



COMPLIANCE
INSTITUTE
SOUTHERN AFRICA

Guidelines for Commissioners of Oaths

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Guidelines for Commissioners of Oaths

1. Introduction

The following designation holders of the Compliance Institute Southern Africa ('the Institute') have been granted the right to hold the designation of and act as ex officio Commissioners of Oaths:

- Compliance Practitioner (SA) / CPrac (SA)
- Compliance Professional (SA) / CProf (SA)
- Anit-Money Laundering Compliance Practitioner (SA) / AMLC Prac (SA)

The Justices of the Peace and Commissioners of Oaths Act, No. 16 of 1963 (as amended) ('the Act') regulates the designation of "Commissioner of Oaths", the powers and duties of a Commissioner of Oaths, and their administering of an oath or affirmation.

In terms of Government Notice no. 3873 Designation of Commissioners of Oaths under section 6 of the Act issued on 14 September 2023, clause 61F was inserted to the Schedule to Notice No.R.903 of 10 July 1998:

"61F. Compliance Institute Southern Africa
Compliance Practitioner, Compliance Professional, Anti-Money Laundering Compliance Practitioner."

This empowers these designation holders of the Institute to play a vital role in ensuring the authenticity and integrity of various documents and affidavits.

This guideline outlines the regulatory requirements, powers, duties, and procedures of Commissioners of Oaths.

2. Definitions

The Act	Justices of the Peace and Commissioners of Oaths Act, 16 of 1963 and Regulations
Designation holder	A member who has been awarded one or more of the Institute's SAQA-registered designations
Member	An individual who met the criteria of, and has formally joined the Institute
SAQA	South African Qualifications Authority - responsible for the recognition of professional bodies and registration of professional designations
SAQA-recognised professional body	A body of expert practitioners in an occupation or profession resulting in learning in and for the workplace
SAQA-registered designations	<ul style="list-style-type: none">• CPrac (SA)

- CProf (SA)
- AMLC Prac (SA)

The Institute

The Compliance Institute Southern Africa (NPC), a SAQA-recognised professional body

3. Powers

3.1 Justices of the Peace and Commissioners of Oaths Act, 16 of 1963 and Regulations

Section 6. Ex officio commissioners of oaths

The Minister may, by notice in the Gazette, designate the holder of any office as a commissioner of oaths for any area specified in such notice, and may in like manner withdraw or amend any such notice.

Section 7. Powers of commissioners of oaths

Any commissioner of oaths may, within the area for which he [or she] is a commissioner of oaths, administer an oath or affirmation to or take a solemn or attested declaration from any person:

Provided that he [or she] shall not administer an oath or affirmation or take a solemn or attested declaration in respect of any matter in relation to which he [or she] is in terms of any regulation made under section 10 prohibited from administering an oath or affirmation or taking a solemn or attested declaration, or if he [or she] has reason to believe that the person in question is unwilling to make an oath or affirmation or such a declaration.

3.2 Oaths

Commissioners of Oaths have the authority to administer oaths and affirmations for various legal documents, including affidavits. They play a key role in ensuring the validity and authenticity of statements made under oath.

The role of the Commissioner of Oaths is to confirm that a person making a sworn statement (affidavit) has sworn that the content of the statement is true.

3.3 Affirmations

In cases where an individual is not comfortable with taking a religious oath, they may choose to make a solemn affirmation, which has the same legal weight as a religious oath but is based on their personal beliefs and values.

3.4 Truth of the content of a statement

The Commissioner of Oath's role is to ensure that the person making the statement is sincere and genuinely believes in the accuracy and truthfulness of what they are affirming or declaring. However, the Commissioner of Oaths is not responsible for independently confirming the objective truth or accuracy of the statement itself.

4. Responsibilities

As a Commissioner of Oaths, your primary responsibilities include:

4.1 Administering Oaths and Affirmations

- You have the authority to administer oaths and affirmations to individuals making statements or declarations.
- Ensure that the individuals understand the legal significance of their statements and the consequences of providing false information.
- The Commissioner of Oaths must be presented with the original document and the copy thereof at the same time and must look at the original document and the copy and satisfy him or herself that the content of the documents is the same. If the content is not the same, the Commissioner of Oaths cannot certify the copy as a true copy of the original.

4.2 Taking affidavits

- You can take affidavits, which are written statements made under oath.
- Confirm that the affiant swears or affirms that the contents of the affidavit are true and accurate to the best of their knowledge and belief.

4.3 Certifying documents

- You are authorised to certify the authenticity of certain documents by using your Commissioner of Oaths stamp and affixing the words 'Certified a true copy of the original'.
- This certification signifies that the document is genuine and has been verified by you.

4.4 Verifying identity

- Verify the identity of individuals appearing before you by requesting identification documents, such as a passport or identity card.
- Ask questions as necessary to confirm their identity.

4.5 Recording details

- Maintain accurate records of the documents you have certified, including the date, nature of the document, and the names of the parties involved.
- These records serve as a legal record of your activities.

4.6 Impartiality and neutrality

- Always remain impartial and neutral in your duties.
- Avoid having a personal interest in the outcome of the documents you certify.
- Do not provide legal advice or take sides in any legal matter.

4.7 Compliance with regulations

- Adhere to the regulations and guidelines governing your role, including any prescribed fees and procedural requirements.

4.8 Protecting the integrity of the Oath

- Ensure that individuals understand the seriousness of the oath-taking process.
- Confirm that they are not under duress or coercion when making their statements.

4.9 Reporting misconduct

- If you become aware of any misconduct or unethical behaviour related to the documents you have certified, report such incidents to the appropriate authorities.

5. Commissioner of Oaths stamp

Your Commissioner of Oaths stamp is a crucial tool for certifying documents. It must include the following information:

- Your full name and surname, address
- Your designation, e.g. CPrac (SA)
- Your registration number
- The words "Commissioner of Oaths"
- Date of certification

6. Administering an Oath or Affirmation

The Commissioner's role is to ensure that the person making the statement is sincere and genuinely believes in the accuracy and truthfulness of what they are affirming or declaring. However, the Commissioner is not responsible for independently confirming the objective truth or accuracy of the statement itself.

6.1 Steps to administer and Oath or Affirmation

- A Commissioner of Oaths may administer an Oath or Affirmation from any person, provided that the person does not object to taking an Oath or Affirmation and provided that s/he is not prohibited from doing so under the Act or law.
- Where a signature is required, the person making the Oath or Affirmation must sign the document in the presence of the Commissioner of Oaths.
- Before taking the Oath or Affirmation, the Commissioner of Oaths must ask three questions:
 - Do you know and understand the contents of the declaration?
 - Do you have any objection to taking the prescribed Oath?
 - DO you consider the prescribed Oath to be binding on your conscience?
- The deponent must utter the following words in the presence of the Commissioner of Oaths:
For an Oath: 'I swear that the contents of this declaration are true, so help me God.'
For an Affirmation: 'I truly affirm that the contents of this declaration are true.'

6.2 Conflict of interest

The Commissioner of Oaths shall not administer an Oath or Affirmation in a matter in which s/he has an interest.

7. Certifying documents

The purpose of certifying documents is to confirm that the copy presented to the Commissioner of Oaths is in all respects a true copy of the original document presented.

When certifying a document, follow these steps:

7.1 Steps to certify documents

- Verify the identity of the person requesting the certification.
- Examine the document to ensure it is genuine and complete.
- Carefully compare the copy with the original document to ensure it is an accurate reproduction.
- Stamp the copy with your Commissioner of Oaths stamp in a visible and legible manner.
- Sign and date the certification, indicating that it is a true copy of the original by affixing the words 'Certified a true copy of the original'.
- Make a record of the certified document in your register, including the date of certification and a brief description of the document.
- Return the certified document to the individual who presented it, keeping a copy for your records if necessary.

8. Penalties and offences

The Act does not create an offence or penalty in relation to the Commissioner of Oaths, but it is important for the Commissioner of Oaths to follow the Act properly in certifying documents or administering an Oath or Affirmation. The validity of a document or credibility of a declaration can be questioned if certification, or the administering of an Oath or Affirmation was not carried out properly.

In practice, the Commissioner of Oaths can be subject to liability and possible criminal sanction if he or she fails to perform his or her duties in accordance with the Act.

In addition, members and associates of the Institute may be subject to disciplinary steps in the event that they fail to comply with the provisions of the Act.

9. Conclusion

As a Commissioner of Oaths, your role is integral to maintaining the integrity of legal documents and statements. By following these guidelines and exercising your powers responsibly, you contribute to the trustworthiness of the documents you certify. Always stay informed about changes in the law and regulations governing your role, and act with integrity and impartiality in all your duties.

For any questions or clarifications, please contact enquiries@compliancesa.com for further guidance.