



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

The number of commissioned notaries public in North Dakota continues to increase each year. As of June 30, 2016, North Dakota had 15,143 commissioned notaries public, which was an increase of approximately 1.9% (288) from last year. It is important to remember that notarial officers are in a position of trust and integrity and they perform an essential service to the public. Therefore, notaries need to perform their duties properly and with integrity. This means that you, as a notary public, need to know the responsibilities of a notary public so that you are able to accurately perform your duties.

Included on page 5 of this newsletter is a list of notarial violations in which notaries executed settlement agreements from July 1, 2015 through June 30, 2016 with monetary fines or suspensions.

During that same time period,

174 reprimands were issued. 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.

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.

A notary is an officer of the state and a violation of the notary laws cannot be ignored even if it was inadvertent. It is your responsibility, as a notary, to review the document you are notarizing and to accurately follow the notarization procedures. 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.

Importance of Reading Notary Notes

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.



Check It Twice!

It is important that a notary public double check each notarial act the notary performs to ensure that the act includes:

- The jurisdiction (state and county) where notarial act was performed;
- Text for the certificate of the notarial act;
- The person's signature;
- The notary's signature and date; and
- A clear impression of the notary stamp, which includes the commission expiration date.

When is a Notary Authorized to Perform Notarial Acts?

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

After a notary application is approved, an authorization to purchase a notary stamping device is sent to the applicant. The authorization to purchase a notary stamping device allows an applicant to do just that - purchase a notary stamping device. It does not authorize the applicant to perform notarial acts.

Once the notary stamping device is obtained, an impression of it must be affixed to the 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. If a commission is received prior to the effective date of the commission, do not perform notarial acts until the effective date listed on the commission! Doing so could result in a penalty or possible liability issues for the notary. A notary may not perform notarial acts until the notary commission certificate is received **and** only during the six-year period listed on the notary public's commission.



Renewing notaries who have received the new commission certificate may continue to use the first notary stamping device until that commission expires and may begin using the new stamping device once that commission becomes effective.

Notary Public Signature When Performing Notarial Acts

When performing notarial acts, a notary public must sign his or her name exactly as it appears on the notary public's commission. 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. An applicant's name should be printed on the application in the manner in which the notary public will sign when performing notarial acts. Only include a middle name or initial if that is how the name will be signed when performing notarial acts.



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

Certificates of Notarial Acts

Every document that is notarized must contain a certificate of notarial act, such as an acknowledgment, verification on oath or affirmation, or other notarial certificate that complies with the requirements in law. The person whose signature is being notarized must 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 necessary information for a complete notarial act. Examples of certificates of notarial acts are available in the Notaries Public section of the Secretary of State's website under Certificates of Notarial Acts.

Notary Laws and Other Important Information on Website

It is important that a notary is knowledgeable about the current notary public laws so that the notary is able to perform his or her duties to the best of the notary's ability.

Therefore, notaries are encouraged to visit the Notaries Public section of the Secretary of State's website at 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

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 notarial 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. However, 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 its own notarial certificate. Refer to N.D.C.C. § 44-06.1-19 for examples of these notarial certificates. Remember, no matter which notarial act is being performed, personal presence is imperative!

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."

Notarizing Petitions

N.D.C.C. § 44-06.1-23(6)(b)

North Dakota law specifically states that a notary public cannot notarize a petition if the notary or the notary's spouse signed the petition. This includes petitions that are being circulated to place a measure on the election ballot. When notarizing the signature of the petition circulator, the notary should make sure that the notary did not sign that specific copy of the petition in an individual capacity. If the notary wants to sign the petition, he or she should sign a copy of the petition that will be notarized by another notary public.



Handwriting or Typing Commission Expiration Dates

The expiration date included on a notary public's stamp is sufficient evidence of a notary's commission expiration date. 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. 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.

Certified Copies

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

- 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. These documents may only be certified by the office that issues them.

Original Signature Required

When performing a verification on oath or affirmation, a notary public must ensure that the document is signed or resigned by the person whose signature is being notarized in the presence of the notary public. If performing an acknowledgment, the person whose signature is being notarized must acknowledge that the person signed the document for the purpose stated on the document. In either situation, the notary must be sure that the signature on the document is an original signature, except as otherwise provided by law.

Helpful Tips for Performing Notarial Acts

- Personal presence is required. 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)
- Confirm the identification of the person whose signature you are notarizing either by personal knowledge of the person or by proper identification provided by the person. N.D.C.C. § 44-06.1-06
- Make sure the document is complete and contains no blanks. N.D.C.C. § 44-06.1-23(6)(h)
- An acknowledgment, verification on oath or affirmation, or other approved notarial certificate must be included on the document. Examples can be found in the Notaries Public section on the Secretary of State's website under Certificates of Notarial Acts. Do not choose for the customer. See *Certificates of Notarial Acts*, page 2. N.D.C.C. § 44-06.1-14
- Make sure you sign the document. N.D.C.C. § 44-06.1-14(1)(b)
- Make sure you place an impression of your notary stamp on the document. N.D.C.C. § 44-06.1-23(8)
- There is no need to handwrite your notary commission expiration date on the document. The expiration date on your stamping device is sufficient. See *Handwriting or Typing Commission Expiration Dates*, page 3.
- If the document is in a foreign language, an English translation must be attached to the document prior to notarization and both documents must be signed and notarized. N.D.C.C. § 44-06.1-23(6)(i)



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

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

According to state law, a notary public must notify the Secretary of State's office within 60 days of a name change. This may be accomplished by filing 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. A \$10 filing fee is also required.

Upon receipt of the name change notification, the Secretary of State's office will 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. After the notary notifies the Secretary of State's office of the name change, but before the notary receives the new 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

Date of Notarial Act N.D.C.C. § 44-06.1-23(6)(e)

A notary must ensure that the date placed on the verification on oath or affirmation or acknowledgment is 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.

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. Address changes reported to the Secretary of State's office within this time period are not assessed a fee. An address change filed more than 60 days after the change of address is assessed a \$10 late fee.



Notary Violations from July 1, 2015 through June 30, 2016

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

August 13, 2015 – 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

August 14, 2015 – Notary violated § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

September 23, 2015 – Notary violated § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

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

October 15, 2015 – Notary violated § 44-06.1-14(1)(b) by failing to affix signature to the document: \$50.00 fine

October 21, 2015 – Notary violated § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

November 24, 2015 – Notary violated § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

November 24, 2015 – Notary violated § 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125.00 fine

November 27, 2015 – Notary violated § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

December 31, 2015 – Notary violated § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

January 6, 2016 – Notary violated § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

January 6, 2016 – Notary violated § 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125.00 fine

January 6, 2016 – Notary violated § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

January 13, 2016 – Notary violated § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

January 26, 2016 – Notary violated § 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125.00 fine

February 16, 2016 – Notary violated § 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: three-month suspension

February 16, 2016 – Notary violated § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

February 16, 2016 – Notary violated §§ 44-06.1-14(1)(b) and 44-06.1-14(1)(c) by failing to affix signature to the document, identify the jurisdiction, and include the short form certificate text: \$50.00 fine

March 16, 2016 – Notary violated § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

April 11, 2016 – Notary violated § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

April 19, 2016 – Notary violated § 44-06.1-21(4) by notarizing a document without a commission: \$50.00 fine

April 20, 2016 – Notary violated § 44-06.1-23(6)(e) by notarizing a document with different dates: \$125.00 fine

May 3, 2016 – Notary violated § 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125.00 fine

May 3, 2016 – Notary violated § 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125.00 fine

May 10, 2016 – Notary violated § 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: three-month suspension

May 10, 2016 – Notary violated § 44-06.1-14(1)(b) by failing to affix signature to the document: two-month suspension

May 13, 2016 – Notary violated § 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$150.00 fine

May 19, 2016 – Notary violated § 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: four-month suspension

June 13, 2016 – Notary violated § 44-06.1-23(6)(a) by notarizing a document not signed or acknowledged in the notary's presence: \$125.00 fine



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Visit the Secretary of State's Website

sos.nd.gov

Review the Notary Laws

[sos.nd.gov/notaries-
public](http://sos.nd.gov/notaries-public)

Notary Notes is a newsletter of the Accounting/Notary Unit in the Secretary of State's Office.

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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 Commission - Notary's or Employer's?

A 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 period. If a notary leaves his or her place of employment, it is important that the notary take his or her notary commission and stamp with the notary.

Test Your Knowledge (True or False)

1. The customer should choose which notarial certificate to include when notarizing a document.
2. If a notary legally changes his or her name, the notary cannot notarize documents until the notary receives a new notary commission certificate.
3. A notary is allowed to make a certified copy of a birth certificate.
4. A clear impression of the notary's stamping device must be included on each notarial act.
5. The Secretary of State's website contains examples of certificates for notarial acts.
6. Even if a notary's commission includes a notary's middle name, the notary does not need to include it in the notary's signature when notarizing documents.
7. A notary should not notarize a petition that was also signed by the notary in an individual capacity.
8. A notary does not need to notify the Secretary of State's office if his or her address changes.
9. If a notary leaves his or her place of employment, the notary should take his or her notary commission and stamp with the notary.
10. Personal presence is only required if the notary is performing a verification on oath or affirmation.
11. A notary may postdate a notarial act if requested by the customer.
12. A notary's stamp impression is sufficient evidence of a notary's commission expiration date.
13. A notary may begin notarizing documents as soon as the notary receives a notary stamping device.
14. The date included in the notarial certificate must be the date the notarial act was actually performed.
15. A North Dakota notary public may notarize documents anywhere in North Dakota.



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