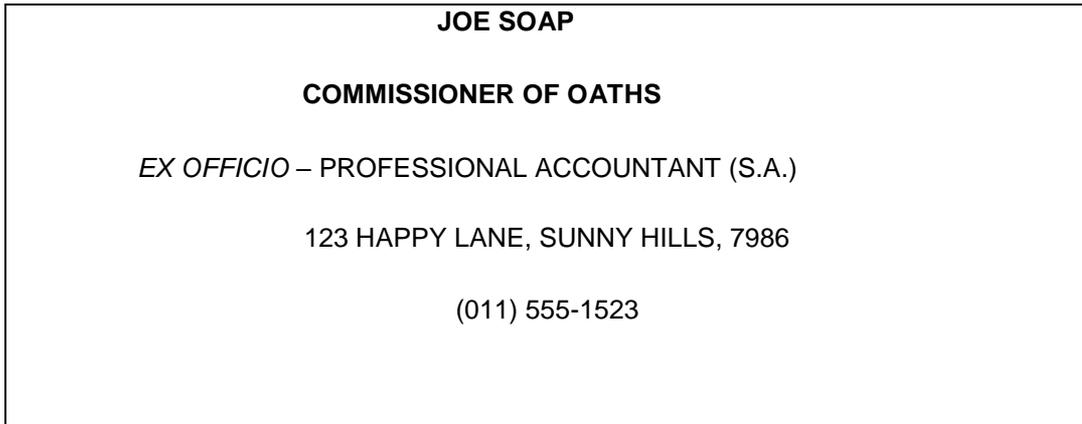
‘Certified a true copy of the original’

3.4. This stamp must be used in conjunction with your Commissioner of Oaths stamp, and your signature.

4. STAMPS

If you are a full SAIPA member i.e. *ex officio* a Professional Accountant (S.A.) you may create your own Commissioner of Oaths stamp. You may produce more than one stamp should the need arise but you are ultimately responsible for the stamp. You may not authorize any other person to use your stamp and should it be used for unintended purposes due to your negligence you will remain accountable for it.

Example of what your stamp should resemble:



ADMINISTRATION OF AN OATH OR AFFIRMATION

I certify that the DEPONENT has acknowledged that he/she knows and understands the contents of this affidavit, he/she does not have any objection to taking the oath, and the he/she considers it to be binding on his/her conscience and which was sworn to and signed before me at

on this the _____ day of _____ 20 __, and that the administering oath complied with the regulations contained in Government Gazette No. R1258 of July 1972, as amended.

Signature _____
Full Names

COMMISSIONER OF OATHS
Designation: Professional Accountant (SA) ex officio: Republic of South Africa
Date: _____ Place _____

Business Address:
(Physical address not postal address) _____

CERTIFICATION OF DOCUMENTS

Certified a true copy of the original document

I certify that this document is a true copy of the original which was examined by me and that, from my observations, that there are no indications that the original document has been altered by unauthorized persons. SIGNATURE _____ FULL NAMES _____ COMMISSIONER
OF OATHS Designation: Professional Accountant (SA) ex officio: Republic of South Africa Date: _____
_____ Place _____ Business Address: _____
_____ (physical address not postal address)

5. LEGAL IMPLICATIONS

- 5.1. If an oath or affirmation is not taken correctly as prescribed, and the matter goes to court, the affidavit will be declared invalid and may have serious consequences which for example, in criminal cases, may lead to the acquittal of the accused;
- 5.2. If the Commissioner of Oaths becomes aware that person making a statement, was unwilling to take an oath, he or she should not administer an oath. There was a case where the accused arrested under the Internal Security Act, was after detention in solitary confinement and interrogation, induced by a police official, to take an oath before a Commissioner of Oaths. The Court set aside the conviction when it was found that the accused was forced to take an oath before a Commissioner of Oaths;
- 5.3. It is an offence to make a false statement knowing it to be false in an affidavit, affirmation or solemn or attested declaration, provided that false statement is embodied in a document, the truth of which has been sworn to, affirmed, or declared before a person empowered by the statute to administer oaths or to take solemn or attested declaration.
- 5.4. In an appeal against conviction in a magistrate's court of exceeding the speed limit, it was found that an affidavit made by a traffic officer on the apparatus used to measure the speed, was invalid because the Commissioner of Oaths failed to comply with the requirements for administering an oath, by:
 - 5.4.1 Failing to sign the declaration and to print his full name and business address below his signature, and
 - 5.4.2 Failing to state his designation and area for which he held his appointment or the office held by him if he held his appointment ex officio. The appeal against the conviction succeeded;
- 5.5. A commissioner of Oaths who attests affidavits, is required to be impartial, unbiased and entirely independent of office where an affidavit was drawn up. In a case where an attorney practicing in association with another, served as a Commissioner of Oaths for his colleague, it was found that he lacked complete independence and had an interest. The court ordered that the affidavit be re-attested before a competent Commissioner of Oaths;
- 5.6. If copies of documents are not certified correctly as true copies of the original, the Commissioner of Oaths who certified the document, may find himself or herself in court as a

co-accused for assisting someone to commit fraud or as a witness to give evidence on the falsified documents;

- 5.7. Any person who, in an affidavit, affirmation or solemn or attested declaration made before a person competent to administer an oath or affirmation or take the declaration in question, has made a false statement knowing it to be false, shall be guilty of an offence and liable upon conviction to the penalties prescribed by law for the offence of perjury;
- 5.8. In terms of the case of *Radue Weir Holdings Ltd v Galleus Investments CC*, the court found that a Commissioner of Oaths who attests an affidavit, is required to impartial, unbiased and entirely independent of the office where the terms of Section 10 of the Justice of Peace and commissioner of Oaths Act 16 of 1963, need not be a pecuniary or proprietary one. The rigor with which the Court enforced the necessity for independence of a Commissioner of Oaths should serve as a warning to Commissioners who administer the oath lightly, or do not necessarily seriously consider the implications of attesting an affidavit.

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ANNEXURE 'A'

The Minister of Justice has issued the following notice in the Government Gazette 25137 dated 4 July 2003:

“AMENDMENT OF DESIGNATION OF COMMISSIONERS OF OATHS UNDER SECTION 6 OF THE JUSTICES OF THE PEACE AND COMMISSIONERS OATHS ACT, 1963 (ACT NO. 16 OF 1963)

I, Penuell Mpapa Maduna, Minister of Justice and Constitutional Development, under section 6 of the Justices of the Peace and Commissioners of Oath Act, (Act No. 16 of 1963) hereby amend Government Notice No. R903 of 10 July 1998, as set out in the Schedule.

SCHEDULE

Substitution of item 61B in Schedule to Notice:

“61B South African Institute of Professional Accountants:
[Item 61B inserted by Government Notice R.211 of 14 February 2003 and substituted by Government Notice R.943 of 4 July 2003]

The effect of this notice is that all Professional Accountant (SA)'s are *ex officio* Commissioners of Oaths, and individual applications will no longer be necessary.