



# NOTARY NOTES

Newsletter of Licensing Division  
North Dakota Secretary of State's Office  
Alvin A. Jaeger, Secretary Of State

November 2002

Vol 3 No. 6

## Greetings!

Today, there are almost 11,600 commissioned Notary Publics in the State of North Dakota. Each one of them, when applying for his or her commission executed the following Oath of Office.

"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."

Obviously, this is not an Oath to be taken lightly and quite appropriate for the position of trust and responsibility that one undertakes when becoming a Notary. Therefore, I encourage Notaries to always remain knowledgeable about the law and that they use common sense and follow his or her conscience in doing what is right and honest. A Notary is an Officer of the State and must perform the duties of the office with the highest level of integrity. The public depends on you.

I wish you well as you perform your duties.

Al Jaeger  
Secretary of State

\*\*\*\*



## Everything Is On The Web

Everything you ever wanted to know about being a Notary Public is available on the Secretary of State's website at [www.state.nd.us/sec](http://www.state.nd.us/sec) such as:

- What Is A Notary Public?
- How To Become A Notary Public
- Notary Address Change Form
- Notary Name Change Form
- Notary Responsibilities
- Notary Seal/Stamp Specifications
- Notary Terminology
- *Notary Notes* – current and past issues

## Do You Have an E-Mail Address or Access to the Internet?

One of the future goals of the Secretary of State's office is to distribute notary tips via e-mail. If you are interested in receiving these tips and have not previously provided your e-mail address, please send it to [sosadlic@state.nd.us](mailto:sosadlic@state.nd.us). Your e-mail address will then be added to the distribution list. The tips will also be posted to the Secretary of State's website at [www.state.nd.us/sec](http://www.state.nd.us/sec).

## Common Sense and Conscience Avoids Compromising Notary Impartiality

(Parts of the following commentary have been adapted from an article written by David S. Thun of the National Notary Association.)

"Beneficial Interest," it is one of the hardest terms for a Notary Public to clearly define. The basic rule is simple, a Notary should not notarize a signature if he or she benefits from the document or has a connection that compromises impartiality. But what are these connections? Is it acceptable to notarize for a spouse, parent, a friend, or an employer?

North Dakota law is clear in stating that a Notary cannot notarize his or her spouse's signature. The law also states that the Notary cannot notarize a document if the name of the Notary or the name of his or her spouse appears on the document as a party to the transaction. Although North Dakota law presently does not have prohibitions beyond that, a Notary should still use common sense and conscience to avoid the appearance of having a "Beneficial Interest" when performing notarial duties.

Here are basic guidelines for judging impartiality in any act of notarization.

1. A Notary should not notarize a signature on a document in which they are named or in which they will receive a benefit from. Aside from being against the law, this is clearly a conflict of interest. It is hardly possible to be objective when notarizing a signature on a will that leaves thousands of dollars to the Notary, or on a document granting a Notary power to sign checks on behalf of another individual. In both cases, another Notary should be used. Even if the Notary does not benefit directly, it would be improper.

2. A Notary should not notarize a document for close family members. Notarizing documents for parents, siblings, spouses, and other relatives opens an ethical can of worms for the Notary. In many cases, a close family relationship with a signer automatically brings beneficial interest. Although North Dakota only prohibits notarizing if the Notary is named in the document, it is best to refer close family members to another Notary in order to avoid even the slightest appearance of bias.
3. If a Notary is a company officer, it may be a conflict of interest to notarize company documents. Because the Notary may have a financial stake in the document, it may be better to have a lower-level salaried employee, perhaps a clerk or administrative assistant, notarize the document instead.
4. Performing a notarial act when the Notary is also a paid agent for a signer may be a conflict of interest. Often times, attorneys, real estate agents, and other professionals are Notaries who, at the same time, are paid by clients for their services. While it may be convenient for these Notaries to notarize a client's signature, the Notary should consider whether it is ethically appropriate. When judging whether notarizing for a client would compromise honesty and impartiality, it is far better to take the document to another Notary instead. This demonstrates that the Notary's ethical standards go above and beyond what the law requires, which is certainly a helpful character trait for all Notaries. It also helps ensure that the Notary has exercised every reasonable care to ensure that the document is properly notarized.
6. Which is better, a seal embosser or a notary stamp? Often times, copies of documents are photocopied, transmitted via fax, or scanned for electronic transmission. An embossed impression of a Notary's seal will not be visible with these forms of copying. Although both types are legal, Notaries are encouraged to consider purchasing a notary stamp that leaves an inked impression, which will be visible when copies are made.
7. Is there an advantage to a Notary in having his or her expiration date on their notary stamp? State law requires a Notary Public to include the expiration date of the Notary's commission each time he or she performs a notarial function. Having the Notary's commission expiration date on the notary stamp, as listed on his or her Certificate of Commission, will fulfill this requirement and ensure that the correct expiration date is used each time.
8. May a Notary affix his or her seal/stamp over the top of written or printed information on a document? This practice is discouraged since the seal/stamp may cover information pertinent to the document.
9. Who decides the expiration date of a Notary's commission? The expiration date is chosen by the Secretary of State's office and appears on the Notary's Certificate of Commission. The Notary, when performing notarial functions, must use the date as listed on the official certificate issued by the state. A Notary should not rely on any dates appearing on a Notary's surety bond as the basis for his or her commission's expiration date.

## Answers To Often Asked Questions



1. When notarizing, may a Notary use a rubber stamp facsimile for his or her signature? No. A Notary's signature must be original and signed exactly as listed on his or her commission.
2. May a Notary notarize a facsimile, pre-printed, or stamped signature? No. Except as otherwise may be provided in law, a Notary may not notarize a signature that is not an original signature and signed in his or her presence.
3. When does a Notary's commission officially expire? The commission expires on midnight on the date listed on the Notary's Certificate of Commission.
4. Is the Notary responsible for verifying the truth or accuracy of the document? No. The main purpose of notarization is to verify that the individual affixing his or her signature is the person they say they are and that he or she is not under any duress to sign the document.
5. Is a Notary authorized to give legal advice or prepare legal documents? Unless the Notary is an attorney, they are not allowed to provide legal counsel or prepare legal documents.
10. When a Notary receives his or her Certificate of Commission, what should they do with it? State law requires a Notary to post his or her certificate in a conspicuous place.
11. Is a Notary only authorized to perform notarial duties in the county of his or her residence? No. A Notary, commissioned by the State of North Dakota, may perform notarial duties throughout the state. Therefore, the Notary's county of residence should not appear on the notary stamp.
12. How soon before a Notary's commission expiration date, can a renewal application be submitted? Renewal applications are accepted up to two months prior to the expiration date of the Notary's commission. A Notary must never continue to perform notarial functions after the expiration date of his or her commission unless they have received a new Certificate of Commission from the Secretary of State's office.
13. How does one report a suspected illegal, improper, or questionable act committed by a Notary? A suspected violation may be reported to the Secretary of State or to a County State's Attorney.

## Notary Violations From July 1, 2001 Through June 30, 2002



(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.)

**May 30, 2001** – Notary violated 44-06-13.1(3) by notarizing his own signature. File closed without penalty.

**June 18, 2001** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$50

**June 25, 2001** – Notary violated 44-06-13.1(1) by notarizing her own signature. Commission suspended for two years without automatic re-instatement

**August 16, 2001** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$50

**August 31, 2001** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in his presence. File closed without penalty.

**September 1, 2001** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$50

**September 24, 2001** – Notary violated 44-06-13.1(2) by not faithfully discharging the duties of Notary Public Office. \$150

**October 26, 2001** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in his presence. \$50

**November 8, 2001** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$50

**November 19, 2001** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Commission revoked for one year.

**November 21, 2001** – Notary violated 44-06-13.1 (5) by dating the jurat with a different date then the date on which the document was signed. Commission revoked for thirty months.

**March 4, 2002** – Notary violated 44-06-13 by notarizing for six years without a commission. \$150

**March 6, 2002** – Notary violated 4-06-13.1(3) by notarizing his own signature. Commission revoked for six years.

**March 20, 2002** – Notary violated 44-06-13.1(3) by notarizing her own signature. Commission revoked for one year.

**March 22, 2002** – Notary violated 44-06-13 by notarizing a document after her commission expired. \$150

**March 22, 2002** – Notary violated 44-06-13 by notarizing a document after his commission expired. Commission revoked for six months.

**April 9, 2002** – Notary violated 44-06-13.1(3) by notarizing her own signature. Commission revoked for one year.

**May 6, 2002** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$150.

## Address Change

Within 60 days from the time it changes, state law requires notaries to notify the Secretary of State's office of any change in their address. Otherwise, the Notary is charged a fee of \$10.

If a Notary moves to a bordering county outside of North Dakota, and that state extends reciprocity to the Notary, the Notary must also file an Appointment of Agent (SFN 19369) form with the Secretary's of State's office.

## Name Change

When a Notary legally changes his or her name, they must submit the following documents to the Secretary of State's office: a rider to the Notary's surety bond stating both the previous name and new name; a Notary Name Change (SFN 51261) form; and \$10. This form must be filed within 60 days of the time that the name change became effective. If the name change is not done within the 60 days as required by law an additional \$10 fee will be charged.

The Secretary of State's office will then issue an authorization, which will allow the Notary to purchase a new Notary stamp/seal. As soon as the authorization, with an impression of the new seal/stamp, is returned to the Secretary of State's office, a new Certificate of Commission having the new name will be issued to the Notary.

# Happy Thanksgiving

**Notary Notes** is the newsletter of the Licensing Division 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. 8-2901

Mary Feist..... Licensing Director  
Charlotte Zander..... Licensing Specialist  
Al Jaeger ..... Secretary of State  
Cory Fong..... Deputy  
Kim Shaw ..... Executive Assistant