



# Notary Notes

Newsletter of the Accounting/Notary Unit  
North Dakota Secretary of State's Office  
Alvin A. Jaeger, Secretary of State

## Inside this issue:

Employer vs. Employee—Who Owns the Notary Commission?	2
Copy Certifications	2
Witnessing/Attesting Signatures vs. Acknowledging Signatures	2
How to Determine if Someone is of Sound Mind	3
Certificates of Notarial Acts	3
Reciprocity of Notarial Acts	3
Handwriting or Typing Commission Expiration Dates	3
Documents Drafted in Pencil	3
Notarizing Documents for Family Members	4
Notary Name Change	4
What Does "Name of Vendor" Mean?	4
I-9 Forms—Do They Require Notarization?	4
Change of Address	4
Notary Violations	5
Test Your Knowledge	6

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## Greetings from Secretary of State Al Jaeger

As of June 30, 2013, 13,873 notarial officers were commissioned in North Dakota, which is an increase of 518 or 3.88% from last year. Notarial officers are in a position of trust and integrity and they perform an essential service to the public. Therefore, it is important for notaries to perform their duties properly and with integrity. To emphasize this, I have included in this newsletter a list of occurrences in which notaries executed settlement agreements with monetary fines or suspensions for notarial violations. All of these situations had the potential of resulting in the revocation of the notary's commission.

In addition to the settlement agreements specified in this newsletter, 225 reprimands were issued from July 1, 2012 through June 30, 2013. Although not an exhaustive list, the reprimand violations include: notarizing a document without a signature; notarizing

a document without a commission; not including an English translation for a foreign document; notarizing a predated or postdated document; notarizing a spouse's signature; not leaving an impression or a clear impression of the notary stamping device; notarizing an incomplete document; missing or inconsistent 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); and notarizing a document that includes one's own name. All of these situations could have resulted in a fine, suspension or revocation of commission, and in certain cases, criminal proceedings.

Interestingly, only a few of these violations were reported by sources outside of the Sec-



retary of State's office. Almost all of the violations were discovered on forms and documents submitted to this office or the Office of the Attorney General. A notary is an officer of the state and a violation of the notary laws cannot be ignored even if the notary inadvertently makes a mistake. As a notary, it is your responsibility to review the document you are notarizing and to follow the notarization procedures accurately.

Always remember that you are an important officer of the state and people depend on you to perform your service as a notary truthfully and with integrity.

## Notary Laws on Website

As a notary, it is important that you are knowledgeable about the current notary public laws so that you are able to perform your duties to the best of your ability.

Therefore, you are encouraged to visit the Notary Public section of the Secretary of State's website at [www.nd.gov/sos/notaryserv/](http://www.nd.gov/sos/notaryserv/), which contains valuable notary information, including the notary laws and past editions of *Notary Notes*. When reviewing the notary laws, particularly note the following sections: N.D.C.C. §§ 44-06.1-14, 44-06.1-19, and 44-06.1-23.

## New Notary Laws Adopted by the 63rd Legislative Assembly

During the 63rd Legislative Assembly, House Bill 1207 was introduced and passed, which resulted in changes to the notary law. There are two portions of the bill we would like to highlight. First, the bill adjusted the criteria regarding the dimension of the notary circular stamp. The new criteria states that the circular stamp may be up to or equal to one and five-eighths inch in diameter. Second, the bill restored language to the Century Code regarding reciprocity of notarial acts by bordering states.

## Employer vs. Employee – Who Owns the Notary Commission?



A notary commission is issued to a notary public and not to the notary public's employer even if the notary's employer pays for the application fee, bond or stamping device. This is true even if the notary no longer works for the employer. **A notary must remember that he or she is responsible for and liable for notarial acts that the notary performs.** Any disciplinary actions related to a notarial act are commenced against the notary

public and not the notary's employer. If an employer pays the expenses for a notary to obtain and maintain a notary commission, the employer may have the understanding that the notary will be available to only perform notarial acts for the employer and will not be available to notarize documents for the general public. However, an employer cannot force a notary to perform a notarial act that is not in full compliance with the provisions of

state law. Therefore, a notary public must always remember that he or she personally assumes the duties and obligations of the office to which the notary has been commissioned. As a public official, the notary, and not the employer, is responsible for performing the duties of a notary public in full compliance with the provisions of state law.

### Copy Certifications N.D.C.C. § 44-06.1-19(5)

At times, a notary public may need to complete a copy certification. A notary may be able to compare the copy of the document with the original and state that the copy is a true, correct and complete copy of the original. An example of the notarial certificate is as follows:

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

I certify that this is a true and correct copy of a record in the possession of (Name of Person Providing Original).

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of notarial officer

Stamp

\_\_\_\_\_  
Title of office  
My commission expires: \_\_\_\_\_

However, notaries may not certify a copy of a vital record, a document entitled to be recorded with a county recorder, or a public record containing an official seal. The person requesting such a certified copy should be directed to the public office that is authorized to produce certified copies of those documents.

### Oath of a Notary Public

***“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.”***

### Witnessing/Attesting Signatures vs. Acknowledging Records N.D.C.C. § 44-06.1-19

The notarial acts of witnessing/attesting a signature and acknowledging a record can be a difficult task for some to differentiate. When a notary is asked to witness or attest a signature, the person must personally appear before the notary and sign the document in the presence of the notary prior to completion of the certificate. The notary is merely witnessing the signature of an identified individual. If a notary is requested to acknowledge a record, the person must still personally appear before the notary and satisfy the notary that the individual is who he or she claims to be. Also, the person whose signature is being notarized must declare before the notary that the individual has signed the record for the purpose stated in the record and that the signature on the document is his or her signature. Each of these has a different notarial certificate. Refer to N.D.C.C. § 44-06.1-19 for examples of these notarial certificates.



## How to Determine if Someone is of Sound Mind

A notarial officer may refuse to perform a notarial act if he or she is not satisfied that the individual executing the record is competent or has the capacity to execute the record. One method to determine the competency or capacity of an individual is to ask common questions, such as the person's name or address, the date, where he or she is at the time, etc. If a person is unable to answer these questions, the individual may be lacking competency or capacity. It is ultimately up to the notary public to make the decision whether to notarize a person's signature.

***“The notary should not choose the notarial certificate for the customer.”***

## Certificates of Notarial Acts N.D.C.C. § 44-06.1-14

Every document that is notarized must contain a certificate of notarial act, such as an acknowledgment, verification on oath or affirmation, or other approved notarial certificate. It is the responsibility of the person whose signature is being notarized to choose which notarial certificate to include. The notary should not choose the notarial certificate for the customer. However, it is the responsibility of the notary to verify that the notarial certificate contains all of the correct text. Examples of certificates of notarial acts are available in the Notary Section of the Secretary of State's website under Certificates of Notarial Acts.

## Reciprocity of Notarial Acts

As previously stated in this newsletter, House Bill 1207 restored language to the Century Code regarding the reciprocity of notarial acts performed by notaries public of bordering states. The law now permits the recognition of notarial acts performed in North Dakota by a notary public of a bordering state if that state also recognizes notarial acts performed by notaries public commissioned in North Dakota. Currently, Montana is the only state to offer reciprocity to North Dakota.

## Handwriting or Typing Commission Expiration Dates

Handwriting or typing a notary's commission expiration date on a document is not required if the document has a designated space for the expiration date. The notary public's stamp includes the notary's commission expiration date, which provides sufficient evidence of the notary's commission expiration date. If the incorrect commission expiration date is written or typed on the document, the discrepancy between the handwritten or typed expiration date and the actual expiration date could result in a notary violation.



## Documents Drafted in Pencil

If a notary is asked to notarize a document that is written in pencil, it is good practice to decline to notarize the document. Notarizing a document that is written in pencil may create subsequent complications. For example, part of the document could be erased or changed and there would be no record of the change after notarization.

## Notarizing Documents for Family Members

A notary public is prohibited from notarizing his or her own signature and that of the notary's spouse. Although not prohibited by law, it is recommended that a notary not notarize a document for a close family member, such as a parent, sibling, child or other close relative. Notarizing documents for these individuals can sometimes cause the notary to appear biased and may be an ethical issue. If a family member requests that you notarize a document, it is best to refer the family member to another notary to avoid any possible conflicts.

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***“Notaries do not simply perform meaningless clerical functions. They perform an essential service to the public.”***

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## Notary Name Change N.D.C.C. § 44-06.1-27

If a notary legally changes his or her name, the notary must file a Notary Name Change/Notary Seal/Stamp Change (SFN 51261) with the Secretary of State's office along with a rider to the notary's surety bond stating both the previous name and the new name. The filing fee is \$10 and the documents must be filed within 60 days of the name change. The Secretary of State's office will then issue a new authorization to purchase a notary public stamping device. Once the verification of the notary public stamping device is returned to the Secretary of State's office, a new notary commission certificate with the notary's new name will be issued. For the time period between when the notary notifies the Secretary of State's office of the name change and the receipt of the new notary commission certificate, the notary may sign his or her name as follows:

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Notary Public North Dakota  
Formerly known and commissioned as

---

My commission expires  
Notary Seal



## What Does “Name of Vendor” Mean?

Once a notary application and notary bond are filed, the Secretary of State issues an authorization to purchase a notary public stamping device. This authorization refers to the “Name of Vendor.” The “Name of Vendor” is the name of the person or company who manufactures the notary public stamping device. The name and address of the vendor must be provided on the verification of notary public stamping device, which must be returned to the Secretary of State after the notary obtains his or her notary stamping device.

## I-9 Forms – Do They Require Notarization?

The Department of Homeland Security – Employment Eligibility Verification I-9 form does not require notarization. Therefore, if a notary is presented with this form, the notary should not notarize the form. If it is requested that the notary be the authorized representative for the employer, the notary may complete the form, but this would **not** be in a notary public capacity and the notary should not include his or her notary stamp on the form. The authorized representative only certifies that he or she reviewed the identification provided by the employee and states when the employee began employment. This is not a notarial act.



## Change of Address N.D.C.C. § 44-06.1-20(9)

A notary is required by state law to notify the Secretary of State's office within 60 days of any address change. If the address change is reported to the Secretary of State's office within this time period, there is no fee for the address change. However, if the address change is filed with the Secretary of State's office more than 60 days after the change of address, the notary must pay a \$10 late fee.

## Notary Violations from July 1, 2012 through June 30, 2013

Note: Some of the following abbreviated summaries may appear to be similar in nature. However, the circumstances surrounding each violation are often different and result in varying penalties. All violations are a matter of public record under the state's open record laws.

**July 10, 2012** – Notary violated 44-06.1-23(6)(c) by notarizing spouse's signature: \$125.00 fine

**July 31, 2012** – Notary violated 44-06.1-16(1) by notarizing a document without a notary commission: \$50.00 fine

**July 31, 2012** – Notary violated 44-06.1-23(6)(e) by notarizing a document with different dates; and 44-06.1-14(1)(c) by notarizing a document without the correct county listed on the jurisdiction: 3 month suspension

**July 31, 2012** – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed in the notary's presence: \$125.00 fine

**September 10, 2012** – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50.00 fine

**September 10, 2012** – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50.00 fine

**September 10, 2012** – Notary violated 44-06.1-14(1)(b) by failing to affix signature to the document: \$50.00 fine

**September 12, 2012** – Notary violated 44-06.1-23(6)(e) by notarizing a document with different dates: 3 month suspension

**September 17, 2012** – Notary violated 44-06.1-14(2) and 44-06.1-23(8) by failing to affix notary stamp to the document: 2 month suspension

**September 24, 2012** – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed in the notary's presence: \$125.00 fine

**October 2, 2012** – Notary violated 44-06.1-21(4) by notarizing a document without a notary commission: \$50.00 fine

**November 13, 2012** – Notary violated 44-06.1-16(1) and 44-06.1-21(4) by notarizing a document without a notary commission: \$50.00 fine

**December 3, 2012** – Notary violated 44-06.1-23(6)(a) by notarizing a document without a signature; and 44-06.1-23(6)(h) by notarizing an incomplete document: 3 month suspension

**December 5, 2012** – Notary violated 44-06.1-23(6)(c) by notarizing spouse's signature: 4 month suspension

**December 18, 2012** – Notary violated 44-06.1-23(6)(e) by notarizing a document with different dates: \$125.00 fine

**December 31, 2012** – Notary violated 44-06.1-23(6)(a) by notarizing a document without a signature: \$50.00 fine

**December 31, 2012** – Notary violated 44-06.1-16(1) by notarizing a document without a notary commission – impression of notary stamp not returned: 4 month suspension

**December 31, 2012** – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50.00 fine

**December 31, 2012** – Notary violated 44-06.1-16(1) by notarizing a document without a notary commission: \$50.00 fine

**January 3, 2013** – Notary violated 44-06.1-16(1) and 44-06.1-21(4) by notarizing a document without a notary commission – impression of notary stamp not returned: \$50.00 fine

**January 3, 2013** – Notary violated 44-06.1-16(1) and 44-06.1-21(4) by notarizing a document without a notary commission – impression of notary stamp not returned: \$50.00 fine

**January 7, 2013** – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document and 44-06.1-14(1)(e) by handwriting the incorrect commission expiration date on the document: \$50.00 fine

**January 28, 2013** – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50.00 fine

**January 28, 2013** – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: 2 month suspension

**January 28, 2013** – Notary violated 44-06.1-14(1)(b) by failing to affix signature to the document: 2 month suspension

**January 28, 2013** – Notary violated 44-06.1-23(6)(e) by notarizing a document with different dates: 3 month suspension

**February 4, 2013** – Notary violated 44-06.1-23(6)(a) by notarizing a document without a signature: \$125.00 fine

**February 26, 2013** – Notary violated 44-06.1-16(1) and 44-06.1-21(4) by notarizing a document without a notary commission – impression of notary stamp not returned: \$50.00 fine

**March 7, 2013** – Notary violated 44-06.1-23(6)(a) by notarizing a document without a signature: 3 month suspension

**March 12, 2013** – Notary violated 44-06.1-23(6)(h) by notarizing an incomplete document and 44-06.1-23(8) by failing to affix notary stamp to the document: \$50.00 fine

**March 18, 2013** – Notary violated 44-06.1-21(4) by notarizing a document without a notary commission: \$50.00 fine

**March 25, 2013** – Notary violated 44-06.1-14(1)(b) by failing to affix signature to the document: 2 month suspension

**April 3, 2013** – Notary violated 44-06.1-14(2) by failing to affix notary stamp to the document: 2 month suspension

**April 9, 2013** – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50.00 fine

**April 9, 2013** – Notary violated 44-06.1-14(1)(b) by failing to affix signature to the document: 2 month suspension (continued on page 6)



## Secretary of State

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Visit the Secretary  
of State's Website  
[www.nd.gov/sos](http://www.nd.gov/sos)

Review the  
Notary Laws  
[www.nd.gov/sos/  
notaryserv/](http://www.nd.gov/sos/notaryserv/)

Notary Notes is a  
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National Notary  
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[www.nationalnotary.org](http://www.nationalnotary.org)

Notary Law Institute  
[www.notarylaw.com](http://www.notarylaw.com)

## Notary Violations (continued from page 5)

to affix signature to the document: \$50.00 fine

returned: \$50.00 fine

**April 9, 2013** – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: 2 month suspension

**April 23, 2013** – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50.00 fine

**April 10, 2013** – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50.00 fine

**April 25, 2013** – Notary violated 44-06.1-14(2) and 44-06.1-23(8) by failing to affix notary stamp to the document: 2 month suspension

**April 10, 2013** – Notary violated 44-06.1-16(1) by notarizing a document without a notary commission: \$50.00 fine

**May 28, 2013** – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50.00 fine

**April 11, 2013** – Notary violated 44-06.1-14(2) by failing to affix notary stamp to the document: 2 month suspension

**June 4, 2013** – Notary violated 44-06.1-16(1) by notarizing a document without a notary commission: \$50.00 fine

**April 23, 2013** – Notary violated 44-06.1-16(1) by notarizing a document without a notary commission – impression of notary stamp not returned: \$50.00 fine

**June 5, 2013** – Notary violated 44-06.1-16(1) by notarizing a document without a notary commission: \$50.00 fine

**April 23, 2013** – Notary violated 44-06.1-16(1) by notarizing a document without a notary commission – impression of notary stamp not

**June 19, 2013** – Notary violated 44-06.1-16(1) by notarizing a document without a notary commission: \$50.00 fine

## Test Your Knowledge

Answer the following true or false questions to test your knowledge as a notary public:

1. If a notary's name changes, the notary is not allowed to notarize documents until he or she receives a new commission certificate displaying the notary's new name.
2. If a notary changes jobs, the notary must resign his or her notary commission at the employer's request.
3. If the address of a notary public changes, the notary must notify the Secretary of State within 60 days of the change or a fee of \$10 will be assessed.
4. According to a new law recently passed in North Dakota, a North Dakota notary public may perform notarial acts anywhere in the United States.
5. The Department of Homeland Security – Employment Eligibility Verification I-9 form does not need to be notarized.
6. Even though a notary stamp has an expiration date, a notary should always write in his or her commission expiration date on the document.
7. Family members, such as parents, children or siblings, should be referred to another notary for any documents they may need notarized.
8. The vendor is the person or company who manufactures a notary public stamping device.
9. Witnessing a signature and acknowledging a signature are the same notarial act.
10. Notarizing a document drafted in pencil is not a good practice.
11. A notary is prohibited from notarizing a document for a person who holds power of attorney over another individual.
12. A notary can certify a copy of a birth or death certificate.
13. Even if the notary does not believe the person to be competent, a notary cannot decline to notarize a document.
14. An individual must take an Oath of Office in order to act in the capacity of a notary public.
15. A notary can notarize a document by including the notary's signature and impression of his or her stamp with no additional wording.

Answers: 1. False (page 4); 2. False (page 2); 3. True (page 4); 4. False (pages 1 and 3); 5. True (page 4); 6. False (page 3); 7. True (page 4); 8. True (page 4); 9. False (page 2); 10. True (page 3); 11. False (page 4); 12. False (page 2); 13. False (page 3); 14. True (page 2); 15. False (page 3)