



# Notary Notes

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

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## Greetings from Secretary of State Al Jaeger



In the past year, the number of commissioned notaries public in North Dakota has increased by 3.5% (503) to a total of 14,855 as of June 30, 2015. 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. Included on page 5 of this newsletter is 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.

agreements specified in this newsletter, 193 reprimands were issued from July 1, 2014 through June 30, 2015. These unlawful acts included: failing to leave 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; incorrect 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.

even if the notary makes a mistake. As a notary, it is your responsibility to review the document you are notarizing and to follow the notarization procedures accurately.

Finally, 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.

A notary is an officer of the state and a violation of the notary laws cannot be ignored

In addition to the settlement



## Importance of Reading Notary Notes

This office encourages you to read this newsletter and review your responsibilities as a notary public. As a notary public, it is important to be familiar with the laws pertaining to the duties of a notary public. Most of the errors and violations by notaries public are discovered on forms submitted to this office and the Office of the Attorney General. Some of these errors and violations are innocent mistakes that could

have been prevented had the notary realized what he or she was doing was incorrect. However, some violations could be the basis of revocation of the notary's commission.

Reading this newsletter will help you, as a notary public, understand the duties and responsibilities you undertook when you became a notary public. This newsletter highlights the most common questions that are received by this office from notaries public and the most common errors made by notaries public.

## Good Practices for Performing Notarial Acts

When notarizing a document, it is important to review the document before completing the notarial act to make sure it is an acceptable document for you to notarize. Some good practices include:



- Make sure there are no blanks on the document. If there are blank spaces, the signer may either put a dash or "N/A" in the space to ensure that it will not be completed at a later time.
- If the document is in a foreign language, an English translation must be attached and both documents must then be signed and notarized in English.
- Make sure the signer has signed the document in your presence in the case of a verification on oath or affirmation, or has acknowledged his or her signature in your presence in the case of an acknowledgment.
- Make sure dates include the month, day, and year and that the dates match if the notarial act being performed is a verification on oath or affirmation.
- If any information in the notarial block is incorrect, cross out the information, write the correct information, and initial next to the change.
- Make sure the document contains the required information in the notarial block:
  - Venue (state and county where notarial act is performed);
  - Notarial wording;
  - Customer's signature and date;
  - Notary's signature and date; and
  - Clear impression of the notary's stamping device.

## Notary Laws and Other Important Information 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 [sos.nd.gov](http://sos.nd.gov), which contains valuable notary information, including the notary laws and past editions of *Notary Notes*.

The website also contains other helpful information for notaries public, including:

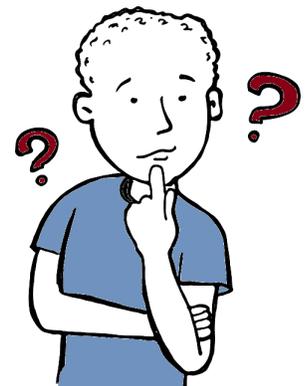
- Examples of certificates for notarial acts
- Frequently asked questions
- Notary public responsibilities
- Common terms and definitions
- Requirements for the notary public stamping device
- Forms

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

## Employer Pressure to Perform an Unlawful Notarial Act

A notary may at one time be placed in a situation where he or she feels pressured by his or her employer to perform a notary act that is in conflict with the law. As difficult as it may be, a notary must uphold the oath that is taken when commissioned as a notary public and should not perform unlawful notarial acts.

As a public official, a notary is held liable for his or her actions. A claim of being pressured by an employer or supervisor does not relieve the notary from his or her responsibilities as a notary public nor does it relieve the notary from any liability that may arise from performing an unlawful notarial act.



If a notary is ever put in this type of situation, he or she should refer the employer or supervisor to the notary law that states the notarial act is unlawful.

## Which Certificate Do I Choose?

At times, the person requesting that a notarial act be performed 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 cannot make decisions on the signer's behalf. 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 in the Notaries Public section of the Secretary of State's website at [sos.nd.gov/notaries-public](http://sos.nd.gov/notaries-public).

### 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."*



## Renewal of Commission

Renewal information for notary commissions is sent by the Secretary of State's office approximately two months prior to the expiration date of the notary's current commission and is marked as "official mail." However, it is also likely that you will receive information from private companies around the same time. Some of these companies duplicate the notary application on the company's bond form and may offer additional products or services that are not required to renew your notary commission. If you have any questions on the requirements for renewing your notary commission, please contact our office. **Remember: The renewal process cannot begin until you receive the notice from the Secretary of State's office.**



## What Happens to an Employer-Paid Commission Upon Termination of Employment?

A notary commission always belongs to the notary public. At times, an employer may pay the expenses for a notary public to obtain a notary commission so that the notary is able to notarize documents for the employer. However, the commission still belongs to the notary public even if the notary no longer works 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.

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. An employer cannot force a notary to perform any notarial acts that are not in full compliance of the law. 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. An employer who pays the expenses for a notary to obtain and maintain a notary commission may expect that the notary public will only be available to notarize documents for the employer during work hours. This may mean that the notary will not be available to notarize documents for the general public during those hours. However, the notary would still be able to notarize documents for other individuals outside of the notary's work hours.

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

Within 60 days of a notary public changing 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. After the required documents and \$10 fee are received, the Secretary of State's office will issue a new certificate of authorization to purchase a notary public stamping device and the notary must then return an impression of the new notary stamping device. Once 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. After the notary has notified the Secretary of State's office of the name change, the notary may use the stamping device with the notary's previous name until he or she receives the new notary commission certificate provided that the notary signs his or her name as follows:

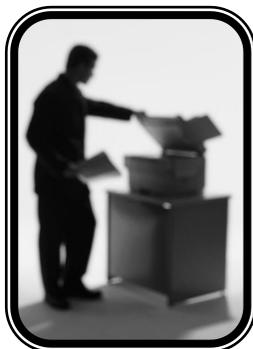
\_\_\_\_\_  
Notary Public North Dakota  
Formerly known and commissioned as

\_\_\_\_\_  
My commission expires  
Notary Seal

## Errors and Omissions Insurance

A surety bond in the amount of \$7,500 is required to become a notary public. In addition to a surety bond, some notaries purchase optional errors and omissions insurance, which provides additional protection for a notary public. Errors and omissions insurance protects a notary in the event that he or she makes a mistake that causes a client to suffer a financial or other loss for which the notary is sued for recovery. Errors and omissions insurance will pay the claims without requiring the notary public to reimburse the insurance carrier while a surety bond requires that the notary reimburse the surety company for any claims paid.

Since errors and omissions insurance is not required by law, documentation related to the insurance is for the notary's record only and is not required to be filed with this office.



## 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, and anything that bears a government seal.

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

As a notary public, it is important that the address on file with this office is up-to-date. This office sends important information to notaries, including information about renewing notary commissions and at times, may need to contact a notary public regarding a notarial act performed by the notary. 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.



***“Notaries do not simply perform meaningless clerical functions.***

***They perform an essential service to the public.”***

## Notarizing Documents for Close Family Members

State law prohibits a notary public from notarizing his or her signature or that of the notary public's spouse, but it does not specifically mention notarizing signatures of other relatives. Notarizing the signature of a close relative is often seen as an ethical issue and may cause the notary public to appear biased. Also, in many cases, a close family relationship with a signer automatically brings beneficial interest and notaries are prohibited from notarizing a document in which he or she has direct beneficial interest. If asked to notarize the signature of a close relative, it is best to refer the relative to another notary public to avoid any possible conflicts.

## Handwriting or Typing Commission Expiration Dates

A notary's commission expiration date is one of the required components of a complete notarial certificate. Since a notary's stamp includes the notary's commission expiration date and an impression of the notary's stamping device is also a requirement of a complete notarial certificate, handwriting or typing the notary's commission expiration date on a document is not necessary, even if a document has a designated space for the commission expiration date.

The impression of the notary public's stamping device 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.



## Notary Violations from July 1, 2014 through June 30, 2015

**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 23, 2014** – Notary violated N.D.C.C. § 44-06.1-14(1)(b) by failing to affix signature to the document: \$75.00 fine

**July 28, 2014** – Notary violated N.D.C.C. § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

**August 21, 2014** – Notary violated N.D.C.C. § 44-06.1-23(8) by failing to affix notary stamp to the document: \$50.00 fine

**September 19, 2014** – Notary violated N.D.C.C. § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

**October 3, 2014** – Notary violated N.D.C.C. § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

**October 3, 2014** – Notary violated N.D.C.C. § 44-06.1-23(6)(c) by notarizing spouse's signature: \$150.00 fine

**October 7, 2014** – Notary violated N.D.C.C. § 44-06.1-21(4) by notarizing a document without a notary commission: \$50.00

**October 7, 2014** – Notary violated N.D.C.C. § 44-06.1-21(4) by notarizing a document without a commission: four-month suspension

**October 16, 2014** – Notary violated N.D.C.C. § 44-06.1-23(6)(c) by notarizing spouse's signature: four-month suspension

**November 25, 2014** – Notary violated N.D.C.C. § 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$175.00 fine

**December 8, 2014** – Notary violated N.D.C.C. § 44-06.1-23(6)(c) by notarizing spouse's signature: \$150.00 fine

**December 8, 2014** – Notary violated N.D.C.C. § 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125.00 fine

**December 18, 2014** – Notary violated N.D.C.C. § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

**April 20, 2015** – Notary violated N.D.C.C. § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

**April 28, 2015** – Notary violated N.D.C.C. § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

**May 4, 2015** – Notary violated N.D.C.C. § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

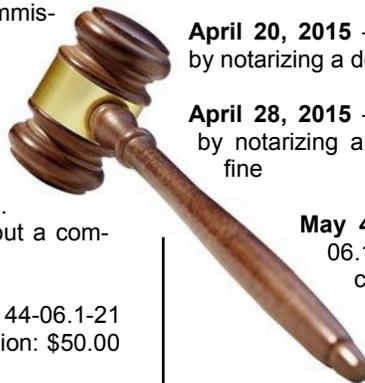
**May 15, 2015** – Notary violated N.D.C.C. § 44-06.1-23(6)(e) by notarizing a document with different dates: \$125.00 fine

**May 20, 2015** – Notary violated N.D.C.C. § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

**June 2, 2015** – Notary violated N.D.C.C. § 44-06.1-14(1)(b) by failing to affix signature to the document: \$50.00 fine

**June 2, 2015** – Notary violated N.D.C.C. § 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125.00 fine

**June 17, 2015** – Notary violated N.D.C.C. § 44-06.1-21(4) by notarizing a document without a commission: \$100.00 fine



## Secretary of State

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Visit the Secretary  
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[sos.nd.gov](http://sos.nd.gov)

Review the  
Notary Laws  
[sos.nd.gov/notaries-  
public](http://sos.nd.gov/notaries-public)

Notary Notes is a  
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Unit in the Secretary of  
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American Society of  
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[www.asnnotary.org](http://www.asnnotary.org)

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

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

Notary Rotary  
[www.notaryrotary.com](http://www.notaryrotary.com)

### Notary Signature N.D.C.C. § 44-06.1-23(6)(d)

A notary must sign his or her name exactly as it appears on the notary's commission. For example, if a notary's commission includes the notary's middle initial, the notary must include his or her middle initial when performing notarial acts. Although it does not affect the validity of the document, notarizing a document in a name other than as it appears on the notary's commission is prohibited by law, which could result in disciplinary action.

### Documents Drafted in a Foreign Language N.D.C.C. § 44-06.1-23(6)(i)

**Remember:** When asked to perform a notarial act on a document drafted in a language other than English, a written English translation must be permanently affixed to the document and both documents must be signed and notarized.

### Test Your Knowledge

1. If space is provided to handwrite a notary's commission expiration date, the notary must write his or her commission expiration date in the space provided.
2. If a notary changes his or her name, the notary is prohibited from notarizing documents until he or she receives a new commission certificate.
3. If a document contains blank spaces, the notary should ask the customer to put a dash or "N/A" in the spaces prior to notarizing the document.
4. It is good practice to refer close family members to another notary when asked to notarize a document.
5. Errors and omissions insurance documents must be filed with the Secretary of State's office.
6. A notary may renew his or her notary commission six months prior to the expiration of the notary's current commission.
7. The fee for a notary address change is \$5.00.
8. A notary may not make a certified copy of a birth certificate.
9. If a notary's employment is terminated, the employer may keep the notary's commission and stamping device.
10. It is okay for a notary to perform an unlawful notarial act if the notary's employer instructs the notary to perform the act.
11. A notary public is only a notary for the county in which the notary resides.
12. Documents drafted in a language other than English must have an English translation attached before performing the notarial act.
13. Most notary errors and violations are discovered on documents submitted to the Office of the Governor.
14. A notary must include his or her middle name when performing notarial acts if the notary's commission certificate also includes the notary's middle name.
15. If a customer does not know which notarial act is needed on the document, the notary may explain the different types of notarial acts so that the customer can select which one he or she would like the notary to perform.



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