

**MANUAL
FOR
NOTARIES PUBLIC
OF
NEW JERSEY**

SECOND EDITION

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AMERICAN SOCIETY OF NOTARIES

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§7.1 Introduction.

The protesting of commercial paper is one of a notary's most important functions and one which must be done with extreme care. However, the necessity for protesting the dishonor of drafts was greatly diminished by the Uniform Commercial Code (UCC) which became effective in New Jersey on January 1, 1963, and is now the law in the District of Columbia, the Virgin Islands and all States except Louisiana.

Prior to the adoption of the UCC a protest was required when a draft (bill of exchange) of which the drawer and the drawee were residents of different States or different countries was dishonored. Under the UCC a protest is required only in case a draft drawn or payable outside the United States is dishonored. However, other drafts and other instruments may be protested and it is sometimes advisable to do so.

§7.2 Definitions.

Any writing to be a *negotiable instrument* must:

- (a) be signed by the maker or drawer, and
- (b) contain an unconditional promise or order to pay a certain sum in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by law, and
- (c) be payable on demand or at a definite time, and
- (d) be payable to order or to bearer.¹

A writing which complies with the requirements of the preceding paragraph is:

- (a) a draft (*bill of exchange*) if it is an order;
- (b) a check if it is a draft drawn on a bank and payable on demand;
- (c) a note if it is a promise other than a certificate of deposit.²

Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.³

Holder means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.⁴

Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.⁵

Acceptance is the drawee's signed engagement to honor a draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.⁶ Certification of a check is acceptance.⁷

An instrument is *dishonored* when (a) necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is reasonably returned by the midnight deadline, or (b) presentment is excused and the instrument is not duly accepted or paid.⁸

A *protest* is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs.⁹

Midnight deadline with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which time the time for taking action commences to run, whichever is later.¹⁰

§7.3 Necessity for Presentment.

Unless excused (as provided in section 7.21) presentment is necessary to charge secondary parties as follows:

- (a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere

than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(b) presentment for payment is necessary to charge any indorser;

(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in section 7.22 (1) (b).¹¹

§7.4 Time of Presentment.

Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.¹²

A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and

(b) with respect to the liability of an indorser, seven days after his indorsement.¹³

Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full

business day for both parties. Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.¹⁴

§7.5 How Presentment is Made.

Presentment may be made (a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or (b) through a clearing house; or (c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.¹⁵

A draft or note made payable at a bank in the United States must be presented at such bank.¹⁶

§7.6 To Whom Presentment is Made.

Presentment may be made (a) to any one of two or more makers, acceptors, drawees or other payors, or (b) to any person who has authority to make or refuse the acceptance or payment.¹⁷

§7.7 Noting for Protest.

Noting for protest or noting the dishonor is the act of a notary in making a memorandum on the instrument which has been dishonored of the essential facts relating to the dishonor along with his signature or initials. This is the first step toward protest. The purpose of the noting is to give the notary a record from which to prepare his certificate of protest without having to rely on his memory. This note or minute of protest can later be extended into the certificate of protest.

When an instrument is noted for protest before the protest is due, the actual certificate of protest may be made at any time thereafter as of the date of noting.¹⁸

The noting should show the date of dishonor or the date notice of dishonor was received, the fact that acceptance (or payment) was demanded and refused and any reason given therefor, and the notary's signature or initials.

§7.8 Protest.

It is no longer necessary that the notary or other officer who is to make

protest must also make presentment of the instrument. A protest may be made upon information satisfactory to the notary.¹⁹

There is no prescribed form of protest. However, it must:

- (a) identify the instrument,
- (b) certify that due presentment has been made (or the reason why it is excused), and,
- (c) certify that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to all parties or to specified parties.²⁰

§7.9 Form of Protest.

CERTIFICATE OF PROTEST

United States of America)
 State of New Jersey)
 County of _____)

Date _____

* * * * * Description of Instrument Protested * * * * *

I, _____, a notary public in and for the State of New Jersey, hereby certify that on _____, 19____, due presentment was made on _____, by _____ of a (draft or note), a true copy of which is set forth above, (or, of which the annexed is a copy) and acceptance (or payment) demanded and that upon the making of such presentment the (draft or note), was dishonored by nonacceptance (or nonpayment); and I hereby certify that on the same day I gave due notice to the (drawer or maker) and indorsers thereof by depositing in the Post Office at (city and State) postage prepaid, notices thereof, directed to the parties to be charged, as follows:
 One for (name) directed to (address)
 Etc.,

Each notice being directed to the reputed place of residence of the person for whom it was intended.

In Witness Whereof, I have hereunto set my hand and affixed my

seal of office at _____, this _____ day of _____, 19 _____.

(Notarial Seal)

/s/ _____

Notary Public

My commission expires _____

Fees \$ _____ Postage \$ _____ Travel \$ _____ Total \$ _____

§7.10 Necessity for Protest.

Unless excused (as provided in section 7.21) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside the States and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.²¹

Neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.²²

§7.11 Who May Make Protest.

Protest may be made by a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs.²³

Any notary public who is a stockholder, director, officer, employee or agent of a bank or other corporation may protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such bank or other corporation, unless such notary is individually a party to such instrument.²⁴

§7.12 Time of Making Protest.

Protest is due by the time that notice of dishonor is due. However, if before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.²⁵

§7.13 Notary's Record of Protest.

Every notary public, upon protesting any draft or promissory note, must record in a book to be kept for that purpose the time when, place

where and upon whom, demand of payment was made, with a copy of the notice of nonpayment, how and when served; or if sent, in what manner and the time when, and if sent by post, to whom the same was directed, at what place, and when the same was put into such post office, to which record he must sign his name.²⁶

§7.14 Certificate of Record of Protest.

Any notary who protests any draft or promissory note must furnish to the person paying the costs and expenses of such protest a certificate under his hand and official seal of the matters and things required by section 7.13 to be recorded by him.²⁷

§7.15 Death or Removal of Notary – Deposit of Record.

Upon the death or removal out of the State of a notary, the record mentioned in section 7.13 must be deposited in the office of the clerk of the county in which he last resided.²⁸

§7.16 How Notice of Dishonor is Given.

The following rules are provided regarding notice of dishonor.²⁹

Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

Written notice is given when sent although it is not received. Notice to one partner is notice to each although the firm has been dissolved.

When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

Notice operates for the benefit of all parties who have rights on the instrument against the party noticed.

§7.17 Forms of Notice of Dishonor.

The following forms illustrate the way in which written notice of dishonor may be given:

(1) To drawer of a draft.

City/State/Date

To _____
 Please take notice that a draft for \$ _____ dated _____
 drawn by _____ in favor of _____,
 or order on the _____ Bank,
 and payable _____, was presented for acceptance
 on _____ which was refused, and the said draft having
 been dishonored by nonacceptance, the holder therefore looks to you
 for payment thereof. _____

(2) To indorser of promissory note.

City/State/Date

To _____
 Please take notice that a promissory note made by _____,
 for \$ _____, dated _____, payable _____ after
 date to _____ and indorsed by you, was pre-
 sented for payment on _____ which was refused, and
 the said note having been dishonored by nonpayment, the holder there-
 fore looks to you for payment thereof. _____

§7.18 Time of Giving Notice of Dishonor.

Any necessary notice must be given by a bank before the midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.³⁰

§7.19 Necessity of Notice of Dishonor.

Unless excused as provided in section 7.21: (a) notice of dishonor is necessary to charge any indorser; (b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in section 7.22 (1) (b).³¹

§7.20 To Whom Notice of Dishonor is Given.

Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition, an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.³²

§7.21 Waived or Excused Presentment, Protest or Notice of Dishonor or Delay Therein.

The law provides the following rules regarding presentment, protest and notice of dishonor.³³

(1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when

- (a) the party to be charged has waived it expressly or by implication either before or after it is due; or
- (b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or
- (c) by reasonable dilligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when

- (a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or
- (b) acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only.

§7.22 Unexcused Delay—Discharge.

(1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

(a) any indorser is discharged; and

(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged.³⁴

FOOTNOTES

¹ R.S. 12A:3-104(1).

² R.S. 12A:3-104(2).

³ R.S. 12A:3-202(1).

⁴ R.S. 12A:1-201(20).

⁵ R.S. 12A:3-504(1).

⁶ R.S. 12A:3-410(1).

⁷ R.S. 12A:3-411(1).

⁸ R.S. 12A:3-507(1).

⁹ R.S. 12A:3-509(1).

¹⁰ R.S. 12A:4-104.

¹¹ R.S. 12A:3-501(1).

¹² R.S. 12A:3-503(1).

¹³ R.S. 12A:3-503(2).

¹⁴ R.S. 12A:3-503(3) & (4).

¹⁵ R.S. 12A:3-504(1) & (2).

¹⁶ R.S. 12A:3-504(4).

¹⁷ R.S. 12A:3-504(3).

¹⁸ R.S. 12A:3-509(5).

¹⁹ R.S. 12A:3-509(1).

²⁰ R.S. 12A:3-509(2) & (3).

²¹ R.S. 12A:3-501(3).

²² R.S. 12A:3-501(4).

²³ R.S. 12A:3-509(1).

²⁴ R.S. 7:5-6.

²⁵ R.S. 12A:3-509(4) & (5).

²⁶ R.S. 7:5-3.

²⁷ R.S. 7:5-4.

²⁸ R.S. 7:5-5.

²⁹ R.S. 12A:3-508(3)-(8).

³⁰ R.S. 12A:3-508(2).

³¹ R.S. 12A:3-501(2).

³² R.S. 12A:3-508(1).

³³ R.S. 12A:3-511.

³⁴ R.S. 12A:3-502.