



# NOTARY NOTES

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

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## Greetings!

When an individual applies to become commissioned as a notary public, they execute the following Oath of Office in front of a notary public who then completes a jurat (as explained elsewhere in this newsletter).

"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."

The observance of the above oath is unconditionally essential when a notary performs notarial functions. It is a personal commitment not to be taken lightly.

As a notary public, a person is an Officer of the State, which is a position of trust and requires the highest degree of integrity. Therefore, a notary must never take for granted the duties he or she performs. It is not just a meaningless clerical function. It is much more than that.

A notarial act is required for specific legal reasons that date back many hundreds of years. That is, to verify that the person, who is signing a particular document in the notary's presence, is the person who they say they are. Sounds simple, doesn't it? Yet, it is vitally important and a notary should be proud of the role and responsibility they have been given in performing that duty.

Everyone depends on you. You have a position of trust and responsibility. Do it well and with integrity just as you swore to do when you took your Oath of Office.

Al Jaeger  
Secretary of State



## Everything Is On The Web

Everything you ever wanted to know about being a Notary Public is available on the Secretary of State's website at [www.state.nd.us/sec](http://www.state.nd.us/sec) such as:

- What Is A Notary Public?
- How To Become A Notary Public
- Notary Address and/or Name Change Forms
- Notary Responsibilities
- Notary Seal/Stamp Specifications
- Notary Terms and Definitions
- *Notary Notes* – current and past issues

## Introducing The Administrative And Notary Staff

They are:

**Al Jaeger**, Secretary of State, was born and raised in Beulah. He received a degree from Dickinson State University and afterwards taught high school in Killdeer and Kenmare. Before becoming Secretary of State, he was a real estate broker in Fargo. He has been a notary public since 1973.

**Jim Silrum**, Deputy Secretary of State was born in Minnesota, but spent most of his childhood in Washington. After receiving his degree from Augsburg College in Minneapolis and working for a number of years in Minnesota, he moved to North Dakota in 1995. After 20 years of work in nonprofit administration, he was appointed Deputy Secretary of State on November 17, 2003.

**Mary Feist**, Licensing Division Director, has worked in the Secretary of State's office since 1979. Her responsibilities include the commissioning of notaries public, licensing of contractors and charitable solicitations, lobbyist registration, and regulation of boxing. She has been a notary public since April 1, 1991.

**Charlotte Zander**, Account Tech II, has worked in the Secretary of State's office since 1987. She worked previously in the Central Indexing Unit and in 1998 she transferred to the Administrative and Licensing Division and currently does accounting functions and commissions notaries public. She has been a notary public since October 3, 1998.

**Kim Shaw**, Executive Assistant, is a native of Mandan, North Dakota, and a 1980 graduate of Seattle Pacific University in Seattle, Washington. She has been with the office of the Secretary of State since 1995 and is responsible for the layout, editing, and formatting of the *Notary Notes*.

# Must Know Helpful Tips To Make A Notary's Job Easier

## Notary Seal/Stamp

Whenever a notary wants to either replace or purchase an additional seal/stamp, they must first contact the Secretary of State's office for an authorization form.

According to state law, it is illegal for a vendor to produce a new seal/stamp without the authorization form. The authorization form prevents unauthorized persons to purchase a notary seal/stamp, confirms that the seal/stamp is made according to state law, and verifies the notary's correct commission expiration date. An incorrect seal/stamp could possibly invalidate a notarial act and subject the notary to disciplinary action.

Therefore, a notary should always verify that the expiration date on his or her certificate of commission matches the date on their seal/stamp. If a discrepancy is discovered, the notary should immediately contact the Secretary of State's office. If a notary's seal/stamp already has the expiration date on it, it is not necessary for the notary to also write the expiration date on the document when notarizing.

To verify the legality of a seal/stamp and its approval by the Secretary of State's office, an impression of it can be sent by facsimile transmission to (701) 328-1690 or mailed to the Licensing Division, Secretary of State, 600 East Boulevard Avenue, Dept 108, Bismarck ND 58505-0500.

A notary public should never affix his or her seal(s)/stamp(s) over the top of another notary's seal/stamp and never over any printed or written text. Doing so could inadvertently cover pertinent information.

## Notarizing and Commission Starting and Ending Dates

It is illegal for a notary to perform notarial acts prior to the beginning of his or her commission commencement date or beyond the commission's expiration date. The commission begins at 12:00 a.m. on the commencement date and expires at midnight of the expiration date listed on the certificate of commission.

## Why Are Some Documents Sworn To And Others Acknowledged?

When you notarize a signature, you perform one of two official notarial acts. It is either an acknowledgement or the administration of an oath (or affirmation), which is called a jurat. The two acts have different purposes.

An acknowledgment is the simple authentication of a signature. It proves or acknowledges that the signer personally appeared before the notary, was identified, and that his or her signature was witnessed when signing the document. In doing so, the signer declares that he or she executed and signed the document voluntarily. 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.

A jurat is the authentication of a signature made under an oath or affirmation and is administered to a document signer when the signer is required to make a sworn statement about certain facts. The signer personally appears before the notary to swear (affirm) that the information contained in the document is true.

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, the notary completes a proper notarial certificate indicating that an oath or affirmation was taken.



## 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. 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. Whenever a notary executes a jurat, they are not held responsible for the truthfulness or legality of the affidavit.

It is acceptable for the statement (affidavit) to be written by the signer on a sheet of paper (it never needs 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 2004."

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.

State of \_\_\_\_\_  
County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

(Notary Signature) \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Under certain circumstances when a particular request is asked of the notary, he or she may find it advisable to turn the request into an affidavit. The signer is asked to write out his or her request and affix their signature, after which the notary adds the jurat wording and completes the notarization. Whenever an individual signs an affidavit, he

or she is held legally accountable under the penalty of perjury for the contents of the document.

## What Is Errors & Omissions (E&O) Insurance?

It is protection for a notary in the event he or she makes a mistake, which causes the client to suffer a financial or other type of loss for which the notary is sued for recovery.

Since notaries are individually responsible for their actions, a notary's employer may not provide protection. It is important for a notary to remember that even though he or she is an employee and only performs notarial duties as a 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 bond, required by state law, protects them in the event a mistake is made. However, a notary bond is a contract in which three parties are involved. They are: (1) the "obligor" who is the bond surety company that underwrites the bond and binds themselves by contract to pay certain sums of money to a person, called the "obligee", who is injured by a wrongful notarization; (2) the obligee is the victim of a wrongful notarization and if certain conditions are met, the obligee may collect monies from the obligor as indemnification for the losses suffered; and (3) the "principal" is the notary to whom the obligor is contractually "bonded." If the obligor (surety) pays monies to an obligee (injured party), the principal (the notary) has to reimburse the obligor (surety) the full amount of the loss.

E&O insurance provides primary protection. The coverage will first pay any claims, for which the notary is not required to reimburse the insurance carrier and which is done before the bond surety pays any claims, which must be reimbursed by the notary.

## It Is Impossible To Notarize One's Own Signature

As you will note in another section of this newsletter, a very common violation of the state's notary laws is when a notary has notarized his or her own signature, which is specifically prohibited by N.D.C.C. § 44-06-13.1(3). Quite often, many of these violations have been discovered on documents submitted by a notary to the Secretary of State's office. As a result, some notaries have paid a penalty as high as \$150 for notarizing their own signature.

On occasion, the violation occurs because of a poorly formatted form. Most often, however, it is because the notary has not taken the time to read the text of the acknowledgment or jurat and stopped to think about what they are doing.

For example, the line where an applicant is to sign his or her name is usually clearly identified as the location for the applicant or individual's signature. Then, in the following acknowledgment, the notary acknowledges that the applicant "personally appeared" and is "known to me to

be the person who executed the foregoing instrument." Or, if it is a jurat, the notary states that the signer "subscribed and sworn before me." The plain reading of those statements is clear and should immediately remind the notary that it is impossible and illogical for him or her to appear before themselves, which would allow them to notarize their own signature.

The bottom line is that notaries must always remember to take care and think about what they are doing when they are performing notarial functions.

## True Or False

1. If a Notary is fired, the notary must resign the commission at the employer's demand?

**False:** N.D.C.C 44-06-24 states in part, "An official seal 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 seal. An official seal must remain in the direct and exclusive control of the notary at all times during a notary's commission.

2. A notary should never sign and seal a certificate containing false information.

**True:** A notary shall not knowingly issue a certificate containing information that is false, deceptive, inaccurate, or incomplete.

3. It is permissible for a notary to let another person use their official seal/stamp with clear instructions on how the seal/stamp should be used.

**False:** A notary shall not allow his or her notary seal/stamp to be used or possessed by another person.

4. It is appropriate for a notary to notarize documents that contain blanks or missing spaces, as long as the blanks are said by the signer to be inapplicable.

**False:** Notaries should refuse to notarize any document whose text is blank or incomplete. In addition, it is not the notary's responsibility, nor should they do it, to write "not applicable" or "N/A" in the blanks.

5. I don't have to sign my name when notarizing, if I use a stamped facsimile of my signature.

**False:** Stamped signatures are not acceptable in any notarial situation and will subject the notary to a fine, suspension, or revocation of his or her commission. The notary's signature on a document must be an original signature and is part of the authentication process. By the notary taking the time to write his or her signature, it also implies that they have also taken the time to examine the document carefully and to complete the document in a legally appropriate manner.

6. A birth certificate is considered an acceptable form of a signer's identification.

**False:** A birth certificate does not have a current photo, signature or physical description of the signer, so it is impossible to determine whether that particular form of identification belongs to the signer.

7. A notary should test the signer's knowledge of the identification they have provided if the notary has reason to believe that the information on the ID is not genuine.

**True:** Testing the signer's knowledge of the information on the ID (e.g. date of birth, residence address) can be a good way to trip up an imposter. If the signer doesn't know the information on the ID, it could be an indication he or she is using a fake document.

8. A notarization proves the document or statement is true and correct.

**False:** A notarization on a document does not prove that the document or statement is true or accurate, nor does a notarization validate or legalize a document.

9. I cannot notarize my own signature or that of my spouse under any circumstances.

**True:** It is impossible to notarize your own signature. In addition, both acts are prohibited in N.D.C.C. § 44-06-13.1. That is, a notary public may not notarize a document if the signature of "the name of the notary public or the spouse of the notary public appears on the document as a party to the transaction."



## Husband's Deception Fools Notary

(National Notary Association – December 2002)

**Georgia** – Taking the word of a friend that a forged signature was genuine, a Phenix City Notary "notarized" divorce papers in violation of the law. Linda Allgood notarized the document without Tammy Kennedy, whose forged signature was notarized without her being present. "She was very forthcoming about what she did. She knew she shouldn't have notarized the document without the signer being present, but she was doing a favor for a friend," said Columbus Police Detective Ron Copeland.

**Gregory Kennedy** is facing a first-degree forgery charge for allegedly having signed his estranged wife's name on the divorce document. Gregory Kennedy's fiancée at the time, who he has since married, was also unaware the document had been forged when she presented it to Allgood for notarization, Copeland said.

"**Mr.** Kennedy apparently told his fiancée that his estranged wife had finally signed the divorce papers. The new Mrs. Kennedy is very upset at the whole thing," Copeland said.

**A** report on Allgood's involvement in the case has been filed with Georgia's Notary-regulating authorities, Copeland said.

## Notarizing Petition Controversy

(National Notary Association – December 2002)

**Florida** – Two notaries public have been accused of misusing their commissions during a petition drive to overturn a controversial gay rights ordinance in Miami-Dade County. Nayibe Busse and Ralph Patterson were charged with notarizing their own signatures, said John Aguero, a Polk County assistant state attorney assigned by the governor's office to the case.

**Aguero** said he was unaware if Busse and Patterson were members of the organization circulating the petitions to repeal the ordinance. "They notarized petitions," he said. "Whether they had any personal feelings about it, I couldn't tell you. What they did was illegal, whether they agreed or disagreed with the petition."

**Both** notaries have been referred to a pre-trial intervention, in which the charges will be dismissed if they agree to give up their notary commissions and meet other court requirements, Aguero said.

**A** local gay rights group challenged the validity of the petitions seeking to overturn the ordinance, which prohibits discrimination on the basis of sexual orientation. The repeal campaign was defeated in an election earlier this year.

## Fifth Notary Pleads Guilty

(The Bismarck Tribune – November 9, 2004)

**Sioux Falls, S.D. (AP)** – A fifth person pleaded guilty Monday to improperly notarizing absentee ballot applications. Nathan Mertz, 20, told the judge that he had a lapse in judgment and apologized.

**Mertz**, like the four before him, was given a suspended 30-day jail sentence and fined \$200 for the misdemeanor violation. The five were accused of notarizing absentee ballot applications without witnessing the person sign it.

## Beware of Identity Thieves Posing as Government Officials

(National Notary Association – April 2003)

**California** – The state Attorney General's office warns notaries to beware of identity thieves posing as government officials to obtain personal information. Claiming they work for the IRS, state Department of Justice, or a "Do Not Call" list, the identity thieves have been asking people for Social Security numbers, bank account numbers and other personal information.

"**We** want to make sure consumers are aware this is happening," said Hallye Jordan, spokeswoman for the Attorney General's office. "You should be wary of anybody who asks you for personal information." If notaries are

contacted with a suspicious request for information, they should take the person's name, organization, and city and call the agency independently to verify the person's credentials, Jordan said. "Don't rely on a phone number they have given you," she said.

Jordan also warned notaries not to give information from a journal entry to a telephone caller. "I would never give that information out over the phone," she said. "We urge everyone to be wary of calls from anyone you don't know."

California law requires persons asking for a copy of a notary's journal entry to provide a written request including the names of the participants, the type of document notarized, and the month and year of the notarization.

### Don't Choose Certificate

Sometimes, when signers present documents to a notary, they do not know what type of notarization they need. If faced with this situation, a 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 can only act at the direction of the signer and is not empowered to make decisions on the signer's behalf, which may have legal ramifications for the signer. Should the notary mistakenly choose the wrong type of certificate wording, the document could cause financial losses as a result. If is not clear what type of notarization is needed on a document, the notary may explain the different types and let the signer choose from among them. Alternatively, the issuing or receiving agency could be contacted for further instructions.



### Violations

Each notary is encouraged to carefully review the following listing of notary violations that were settled between July 2003 and September 2004. Many of them could easily have been avoided if the notary had taken the time, remembered the law, and read carefully what they were signing. As noted, not following the law resulted in significant consequences for many of these notaries. Also, beyond the authority of the Secretary of State's office, these violations could present personal liability issues for the notary or result in criminal prosecution.

(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.)

**November 11, 2003** – Notary Violated 44-06-13.1(1) by notarizing a document not signed in his presence. \$400.00 and three-month suspension.

**November 12, 2003** – Notary Violated 44-06-13.1(3) by notarizing the signature of her spouse. \$150.00

**January 20, 2004** – Notary Violated 44-06-13.1(1) by notarizing a document that was not signed or re-signed in her presence. Issued letter of reprimand.

**January 21, 2004** – Notary Violated 44-06-13.1(3) by notarizing her own signature. \$150.00

**March 3, 2004** – Notary Violated 44-06-3 by being convicted of a Class B Felony. Notary commission revoked for six years.

**April 29, 2004** – Notary Violated 44-06-13.1(4) by notarizing a document that was not signed. Six-month suspension.

**June 1, 2004** – Notary Violated 44-06-13.1(6) by notarizing a signature that was not original. \$150.00

**June 8, 2004** – Notary Violated 44-06-13.1(3) by notarizing the signature of his spouse. Six-month suspension.

**July 4, 2004** – Notary Violated 44-06-13.1(1) by notarizing a document that was not signed or re-signed in her presence. Three-month suspension.

**July 27, 2004** – Notary Violated 44-06-13.1(1) by notarizing a document that was not signed or re-signed in her presence. Six-month suspension.

**August 3, 2004** – Notary Violated 44-06-13.1(1) by notarizing a document that was not signed or re-signed in her presence. \$50.00

**August 10, 2004** – Notary Violated 44-06-13.1(6) by notarizing a photocopied signature. Issued letter of reprimand.

**August 27, 2004** – Notary Violated 44-06-13.1(6) by notarizing a signature that was not original. \$150.00

**Copy of the Law**

A complete copy of the laws, effective August 1, 2003, pertaining to the duties of a notary public is attached as part of this newsletter. Take the time to read them. These are the laws you agreed to faithfully discharge when you executed your Oath of Office.

**Notary Notes** is published by 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: (800) 352-0867, ext. 8-2901

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