

CHAPTER 44-06 NOTARIES PUBLIC

44-06-01. Appointment and qualification of notaries public. The secretary of state shall appoint notaries public. A notary holds office for six years unless sooner removed by the secretary of state. Each notary may administer oaths and perform all other duties required by law. Notwithstanding any other provision of law, a notary public may perform any notarial act as defined in section 47-19-14.1 outside the state as provided in section 47-19-55. A notary public must have the qualifications of an elector as to age and residence or must reside in a county that borders this state and which is in a state that extends reciprocity to a notary public who resides in a border county of this state. If the person resides in a county bordering this state, that person must designate the secretary of state as the agent for service of process, for all purposes relating to notarial acts, including the receipt of correspondence relating to notarial acts.

44-06-02. Commission - Record - Fee - Notice. The secretary of state shall issue a commission to each notary public appointed by the secretary of state in the notary's legal name. Before issuing a commission, the secretary of state may require proof acceptable to the secretary of state of the notary's legal name. The notary shall post the commission in a conspicuous place in the notary's office. The secretary of state shall collect thirty-six dollars for the issuance of the commission. The secretary of state shall remit all fees collected under this section to the state treasurer for deposit in the general fund. The secretary of state shall keep a record of appointments and the date of the expiration of the appointments. The secretary of state shall notify each notary public by mail at least thirty days before the expiration of the notary public's term of the date upon which the notary public's commission will expire. The notice must be addressed to the notary public at the last-known place of residence. Each notary public issued a commission shall notify the secretary of state by mail within sixty days of any change of address. If a notary fails to notify the secretary of state within sixty days of a change of address, the secretary of state may impose a late fee in the amount of ten dollars. The notary shall pay any late fee imposed by the secretary of state before the renewal of the notary's commission.

44-06-03. Oath and bond of notary public - Approval of bond. Each notary public, before entering upon the duties of the office, shall take the oath prescribed for civil officers and give to the state a bond in the penal sum of seven thousand five hundred dollars conditioned for the faithful discharge of the duties of the office. Such bond may be furnished by a surety or bonding company authorized to do business in this state or by one or more sureties, and is subject to approval by the secretary of state.

44-06-03.1. Notice by surety to secretary of state of claim against bond. If a surety or bonding company giving a bond under section 44-06-03 receives a claim against that bond with respect to a notary public, that surety or bonding company shall notify the secretary of state of the outcome of said claim.

44-06-04. Filing of oath, bond, and impression of notarial seal - Requirements of seal. Each notary public, before entering upon the duties of office, shall file the notary public's oath and bond, in the office of the secretary of state. The secretary of state, upon receipt of the proper fee, oath, and bond, shall issue a certificate of authorization with which the notary public may obtain an official notary seal. A notary seal vendor may provide a notary with an official seal only upon presentation by the notary of a certificate of authorization. The notary public shall place an impression of the notary's seal on the certificate of authorization and return the certificate of authorization to the secretary of state. After the certificate of authorization is received, approved, and filed, the secretary of state shall issue a notary commission that authorizes the notary to commence the duties of the office of notary public.

After August 1, 2003, a notary being commissioned must obtain a seal approved by the secretary of state which must be designed to leave a clear impression, be photographically reproducible, include the words "State of North Dakota" and "Notary Public", contain the name and commission expiration date of the notary public exactly as shown on the notary's commission, and which may not contain any other words, numbers, symbols, or a reproduction

of the great seal of the state. All notary seals must be surrounded by a border and be either one and five-eighths inch [41.28 millimeters] in diameter or if of a rectangular design, may be up to or equal to seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally. An official seal is the property of the notary only and may not be retained or used by any other person including an employer of a notary even if the employer purchased or paid for the notary's seal. An official seal must remain in the direct and exclusive control of the notary at all times during a notary's commission. A notary must affix the notary's seal to each jurat or certificate of acknowledgment at the time of performing the notarial act. Upon the resignation, removal, revocation, or expiration of a notary's commission, or the death or name change of a notary, the notarial seal must be destroyed. When a notary's official seal is lost, damaged, or is rendered otherwise unworkable, the notary shall immediately submit written notice of that fact to the secretary of state. Within five working days after receipt of the notice, the secretary of state shall issue a new certificate of authorization which a notary may use to obtain a replacement seal.

44-06-04.1. Name change. A notary who has legally changed the notary's name shall submit to the secretary of state a rider to the notary's surety bond stating both the old and new names, the effective date of the new name, and a ten dollar fee within sixty days of the name change. Upon receipt of the rider and fee the secretary of state shall issue a certificate of authorization that a notary public may use to obtain a new seal. Once the authorization is on file the secretary of state shall issue a commission with the notary's new name. After notification to the secretary of state of the name change and until a new seal is obtained, the notary may continue to use the old seal but must sign any notarial certificate substantially as follows:

Notary public North Dakota
Formerly known and commissioned as

My commission expires _____

Notary Seal

44-06-05. Vacancy - Disposition of records and seals. Whenever the office of any notary public becomes vacant, the record of the notary together with all papers relating to the office must be deposited in the office of the secretary of state except for the seal which must be destroyed as provided in section 44-06-04. If a notary public resigns the notary's commission, the notary shall notify the secretary of state within thirty days of the resignation, and shall indicate the effective date of the resignation. Any notary public who, on resignation or removal from office, or any executor or personal representative of the estate of any deceased notary public who neglects to deposit the records and papers as aforesaid for the space of three months, or any person who knowingly destroys, defaces, or conceals any records or papers of any notary public, shall forfeit and pay a sum of not less than fifty dollars nor more than five hundred dollars, and that person also is liable in a civil action for damages to any party injured.

44-06-06. Duty of notary as to protested instrument. Each notary public, when any bill of exchange, promissory note, or other written instrument, is by that notary public protested for nonacceptance or nonpayment, shall give notice thereof in writing to the maker, to each and every endorser of such bill of exchange, and to the maker of each security or the endorsers of any promissory note or other written instrument, immediately after such protest has been made.

44-06-07. Service of notice by notary public. Each notary public shall serve notice personally upon each person protested against, or by properly folding the notice, directing it to the person to be charged at that person's place of residence according to the best information that the person giving the notice can obtain, depositing it in the United States mail or post office most conveniently accessible, and prepaying the postage thereon.

44-06-08. Record of notices - Certified copy - Competent evidence. Each notary public shall keep a record of all notices, of the time and manner in which the same were served, the names of all the persons to whom the same were directed, and the description and amount of

the instrument protested. Such record, or a copy thereof, certified by the notary under seal, at all times is competent evidence to prove such notice in any court of this state.

44-06-09. Secretary of state - Preservation of records. The secretary of state shall receive and keep safely all the records and papers directed by this chapter to be deposited in the secretary of state's office and shall furnish certified copies thereof when required. Such copies have the same force and effect as if the same were certified by the notary public by whom the record was made.

44-06-10. Removal from county - Requirements. Repealed by S.L. 1955, ch. 286, § 1.

44-06-11. Revocation of notary commission - Notice. In case the commission of a person appointed as a notary is subject to a revocation action, the secretary of state shall give notice thereof by mail to that person immediately, using the procedures of chapter 28-32. The notice may provide that the person may not perform any notarial acts during the pendency of the revocation proceeding. A notary whose commission is revoked may be denied a new commission for a period of up to six years following the date of revocation.

44-06-12. Notary public commission - Venue - Date of expiration - Form of jurat. Every notary public taking an acknowledgment to any instrument, immediately following the notary's signature to the jurat or certificates of acknowledgment of the type set out in chapter 47-19, shall legibly print, stamp, or type the notary's name and include the date of the expiration of the commission. Each jurat or certificate of acknowledgment must also contain the name of the state and county where the notarial act is being performed. The expiration date must be stamped or printed upon the instrument and must be substantially in the following form:

My commission expires _____.

Each jurat must be substantially in the following form:

Subscribed and sworn to before me on _____, _____.

(Notary Seal) _____
(signature of notary)
Notary Public
My commission expires _____

44-06-13. Acting as notary when disqualified - Penalty. A notary public who exercises the duties of a notary's office with knowledge that the notary's commission has expired or has been revoked or that the notary is disqualified otherwise or any other person who acts as a notary or performs a notarial act without a lawful notary commission is guilty of an infraction, and, if appropriate, the notary's commission must be revoked by the secretary of state using the procedure under chapter 28-32.

44-06-13.1. Prohibited acts - Penalty.

1. A notary public may not notarize a signature on a document if:
 - a. The document was not first signed or re-signed in the presence of the notary public, in the case of a jurat, or in the case of a certificate of acknowledgment, was not acknowledged in the presence of the notary public.
 - b. The name of the notary public or the spouse of the notary public appears on the document as a party to the transaction or as a signatory to a petition within the meaning of section 1-01-50.
 - c. The signature is that of the notary public or the spouse of the notary public.

- d. Except as otherwise provided by law, the notary public uses a name or initial in notarizing the document other than as it appears on the notary's commission. However, such an act by a notary by itself does not affect the validity of the document.
 - e. The date of the jurat or certificate of acknowledgment is not the actual date the document is to be notarized or the jurat or certificate of acknowledgement is undated.
 - f. The signature on the document or the notarial certificate is not an original signature, except as otherwise provided by law.
 - g. The notary is falsely or fraudulently signing or notarizing a document, jurat, or certificate of acknowledgement or in any other way is impersonating or assuming the identity of another notary.
 - h. The signature is on a blank or incomplete document.
 - i. In the case of a document drafted in a language other than English, the document is not accompanied by a permanently affixed and accurate written English translation.
 - j. Except as otherwise provided by law:
 - (1) The document is a copy or certified copy of any vital record authorized or required by law to be registered or filed;
 - (2) The document is a copy or certified copy of an instrument entitled by law to be recorded; or
 - (3) The document is a copy or certified copy of a public record containing an official seal.
 - k. The notary did not obtain satisfactory evidence of the identity of the signer, unless the signer is personally known to the notary.
2. A notary public may not make or purport to make any certified copy of a vital record, a recordable instrument, or a public record containing an official seal as described in subdivision j of subsection 1.
3. A notary public who violates this section is guilty of an infraction.

44-06-13.2. Disciplinary proceedings.

- 1. The secretary of state may deny, revoke, or suspend a commission granted under this chapter on the following grounds:
 - a. Conviction by a court of competent jurisdiction of an offense related to the honesty, integrity, or trustworthiness of the notary which the secretary of state determines would render the notary or notary applicant unfit to serve the public as a notary.
 - b. Fraud, misrepresentation, or false statement in obtaining or renewing a commission.
 - c. Failure by a commissioned notary to report in writing to the secretary of state the notary's conviction by a court of competent jurisdiction of a felony within ninety days of the date of the conviction.

- d. Engaging in any act prohibited under section 44-06-13.1.
 - e. Violating any other provision of this chapter.
2. The secretary of state may impose a lesser sanction for a violation of subsection 1 if determined appropriate by the secretary of state under the pertinent facts and circumstances. A lesser sanction includes imposition of a civil penalty not to exceed five hundred dollars or a letter of reprimand.
 3. Any person may file a complaint with the secretary of state seeking denial, revocation, or suspension of a commission issued or to be issued by the secretary of state. The secretary of state shall provide a complaint form. The complainant shall use that form and the form must be verified under oath by the complainant or duly authorized officer of the complainant. If the secretary of state determines that a complaint alleges facts that, if true, would require denial, revocation, or suspension of a commission, the secretary of state shall initiate a hearing without undue delay. If the secretary of state determines a complaint does not state facts warranting a hearing, the secretary of state may dismiss the complaint. The secretary of state may initiate a hearing for denial, revocation, or suspension of a license on the secretary of state's own motion.
 4. Any person whose commission has been revoked or suspended may apply to the secretary of state for reinstatement of the commission or termination of the suspension.

44-06-14. Fees to be charged for notarial acts - Penalty. A notary public is entitled to charge and receive not more than five dollars per notarial act. A notary who charges a fee exceeding that amount is guilty of an infraction. It is an infraction for any person other than the notary public to impose or collect any monetary fee, charge, or commission in connection with the notarization of any document. A notary may charge a travel fee when traveling to perform a notarial act if:

1. The notary and the person requesting the notarial act agree upon the travel fee in advance of the travel; and
2. The notary explains to the person requesting the notarial act that the travel fee is both separate from the notarial fee and neither specified nor mandated by law.