



# NOTARY NOTES

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Alvin A. Jaeger, Secretary of State

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## Greetings!

A person commissioned as a notary public is appointed to a position of trust, which requires them to perform his or her duties with the utmost integrity. The notarial duties they perform are not just meaningless clerical functions. They are essential legally required duties established in state law based on hundreds of years of history.

When commissioned as a notary, that person becomes an officer of the state. Therefore, when a person submits an application to become a notary, they execute the following oath of office before a notary public who then completes the jurat:

"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."

It is a personal commitment not to be taken lightly. It requires the notary to be knowledgeable about the law and about his or her duties and responsibilities.

I emphasize this because of the number of notary related violations that occur each year. In another portion of this newsletter are listed situations in which notaries have executed settlement agreements with monetary fines or suspensions. All of them had the potential of resulting in the revocation of the notary's commission.

Or, they could have resulted in criminal proceedings whereby the violating notary could be found guilty of an infraction (\$500 maximum fine). In addition to the fines and suspensions, from July 1, 2008, through June 30, 2009, letters of reprimand were issued to 286 notaries.

What is particularly surprising is that only a few of these violations were reported by sources from outside the Secretary of State's office. Otherwise, the violations occurred on forms and documents submitted to this office such as the notary bond and commission application form. Because they are violations, they obviously cannot be ignored, even if they might be inadvertent errors.

There were missing dates (day or year); incomplete, wrong, or missing venues; no acknowledgment or jurat text (common with adoption documents); incorrect listed commission expiration dates; unlawful use of an embosser style notary seal; notarizing one's own signature; not

witnessing the signature being affixed to the document and still completing the notarization; failing to affix an impression of the notary stamp, etc.

Consequently, I urge you to read every word in this newsletter and to review the attached notary law now and periodically. Additionally, review the previous editions of *Notary Notes* on the Notary Section on the Secretary of State's website at [www.nd.gov/sos/notaryserv/](http://www.nd.gov/sos/notaryserv/).

Your position is essential and one of trust. Several situations of improper notarizations have become issues in court. Therefore, it is vital you do your duties well and legally correct. A lot of people are depending on you.

Al Jaeger  
Secretary of State

## 2009 Legislative Changes

During the 2009 legislative session, Senate Bill 2322 was adopted and signed into law by the Governor. It made several changes to Chapter 44-06 of the North Dakota Century Code, which regulates notaries public. They are:

- A notary is prohibited from notarizing a petition on which his or her spouse has affixed their signature. N.D.C.C. § 44-06-13.1(b).
- A notary is prohibited from notarizing a signature of an individual without first having obtained satisfactory evidence as to the signer's identity unless he or she is personally known by the notary. N.D.C.C. § 44-06-13.1(k).
- Made it clear a notary is subject to disciplinary proceedings for violating any provision of Chapter 44-06 in addition to those listed in N.D.C.C. § 44-06-13.1 and N.D.C.C. § 44-06-13.2(e).

## The Importance of Reading Notary Notes

It is extremely important to know your responsibilities as a notary. Almost all of the errors and violations are discovered when reviewing notary applications and doing authentications for customers. Some of these errors and violations result in a letter of reprimand from the Secretary of State's office but others result in fines, suspensions, or revocation of a notary's commission. In each newsletter, the most common violations are listed.

By reading this newsletter, many of your questions will be answered. Also attached is an updated copy of the laws

governing notaries. The law and earlier newsletters are also on the Secretary of State's website at [www.nd.gov/sos](http://www.nd.gov/sos). Nevertheless, please remember, if you have questions, you are always welcome to call the Secretary of State's office at (701) 328-2901.

## *When Performing a Notarial Act*

***Be sure to scan the contents of the document to be confident there are no blanks.*** It is not necessary to examine every word of the document. You are not responsible for the contents of the document; however, you should be satisfied that the signer has read and appears to understand the contents of the document. [44-06-13.1(1)(h)]

***Be sure that if the document is in a foreign language, that an English translation is attached.*** Both pages should be notarized and be kept together. [44-06-13.1(1)(i)]

***Be sure to identify the person.*** This is one of the most important steps. You must either personally know the signer or see a form of identification that you are comfortable with. **Note:** If you keep a record book or journal of your notarial acts, you will want to complete your entry and have the person sign your book after you properly identify him or her.

***Be sure there is a venue.*** This is State of \_\_\_\_\_ County of \_\_\_\_\_. The venue is always where the notarial act took place. Do not use your county of residence or your county of employment. You are a notary for the whole state of North Dakota. If this information is incorrect, change the language and initial the change **before** notarizing. **Never** use "white-out" products. (44-06-12)

***The document must have either an acknowledgement or a jurat (see following examples) to legally complete a notarial act.***

***An Acknowledgement.*** John Doe acknowledged before me this (date) that he executed the document. When taking an acknowledgement, make sure that the person understands that he or she is acknowledging they signed the document.

***A Jurat.*** John Doe subscribed and swore before me this (date). When administering an oath make sure the person understands that he or she is swearing (or affirming) that the contents of the document are true.

***Stamp the document with your notary stamp and sign.*** You do not need to write in the commission expiration date as it is already on your notary stamp. If you happen to list an incorrect expiration date, it could put the document being notarized into question.

***Never*** stamp and sign a document without notarial wording. While a simple witness of a signature by a notary is permitted in some states it is unclear whether North Dakota law recognizes such a form of notarization and, consequently, its use in this state is not encouraged.

***If*** a notary is presented with a document which contains no notarial wording, i.e., no acknowledgment or jurat, the notary may refuse to notarize the document in its current form.

The notary may then refer the signer to the person or entity who supplied the document, suggest the signer seek legal counsel, or give the signer a copy of the notary law from which the signer may choose which form of notarial wording to add to the document. Unless the notary is an attorney, the notary should not provide legal advice to the signer, attempt to explain the contents or legal effect of a document, or advise the signer on which notarial wording (jurat or acknowledgment) to add to a document. That decision is made by the author of the document or the signer or his or her legal counsel. In any case, the notary must include, if missing, the venue, i.e., state and county where the notarial act was performed.

## *Some Common Notary Errors*

1. The individual does not appear before the notary when the notary completes the notarization.
2. The notary fails to positively identify the signer.
3. The notary notarizes his or her own signature.
4. The notary notarizes his or her spouse's signature.
5. The notary notarizes a document with a notarial certificate or jurat that was back-dated or post-dated.
6. The date the document was notarized is not complete. It must have a month, day, and year.
7. The notary notarizes a signature being affixed to a document containing blank spaces.
8. There is no English translation attached to a document drafted in a foreign language.
9. A notary is prohibited from making and certifying a copy of a vital record or certified copy of a public record containing an official government seal.

## *Notarizing for Self or Family Members*

***A*** notary is prohibited from notarizing his or her spouse's signature and it is unlawful for a notary to notarize his or her own signature. [NDCC 44-06-13.1 (1)(c)]

***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.



## *Renewal Information*

***The*** Secretary of State's office sends renewal information to a notary two months prior to the expiration date of a notary's commission. It is marked "official mail."

***However,*** prior to the mailing from this office, it is quite likely you will be contacted by several different private bonding companies. These companies duplicate the Secretary of

State's notary application form on their bond form. It may not be the same company from whom you previously purchased your bond coverage.

It is entirely your choice whether you purchase your notary bond through one of these bonding companies or purchase your bond through a local insurance agent.

## *Notary Violations From July 1, 2008, through June 30, 2009*



**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 2, 2008** – Notary violated 44-06-13.1(1)(a) by notarizing a document not signed in notary's presence: \$150 penalty.

**September 22, 2008** – Notary violated 44-06-13.1(1)(f) by notarizing a document when the signature is not original: \$100 penalty.

**September 22, 2008** – Notary violated 44-06-13.1(a) by notarizing a document not signed in notary's presence: six-month suspension.

**September 22, 2008** – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

**September 22, 2008** – Notary violated 44-06-13.1(1)(c) by notarizing spouse's signature: \$75 penalty.

**September 24, 2008** – Notary violated 44-06-04 by notarizing without providing the Secretary of State's office with new stamp: \$100 penalty.

**September 26, 2008** – Notary violated 44-06-13.1(1)(a) by notarizing a document not signed in notary's presence: \$150 penalty.

**October 15, 2008** – Notary violated 44-06-04 by failing to affix stamp to the document: \$50 penalty.

**October 22, 2008** – Notary violated 44-06-12 by acknowledging a signature without a venue: \$50 penalty.

**October 30, 2008** – Notary violated 44-06-04 by not affixing stamp to a jurat or acknowledgement: \$50 penalty.

**October 30, 2008** – Notary violated 44-06-13.1(e) by notarizing a document that was not the actual date: \$50 penalty.

**November 17, 2008** – Notary violated 44-06-04 by notarizing without providing the Secretary of State's office with stamp: \$36 penalty.

**November 18, 2008** – Notary violated 44-06-13.1(a) by notarizing a document that was not signed by anyone: \$150 penalty.

**November 26, 2008** – Notary violated 44-06-13 & 44-06-04 by failure to return impression of seal to the Secretary of State's office and exercising duties of a notary without a commission: \$50 penalty.

**December 1, 2008** – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

**December 4, 2008** – Notary violated 44-06-13 by exercising duties of a notary without a commission: \$50 penalty.

**December 4, 2008** – Notary violated 44-06-13 by exercising duties of a notary without a commission: \$36 penalty.

**December 6, 2008** – Notary violated 44-06-04 by failure to return impression of seal to the Secretary of State's office: \$125 penalty.

**December 15, 2008** – Notary violated 44-06-12 by not having the proper notarial wording on the document: \$50 penalty.

**December 15, 2008** – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

**December 29, 2008** – Notary violated 44-06-04 by failure to return impression of seal to the Secretary of State's office: \$50 penalty.

**December 29, 2008** – Notary violated 44-06-04 by failure to return impression of seal to the Secretary of State's office: two-month suspension.

**December 29, 2008** – Notary violated 44-06-04 by failure to return impression of seal to the Secretary of State's office: three-month suspension.

**December 29, 2008** – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

**December 29, 2008** – Notary violated 44-06-13.1(1)(f) by notarizing a document when the signature is not original: \$100 penalty.

**December 29, 2008** – Notary violated 47-06-13.1(1)(a) by notarizing a document not signed in notary's presence: \$50 penalty.

**January 7, 2009** – Notary violated 44-06-04 by not affixing stamp to the document: three-month suspension.

**January 7, 2009** – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

**January 7, 2009** – Notary violated 44-06-13(1)(f) by notarizing a document not signed in notary's presence: \$100 penalty.

**January 10, 2009** – Notary violated 44-06-04 by not affixing stamp to the document: three-month suspension.

**January 10, 2009** – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

**January 10, 2009** – Notary violated 44-06-04 by not affixing stamp to the document: three-month suspension.

**January 10, 2009** – Notary violated 44-06-13 by exercising duties of a notary without a commission – commission had expired.

**January 19, 2009** – Notary violated 44-06-13.1(1)(f) by notarizing a document when the signature is not original: \$100 penalty.

**January 19, 2009** – Notary violated 44-06-13.1(1)(a) by notarizing a document not signed or resigned in notary's presence: three-month suspension.

**January 19, 2009** – Notary violated 44-06-13.1(1)(f) by notarizing a document when the signature is not original: six-month suspension.

**January 19, 2009** – Notary violated 44-06-13.1(1)(a) by notarizing document not signed in notary's presence: six-month suspension.

**January 19, 2009** – Notary violated 44-06-13.1(1)(e) by not dating the jurat or certificate of acknowledgement: \$50 penalty.

**January 19, 2009** – Notary violated 44-06-13.1(1)(f) by notarizing a document when the signature is not original: \$100 penalty.

**January 27, 2009** – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

**February 11, 2009** – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

**February 16, 2009** – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

**February 25, 2009** – Notary violated 44-06-04 by not affixing stamp to the document: three-month suspension.

**February 25, 2009** – Notary violated 44-06-04 by not affixing stamp to the document: \$50 penalty.

**February 26, 2009** – Notary violated 44-06-04 by not affixing signature to the document: \$50 penalty.

**March 13, 2009** – Notary violated 44-06-12 by not affixing stamp to the document: \$50 penalty.

**March 13, 2009** – Notary violated 44-06-13 by exercising duties of a notary without a commission: \$50 penalty.

**March 13, 2009** – Notary violated 44-06-13 by exercising duties of a notary without a commission: \$50 penalty.

**March 25, 2009** – Notary violated 44-06-13.1(1)(e) by notarizing a jurat not on the date the document was notarized: \$75 penalty.

**April 9, 2009** – Notary violated 44-06-13.1(1)(e) by not dating the jurat or certificate of acknowledgement: \$30 penalty.

**April 9, 2009** – Notary violated 44-06-13.1(1)(e) by notarizing the jurat or acknowledgement when the date is not the actual date: \$75 penalty.

**April 9, 2009** – Notary violated 44-06-13 by exercising duties of a notary without a commission: \$50 penalty.

**May 7, 2009** – Notary violated 44-06-13.1(1)(e) by notarizing a document without a completed date: \$50 penalty.

**May 7, 2009** – Notary violated 44-06-04 by not affixing stamp to the document: three-month suspension.

**May 7, 2009** – Notary violated 44-06-13.1(1)(e) by notarizing a document when the date of jurat or certificate of acknowledgement is not the actual date or the jurat or certificate of acknowledgement is undated: \$125 penalty.

**May 20, 2009** – Notary violated 44-06-12 by failing to affix the name of the county and state to the jurat or certificate of acknowledgement: letter of reprimand.

**May 20, 2009** – Notary violated 44-06-13.1(1)(i) by notarizing a document that was in a foreign language and did not have an English translation attached: letter of reprimand.

**May 29, 2009** – Notary violated 44-06-04 by not affixing stamp to the document: three-month suspension.



**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 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; [www.nd.gov/sos](http://www.nd.gov/sos)

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