



NOTARY NOTES

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

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Greetings!

In each of the past several issues of the *Notary Notes*, I have emphasized and reminded notaries of the following Oath of Office they executed when applying to become a notary. The observance of this oath is absolutely essential when a notary performs notarial functions. It is a personal commitment not to be taken lightly.

"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."

When commissioned as a notary public, a notary becomes an Officer of the State, which is a position of trust and requires the highest degree of integrity. Therefore, a notary must never take for granted the duties he or she performs. It is not just a meaningless clerical function. It is much more than that. A notarial act is required for specific legal reasons. That is, to verify that the person, who is signing a particular document in the notary's presence, is the person who they say they are. Sounds simple. Yet, it is vitally important and a notary should be proud of the role and responsibility they have been given in performing that duty.

The public depends on you. Do your job well and right.

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 such as:

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

Introducing The Administrative And Notary Staff

They are:

Al Jaeger, Secretary of State, was born and raised in Beulah. He received a degree from Dickinson State University and afterwards taught high school in Killdeer and Kenmare. Before becoming Secretary of State, he was a real estate broker in Fargo. He has been a notary public since 1973.

Jim Silrum, Deputy Secretary of State was born in Minnesota, but spent most of his childhood in Washington. After receiving his degree from Augsburg College in Minneapolis and working for a number of years in Minnesota, he moved to North Dakota in 1995. After 20 years of work in nonprofit administration, he was appointed Deputy Secretary of State on November 17, 2003.

Mary Feist, Licensing Division Director, has worked in the Secretary of State's office since 1979. Her responsibilities include the commissioning of notaries public, licensing of contractors and charitable solicitations, lobbyist registration, and regulation of boxing. She has been a notary public since April 1, 1991.

Charlotte Zander, Account Tech I, has worked in the Secretary of State's office since 1987. She worked previously in the Central Indexing Unit and in 1998 she transferred to the Administrative and Licensing Division and currently does accounting functions and commissions notaries public. She has been a notary public since October 3, 1998.

Kim Shaw, Executive Assistant, is a native of Mandan, North Dakota, and a 1980 graduate of Seattle Pacific University in Seattle, Washington. She has been with the office of the Secretary of State since 1995 and is responsible for the layout, editing, and formatting of the *Notary News*.



2003 Legislative Changes

With House Bill 1168, the 2003 Legislative Assembly made several changes to Chapter 44-06 of the North Dakota Century Code. It pertains to Notaries Public. The changes in the law, which became effective on August 1, 2003, are highlighted below:

1. All NEW and RENEWING notaries commissioned after August 1, 2003, must use a notary seal/stamp, which is photographically reproducible and which contains the expiration date of the notary's commission. A notary public commissioned prior to August 1, 2003, may continue using his or her existing seal(s)/stamp(s) until the date that their notary commission expires between August 1, 2003, and July 30, 2009.
2. A notary's seal is the property of the notary, even if an employer paid for it, and it must always remain under the direct and exclusive control of the notary throughout the entire time his or her commission is in effect. This applies even if they no longer work for the employer who paid for it.
3. A notary must affix his or her notary seal/stamp to the document each time they perform a notarial act.
4. A notary, each time he or she performs a notarial act, must also list the venue, i.e., the state and county where the notarial act was performed.
5. It is a violation whenever a notary does not date his or her notarial act.
6. It is a violation for a notary to falsely or fraudulently perform a notarial act or to impersonate or assume the identity of another notary.
7. A notary may charge mileage, in addition to the notary fee, if agreed upon in advance with the party requesting the notary's services. The notary must also explain to the requesting party that the amount of the travel fee is not specified or mandated by state law and that it is separate from the maximum \$5 fee the notary may charge for each notarial act they perform.

Must Know Helpful Tips To Make A Notary's Job Easier

Notary Seal/Stamp

Whenever a notary wants to either replace or purchase an additional seal/stamp, they must first contact the Secretary of State's office for an authorization form.

According to state law, it is illegal for a vendor to produce a new seal/stamp without the authorization form. The authorization form prevents unauthorized persons to purchase a notary seal/stamp, confirms that the seal/stamp is made according to state law, and verifies the notary's correct commission expiration date. An incorrect

seal/stamp could possibly invalidate a notarial act and subject the notary to disciplinary action.

Therefore, a notary should always verify that the expiration date on his or her certificate of commission matches the date on their seal/stamp. If a discrepancy is discovered, the notary should immediately contact the Secretary of State's office. If a notary's seal/stamp already has the expiration date on it, it is not necessary for the notary to also write the expiration date on the document when notarizing.

To verify the legality of a seal/stamp and its approval by the Secretary of State's office, an impression of it can be sent by facsimile transmission to (701) 328-1690 or mailed to the Licensing Division, Secretary of State, 600 East Boulevard Avenue, Dept 108, Bismarck ND 58505-0500.

A notary public should never affix his or her seal(s)/stamp(s) over the top of another notary's seal/stamp and never over any printed or written text. Doing so could inadvertently cover pertinent information.

Signature of Notary

When performing a notarial act, the notary must sign his or her name exactly as it appears on the notary's certificate of commission and seal/stamp. Although it does not affect the validity of the document, it is a prohibited act and could subject the notary to the revocation of his or her commission or result in other disciplinary action.

Notary Journals

Although state law does not require a notary to keep a journal, it is strongly encouraged and provides a very valuable record of the notarial acts performed by the notary. The value of this record is especially confirmed if a notary is ever asked to testify in court or execute an affidavit related to a particular notarial act he or she performed. Detailed information about how to maintain a journal is available on the Secretary of State's website at www.state.nd.us/sec.

Notarizing and Commission Starting and Ending Dates

It is illegal for a notary to perform notarial acts prior to the beginning of his or her commission commencement date or beyond the commission's expiration date. The commission begins at 12:00 a.m. on the commencement date and expires at midnight of the expiration date listed on the certificate of commission.

Commission Renewal Information

Two months prior to the expiration date of a notary's commission, the Secretary of State's office mails a commission renewal packet to the notary. The renewal forms can also be obtained from the Secretary of State's website. However, because there are companies that regularly purchase a listing of all active notaries, a notary may also receive a renewal packet from one of those firms. This dual mailing often causes confusion since the company's information may look official and usually arrives before the packet from the Secretary of State's office.

Many of these companies are sellers of notary bonds and may even imply that the notary previously purchased their services. That, however, might not be true and it is recommended that the notary refer to his or her own records from their previous application or renewal process. A notary may purchase notary bond coverage from any insurer of his or her choice regardless of which company sent them a renewal packet.

Finally, here is another tip when a notary is renewing his or her commission. If the notary wants to add or delete an initial or make other changes to his or her name as it appears on their commission (which is exactly how they must sign their name), they can make those changes on the application form. State law does not require a notary to use his or her full legal name e.g., Jonathon D. Doe or Dorothy Ann Smith. The notary can use the name that they are commonly known by and use (e.g., Jon D. Doe, J. D. Doe, Jon Doe, Dorothy A. Smith, D. Ann Smith, Ann Smith, etc). **Renewal time is the best time to make changes.**

Notarizing Documents

A notary should never just sign and affix his or her seal/stamp to a document, this does not complete the notarization of a document. In order to have a complete and legal notarial act, the notary must also give the venue and use either a jurat or an acknowledgement. If these items are not preprinted on the document, it is the obligation and responsibility of the notary to add them to the document. More information regarding the requirements, appropriate language, and examples of a jurat or acknowledgment is available on the Secretary of State's website at www.state.nd.us/sec.

Witnessing the Signature and Identity Theft

It is imperative, that anytime a notary performs a notarial act, the person who signs the document must be physically present and the notary must witness the signature. In addition, unless the notary knows the individual personally, the notary should always first ask for adequate identification. If the person cannot provide appropriate identification, the notary should not perform the notarial act. The failure of the notary to either witness the signature or ask for identification could make the notary a party to identity theft, which could result in significant negative consequences for the notary and others.

Certificate of Commission

State law requires that a notary's certificate of commission must be posted in a conspicuous place in the notary's office. In addition, the commission expiration date on it must match the expiration date that is used by the notary when he or she performs a notarial function.

Violations

Secretary of State Al Jaeger encourages each notary to carefully review the following listing of notary violations that were settled between July 1, 2002, and June 30, 2003. Many of them could easily have been avoided if



the notary had taken care and time, remembered the law, and read carefully what they were signing. As you will see, not following the law resulted in significant consequences for many of these notaries. Also, beyond the authority of the Secretary of State's office, these violations could present personal liability issues for the notary or result in criminal prosecution.

(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.)

September 8, 2002 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in his presence. \$150

September 17, 2002 – Notary violated 44-06-13.1(1) and 44-06-13.1(6) by notarizing a signature that was not original. \$50

September 25, 2002 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in his presence. \$150

October 3, 2002 – Notary violated 44-06-12 by notarizing a document incorrectly. \$50

October 22, 2002 – Notary violated 44-06-13.1(5) by notarizing a document that did not have the actual date on the jurat. Letter of reprimand.

October 25, 2002 – Notary violated 44-06-13.1(3) by notarizing her spouse's signature. \$150

October 29, 2002 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$50

October 30, 2002 – Notarizing without a Notary Commission. For one year, could not apply for a notary commission.

November 19, 2003 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Commission suspended for one year.

November 21, 2002 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$150

November 27, 2002 – Notary violated 44-06-13.1(3) by notarizing her spouse's signature. \$150

November 27, 2002 – Notary violated 44-06-13.1(1) by notarizing a signature that was not signed in her presence. Commission suspended for six months.

December 4, 2002 – Notary violated 44-06-13.1(5) by notarizing a document that was post dated. Letter of reprimand.

December 17, 2002 – Notary violated 44-06-13.1(1) and 44-06-13.1(6) by notarizing a signature that was not original. \$50

January 30, 2003 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in his presence. \$50

January 30, 2003 – Notary violated 44-06-13.1(1) by notarizing his spouse's signature. Commission suspended for one year.

January 30, 2003 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$50

January 30, 2003 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$50.00

January 31, 2003 – Notary violated 44-06-13.1(3) by notarizing his own signature. Commission suspended for six months.

February 4, 2003 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in his presence. \$50

February 11, 2003 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in his presence. \$150

February 20, 2003 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$50

February 24, 2003 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Commission suspended for three months.

March 10, 2003 – Notary violated 44-06-13.1(3) by notarizing a signature of herself and her spouse. Commission suspended for six months.

April 7, 2003 – Notary violated 44-06-13.1(3) by notarizing his own signature. Commission suspended for six months.

April 21, 2003 – Notary violated 44-06-13.1(3) by forging a signature then notarizing the forged signature. \$400 and commission suspended for six months.

May 15, 2003 – Notary violated 44-06-13.1(1) by notarizing a signature that was not original. \$50

May 15, 2003 – Notary violated 44-06-03 by not affixing her notary seal to the document. \$50

June 10, 2003 – Notary violated 44-06-13.1(1) by notarizing a signature that was not an original or in her presence. Commission suspended for eighteen months.

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 out of North Dakota, the notary's commission must be terminated, unless the notary moves to a bordering county in Minnesota. In this circumstance, the notary would need to file an appointment of agent form with the address change. In order to terminate a notary commission, the notary must file the address change form.

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 seal/stamp. 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.

2003-2005 North Dakota Blue Book

The Secretary of State recently published the *2003-2005 North Dakota Blue Book*. The 600 plus page book contains contributions from over 70 individuals throughout the state. It is an excellent resource book about all facts of state government. A special feature section titled "Ever and Always" portrays the character of North Dakota's people through state writers, poets, and artists.

If interested, please call the ND Heritage Center Museum Store at (701) 328-2666 for credit card orders. The cost of the book is \$20 plus shipping and handling.

Copy of the Law

A complete copy of the laws, effective August 1, 2003, pertaining to the duties of a notary public is attached as part of this newsletter. Take the time to read them. These are the laws you agreed to faithfully discharge when you executed your Oath of Office.

Notary Notes is published by 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: (800) 352-0867, ext. 8-2901

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