



NOTARY NOTES

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

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Greetings!

During this past session, North Dakota became the first state to adopt the Revised Uniform Law on Notarial Acts that was introduced by the state's Uniform Law Commission. In doing so, the law repealed Chapter 44-06 on Notaries Public. The replacement is Chapter 44-06.1 and is titled Revised Uniform Law on Notarial Acts. It becomes effective August 1, 2011 and a copy is attached to this newsletter.

While it is a new chapter with additions, many of the provisions related to notarizations that have existed in North Dakota law for many years were incorporated into the new chapter. It also combined other sections of law from other parts of the Century Code that were part of the notarization process.

Therefore, while it is important for each commissioned notary to study and review this new chapter, I also urge you not to be intimidated by it. The basic elements of performing notarial acts are still intact albeit with some new areas of emphasis.

It is essential that you make time to read it. It begins with a very helpful section on definitions in N.D.C.C. § 44-06.1-01, which will provide a solid background for understanding the terms used throughout the chapter. In particular, I encourage you to review and study the following sections:

- N.D.C.C. § 44-06.1-04 – Requirements for certain notarial acts
- N.D.C.C. § 44-06.1-05 – Personal appearance required
- N.D.C.C. § 44-06.1-06 – Identification of individual
- N.D.C.C. § 44-06.1-07 – Authority to refuse to perform notarial act
- N.D.C.C. § 44-06.1-14 – Certificate of notarial act
- N.D.C.C. § 44-06.1-15 – Official stamp
- N.D.C.C. § 44-06.1-16 – Stamping device
- N.D.C.C. § 44-06.1-19 – Short forms
- N.D.C.C. § 44-06.1-21 – Grounds to deny, refuse to renew, revoke, suspend, or condition commission of notary public
- N.D.C.C. § 44-06.1-23 – Prohibited acts

It is important to remember that notarial acts are not meaningless clerical functions. It is an important duty not to be taken lightly. As a notary public, you are an officer of the state as evidenced by the following Oath of Office you executed to become a notary.

"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 a notary to be knowledgeable about the law. It is a position of trust, which requires the notary to perform his or her duties with the utmost integrity.

With that in mind, I must share a concern about the number of settlement agreements (listed elsewhere in this newsletter) and the 242 reprimands that have been issued from July 1, 2010, through June 30, 2011. All of them had the potential of a fine, suspension, or revocation of a notary commission. In certain cases, it could have resulted in criminal proceedings.

What is particularly puzzling is that only a few of these violations were reported by sources from outside the Secretary of State's office. Most of the violations occurred on forms and documents submitted to the Secretary of State's office or to the Office of the Attorney General. It does raise a question about how notarial acts might be performed on documents that are unseen by this office. Regardless, when violations become known, they cannot be ignored, even if some of them might be accidental.

Although not an exhaustive list, the violations include missing dates (day, month or year); incomplete, wrong, or missing identity of the jurisdiction (state and county) where the notarial act was performed; no text for the certificate of the notarial act; erroneous commission expiration dates; unlawful use of an embosser style notary seal (prohibited since 2003); notarizing one's own signature; not witnessing the signature being affixed to the document or completing the notarization even though a signature does not appear on the document; and failing to affix an impression of the notary stamp.

Currently, North Dakota has approximately 13,000 notarial officers. Your position is important and people depend on you. Do your job well and take pride in providing an essential service to the citizens of this state.

Al Jaeger
Secretary of State

Returning Stamping Device Impressions N.D.C.C. § 44-06.1-16

With the adoption of the new law, a notary seal/stamp is now referred to as an official notary stamping device. However, the procedure for obtaining one is still the same.

That is, the Secretary of State's office provides a certificate of authorization, which the purchaser gives to a vendor (a company who provides the stamps) indicating that they are allowed to manufacture the stamping device. An impression of the stamp must then be returned to the Secretary of State's office even if it is a replacement.

For new and renewing notaries, an impression of the stamping device must be received in the Secretary of State's office on or before the month and day listed in the authorization letter. The impression must be received in the Secretary of State's office before a certificate of commission can be issued. It cannot be accepted past the month and day listed in the authorization letter. Otherwise, a new authorization must be obtained and the applicant must purchase a new official notary stamping device with a new commission expiration date.

The impression may be returned by mail; it may be scanned and transmitted to sosadlic@nd.gov; or it may be faxed to (701) 328-1690.

Commission Start and End Dates

N.D.C.C. § 44-06.1-26

It is illegal for a notary to exercise the duties of a notary's office prior to the beginning date of his or her certificate of commission or after the commission's expiration date. A notary's commission begins at 12:00 a.m. on the commencement date and expires at midnight on the expiration date listed on the certificate of commission.

Notary Commission Exclusively For Notary

N.D.C.C. § 44-06.1-16(4)

An official notary stamping device is the property of the notary only and may not be retained or used by any other person, including an employer of a notary even if the employer purchased or paid for the notary's stamping device. An official stamping device must remain in the direct and exclusive control of the notary at all times during a notary's commission.

Errors and Omissions (E&O) Insurance

Errors and Omissions Insurance is to protect a notary in the event he or she makes a mistake, which causes a client to suffer a financial or other type of loss for which the notary is sued for recovery.

Generally notaries are individually responsible for their actions. A notary's employer may or may not provide Errors and Omissions Insurance or other liability protection. It is important for a notary to remember that even though he or she may be an employee and only performs notarial duties as part of their employment, they are commissioned as an officer of the state and are ultimately responsible for their actions even if directed by an employer or supervisor.

It is a common misconception that a notary's surety bond, which is required by state law, fully protects the notary in the event a mistake is made. Although the surety bond may initially cover losses of an injured party, the notary may be liable to the surety for any amounts paid out on the bond.

Notaries should consult with their insurance agents or attorneys for further information on Errors and Omissions Insurance and to assist the individual notary in deciding whether to purchase such insurance coverage.

If a notary purchases the Errors and Omissions Insurance, the policy is kept with his or her records. It is not necessary for the notary to provide the Secretary of State's office with a copy of the policy, a notification, or a certificate. If submitted, they will be returned.



Documents Used in a Foreign

Country N.D.C.C. § 44-06.1-13(5) and

N.D.C.C. § 44-06.1-23(6)(i)

The Secretary of State's office receives an increasing number of documents that are used in foreign countries. In order to be accepted in those countries, they are submitted to this office for authentication. An authentication is either an apostille or certification depending on what the foreign country requires. It establishes that the signature of the notarial officer is genuine and the officer holds the indicated office.

If a notary is asked to notarize a document written in a foreign language, it must be accompanied by a permanently affixed and accurate written English translation. If not, the notary cannot execute the notarial act. Both documents must be properly notarized or they cannot be authenticated by this office, which may cause unanticipated and unwelcomed delays for the party needing the document notarized. Therefore, notaries are encouraged to review the detailed information and instructions about the process that is available in the Notary Public section of the Secretary of State's website at www.nd.gov/sos.

Don't Choose For The Customer

N.D.C.C. § 44-06.1-19

Sometimes, a notary is presented with a document that does not have the proper notary text required by state law. Even if the requester does not know what type of certificate of a notarial act is required, the notary should never, on behalf of the signer, select the notarial wording to be used.

A notary public is a ministerial officer, which means he or she is given minimal discretion in carrying out their duties. A notary public, other than an attorney, cannot assist in drafting legal records or give legal advice. Therefore, a notary is not empowered to make decisions on the signer's behalf, which may have legal ramifications for the signer. If the notary mistakenly chooses the wrong type of certificate wording, the document might cause losses as a result. If it is not clear what type of certificate of notarization is needed on the document, the notary may present the different types of statutory short forms available in N.D.C.C. § 44-06.1-19 and let the signer choose from among them. Or, the requester could be directed to contact the issuing or receiving agency or his or her attorney for further instructions.

Why Are Some Documents Sworn To And Others Acknowledged?

When you notarize a signature, you commonly perform one of two official notarial acts.¹ It may be an acknowledgement or the administration of an oath (or affirmation), which is called a jurat. Under the new Revised Uniform Law on Notarial Acts, a jurat is now referred to as a “verification on oath or affirmation.” These two acts have different purposes. An acknowledgment is the simple authentication of a signature which may or may not have been signed in front of a notary. It proves or acknowledges that the signer personally appeared before the notary, was identified, and that the individual declares that he or she signed the document for the purpose stated in the document. It acts as a safeguard against forgery and undue influence. The notary should ensure that the signer understands the document and has not been coerced into signing. An acknowledgment is most often used in connection with real estate documents such as deeds and mortgages to be recorded with a county recorder.

A jurat or “verification on oath or affirmation” is a signed declaration made under an oath or affirmation before a notary that a statement in the document is true. The signer personally appears before the notary. A notarization requiring an oath should begin with the administration of an oath or affirmation. The notary may want to ask the signer “Do you swear (or affirm) that the information contained in this document is true?” After receiving an affirmative answer and a signature on the document, the notary completes a proper notarial certificate indicating that an oath or affirmation was taken. A jurat is attached to an affidavit or other sworn statement which must be signed by the individual in front of the notary.

What Is An Affidavit?

An affidavit is nothing more than a written statement of the truthfulness of which the signer attests by signing his or her name before a notary using a jurat or what is now called a “verification on oath or affirmation.” A notary can only notarize the signature and that signature must be made to a written statement, which is called the affidavit. The signer is placed under oath as to the truthfulness of his or her written statement and then signs the affidavit in front of the notary.

It is acceptable for the statement (affidavit) to be written by the signer on a sheet of paper (it does not need to be typed). For example, “I, John Doe, affirm that my Grandpa John gave me his 1959 Studebaker which is green. I certify this statement is true and sign my name under the penalty of perjury this 1st day of December 2011.”

Then, the notary adds the appropriate jurat wording and affixes his or her signature along with an impression of the notary’s seal/stamp. The following is an example of an acceptable jurat or “verification on oath or affirmation.”

¹ Under the new Revised Uniform Law on Notarial Acts, H.B. 1136, passed by the Legislature, there are two new types of notarization specifically permitted – one for witnessing or attesting a signature, and another for certifying a copy of a record. See N.D.C.C. § 44-06.1-19.

State of _____
County of _____
Subscribed and sworn to before me this ___day of ____ 20____.
(Notary Signature) _____
My commission expires: _____

Whenever an individual signs an affidavit, he or she is held legally accountable under the penalty of perjury for the contents of the document.



A Check List Before Notarizing!

1. The notarial officer must determine based on either personal knowledge or satisfactory evidence the identity of the individual appearing before the notary. N.D.C.C. § 44-06.1-04 and 44-06.1-06
2. The individual making the statement or executing the signature must appear personally before the notarial officer. N.D.C.C. § 44-06.1-05
3. The date of the notarial act must include the month, day, and year when the individual appeared before the notarial officer and made the statement or executed his or her signature. N.D.C.C. § 44-06.1-23 and 44-06.1-14(1)(a)
4. The certificate of notarial act must include the jurisdiction (state and county) in which the notarial act is performed. N.D.C.C. § 44-06.1-14(1)(c)
5. A notarial act must be evidenced by a certificate. N.D.C.C. § 44-06.1-14 and 44-06.1-19
6. A notarial act must indicate the date of the notary commission’s expiration date, which is on the official stamping device and which does not have to be written separately on the document even if there is a space for it. N.D.C.C. § 44-06.1-14(1)(e) and 44-06.1-15
7. A notarial officer is only allowed to use the stamping device authorized by the Secretary of State and which is photographically reproducible (embossers have not been allowed since 2003). N.D.C.C. § 44-06.1-16(1)
8. A notarial officer may not perform a notarial act on a document on which he or she or the spouse appears on the document or in which either individual has a direct beneficial interest. N.D.C.C. § 44-06.1-23(6)(b)
9. The notarial act cannot be performed if the signature is on a blank or incomplete document. N.D.C.C. § 44-06.1-23(6)(h)
10. A notarial officer cannot notarize a document that is a copy or certified copy of any vital record, instrument, or a public record containing an official seal. N.D.C.C. § 44-06.1-23(6)(j)
11. The notarial officer’s official stamp must be affixed to the certificate of notarial act. N.D.C.C. § 44-06.1-14(2)
12. The notarial officer cannot affix his or her signature to the document until all requirements are completed, e.g., such as the individual’s signature being affixed to the document. N.D.C.C. § 44-06.1-14(5)

Notary Violations From July 1, 2010, through June 30, 2011



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.

July 1, 2010 – Notary violated 44-06-04 by failing to affix stamp to each jurat: \$50 penalty.

July 1, 2010 – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

July 15, 2010 – Notary violated 44-06-13.1(1)(c) by notarizing spouse's signature: \$150 penalty.

July 26, 2010 – Notary violated 44-06-13.1(1)(e) by notarizing the signature without the day of the month on the document: \$125 penalty.

July 27, 2010 – Notary violated 44-06-13.1(1)(e) by notarizing the signature and affixed a different date than on the document: \$125 penalty.

August 3, 2010 – Notary violated 44-06-13.1(1)(e) by notarizing the signature on two documents and failed to affix the stamp: \$75 penalty.

August 3, 2010 – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

August 3, 2010 – Notary violated 44-06-13.1(1)(a) by notarizing the document without the signature: two-month suspension.

August 13, 2010 – Notary violated 44-06-04 by not affixing stamp to the document: two-month violation.

September 3, 2010 – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty

September 13, 2010 – Notary violated 44-06-14 by failing to affix signature to the document: \$50 penalty.

October 18, 2010 – Notary violated 44-06-02 by notarizing documents without receiving notary commission: \$50 penalty

October 22, 2010 – Notary violated 44-06-04 by failing to affix signature to the document: three-month suspension.

October 27, 2010 – Notary violated 44-06-13.1(1)(a) by notarizing a document not signed in the notary's presence: three-month suspension.

November 24, 2010 – Notary violated 44-06-04 by not affixing stamp to the document: two-month suspension.

January 18, 2011 – Notary violated 44-06-11 – Admission of Service 12-3-2012: six-year suspension.

January 20, 2011 – Notary violated 44-06-13.1(1)(e) by notarizing a document with the wrong date: \$125 penalty.

January 20, 2011 – Notary violated 44-06-12 by failing to affix signature to the document: \$125.

January 20, 2011 – Notary violated 44-06-04 by not affixing stamp to the document: two-month suspension.

January 20, 2011 – Notary violated 44-06-12 by using the wrong expiration date on notary commission: two-month suspension: \$50 penalty.

January 20, 2011 – Notary violated 44-06-04 by failing to affix signature to the document: three-month suspension.

January 24, 2011 – Notary violated 44-06-04 by notarizing documents after notary commission had expired: \$50 penalty.

January 27, 2011 – Notary violated 44-06-04 notarized documents before commission was issued: three-month suspension.

January 27, 2011 – Notary violated 44-06-13.1(1)(a) by notarizing the document without the signature: three-month suspension.

February 3, 2011 – Notary violated 44-06-13.1(1)(a) by notarizing a document not signed or re-signed in notary's presence: \$125 penalty.

February 3, 2011 - Notary violated 44-06-13.1(1)(e) by notarizing a document with the wrong date: \$125 penalty.

February 8, 2011 – Notary violated 44-06-13.1(1)(a) by notarizing the document without the signature: three-month suspension.

February 8, 2011 – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

February 25, 2011 – Notary violated 44-06-13.1(1)(e) by notarizing a document with the wrong date: three-month suspension.

March 22, 2011 – Notary violated 44-06-13.1(1)(c) by notarizing spouse's signature: six-month suspension.

March 22, 2011 – Notary violated 44-06-12 by notarizing documents after notary commission had expired: \$50 penalty.

March 23, 2011 – Notary violated 44-06-13.1(1)(a) by notarizing the document without the signature: three-month suspension.

March 30, 2011 – Notary violated 44-06-13.1(1)(a) by notarizing the document without the signature: \$75 penalty.

March 30, 2011 – Notary violated 44-06-04 by failing to affix signature to the document: \$125.

April 1, 2011 – Notary violated 44-06-04 by notarizing documents without receiving notary commission: \$50 penalty.

April 1, 2011 – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

April 8, 2011 – Notary violated 44-06-13.1(1)(e) by notarizing a document with the wrong date: three-month suspension.

April 19, 2011 – Notary violated 44-06-04 by failing to affix signature to the document: three-month suspension.

April 19, 2011 – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

April 19, 2011 – Notary violated 44-06-04 by failing to affix signature to the document: three-month suspension.

April 19, 2011 – Notary violated 44-06-04 by failing to affix signature to the document: \$125 penalty.

April 21, 2011 – Notary violated 44-06-04 by failing to affix signature to the document: three-month suspension.

April 22, 2011 – Notary violated 44-06-04 by failing to affix signature to the document: \$125 penalty.

April 27, 2011 – Notary violated 44-06-04 by failing to affix signature to the document: \$125 penalty.

April 27, 2011 – Notary violated 44-06-04 by failing to affix signature to the document: \$125 penalty.

May 10, 2011 – Notary violated 44-06-12 by failing to affix signature to the document: \$125.

May 11, 2011 – Notary violated 44-06-12 by failing to affix signature to the document: three-month suspension.

May 17, 2011 – Notary violated 44-06-12 by failing to affix signature to the document: three-month suspension.

May 17, 2011 – Notary violated 44-06-04 by not affixing stamp to the document: two-month suspension.

May 20, 2011 – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

May 26, 2011 – Notary violated 44-06-13.1(c) by notarizing own signature: \$150 penalty.

May 27, 2011 – Notary violated 44-06-13.1(1)(b) by notarizing a document that notary was party to the transaction: \$125 penalty.

June 14, 2011 – Notary violated 44-06-13.1(1)(a) by notarizing the document without the signature: two-month suspension.

June 14, 2011 – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

June 15, 2011 – Notary violated 44-06-13.1(1)(a) by notarizing the document without the signature: three-month suspension.



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 Unit 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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Enjoy the summer!



