



Commissioner of Oaths – Guide for Business Accountants in Practice

The Southern African Institute for Business Accountants

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The mission of The Southern African Institute for Business Accountants (SAIBA) is to serve the public interest, strengthen the accountancy profession in Southern Africa and contribute to the development of a strong regional economy by establishing and promoting adherence to high-quality professional standards, furthering co-operation on such standards and speaking out on public interest issues where the profession's expertise is most relevant. This will enable SAIBA to deliver trusted advisors to Southern African small business and support staff to big business.

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● Preface

This **Commissioner of Oath – Guide for Business Accountants in Practice** (the Guide) was commissioned by the SAIBA Small and Medium Practices (SMP) Committee to provide guidance to small and medium sized practices (SMPs) on their duties under The Justices of the Peace and Commissioner of Oaths Act No. 16 of 1963, Regulation No. 66A (the Act)

In Government Gazette R421 dated 30 May 2014, it was approved that the Southern African Institute for Business Accountants: Business Accountants in Practice are ex officio (by reason of the designation they hold) Commissioners of Oath in terms of the Act. In terms of this ex officio status, the Business Accountant in Practice designation must be maintained in order to retain the Commissioner of Oath status.

Section 6 of the Act provides that the Minister may designate the holder of any office as a commissioner of oaths for any area specified in such notice. A designated member of a professional institution is regarded as the holder of an office. In addition Business Accountants in Practice are recognized in various statutes such as the Close Corporations Act, 1984 and the Companies Act, 2008.

Nicolaas van Wyk
CEO

May 2014

● Request for Comment

This is the first version of the Guide. We consider the Guide to be of high quality and useful in its present form, but like any first edition, it can be improved. Hence, we are committed to updating the Guide on a regular basis to ensure it reflects current best practice and is as functional as possible.

The next update is scheduled for 2015. We welcome comments from members and other stakeholders. These comments will be used to assess the Guide's usefulness and to improve it prior to publishing the second edition.

Please submit your comments to
technical@saiba.org.za

● How to Perform an Oath or Affirmation

1. A Commissioner of Oaths may administer an oath or affirmation to or take a solemn or attested declaration from any person, provided that that person is willing to make the oath or affirmation or declaration and provided that he/she is not so prohibited under the Act.
2. The person signing the declaration, known as the deponent, must sign the declaration in the presence of the Commissioner of Oaths.
3. Once signed, the Commissioner of Oaths must certify that the deponent has acknowledged that he/she knows and understands the contents of the declaration and state the manner, date and place of taking the declaration.
4. Before a Commissioner of Oaths administers to any person the oath or affirmation prescribed by Regulation 1 of the Act, he/she shall ask the deponent:
 - a. whether he/she knows and understands the contents of the declaration; and
 - b. whether he/she has any objection to taking the prescribed oath; and
 - c. whether he/she considers the prescribed oath to be binding on his/her conscience.
5. If the deponent acknowledges that he/she knows and understands the contents and has no objection to taking the oath, the Commissioner of Oaths may administer the oath. Should he/she object to taking the oath, then an affirmation may be administered.
6. 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”.
7. An affirmation is administered by causing the deponent to utter the following words:

“I truly affirm that the contents of this declaration are true”.

8. He/she must then sign the declaration, print his/her full name and business address below his/her signature, state his/her designation and office held by him/her as he/she holds his/her appointment ex officio, all of which should appear on the relevant stamp.
9. No fee may be charged for administering any oath or affirmation or attesting any declaration.
10. A Commissioner of Oaths cannot administer an oath or affirmation relating to a matter in which he/she has an interest.
11. The following is an example of the certification paragraph to be used by a Commissioner of Oaths:

"I certify that the DEPONENT has acknowledged that he/she knows and understands the contents of this affidavit, that he/she does not have any objection to taking the oath, and that 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. R 1258 of 21 July 1972, as amended.

● How to Certify a Document to be a True Copy

1. A document can be certified to be a true copy of the original 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”

2. Very Important: mere knowledge of the existence of the original document will not suffice – the Commissioner must personally inspect/view the original document and compare same to the copy.
3. Remember to insert the date of certification.

● Stamps

Administration of an oath or affirmation

"I certify that the DEPONENT has acknowledged that he/she knows and understands the contents of this affidavit, that he/she does not have any objection to taking the oath, and that he/she considers it to be binding on his/her conscience, and which was sworn to and signed before me at _____ on this day of _____ 20_____ and that the administering oath complied with the regulations contained in Government Gazette No. R 1258 of 21 July 1972, as amended.

Signature:

Full names

COMMISSIONER OF OATHS

Designation: Business Accountant in Practice (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

Or

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.

Signature:

Full names

COMMISSIONER OF OATHS

Designation: Business Accountant in Practice (SA) Ex Officio Republic of South Africa

Date: _____

Place: _____

Business Address: _____

(physical address not postal address)

● Conduct

1. If an oath or affirmation is not taken correctly as prescribed, and the matter goes to court, the affidavit may be declared invalid. This could lead to the acquittal of the accused.
2. If the Commissioner of Oaths becomes aware that the person making a statement, was unwilling to take an oath, he or she should not administer an oath.
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.
4. An affidavit may be invalid if the Commissioner of Oaths fail to comply with the requirements for administering an oath, by:
 - a. Failing to sign the declaration and to print his full name and business address below his signature, and
 - b. 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.
5. A Commissioner of Oaths who attests affidavits, is required to be impartial, unbiased and independent of office where an affidavit was drawn up. For example a Business Accountant in Practice (SA) is not allowed to serve as a Commissioner of Oaths for his own firm.
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.
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.
8. Commissioners are required to seriously consider the implications of attesting an affidavit.



Gazette

STAATSKOERANT, 30 MEI 2014

No. 37683 7

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING**

No. R. 421

30 May 2014

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

I, Jeffrey Thamsanqa Radebe, Minister of Justice and Constitutional Development, acting under section 6 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), hereby amend Government Notice No. R. 903 of 10 July 1998, as set out in the Schedule.

SCHEDULE

Definition

1. In this Government Notice, "the Notice" means Government Notice No. R. 903 of 10 July 1998, as amended by Government Notice Nos. R. 1687 of 24 December 1998, R. 950 of 6 August 1999, R. 1317 of 12 November 1999, R. 1510 of 24 December 1999, R. 1511 of 24 December 1999, R. 1180 of 17 November 2000, R. 301 of 6 April 2001, R. 847 of 14 September 2001, R. 1365 of 21 December 2001, R. 1366 of 21 December 2001, R. 515 of 22 April 2002, R. 211 of 14 February 2003, R. 401 of 28 March 2003, R. 402 of 28 March 2003, R. 942 of 4 July 2003, R. 943 of 4 July 2003, R. 947 of 4 July 2003, R. 1233 of 5 September 2003, R. 411 of 2 April 2004, R. 645 of 28 May 2004, R. 184 of 11 March 2005, R. 1003 of 26 October 2007, R. 112 of 8 February 2008, R. 1017 of 26 September 2008, R. 1321 of 12 December 2008, R. 1149 of 11 December 2009, R. 153 of 5 March 2010, R. 732 of 20 August 2010, R. 542 of 2 August 2013 and R. 909 of 29 November 2013.

Insertion of item 66B in Schedule to the Notice

2. The following item is hereby inserted after item 66A in the Schedule to the Notice:

"66B. Southern African Institute for Business Accountants:

Business Accountants in Practice".



**MR J T RADEBE, MP
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**