

West Virginia Notary Handbook

Provided by the
Secretary of State's Office

What is a Notary Public?

A notary public is a public officer commissioned by the Secretary of State whose function is to administer oaths, take acknowledgments, certify that a photocopy of a document is a true facsimile, and to perform other duties specified by West Virginia law.

Each notarial act has legal significance and affects the legal rights of others. Chapter 39, article 4 of the West Virginia Code (W. Va. Code § 39-4-1 et seq.) constitutes West Virginia's body of notary laws. Before you start offering your services as a notary, familiarize yourself with the law so you can refer to it conveniently if there's ever a need. To access the West Virginia Code online, go to <https://code.wvlegislature.gov>.

Application and Renewal Process

Qualifications to be Commissioned as a Notary Public

Under West Virginia law, a notary public is commissioned by the Secretary of State. Each applicant must complete an application attesting that:

1. The applicant is at least eighteen (18) years old.
2. The applicant is a citizen or permanent legal resident of the United States.
3. The applicant is a West Virginia resident or is employed in West Virginia.
4. The applicant is able to read and write English.
5. The applicant has a high school diploma or its equivalent.¹
6. The applicant is not disqualified based on the reasons listed in W. Va. Code §§ 39-4-21 or 39-4-23.
7. Indicates whether the applicant plans to perform electronic notarial acts.²
8. The applicant has reviewed the law concerning notaries public and understands the duties of a notary public.

Application Process to be Commissioned as a Notary Public

In addition to the requirements listed above, the notary application must include the following information about the applicant:

1. Exact name as it will be entered when performing a notarial act.
2. Mailing address in West Virginia that will be on the notary stamp.
3. E-mail address where correspondence may be received.
4. Phone number (daytime and evening).

Completed applications must be submitted with the statutory \$52.00 to the Secretary of State's Office.³ No surety bond is needed to become a Notary Public in the State of West Virginia. If any requirement is missing or the application is not signed, it will be rejected and returned to you for completion.

¹ Unless the notary was commissioned prior to January 1, 2018.

² See the Electronic Notarizations section of this handbook.

³ Applicants have the option to voluntarily pay for expedited services at an additional charge.

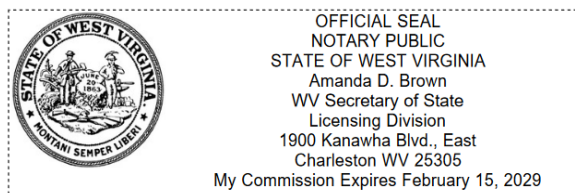
Certificate of Commission

Once your application is approved, you will receive your Secretary of State commission letter that provides the exact information you must include on your notary seal. Check to ensure your name and address information are correct. You must have your stamp created with the information provided in the commission letter.

Seal of Office

After receiving your Secretary of State commission letter, you may purchase your official seal of office (*i.e.* your notary stamp) from a company of your choosing. The Secretary of State's Office does not make or issue stamps. Your stamp must include the following:

1. The words "Official Seal," Notary Public," and "State of West Virginia."
2. Your name.
3. Your address or the address of your business or affiliation.
4. Your commission expiration date.
5. Must have a border and be no larger than 1" x 2.5".



Any changes to the information that appears on your stamp must be reported to the Secretary of State. If you lose your official seal, you must notify the Secretary of State. We will send a new commission letter via e-mail, and you will need to order a new stamp from a company of your choice.

No one else is allowed to use your notary stamp or execute a notarization for you. In the event of a notary's death, the notary's representative, guardian, or any other person knowingly in possession of the stamp shall render it unusable.

Renewal

Notary public commissions are valid for a five-year period. If your commission is about to expire, please note that renewals are not automatic. Every appointment requires a new application to be filed with the Secretary of State. Renewals cannot be processed more than 60 days prior to expiration. For more information, please visit our website at www.sos.wv.gov.

Resignation

If you wish to resign your commission or if you no longer live or work in West Virginia, the law requires you to notify the Secretary of State within thirty days. It is your responsibility to disable or destroy your stamp so that it is unusable after resigning. Any resignation of the commission of a notary public also terminates any existing registration as an electronic notary, remote online notary, or remote ink notary.

Change of Name or Address

If your name or residential/business address changed from what was provided in your original application, you must notify the Secretary of State within 30 days of the change. The Secretary of State will send a new commission letter via e-mail with your updated information, and you must order a new stamp from a company of your choice.

Before you receive your new commission letter and stamp after a change occurs, you are permitted to continue use of your old stamp. You will simply need to sign your new name on the line for the notary's signature, then write the words "Commissioned as (insert previous name)".

Notary Journal

Notaries public may be called to testify in a legal proceeding if a document that was notarized is in question or dispute. West Virginia does not require a notary public to keep a journal. However, it is strongly advised to keep a record book of official acts because it provides documentation of the notary's personal knowledge of the performance of the notarization.

Suggested Format for Journal Entries:

1. Date of notarial act.
2. Type of act performed.
3. Type of document involved.
4. Name and address of each person whose signature was notarized.
5. Signature of each person whose signature was notarized.
6. A "notes" section of personal annotations.
7. Itemized list of fees collected (if any).

Powers and Duties

Under West Virginia law, a notary has the power to perform the following basic notarial acts:

1. Verify signatures and identities of signatories.
2. Administer oaths and affirmations.
3. Take acknowledgments of documents in writing that are authorized by law to be acknowledged.

Requirements for Certain Notarial Acts

Notary Acknowledgment

A notary acknowledgment is a declaration made by a notary public that certifies that the signer of a document is the person named in the document.

The following are the typical requirements for most notarial acknowledgement acts as required by W. Va. Code § 39-4-15:

1. The person whose signature is being notarized must be present to acknowledge the signature or attest to the oath.
2. An ID must be produced if the person is unknown to you.
3. A proper acknowledgment form must be used.
4. You must hand-write your original signature (rather than using a reproduction) and your commission expiration date.
5. You must affix your rubber stamp seal.

Most documents brought before a notary public are simply for acknowledgment of a signature. Except for certain electronic notarizations, personal, physical appearance before the notary public is required. It is your responsibility to ensure that the identification presented to you satisfactorily proves the identity of the person appearing before you at the time of notarization.

The most common form used in notary work is the “certificate of acknowledgment.” Although the law provides certain wording for the certificate of acknowledgment, courts have held that “substantial compliance with the statute form is all that is required.”

For the acknowledgement to be valid, it must include the words “acknowledged before me,” or something similar. If the form is missing on the document(s) being signed, you are responsible for writing the proper form of acknowledgment to complete the notarization.

The following short form templates are sufficient for a notary acknowledgment:

1. For witnessing or attesting a signature:

State of

County of

Signed or attested before me on{Date} by {Name(s) of individual(s) making statement}

..... {Signature of notarial officer}

{Stamp}

..... {Title of office}

My commission expires:

2. For an acknowledgement in an individual capacity:

State of

County of

This record was acknowledged before me on{Date} by {Name(s) of individual(s) making statement}

..... {Signature of notarial officer}

{Stamp}

..... {Title of office}

My commission expires:

3. For an acknowledgment in a representative capacity:

State of

County of

This record was acknowledged before me on {Date} by {Names of individual(s)} as {Type of authority, such as "officer" or "trustee"} of {Name of party on behalf of whom record was executed}.

..... {Signature of notarial officer}

{Stamp}

..... {Title of office}

My commission expires:

Oaths

A notary public can administer an oath unless the law expressly states that it be done by another officer. For instance, West Virginia law requires all depositions to be attested by a certified court reporter. The individual to whom you are administering the oath must be present.

The following short form template of a certificate for acknowledgments is sufficient for administering an oath:

State of
County of
 Signed and sworn to (or affirmed) before me on {Date} by{Name(s) of individual(s) making statement}
 {Signature of notarial officer}
 {Stamp}
 {Title of office}
My commission expires:

Certification of Copies of Certain Documents

Under certain conditions, people need to certify that a copy of certain documents is legitimate. However, if a certified copy can be obtained from an officer in West Virginia (*e.g.* birth certificate, marriage certificate, death certificate, deed, will, or license), a notary is not authorized to certify a copy.

For copies of documents that can be certified by a notary public, certification is permitted on these conditions:

1. The copy of the document is accompanied by a written, signed request that states a certified copy of the document cannot be obtained from the office of any recorder or custodian of public documents in the state;
2. Making a copy of the document does not violate state or federal law; and
3. The notary public keeps a copy of the copy of the document on file.

[See short form certificate/acknowledgment example on next page.]

The following short form certificate/acknowledgment is sufficient for the purposes of certifying a copy of a record:

State of
County of
I certify that this is a true and correct copy of a record in the possession of {Name of party on behalf of whom record was executed}.
..... {Signature of notarial officer}
{Stamp}
..... {Title of office}
My commission expires:

Physically Unable to Sign

If an individual is physically unable to sign a document that requires a notarization, they are permitted to direct a “disinterested third party” to sign on their behalf. The notary public must add the phrase “Signature affixed by (name of other individual) at the direction of (name of individual)” to any document signed under these circumstances.

Multiple People

If multiple people must sign the same document but cannot appear before the same notary public at the same time, each person who signs the document must obtain a separate acknowledgment certificate from a notary with identical wording. Different notaries public can notarize the different signatures so long as all other requirements are met.

Schools, University and Colleges Who Have Notaries on Staff

Foreign exchange students or students traveling out of the country may need their school transcripts and/or diplomas certified or notarized to obtain a certification or an apostille from the Secretary of State’s Office. It is important that the notary public properly certifies the documents or notarizes the signature of the proper authority of the school who is attesting to the validity of the documents.

Failure to perform the notarization properly may cause a rejection of the documents by the Secretary of State’s Office, or a rejection from the other country to which they are being sent and may affect the student’s ability to continue in the foreign exchange program.

Limitations & Conflict of Interest

A notary public shall not notarize a document under the following circumstances:

1. You have a direct or indirect financial (or other beneficial) interest in a document or its content/purpose.
2. For members of their immediate family if you could potentially receive money or property interest from the transaction.
3. You or your spouse is a party to a matter contained in a document, or in which either of you have a direct or indirect beneficial interest, financial or otherwise.
4. You are an attorney that prepared the document for a client for which you have a direct or indirect beneficial interest; in such cases, a third party must perform the notarization.

However, if you are an employee of a company or agency, you are allowed to notarize documents prepared by your employer if it is part of your regular duties of the job and no extra compensation is given as a result. An attorney, who is a notary public and also counsel for a party to a suit, but who has no interest in the transaction other than that which ordinarily arises from the relation of attorney and client, is not disqualified by law to administer an oath to his or her client for the purpose of verifying a pleading in the case.

Refusal to Notarize

A notary public may refuse to perform a notarial act if the notary believes:

1. The individual signing the record is not competent or does not have the capacity to sign the record; or
2. The individual's signature is not knowingly and voluntarily made.

Abuse, Neglect & Financial Exploitation

Because of their frequent interaction with vulnerable West Virginians, notaries public are uniquely situated to recognize and report potential abuse, neglect, and financial exploitation.

Some common warning signs include, but are not limited to:

1. Person seems unclear about the documents being presented for notarization;
2. Person seems to be afraid of the person(s) accompanying them;
3. Person seems to be pressured/forced into signing documents; or
4. Person is making a lot of changes to the same documents in a short period of time.

Anyone of any age who depends on someone else for personal needs can experience financial abuse. Financial exploitation occurs when a person intentionally misappropriates or misuses the funds or assets of an elderly person, protected person, or incapacitated adult. Most often abuse, neglect and financial exploitation are committed by someone the victim trusts.

If you suspect someone is being abused, neglected or financially exploited, report the activity immediately to your local county Department of Health and Human Resources (DHHR). You may also call the Abuse Hotline at 1-800-352-6513. If you suspect someone is in immediate danger, call 911. For more information, visit www.wvadvocates.org.

Fees

The maximum fee in this state for notarization of each signature and the proper recordation thereof in the journal of notarial acts is \$10.00 for each signature notarized.

The maximum fee in this state for certification of a facsimile of a document, retaining a facsimile in the notary's file, and the proper recordation thereof in the journal of notarial acts is \$10.00 for each 8 1/2" x 11" page retained in the notary's file.

The maximum fee in this state is \$10.00 for any other notarial act performed.

Misconduct: Liabilities and Penalties

It is important to properly perform your duties as a notary and recognize the penalties for misconduct.

To Help Protect Yourself from Liability, Follow These Guidelines:

1. Do not notarize the signature of a person who does not appear before you in person or electronically. The entire reason for a notary public system is to ensure that the signature on the document is verified by a disinterested party.
2. If you don't know the person signing the document, ask for a driver's license or some other form of photo identification. The identification cannot have expired for more than 3 years.
3. If you are commissioned as a state or local government employee, you are only authorized to notarize documents of the office in which you are employed. If you are commissioned to notarize private documents for walk-in clients, it is permissible to notarize documents that are not related to your agency.
4. Do not assist persons in drafting legal records, give legal advice or otherwise practice law.
5. Do not act as an immigration consultant or an expert on immigration matters.
6. Do not use false or misleading advertising that you have a duty, right or privilege you do not have.
7. Notify the Secretary of State within 30 days of an address or name change.
8. Do not charge more than the \$10.00 maximum fee for each notarized signature.

The Secretary of State may deny, refuse to renew, revoke, suspend or impose a condition on a commission as a notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including but not limited to:

1. A dishonest misstatement or omission in the application for a commission as a notary public submitted to the Secretary of State.
2. A conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty, or deceit; or
3. Denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state.

Criminal Penalties

A notary public who knowingly and willfully commits any official misconduct (any act that may result in the denial, refusal to renew, revocation, suspension, or condition commission of a notary public) is guilty of a misdemeanor and, upon conviction, will be fined not more than \$5,000, or confined in jail not more than one year, or both fined and confined. W. Va. Code § 39-4-33.

Any person who acts as, or otherwise willfully impersonates, a notary public is guilty of a misdemeanor and, upon conviction, will be fined not more than \$5,000, or confined in jail not more than one year, or both fined and confined. W. Va. Code § 39-4-33.

Any person who unlawfully possesses a notary's official seal or any papers or copies relating to notarial acts, is guilty of a misdemeanor and, upon conviction, will be fined not more than \$1,000. W. Va. Code § 39-4-33.

ELECTRONIC NOTARIZATIONS

What is an Electronic Notary Public?

An electronic notary public is a notary who has registered with the Secretary of State to notarize documents electronically using technology that allows the signatory and notary to sign documents using a digital signature and affix a digital notary seal. This can be done in-person using a computer ("e-notary"), via a remote online notarial act ("RON"), or a hybrid of the two called remote ink notarial act ("RIN") using an approved communication technology. The following sections explain the registration process and these options in detail (*see "Types of Electronic Notarial Acts" below*).

Application and Renewal Process

Qualifications to be Registered as an Electronic Notary Public

Any notary public in good standing may apply for an electronic notary commission. To obtain authorization to perform electronic notarizations, the applicant must complete the E-Notarization Application.

The applicant is required to have the capability to notarize electronically before requesting authorization to perform electronic notarizations, which requires a license or access to certain software/technology.

The identity of the vendor providing the technology used for electronic notarizations is required to be included in your application. A notary public may register one or more respective means for producing electronic signatures and electronic seals at any time. Any change or addition to the data on the Application form must be reported within ten (10) days to the Secretary of State. Any application that contains a material misstatement or omission of fact will be rejected.

Renewal

The commission for electronic notarization runs concurrently with the traditional commission, expiring on the same date. Renewal of an electronic notary registration follows the same process identified above.

Change of E-Mail Address

Within five business days after the change of a notary public's email address, the notary shall electronically transmit to the Secretary of State notice of that change. The email shall include the notary public's notary identification number issued by the Secretary of State.

Change of Vendor/Mean of Production

When your agreement with the vendor identified E-Notarization Application ends, you must renew your agreement with the vendor or secure a new vendor and submit a new E-Notarization Application through the Secretary of State's Office before performing electronic notarial acts. Upon becoming aware that the status, functionality, or validity of the means for producing an electronic notarial act has changed, expired, terminated, or become compromised, the notary public shall:

1. Immediately notify the Secretary of State;
2. Cease producing seals or signatures in notarizations using that means;
3. Perform notarizations only with a currently registered means or another means that has been registered within 30 days; and
4. Within 30 days, permanently dispose of and expunge any pertinent software, coding, disk, certificate, card, token, or program that is that is intended exclusively to perform electronic notarial acts that has been rendered defunct.

Resignation

A notary public's decision to terminate registration as an electronic notary, remote online notary, or remote ink notary, shall not automatically terminate the underlying commission of the notary public. A notary public who terminates an electronic notary registration shall notify the Secretary of State in writing and shall, within 30 days, permanently dispose of and expunge any pertinent software, coding, disk, certificate, card, token, or program that is that is intended exclusively to perform electronic notarial acts.

Maintaining a Journal of Electronic Notarial Acts

Although not required, a notary public who performs an electronic notarial act may keep a chronological journal of those acts that is either a permanently bound book with numbered pages or an electronic journal. If keeping an electronic journal, the notary public shall:

1. Allow journal entries to be made, viewed, printed out, and copied only after access is obtained by a procedure that uses a username and a password;
2. Not allow a journal entry to be deleted or altered in content or sequence by the notary or any other person after a record of the notarization is entered and stored; and

3. Have a backup system in place to provide a duplicate record of notarial acts as a precaution in the event of loss of the original record.

Requirements for Certain Electronic Notarial Acts

In performing electronic notarial acts, an electronic notary public shall adhere to all applicable rules governing notarial acts as set forth in W. Va. Code § 39-4-1 et seq.

Authorized Electronic Notarial Acts

The following notarial acts may be performed electronically:

1. Taking an acknowledgment;
2. Administering an oath or affirmation;
3. Witnessing or attesting a signature;
4. Certifying or attesting a copy; and
5. Noting a protest of a negotiable instrument

An electronic notary public shall perform an electronic notarization only if the individual seeking the notarial act:

1. Is in the presence of the notary at the time of notarization (includes appearance by virtual means for RIN and RON transactions); and
2. Is personally known to the notary or identified by the notary through satisfactory evidence as prescribed in W.Va. Code 39-4-7.

Types of Electronic Notarial Acts

E-Notary a/k/a In-Person Electronic Notarization (IPEN)

For IPEN, the signer is in the physical presence of a notary at the time of notarization. While viewing an electronic document on the same computer or other device, the notary public and signer sign and notarize an electronic document using electronic signatures as directed by the e-notary's software.

The product is a digital document that is affixed with electronic signatures and notary seal, which can be printed and filed/used in West Virginia as if it were an original document signed with ink.

Remote Online Notarial Acts (RON)

For RON, the notary public and signer meet remotely using audio-visual technology. Most often the notary and signer are in different locations and use a computer or other device to communicate with each other via audio-video and examine the document digitally in a screen-share format.

The notary public must identify the signer through personal knowledge, oath or affirmation of a credible witness, or satisfactory evidence of the identity of the individual using at least two different types of identity proofing—this is typically done by the signer showing their

proofs of identification through the video feed sufficient for the notary to view and confirm the signer's identity.

Additionally, by law, the notary public must be reasonably able to confirm that a record before the notary public is the same record in which the signer made a statement or on which the individual executed the signature. This is accomplished by the screen-share option, or collaboration between the notary public and signer.

Once identity and document conformations are complete, the notary public and signer use the technology to affix electronic signatures to sign and notarize an electronic document. The notarial seal must state that the use of the notarial act involved the use of communication technology.

The notary must keep an audiovisual recording of each RON notarial act for at least five years after the recording is made.

Remote Ink Notarial Acts (RIN)

For RIN, the notary public and signer meet remotely from different locations using audio-visual technology. The notary public must identify the signer through personal knowledge, presentation of a government-issued, unexpired document (such as a driver's license or passport), or oath or affirmation of a credible witness.

The signer then signs a paper document while communicating simultaneously with the notary public online using audio-visual technology. Unlike RON, for a RIN transaction the document is mailed or forwarded to the notary for notarization.

The notary public must keep an audiovisual recording of each RIN notarial act for at least five years after the recording is made.

Electronic Notarial Certificate

In performing an electronic notarial act, the notary public shall properly complete an electronic notarial certificate. A proper electronic notarial certificate must contain:

1. Completed wording appropriate to the particular notarial act;
2. A registered electronic signature; and
3. A registered electronic seal.

The wording of an electronic notarial certificate must be in a form that is set forth in W.Va. Code § 39-4-16 (or otherwise prescribed by the laws of this state) or prescribed by law, regulation, or custom of another jurisdiction so long as it does not require actions by the electronic notary public that are unauthorized by this state. The certificate must describe the actions of the electronic notary public in such a manner as meeting the requirements of the particular notarial act.

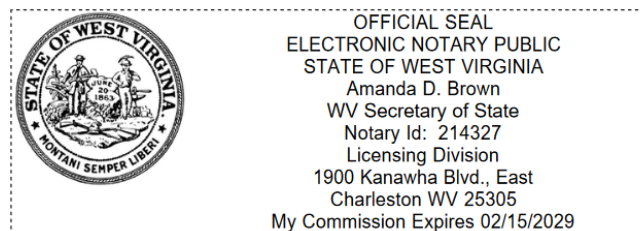
In notarizing an electronic document, except for a RIN act, the notary public shall attach to the electronic notarial certificate a registered electronic signature and a registered electronic notary seal in such a manner that the signature and the seal are attributed to the notary public as named on the commission.

A registered electronic signature must be:

1. Unique to the electronic notary public;
2. Capable of independent verification;
3. Attached to or logically associated with an electronic notarial certificate in such a manner that any subsequent alteration of the certificate or underlying electronic document prominently displays evidence of the alteration; and
4. Attached or logically associated by a means under the electronic notary public's sole control.

A registered electronic notary seal must include:

1. The words "Official Seal;"
2. The words "electronic Notary Public;"
3. The words "State of West Virginia;"
4. The notary public's name as it is spelled on the commissioning document;
5. The notary public's address as it is listed on the commissioning document;
6. The commission expiration date of the electronic notary public;
7. An image of the West Virginia Seal; and
8. The commission registration number of the electronic notary public.



An electronic certificate of authority evidencing the authenticity of the registered electronic signature and seal of an electronic notary public of this state must be in substantially the following form:

Certificate of Authority for Electronic Notarial Act

I, (name and title of commissioning official), certify that (name of electronic notary public), the person named as Electronic Notary Public in the attached, associated, or accompanying electronic document, was registered as an Electronic Notary Public for the State of West Virginia and authorized to act as such at the time the document was electronically notarized. I also certify that the document bears no evidence of illegal or fraudulent alteration.

To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic seal and signature this ____ day of _____, 20____.

(Electronic seal and signature of Secretary of State)

Limitations

An employer of an electronic notary shall not use or control the means for producing registered electronic notarial acts, whether or not the employer financially supported the employee's activities as a notary.

A registered electronic signature may be used by the electronic notary for lawful purposes other than performing electronic notarizations. Neither a registered electronic seal nor a combined single element containing the seal may be used by the electronic notary for any purpose other than performing lawful electronic notarizations.

Refusal to Notarize

A notary may refuse to perform a notarial act with respect to an electronic record, for an individual not in the physical presence of the notary, or for using a technology that the notary has not selected.

Denial, Conditioning, Suspension, or Termination of Registration

The Secretary of State may deny, refuse to renew, revoke, suspend or impose a condition on a registration as an electronic notary public for the following reasons:

1. Submission of a registration form containing material misstatement or omission of fact;
2. Failure to obtain or maintain the capability to perform electronic notarial acts, remote online notarial acts, or remote ink notarial acts, except as allowed in section 24 of this rule; or
3. The notary's performance of official misconduct.

Contact Information

Office of the Secretary of State

State Capitol Building

Charleston, WV 25305

Office Hours:

Open M – F, 8:30 AM to 5:00 PM

Main: (304) 558-6000

Fax: (304) 558-0900

Toll Free: (866) 767-8683

Investigations Hotline: (877) 372-8398

WV One Stop Business Center

13 Kanawha Blvd. W.

Suite 201

Charleston, WV 25302

Open M – F, 8:30 AM to 5:00 PM

Main: (304) 558-8000

Fax: (304) 558-8381

Toll Free: (866) 767-8683

North Central WV Business Hub

153 West Main Street

Suite G- Third Floor

Clarksburg, WV 26301

Open M – F, 8:30 AM to 5:00 PM

Main: (304) 367-2775

Fax: (304) 627-2243

Eastern Panhandle Business Hub

229 East Martin Street

Martinsburg, WV 25401

Open M – F, 9:00 AM to 5:00 PM

Main: (304) 356-2654

Fax: (304) 260-4360