

SECTION 2. DEFINITIONS.

(16) “Verification upon oath or affirmation” or “jurat” means a declaration that a statement is true and is made by an individual upon oath or affirmation.

Rationale: “Jurat” is a commonly understood notarial term and should be used in the definitions section. Although mentioned in the comments, the comments do not usually appear in the statute when enacted.

SECTION 3. AUTHORITY TO PERFORM NOTARIAL ACTS; REQUIREMENTS.

(c) A notarial officer who takes a verification on oath or affirmation or a jurat shall determine, from personal knowledge or satisfactory evidence, that the person appearing before the officer and making the verification is the individual whose signature is on the statement verified.

Rationale: Consistent with the definition of “jurat”.

SECTION 14. SHORT FORMS.

(3) For a verification upon oath or affirmation or for a jurat:

Rationale: Consistent with the definition of “jurat”.

SECTION 15. NOTARY PUBLIC COMMISSION; QUALIFICATIONS.

(b) An applicant for a commission as a notary public must:

(4) be able to read and write English;

Rationale: Consistent with the tense in (1), (2), (3), and (5). Also, a person may not read and write English as a first language, but should “be able to” read and write English in order to receive a commission.

[SECTION 16. EDUCATION OF NOTARIES PUBLIC. The [commissioning officer or agency] or an entity licensed by the [commissioning officer or agency] shall regularly offer a course of instruction to applicants for a notary public commission that ~~is at least~~ ~~[] hours long covering~~ covers the ~~laws~~ statutes, [rules] [regulations], ~~standards~~, procedures and ethics relevant to notarial acts.]

Rationale: The determination of how long a course of instruction should be is

something that is subject to the discretion of the commissioning officer or agency and should not be put into the statute. How does the Legislature know what an appropriate length of time should be for an instructional course?

The word “statutes” is more appropriate than “laws” in a statute since “laws” includes case law. I don’t think we want to start referring to case law in statutes.

The word “standards” should be deleted. “Standards” should not be something that are separate from the statutes that are enacted or the rules that are adopted. If “standards” are to be included, they should be enacted as statutes or adopted as rules. Reference to “standards” in a statute is inappropriate, particularly where the source of the standards is not mentioned. If “standards” are incorporated by reference in a statute or rule, they must be cited with specificity so that the persons subject to the standards know where to find them.

SECTION 17. GROUNDS FOR DENIAL, REFUSAL TO RENEW, OR REVOCATION, OR SUSPENSION OF NOTARIAL COMMISSION.

ADD A NEW SUBSECTION (a)(7) as follows:

(7) engaging in any prohibited act under section _____.

Rationale: See below on sample prohibited acts statute.

OTHER SUGGESTED SECTIONS:

A. PROHIBITED ACTS. There is no section on prohibited notarial acts to give guidance to notaries on what not to do. Should there be a penalty? A suggestion is the language of Section 44-06-13.1 of the North Dakota Century Code, which provides:

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.
 - 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 acknowledgment 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 acknowledgment 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.

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.

B. ACTING AS A NOTARY WHEN DISQUALIFIED. Section 17 sets out grounds for denial, revocation, or suspension, but does not state what happens if a notary performs a notarial act when he/she shouldn't. A suggestion is the language from Section 44-06-13 of the North Dakota Century code, which provides:

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 . . . [using the procedure in Section 17(b) of this Act].

C. NAME CHANGE. There is no provision on what a notary should do if he/she changes his/her name, such as when a notary gets married and takes the last name of her husband. A suggestion is Section 44-06-04.1 of the North Dakota Century code, which provides:

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 [with the new name and stating "formerly known and commissioned as" the former name].

D. VACANCY. What happens to the notary's files and records if the office becomes vacant for any reason, such as resignation, death, or removal from office? The North Dakota provision is in Section 44-06-05, which provides:

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.

E. NOTARIAL ACTS PERFORMED BY A NOTARY OF THIS STATE IN ANOTHER STATE. There could be a section that recognizes the validity of a notarial act in another state performed by a notary of this state. Section 7 doesn't seem to cover this situation. Suggested language is as follows:

A notary may perform a notarial act in another state if that state recognizes the notary's authority within that state.

F. FEES. Should there be limitations on the fees that a notary can charge? The North Dakota provision is in Section 44-06-14 of the North Dakota Century code, which

states:

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.