



NOTARY NOTES

Newsletter of Licensing Division
North Dakota Secretary of State's Office
Alvin A. Jaeger, Secretary of State

July 2008

Vol 9 No. 12

Greetings!

A person commissioned as a notary public is appointed to a position of trust, which requires them to perform his or her duties with the utmost integrity. The notarial duties they perform are not just meaningless clerical functions. They are significant legally required duties established in state law based on hundreds of years of history.

A notary is an officer of the state. Therefore, when a person submits an application to become a notary, they execute the following oath of office before a notary public who then completes the jurat:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of North Dakota and that I will faithfully discharge the duties of the office of Notary Public according to the best of my ability, so help me God."

It is a personal commitment not to be taken lightly. It requires the notary to be knowledgeable about the law and about his or her duties and responsibilities.

I emphasize this because of the number of notary related violations that occur each year. In another portion of this newsletter are listed situations in which notaries have executed settlement agreements with monetary fines or suspensions. All of them had the potential of resulting in the revocation of the notary's commission. Or, they could have resulted in criminal proceedings whereby the violating notary could be found guilty of an infraction (\$500 maximum fine).

The above mentioned list could even be longer. In the past 12 months, there were over 330 additional notaries who received letters of reprimand or admonishment.

What is particularly surprising is that only a few of these violations were reported by sources from outside the office. Otherwise, the violations occurred on forms and documents submitted to the Secretary of State's office. For example, on the notary bond and commission application form, there were missing dates (day or year); incomplete, wrong, or missing venues; no acknowledgment or jurat text (common with adoption documents); incorrect listed commission expiration dates; unlawful use of an embosser style notary seal; notarizing one's own signature; not witnessing the signature being affixed to the documents and still completing the notarization; failing to affix an impression of the notary stamp, etc. Because they are violations, they obviously cannot be ignored, even if they might be inadvertent errors.

For that reason, I urge you to read every word in this newsletter and to review the attached law periodically. Additionally, review the previous editions of *Notary Notes* on the Notary Section on the Secretary of State's website at www.nd.gov/sos/notaryserv/.

Your position is essential and one of reliance. Several situations of improper notarizations have become issues in court. Therefore, please do it right. Please do it well. A lot of people are depending on you.

Al Jaeger
Secretary of State

The Importance of Reading Notary Notes

It is extremely important to know your responsibilities as a notary. Almost all of the errors and violations are discovered when reviewing notary applications and doing authentications for customers. Some of these errors and violations result in a warning letter from the Secretary of State's office but some result in fines and suspensions. This could also be a basis for the revocation of a notary's commission. In each newsletter, the most common ones are highlighted.

By reading this newsletter, it is our hope most of your questions will be answered. Also attached is a copy of the laws governing notaries. The law and earlier newsletters are also on the Secretary of State's website at www.nd.gov/sos. Please remember, if you have questions, you are always welcomed to call the Secretary of State's office.



Questions on Notarizing

When you have questions on notarizing, please check the law or call the Secretary of State's office for accurate up-to-date information. Relying on a fellow notary may not always be the best choice for information.

Proper legal notarizations must contain a venue and either the text for an acknowledgement or a jurat.

A venue is the state and county where the notarization took place.

An example of a venue: State of _____
County of _____

Example of an Acknowledgement: John Doe appeared and acknowledged before me this _____ (month, day and year).

Example of a Jurat: John Doe subscribed and swore before me this _____ (month, day and year).

If the document you are notarizing does not have both of these elements, it is the notary's responsibility to have the signer add this information to the document.

A notary should not just sign and affix his or her notary stamp to a document. It does not mean anything.

Why? Under the North Dakota Century Code, there are two main forms of recognized notarial acts; a jurat and an acknowledgment. To have a complete legally recognized notarial act, one of these two forms of text is required along with a venue. Without them, it does not establish when and where the notarization occurred and whether the notary had the authority to act in the place in which it occurred.

Bond Date and Commission Date

The date on a notary's bond will not be the same as the date on his or her notary certificate and notary stamp. The commissioning date is chosen by the Secretary of State's office. It will appear on both the notary's stamp and his or her certificate of commission.

Stamps With Expiration Date

If a notary's stamp already includes a commission expiration date, it is not necessary for the notary to also insert it or write it on a document even if there is a designated space for it. The commission expiration date on the stamp is sufficient for complying with the law. If you happen to list an incorrect expiration date, it could put the document being notarized into question.

Old Stamps/Seals

Do not use old stamps or seals. Using old stamps/seals, could subject you to a warning letter from the Secretary of State's office, but any subsequent offenses could be referred to the Attorney General and your commission could possibly be revoked or you could be subjected to a fine.

Use the Correct Notary Stamp

Whether a notary is commissioned for the first time or is renewing, a notary cannot legally notarize a document before the beginning date of his or her commission or after its ending date. Therefore, the stamp the notary is using must coincide with those dates and cannot be used earlier than the day the

commission begins, particularly in those situations where a notary's commission was renewed. The renewing notary must use their notary stamp until the expiration date listed on the stamp. The new notary stamp cannot be used until the effective beginning date of the new commission listed on a notary's certificate of appointment. A commission expires at midnight of day listed on a notary's stamp and certificate of commission.

Readable Impressions

The impression made by a notary's stamp must be clear and readable. When using a self-inking stamp, be sure it is well inked. If a notary is still authorized to use an embosser type of seal and it is not readable, contact the Secretary of State's office to obtain an authorization to purchase a new seal/stamp. It is illegal for a notary, whose commission was renewed after August 1, 2003, to use an embosser type of notary seal.

Name and Address Changes

Be sure to notify the Secretary of State's office if you have either an address change or a name change. The law requires it to be done within 60 days to avoid a \$10 late fee.

A No-No Notarizing for Self or Family Members

A notary is prohibited from notarizing his or her spouse's signature and it is unlawful for a notary to notarize his or her own signature. [NDCC 44-06-13.1 (1)(c)]

A Notary should not notarize a document for close family members. Notarizing documents for parents, siblings, spouses, and other relatives opens an ethical can of worms for the Notary. In many cases, a close family relationship with a signer automatically brings beneficial interest. Although North Dakota only prohibits notarizing if the Notary is named in the document, it is best to refer close family members to another Notary in order to avoid even the slightest appearance of bias.

Notarizing Multi-part Forms

(Taken in part from the "Notary Review" – Sept/Oct 2005)



If a person wants each page notarized, the notary must perform a separate notarial act on each page. This means that the person must sign each page individually and each page must have a venue and jurat or acknowledgement text. If each page does not have the applicable text, separate the pages and attach a separate piece of paper with the text to each page of the document.



Renewal Information

The Secretary of State's office sends renewal information to a notary two months prior to the expiration date of a notary's commission. It is marked "official mail."

However, prior to the mailing from this office, it is quite likely you will be contacted by several different private bonding companies. These companies duplicate the Secretary of State's notary application form on their bond form. It may not be the same company from whom you previously purchased your bond coverage.

It is entirely your choice whether you purchase your notary bond through one of these bonding companies or purchase your bond through a local insurance agent.

Notary Violations From July 1, 2007, through June 30, 2008



(Note: The circumstances surrounding each violation are often different and result in varying penalties even though some of the following abbreviated summaries may appear to be similar in nature. All violations are a matter of public record under the state's open records laws.)

August 9, 2007 – Notary violated 44-06-13.1(1)(e) by not listing the actual date the document was notarized: \$50 penalty.

August 28, 2007 – Notary violated 44-06-13.1(3) & 44-06-04.1 by notarizing her spouse's signature and without providing a name change: six-month suspension.

November 21, 2007 – Notary violated 44-06-13.1(1) by notarizing a signature when it did not appear on the document: \$150 penalty.

November 21, 2007 – Notary violated 44-06-04 by not affixing her stamp to the document: \$50 penalty.

November 21, 2007 – Notary violated 44-06-04 by not affixing his stamp to the document: \$50 penalty.

November 21, 2007 – Notary violated 44-06-04 by not providing the Secretary of State's office with her seal/stamp and she had notarized: refunded half the fee and closed the file.

November 30, 2007 – Notary violated 44-06-13 by exercising duties of a notary without a commission: \$50 penalty.

December 31, 2007 – Notary violated 44-06-13 by exercising duties of a notary without a commission: \$50 penalty.

January 22, 2008 – Notary violated 44-06-12 by failing to affix the name of the county: \$50 penalty.

January 22, 2008 – Notary violated 44-06-13.1(1)(e) by not dating the jurat or certificate of acknowledgement: \$50 penalty.

January 30, 2008 – Notary violated 44-06-04 by not affixing her stamp to the document: \$50 penalty.

February 8, 2008 – Notary violated 44-06-04 by not affixing his stamp to the document: three-month suspension.

February 26, 2008 – Notary violated 44-06-04 by not affixing his stamp to the document: three-month suspension.

February 28, 2008 – Notary violated 44-06-04 by failing to sign the document: \$50 penalty.

March 3, 2008 – Notary violated 44-06-04 by not affixing his stamp to the document: three-month suspension.

March 6, 2008 – Notary violated 44-06-13.1(1)(c) by notarizing his own signature: six-month suspension.

March 6, 2008 – Notary violated 44-06-13.1(1)(c) by notarizing her spouse's signature: six-month suspension.

March 10, 2008 – Notary violated 44-06-04 by failing to sign the document: \$50 penalty.

March 10, 2008 – Notary violated 44-06-04 by failing to sign the document: \$50 penalty.

March 12, 2008 – Notary violated 44-06-04 by failing to sign the document: \$50 penalty.

March 12, 2008 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: six-month suspension.

March 17, 2008 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: \$150 penalty.

March 17, 2008 – Notary violated 44-06-04 by not affixing her signature to the document: \$50 penalty.

April 2, 2008 – Notary violated 44-06-04 by failing to sign the document: three-month suspension.

April 3, 2008 – Notary violated 44-06-12 by failing to affix the name of the county: \$50 penalty.

April 14, 2008 – Notary violated 44-06-04 by not affixing her stamp to the document: \$50 penalty.

April 14, 2008 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: \$150 penalty.

April 14, 2008 – Notary violated 44-06-13.1(1) by notarizing a document not signed in her presence: three-month suspension.

April 24, 2008 – Notary violated 44-06-04 by not affixing her stamp to the document: three-month suspension.

April 24, 2008 – Notary violated 44-06-04 by not affixing her stamp to the document: \$50 penalty.

April 24, 2008 – Notary violated 44-06-13.1(1)(a) by notarizing a document not signed in her presence: six-month suspension.

May 9, 2008 – Notary violated 44-06-04 by not affixing her signature to the document: \$50 penalty.

May 13, 2008 – Notary violated 44-06-12.1(1)(a) by notarizing a document not signed in his presence: six-month suspension.

May 13, 2008 – Notary violated 44-06-13.1(1)(a) by notarizing a document not signed in his presence: six-month suspension.

May 23, 2008 – Notary violated 44-06-13.1(1)(e) by notarizing a document when there was no year in the date: \$25 penalty.

May 28, 2008 – Notary violated 44-06-13.1(1)(c) by notarizing her spouse's signature: \$150 penalty.



It's Quiz Time

Answer true or false to the following:

1. You will receive renewal information from companies other than the Secretary of State's office.
2. You can notarize for close family members.
3. It is necessary to submit notary name and address changes.
4. It is O.K. to put your stamp/seal over your signature or any other text.
5. When your stamp/seal has an expiration date, you should still write in your commission expiration date.
6. After renewing your commission, you may still use your old stamp and seal along with new impression.
7. The date on your commission certificate and the date on your notary stamp/seal should match.
8. It is proper to only affix an impression of your stamp/seal and your signature on a document.
9. A proper notarization must contain a venue and either an acknowledgement or a jurat.
10. It is the notary's responsibility to make sure the proper elements are on each document that he or she notarizes.

Answers: 1. True 2. False 3. True 4. False 5. False
6. False 7. True 8. False 9. True 10. True



Copy of the Law

Attached to this newsletter is a copy of the North Dakota law as it pertains to Notaries Public.

Notary Notes is a newsletter of the Licensing Division in the Secretary of State's Office, 600 East Boulevard Avenue, Dept 108, Bismarck ND 58505-0500, (701) 328-2901 or Toll Free: 1-800-352-0867, ext. 8-2901; www.nd.gov/sos

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