



NOTARY NOTES

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

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Greetings!

North Dakota has over 13,000 notarial officers. Once you are commissioned as a notary public, you become an officer of the state. This duty is not to be taken lightly, as verified with the following Oath of Office that 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."

To be commissioned as a notary is a position of trust and integrity. In order for you, as a notary, to perform your duties to the best of your ability, it is important that you are knowledgeable about the laws related to notaries.

In order to emphasize the importance of performing your duty as a notary properly and with integrity, 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 listed in this newsletter, 176 reprimands have been issued from July 1, 2011 through June 30, 2012. All of these situations could have resulted in a fine, suspension or revocation of commission, and in certain cases, criminal proceedings.

Although not an exhaustive list, the violations include: failing to affix an impression of the notary stamp; notarizing a document with no signature; not witnessing the signature of the person whose signature is being notarized; notarizing documents prior to the notary's effective commission date or after the notary's commission expiration date; 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); and notarizing one's own signature.

A surprising fact about these violations is that almost all of the violations were discovered on forms and documents submitted to this office or the Office of the Attorney General. Only a few of the violations were reported by sources outside of the Secretary of State's office. Even if a notary inadvertently

makes a mistake, the violation cannot be ignored. As a notary, you must ensure that you review the document you are notarizing and follow the notarization procedures accurately.

Notaries do not simply perform meaningless clerical functions. They perform an essential service to the public. 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. I urge you to read this newsletter thoroughly and review the attached notary laws on a regular basis. If you would like to review previous editions of Notary Notes, you can find them in the Notary Section on the Secretary of State's website at www.nd.gov/sos/notaryserv.

Al Jaeger
Secretary of State

Errors and Omissions Insurance

In addition to the surety bond required by state law, more and more notaries are choosing to purchase elective Errors and Omissions insurance as added protection from any mistake that causes a financial or other type of loss to a client for which the notary is sued for recovery. While the required surety bond protects the notary in the event a mistake is made, the notary is also protected by Errors and Omissions insurance if the notary is liable to the surety for amounts paid out on the bond. It should be noted that since the Errors and Omissions insurance is optional and not required by state law, documents related to the insurance **do not** need to be filed with the Secretary of State's office. These documents are only for the notary's record and will be returned to the notary if sent to the Secretary of State's office.

Notarizing Family Members

N.D.C.C. § 44-06.1-23(6)(b) and N.D.C.C. § 44-06.1-23(6)(c)

A notary 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. A notary also cannot notarize one's own signature or the notary's spouse's signature. 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 can sometimes 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.

Handwriting Commission Expiration Dates

Even if a document has a space to handwrite a notary's commission expiration date, it is not legally required that the commission expiration date be written or typed on a document. The notary's commission expiration date appears on the notary's stamp, which is sufficient evidence of the notary's commission expiration date. If a notary writes the incorrect commission expiration date on the document, the discrepancy between the handwritten expiration date and the actual expiration date could expose the notary to a potential violation.

Commission is issued to an individual

N.D.C.C. § 44-06.1-16(4)

Once an individual becomes a notary, the notary's commission and stamp are the property of the notary. Even if an employer pays for the commission and/or purchases the stamping device for the notary, the employer is not allowed to retain the commission or stamping device. The notary must always have direct and exclusive control of the stamping device at all times during the notary's commission. **If you leave your place of employment, make sure to take your notary commission and stamp with you.**



Things to remember when preparing to notarize a document

1. Be sure the document is complete and has no blanks. N.D.C.C. § 44-06.1-23(6)(h)
2. If the document is in a foreign language, an English translation must be attached to the document prior to notarization and the document must be signed and notarized. N.D.C.C. § 44-06.1-23(6)(i)
3. Either an acknowledgment, verification on oath or affirmation, or other approved notarial certificate must be on the document. Examples can be found in the Notary Section on the Secretary of State's website under Certifications. Do not choose for the customer. N.D.C.C. § 44-06.1-14
4. The dates must match on a verification on oath or affirmation. N.D.C.C. § 44-06.1-23(6)(e)
5. Confirm the identification of the person whose signature you are notarizing either by personal knowledge of the person or proper identification provided by the person. N.D.C.C. § 44-06.1-06
6. The person whose signature you are notarizing must sign the document in your presence in the case of a verification on oath or affirmation, or acknowledge the document in your presence in the case of an acknowledgment before you complete the notarization. N.D.C.C. § 44-06.1-23(6)(a)
7. Make sure you sign the document. N.D.C.C. § 44-06.1-14(1)(b)
8. Make sure you place an impression of your notary stamp on the document. N.D.C.C. § 44-06.1-23(8)
9. There is no need to handwrite your notary commission expiration date on the document. The expiration date on your stamping device is sufficient.

Check it Twice!

It is good practice to double check your notarial act 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. Statement for certificate of the notarial act.
3. Person's signature and date.
4. Notary's signature and date.
5. Clear impression of the notary stamp, which includes the commission expiration date.

Document Dates

N.D.C.C. § 44-06.1-23(6)(e)

A notary cannot notarize a document in which the date on the verification on oath or affirmation or acknowledgement is not the actual date the document is being notarized. Neither the notary nor the person whose signature is being notarized may predate or postdate the document. Also, a notary cannot notarize a document without completing the date on the verification on oath or affirmation, or on the acknowledgement.

Commission Dates

N.D.C.C. § 44-06.1-21(4)

A notary's commission expires six years from the date of issuance unless otherwise removed by the secretary of state at an earlier date. A notary is not allowed to notarize documents prior to receiving the notary's actual commission or after the notary's commission has expired or is revoked. A notary's commission begins at 12:00 a.m. on the date of issuance and ends at midnight on the commission expiration date. Notarizing documents prior to or beyond the notary's commission is a violation of state law.

Identification of Individual

N.D.C.C. § 44-06.1-06

A notary must have satisfactory evidence of a person's identity prior to notarizing a document. Satisfactory evidence of a person's identity is as follows:

1. Notary has personal knowledge of the person whose signature is being notarized.
2. Passport, driver's license or government-issued non-driver ID card that is currently valid or not expired more than three years prior to the notarization.
3. Another form of government identification that is currently valid or not expired more than three years prior to the notarization, which contains the person's signature or a photograph of the person and is satisfactory to the notary.
4. Verification on oath or affirmation of a credible witness personally appearing before the notary and know to the notary or whom the notary can identify on the basis of paragraph (2) above.

A notary may require additional information or identification of a person to assure identity prior to notarizing a document.

Embossed Seals

Since August 1, 2003, a notary may not use an embosser style notary seal to notarize documents. If you are using an embossed seal to notarize documents, please destroy it as it is no longer legal and may cause you to be in violation of the state law. An embossed seal should not be used along with a notary's official stamping device. Doing so could cause the notary to be in violation of state law.

Notary Violations From July 1, 2011 through June 30, 2012



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 13, 2011 – Notary violated 44-06-13.1(1)(e) by notarizing a document with different dates on the certificate: resigned commission.

August 8, 2011 – Notary violated 44-06-04 by notarizing a document without a notary commission – did not return impression of stamp: \$36 penalty and three-month suspension.

August 8, 2011 – Notary violated 44-06-04 by failing to affix notary stamp to the document: \$50.00 penalty.

August 15, 2011 – Notary violated 44-06-04 by failing to affix notary stamp to the document: two-month suspension.

August 25, 2011 – Notary violated 44-06-13.1(1)(a) by notarizing a document without a signature: \$75 penalty.

September 14, 2011 – Notary violated 44-06-04 by notarizing a document without a notary commission – did not return impression of stamp: \$75 penalty.

September 21, 2011 – Notary violated 44-06-04 by failing to affix notary stamp to the document: cannot apply for one year.

September 23, 2011 – Notary violated 44-06-13.1(1)(a) by notarizing a document without a signature: \$75.00 penalty.

September 28, 2011 – Notary violated 44-06.1-23(6)(a) by notarizing a document without a signature: \$125 penalty.

October 4, 2011 – Notary violated 44-06-04 by failing to affix signature to the document: \$100 penalty.

October 10, 2011 – Notary violated 44-06-13.1(1)(a) by notarizing a document without a signature: two-month suspension.

October 12, 2011 – Notary violated 44-06-13.1(1)(a) by notarizing a document without a signature: three-month suspension.

October 12, 2011 – Notary violated 44-06-13.1(1)(e) by notarizing a document without the year on the certificate: three-month suspension.

October 12, 2011 – Notary violated 44-06-13.1(1)(a) by notarizing a document without a signature: three-month suspension.

October 12, 2011 – Notary violated 44-06-13.1(1)(e) by notarizing a document without the county listed on the jurisdiction: three-month suspension.

October 17, 2011 – Notary violated 44-06.1-23(6)(c) by notarizing own signature: \$150 penalty.

October 17, 2011 – Notary violated 44-06.1-16(1) by notarizing a document without a notary commission – did not return impression of stamp: \$50 penalty.

October 25, 2011 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 penalty.

October 27, 2011 – Notary violated 44-06.1-23(6)(a) by notarizing a document without a signature: \$125 penalty.

November 7, 2011 – Notary violated 44-06.1-23(6)(a) by notarizing three different documents without a signature: \$125 penalty.

November 18, 2011 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 penalty.

December 1, 2011 – Notary violated 44-06.1-21(4) by notarizing a document without receiving a new commission: \$75 penalty.

December 16, 2011 – Notary violated 44-06.1-23(6)(a) by notarizing a document without a signature: three-month suspension.

December 21, 2011 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 penalty.

December 21, 2011 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 penalty.

December 21, 2011 – Notary violated 44-06-23(6)(e) by notarizing a document with different dates on the certificate; 44-06.1-23(6)(h) by notarizing an incomplete document; and 44-06.1-21 by failing to affix a clear impression of notary stamp: \$50 penalty.

January 3, 2012 – Notary violated 44-06.1-21(4) by notarizing a document without receiving a new commission: \$100 penalty.

January 19, 2012 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: two-month suspension.

January 19, 2012 – Notary violated 44-06.1-21(4) by notarizing without a commission: \$50 penalty.

February 29, 2012 – Notary violated 44-06.1-14(1)(b) by not affixing signature to the document: three-month suspension.

March 12, 2012 – Notary violated 44-06.1-14(1)(b) by failing to affix signature to the document: \$100 penalty.

March 14, 2012 – Notary violated 44-06.1-21(4) by notarizing without a commission: \$50 penalty.

March 16, 2012 – Notary violated 44-06.1-14(1)(b) by failing to affix signature to the document: three-month suspension.

March 16, 2012 – Notary violated 44-06.1-21(4) by notarizing without a commission: \$50 penalty.

March 16, 2012 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 penalty.

March 16, 2012 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: two-month suspension.

March 29, 2012 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 penalty.

March 29, 2012 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 penalty.

April 9, 2012 – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed in the notary's presence: four-month suspension.

April 19, 2012 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: two-month suspension.

May 9, 2012 – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed in the notary's presence: \$125 penalty.

May 15, 2012 – Notary violated 44-06.1-14(2) and 44-06.1-23(8) by failing to affix notary stamp to the document: two-month suspension.

May 17, 2012 – Notary violated 44-06.1-21(4) by notarizing without a commission: \$50 penalty.

May 22, 2012 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 penalty.

May 22, 2012 – Notary violated 44-06.1-23(6)(a) by notarizing a document not signed in the presence of the notary: three-month suspension.

June 4, 2012 – Notary violated 44-06.1-23(6)(c) by notarizing own signature: \$150 penalty.

June 4, 2012 – Notary violated 44-06.1-14(1)(b) by failing to affix signature to the document: \$50 penalty.

June 4, 2012 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 penalty.

June 4, 2012 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: two-month suspension.

June 5, 2012 – Notary violated 44-06.1-23(6)(e) by notarizing a document without completing the jurisdiction or certificate dates: two-month suspension.

June 5, 2012 – Notary violated 44-06.1-23(6)(e) by notarizing a document with different dates on the verification on oath or affirmation: two-month suspension.

June 7, 2012 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 penalty.

June 7, 2012 – Notary violated 44-06.1-14(1)(b) by failing to affix signature to the document: two-month suspension.

June 14, 2012 – Notary violated 44-06.1-23(8) by failing to affix notary stamp to the document: \$50 penalty.

June 14, 2012 – Notary violated 44-06.1-23(6)(h) by notarizing an incomplete document: resigned commission.

June 28, 2012 – Notary violated 44-06.1-23(6)(h) by notarizing an incomplete document: \$50 penalty.



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 Accounting/Notary 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. 328-2901; www.nd.gov/sos.

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Hope you had a great summer!

