



Notary Notes

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

Inside this issue:

Do Not Start the Race Before the Gun Sounds	2
Handwriting Commission Expiration Dates	2
What is Errors and Omissions (E&O) Insurance?	2
Clear Impressions	2
Ensuring Notary Public Impartiality Through Common Sense and a Clear Conscience	3
Notary Name Change	3
Change of Address	3
Do Not Choose the Certificate	4
What About Employer Paid Commissions?	4
Signature of Notary Public	4
Certified Copies	4
Documents Drafted in a Foreign Language	4
Primary Functions of a Notary Public	5
Renewal Time	5
Notary Violations	5
Test Your Knowledge	6

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Greetings from Secretary of State Al Jaeger

As of June 30, 2014, North Dakota had 14,352 commissioned notarial officers, which is an increase of 479 or 3.45% 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. It is very important that you, as a notary public, know the responsibilities of a notary public so that you are able to accurately perform the duties of a notary public. 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 instances had the potential of resulting in the revocation of the notary's commission.

In addition to the settlement agreements specified in this newsletter, 246 reprimands were issued from July 1, 2013 through June 30, 2014. Although not a complete list, the

number of unlawful acts include: notarizing a document without a signature; 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; and unlawful use of an embosser style notary seal (prohibited since 2003). All of these situations could have resulted in a fine, suspension or revocation of commission, and in certain cases, criminal proceedings.

It is important to note most of these violations were discovered on forms and documents submitted to this office or to 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.

I encourage you to read this newsletter and review your responsibilities as a notary public. In addition, 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 Notaries Public section of the Secretary of State's website at 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.

Check It Twice!

Prior to the departure of any person whose signature you notarize, make sure your notarial act contains the following:

1. Jurisdiction (state and county) where notarial act was executed.
2. Text for the certificate of the notarial act.
3. Person's signature.
4. Notary's signature and date.
5. Clear impression of the notary stamp, which includes the commission expiration date.

Do Not Start the Race Before the Gun Sounds

Whether you are applying for a new notary commission or renewing your commission, it is very important to read the documents that are provided to you both at the time you are issued an authorization to purchase a notary stamping device and at the time you are issued your notary commission.

After your notary application is approved, you will receive an authorization to purchase a notary stamping device. It is important to note that once you obtain a

notary stamping device, you must affix an impression of it to a verification document, which must then be returned to the Secretary of State's office. After the verification is filed, the Secretary of State will issue a notary commission. Neither the authorization to purchase the notary stamp nor the obtainment of a notary stamping device allow you to begin performing notarial acts. A notary may only perform notarial acts during the six-year period listed on the notary

public's commission. The authorization only allows you to obtain a notary stamping device and having a notary stamping device does not make you a notary. If you receive your commission prior to the effective date of the commission, you are still not authorized to perform notarial acts until the effective date listed on the commission.

Remember, do not perform notarial acts (start the race) before the effective date of

your notary commission (the gun sounds). Performing notarial acts prior to the effective date of the commission could result in a penalty or possible liability issues for the notary.

If you have a notary commission that has not yet expired, but have also received your renewed commission, you will use the first notary stamping device until that commission expires and the new stamping device once that commission becomes effective.

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."

What is Errors and Omissions (E&O) Insurance?

Errors and omissions insurance is added protection for a notary in the event that 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. Errors and omissions insurance provides primary protection and will pay claims without requiring the notary to reimburse the insurance carrier. This is different from a surety bond, which requires that the notary reimburse the surety company for any claims paid. Since a notary public is responsible for his or her own actions, a notary public might not be protected by his or her employer. It is the notary public's decision whether to purchase errors and omissions insurance since it is not required by law. Documentation for errors and omissions insurance is for the notary's records only and **should not** be filed with this office.

Handwriting Commission Expiration Dates

Some documents may have a space to handwrite or type a notary's commission expiration date. However, handwriting or typing a notary's commission expiration date is not legally required as it appears on the notary's stamp, which is sufficient evidence of the notary's commission expiration date. Handwriting or typing the commission expiration date exposes the possibility of the handwritten/typed expiration date not matching the expiration date on the notary stamp, which could lead to a potential violation and could also invalidate the document that is being notarized.

Clear Impressions N.D.C.C. § 44-06.1-16(1)

A notary public's stamping device must leave a clear impression. The impression of the stamp should not obscure or overlap any other text on the document and all of the information on the impression of the stamp should be readable. If you use a self-inking stamping device, make sure that the device is well inked prior to placing an impression on the document. If you notice that the impression of the stamping device is not clear on a document, simply place another impression of the stamping device on the document.



Ensuring Notary Public Impartiality Through Common Sense and a Clear Conscience

“Beneficial interest” is a difficult term for a notary public to clearly define. The basic rule is simple: a notary public should not notarize a document if he or she benefits from the document or if the notary public has an association that could compromise the notary public’s impartiality.

North Dakota law specifically states that a notary public cannot notarize one’s own signature or the signature of his or her spouse. The law also states that a notary public cannot notarize a document if the notary’s name or spouse’s name appears on the document as a party to the transaction. However, the law does not specifically include language regarding notarizing documents for friends, relatives (other than a spouse) or employers. So, how does a notary public determine whether it is acceptable to notarize a document for a relative (other than a spouse), friend or employer? Below are some helpful guidelines to assist a notary public in using common sense and following his or her conscience to avoid any appearance of “beneficial interest” when performing a notarial act. If a notary public is not sure whether he or she should notarize a document, it would be best not to notarize the document to protect the notary public as well as the document that needs notarization.

Notary Public’s Name or Spouse’s Name: As stated above, North Dakota law specifically states that a notary public cannot notarize a document if the name of the notary or the notary’s spouse appears on the document as a party or if the notary or the notary’s spouse has a direct beneficial interest in the document. In addition to being against the law, it would be a conflict of interest. It would be hard to explain how a notary public could be objective when notarizing a document that may leave any money to the notary or authorize the notary to act on another’s behalf.

Other Relatives: Although not disallowed by law, it is recommended that a notary not notarize documents for close family members, such as parents, siblings and other close relatives. Notarizing documents for these individuals may cause the notary to appear biased and is often an ethical issue. If a family member requests that you notarize a document for them, it is best to refer the family member to another notary to avoid any possible conflicts.

Notary Public’s Employer: A notary public who is a company officer should not notarize company documents because a conflict of interest may arise. Since the notary public may have a financial interest in company documents, it may be best to have a salaried employee who is not an officer of the company notarize the documents.

Paid Agent: A conflict of interest may also exist for a notary public to notarize a document for a signer who pays the notary public for other services. For example, attorneys, real estate agents and other professionals may be notaries public who are paid by clients for their services. It is likely convenient for these professionals to notarize a client’s signature, but the notary public also needs to consider whether it is ethical to do so. If there is any question as to whether notarizing a document for a client would compromise the honesty or impartiality of the notary public, it is best to have another notary public notarize the document. This illustrates the notary public’s ethical standards. It also helps ensure that the notary public made every effort to ensure that the document is properly notarized.

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:

Notary Public North Dakota
Formerly known and commissioned as

My commission expires
Notary Seal

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

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.





Do Not Choose the Certificate

At times, a person who is requesting that you perform a notarial act will not know which type of notarial act he or she needs. If this situation occurs, a notary public should never select the notarial wording on behalf of the signer.

As an officer with limited powers, a notary public is given minimal discretion in carrying out the duties of a notary public. A notary public can only act at the direction of the signer and is not empowered to make decisions on the signer's behalf since it could lead to legal ramifications for the signer. If the notary public were to mistakenly choose the wrong type of certificate, the document may result in legal consequences for the signer, including financial losses. If the person is not sure which type of notarization is needed on a document, the notary public may explain the different types so that the signer may choose which notarial act he or she would like the notary public to perform. In the alternative, the signer may contact the issuing or receiving agency to help determine which act is required.

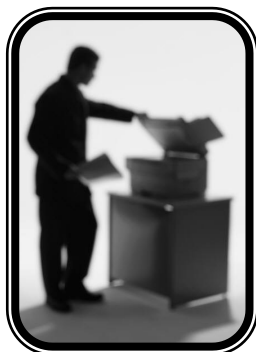
Information about the different certificates and examples are available through the Notaries Public section of the Secretary of State's website at www.nd.gov/sos/notaryserv/.

What About Employer Paid Commissions?

Even if a notary public's employer pays for anything related to obtaining a notary commission, the commission belongs to the notary public regardless of whether the notary continues to work for that 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.

Even if an employer pays the expenses for a notary to obtain and maintain a notary commission, the employer cannot force a notary to perform any notarial acts that are not in full compliance of the law. However, an employer may have an understanding with the notary that, during work hours, the notary public will only be available to notarize documents for the employer and will not be available to notarize documents for the general public if the employer pays the notary expenses. Yet, the notary would still be able to notarize documents for other individuals outside of the notary's work hours.

It is important that a notary public 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.



Certified Copies

Remember: A notary public may not make or purport to make a certified copy of the following:

- Vital records
- Recordable instruments
- Public records containing an official seal

This includes birth certificates, death certificates, college transcripts and anything that bears a government seal.

Signature of Notary Public

A notary public must sign his or her name exactly as it appears on the notary public's commission. Therefore, if a notary public's full middle name or middle initial is included on the commission, the notary public must sign his or her name in that manner. If you only want to sign with your first and last name, do not include your middle name or middle initial on your notary application.

***A North Dakota notary
public is a notary public
for the entire state of
North Dakota.***

Documents Drafted in a Foreign Language

If a document is drafted in a foreign language, an English translation must be permanently attached to the document. Then both documents must be signed and notarized to be considered a proper notarial act.

Primary Functions of a Notary Public

- Assure the identity of the person affixing his or her signature to the document or acknowledging a signature on a document.
- Assure that the person is not signing under any type of duress.
- Document when and where the notarial act takes place.

Renewal Time

You will receive a lot of information from different companies at renewal time. The Secretary of State's office is required to notify a notary public at least thirty days prior to the expiration of a notary public's commission. Note that the renewal process can only begin once you receive a notice from the Secretary of State's office. Forms received from any other companies are not necessarily required to renew your notary commission.



Notary Violations from July 1, 2013 through June 30, 2014

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 8, 2013 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 fine

July 8, 2013 – Notary violated 44-06.1-23(6)(c) by notarizing spouse's signature: 2 month suspension

July 16, 2013 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 fine

July 16, 2013 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

July 31, 2013 – Notary violated 44-06.1-23(6)(c) by notarizing spouse's signature: \$125 fine

July 31, 2013 – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125 fine

August 2, 2013 – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125 fine

August 19, 2013 – Notary violated 44-06.1-14(1)(b) by failing to affix signature to the document: \$50 fine

August 30, 2013 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

September 9, 2013 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

September 9, 2013 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

September 17, 2013 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

September 25, 2013 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$75 fine

September 27, 2013 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

September 27, 2013 – Notary violated 44-06.1-23(6)(e) by notarizing a document with different dates: \$125 fine

November 7, 2013 – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: 3 month suspension

November 7, 2013 – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: 3 month suspension

November 13, 2013 – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125 fine

November 18, 2013 – Notary violated 44-06.1-14(2) and 44-06.1-23(8) by failing to affix notary stamp to the document: 3 month suspension

December 6, 2013 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

December 12, 2013 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$125 fine

December 13, 2013 – Notary violated 44-06.1-23(6)(c) by notarizing spouse's signature: 5 month suspension

December 19, 2013 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$75 fine

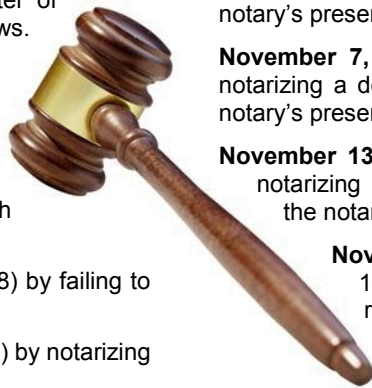
December 30, 2013 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

December 30, 2013 – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125 fine

December 30, 2013 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

December 31, 2013 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

January 16, 2014 – Notary violated 44-06.1-14(1)(b) by failing to affix signature to the document: 3 month suspension
(continued on page 6)



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

Notary Notes is a
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American Society of
Notaries
www.asnnotary.org

National Notary
Association
www.nationalnotary.org

Notary Law Institute
www.notarylaw.com

Notary Rotary
www.notaryrotary.com

Notary Violations (continued from page 5)

January 27, 2014 – Notary violated 44-06.1-23(6)(c) by notarizing spouse's signature: 4 month suspension

February 5, 2014 – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125 fine

March 4, 2014 – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$150 fine

March 6, 2014 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 fine

March 13, 2014 – Notary violated 44-06.1-14(1)(b) by failing to affix signature to the document: \$50 fine

April 11, 2014 – Notary violated 44-06.1-14(1)(b) by failing to affix signature to the document: 6 month suspension

April 14, 2014 – Notary violated 44-06.1-23(6)

(e) by notarizing a document with different dates: 3 month suspension

May 1, 2014 – Notary violated 44-06.1-23(6)(b) by notarizing a document to which the notary was a party: \$100 fine

May 9, 2014 – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125 fine

May 20, 2014 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

May 23, 2014 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

May 29, 2014 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

June 10, 2014 – Notary violated 44-06.1-16(1) by notarizing a document without a commission: \$50 fine

Test Your Knowledge

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

1. A document drafted in a foreign language must have an English translation attached.
2. The expiration date on the notary public's stamping device is sufficient evidence of the notary's commission expiration date.
3. If a notary changes his or her name, the notary does not need to change the name on the notary commission until it is time to renew his or her commission.
4. Errors and omissions insurance provides the same protection as a surety bond.
5. Providing legal advice is one of the primary functions of a notary public.
6. No ethical issues exist for certain professionals (who are also notaries) to notarize a client's signature.
7. A notary should double check that a notarial act contains the person's signature.
8. Once you receive the renewal notice from the Secretary of State's office, you may begin the process to renew your notary commission.
9. A notary has 90 days to notify the Secretary of State's office of any address change without a fee.
10. A notary public's stamping device must leave a clear impression on the document.
11. An employer cannot force an employee to perform a notarial act that is not in full compliance of the law.
12. A notary public may sign his or her name in any manner regardless of what is stated on the commission.
13. At the signer's request, a notary may choose the certificate for the signer.
14. Once a notary obtains a notary stamping device, he or she may begin to notarize documents.
15. A notary is not allowed to make or purport to make a certified copy of a birth certificate.

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