

South Dakota Notary Public Handbook

(SDCL 18-1)



Courtesy of Shantel Krebs, Secretary of State

From the Office of the Secretary of State

The notary public is a position of great importance with origins that trace back to the days of the Republic of Rome. Today, it remains a position of importance in our republic.

As the overseer of the notary seal for South Dakota, I am excited to provide this resource guide to you as a reference. Within these pages you will find the State's notary statutes, definitions of terms commonly used in performing notarial acts, and the procedures for becoming a notary public in South Dakota. Referencing this booklet will help the notary have a greater understanding of the decisions, responsibilities and obligations entrusted to this office.

The oath of notary public carries with it a serious obligation. Once appointed and commissioned, a notary public becomes a public officer charged with "special trust and confidence in integrity and ability." To faithfully serve the public, the notary public must be knowledgeable about his or her responsibilities.

It is our hope that this booklet will be a valuable resource for notaries public in South Dakota. If you have any questions or if we can be of any further service to you, feel free to contact our office at (605) 773-3539.

Shantel Krebs

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Some Do's and Don'ts for the New Notary

DO

- ◆ Learn the duties you are authorized to perform.
- ◆ Learn the circumstances which may disqualify you from acting.
- ◆ Learn what records, if any, you may wish to keep.
- ◆ Learn what fees you can charge.
- ◆ Keep your official seal or stamp in a safe and secure location.

DON'T

- ◆ Attempt to draft legal documents for your clients.
- ◆ Notarize a blank or incomplete instrument.
- ◆ Notarize a document that has already been signed.
- ◆ Attempt to take an acknowledgement or administer an oath over the telephone or without the individual being present.
- ◆ Permit others to use your official seal or stamp.
- ◆ Place the words “My Commission Expires” inside the border of your seal.

Components Required for Complete Notarization

1. **Original signature of individual executing the document** - The Notary Public must witness this signature.
2. **Date of the original signature** - The document must have the date (day, month and year) the original signature was executed.
3. **Notarization of the document** - The original signature of the Notary Public is placed on the document.
4. **Affix Notary Public Seal** - The imprint of the seal must be approved by the Office of the Secretary of State before use. The seal imprint must be legible.
5. **Commission Expiration Date** - The words “My Commission Expires” and the commission expiration date must be written, printed or stamped on the document. The words “My Commission Expires” may NOT be inside the border of the seal. The commission expiration date must include the Month, Day and Year. The commission expiration date must be the date on the Notary Public Commission Certificate issued by the Office of the Secretary of State. SDCL 18-1-4 requires the Notary Public Certificate be displayed for public inspection. Notary Publics, who are renewing their notary commission, are to use the current notary expiration date until that date of expiration. Afterwards, the notary may start using the new notary expiration date as reflected on the new Notary Public Commission Certificate.

Eight Important Concepts to Remember

1. **A notary should never notarize a signature not made in the notary's presence!** This is the most important rule to protect a notary from legal liability.
2. A notary is to serve any person who makes a lawful and reasonable request for a notarization.
3. A notary is an impartial witness to a transaction.
4. A notarization does not prove truthfulness of the contents of a document, nor validate a document and render it legal.
5. A notarization provides verification of a document signer's willingness to sign, his competence to sign, and that the signer is, indeed, the person identified by the signature.
6. If a notary has any doubt about a signer's identity, it is best not to notarize that signature.
7. Notaries are encouraged to utilize a "credible witness" when in doubt about a person's identity. A "credible witness" is any person who personally knows the signer of a document. The notary should likewise personally know the credible witness. The credible witness may, under oath from the notary, attest to the identity of the document signer. Remember, the credible witness should be impartial to the transaction being notarized.
8. When it comes to notarizing your own signature you need to keep in mind SDCL 18-1-12.2. It is a Class 1 misdemeanor for a person to affix a signature to a document as a notary public when the person has also signed the document as a party to the transaction proceeding.

Keeping Records of Official Acts

While South Dakota law no longer requires a register be kept by a notary, it would certainly be to the advantage of the notary to do so. Most lawsuits against notaries could be avoided if the notary kept a record. Such register should include at a minimum some of the following information:

- Date and time of notarization or acknowledgment
 - Kind of document being notarized or acknowledgment
 - Name and address of parties whose signatures are being notarized
 - Have the parties sign the register
- There are other details which might be included such as land description, kinds of identification presented, number of pages to document, etc. The notary journal serves as an excellent form of legal protection for the notary for two important reasons:
 1. If a notarization certificate is lost or damaged, a notary can refer to the journal entry to verify prior existence and purpose.
 2. If a notary is called upon to testify in a legal proceeding about a notarization, the journal provides the ideal reminder of the facts and circumstances.

The notary journal and official seal or stamp should always be kept in a safe and secure place.

Glossary of Terms

ACKNOWLEDGMENT—An acknowledgment is the act of one who has executed an instrument in going before a notary or other official authorized to take the acknowledgment and declaring that they have executed the document.

AFFIDAVITS—An affidavit is simply a written statement sworn to before an officer authorized to administer an oath. A person “makes” an affidavit by going before a notary or other officer and swearing to the contents of a written document. A notary “takes” an affidavit by administering the oath and completing the certificate.

AFFIRMATION—A person who objects to swearing may make an affirmation. In such case, the notary would ask, “Do you solemnly and sincerely affirm under the penalties of perjury that the statements contained in this affidavit are true?” The notary would change the jurat to show that the affiant affirmed rather than swore.

AFFIANT—The person who is making the affidavit.

JURAT—A notary’s certificate on an affidavit is called a jurat.

Illustration of a General Acknowledgment

AN ACKNOWLEDGMENT – In a typical general acknowledgment ceremony the notary examines the document, declaration, or avowal of one’s act or of a fact to give it legal validity. The document, declaration, or avowal is signed in the presence of the notary. “Do you acknowledge the execution of this (name the document, deed, mortgage, etc.) to be your free act and deed?” The acknowledger says, “Yes,” and the notary completes the certificate.

On this _____ day of _____, in the year _____, before me personally appeared _____, known to me (or proved to me on the oath of _____) to be the person who is described in, and who executed the within instrument and acknowledged to me that he (or they) executed the same.

It is important that in connection with an acknowledgment that the notary identifies the person making the acknowledgment. Failure to do so could result in financial loss to someone who relied on the notary’s certificate. It could also result in an effort on the individual’s part to recover his loss from the notary. These cases could involve impersonation or forgery or both. The crucial question then becomes “what degree of care was exercised by the notary to ascertain the identity of the person making the acknowledgment.” A driver’s license might be used to identify the acknowledger. The notary must be certain that the acknowledger is who he purports to be. A notary is a public officer and a great deal of faith and confidence is placed

Illustration of an Affidavit

There are three things necessary for a valid affidavit, and all three must be present at the same time: (1) the affiant, (2) the notary, and (3) the document. The affiant must swear to and sign the affidavit in the presence of the notary. These three elements of a properly made affidavit are embodied in the notary's jurat which reads:

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 20____.

IDENTITY OF AFFIANT – In most states it is not necessary for a notary to request identification of a person making an affidavit because he does not vouch for his identity in any way. The notary's certificate merely says that the document was "sworn to" on a specified date. However, there is nothing wrong with asking for identification, and it might in fact be a good idea to do so. Properly, an affidavit should be taken in the following manner: the notary and the affiant should stand facing each other with raised right hand and the notary should then say, "Do you solemnly swear that the statements contained in this affidavit are the truth, so help you, God?" However, the essential thing is that the affiant be made to realize that he or she is taking an oath. This fact should be impressed upon the affiant.

Illustration of an Affidavit

(Continued)

NOTARY A PARTY – AFFIDAVIT – Obviously a notary cannot appear before himself or take his own affidavit. While it is not illegal for a notary to take a relative’s affidavit, it is not advisable to do so. If the subject matter is something that would benefit the notary or a relative, it is not considered a good business practice. Still it is not illegal for a notary to witness the signatures of close friends and relatives. There are, however, federal and state courts which do have special rules governing the taking of depositions for use in court.

South Dakota law makes it a Class 2 misdemeanor for any notary public to affix his official signature to documents when the parties have not appeared before him. Furthermore, it could well be the unwitting notarization of a forgery, notarization of the signature of a deceased person, or other such irregularity.

It is also good to remember that there are times when a notary may be called upon to appear in court to testify as to the validity of a signature he has witnessed and notarized.

Frequently Asked Questions

1. What is an Errors and Omissions Insurance— Protection for the Notary?

Notaries may choose to buy Errors and Omissions Insurance (E&O) for the exclusive protection it provides against claims of negligence and unintentional mistakes made while performing notarial acts.

2. Can a South Dakota notary notarize in another state?

No, South Dakota notaries can only notarize within the state of South Dakota.

3. What type of identification is sufficient when notarizing?

- A. Driver's license or non-driver identification card;
- B. U.S. Passport;
- C. An identification card issued by any branch of U.S. Armed Forces; OR
- D. Identification card issued by U.S. Immigration and Naturalization Service, such as a Resident Alien card (sometimes referred to as a "green card")

4. What if my Notary Seal is lost or stolen?

If a Notary's Public Seal is lost or stolen, report the loss or theft immediately to the Office of the Secretary of State so that a notation can be made on the Notary's Public records.

There are two options available to a Notary whose seal has been lost or stolen:

Frequently Asked Questions

(Continued)

- A. The notary may continue to use their Notary Commission and have a new seal made. The seal can be identical to the original or it may be a different type. The new seal impression would have to be recorded with the Office of the Secretary of State.
- B. The Notary may request that the Secretary of State cancel their present Notary Commission and ask that a new commission with a different expiration date be issued. The Notary would have to follow the Notary Public application procedure.

In addition to whatever option is taken, the Notary may also wish to change the name on their Notary Commission and Seal. (Example: Elizabeth B. Jackson could be changed to Elizabeth Jackson or E.B. Jackson or Liz B. Jackson). The new impression of the Notary's Seal would have to correspond exactly to the way the name is signed and recorded with the Office of the Secretary of State.

5. Will information about my being a Notary be public?

Yes. South Dakota Codified Law (SDCL) 18-1-4 expressly states that "The Secretary of State shall keep in his office a record of such appointments and the date of their expiration. South Dakota open record statutes under SDCL 1-27 presume a record is open, unless

Frequently Asked Questions

(Continued)

otherwise designated as closed. There is no exemption for notary public information, such as name and address. Please be aware that the address disclosed on your Notary Application Oath and Bond will be in the public domain and will be available for public view on the state's web site.

6. What about the Commission Date and Expiration Date?

The commission date takes effect on the day the Secretary of State makes the appointment and issues the commission. The expiration date is exactly six (6) years from the commission date. The commission expires at midnight on the day of expiration.

A Notary Public may choose to purchase a “My Commission Expires” date stamp, which can be purchased at an office supply store in your area.

7. What if my name changes?

There are three options available to someone who changes their name during the term of the Notary Public Commission:

- A. Continue to use the Notary Commission as it was issued. The Notary would continue to sign their name using the surname on the commission.
- B. Continue to use the Notary Commission as it was issued and, at their option, add to the signature an appropriate notation such as “presently” or “now” and the new name. (Example: Sally Smith, presently Sally Jones).
- C. Change the name on the Notary Commission. If this option is selected, request a “Notary Public Request to Change Record” form from the Office

Frequently Asked Questions

(Continued)

of the Secretary of State. The Notary must purchase a new seal and place the imprint on the form. After this has been submitted to the Secretary of State, a Notary Public Name Change Certificate will be issued without any additional filing fee.

8. What if I move?

A Notary Public commission is good in any county in South Dakota regardless of the county for which it was issued. However, please notify the Office of the Secretary of State of any change in address so that a notation can be made on the Notary's Public records.

9. How do I renew my Notary Public Commission?

If you wish to renew your Notary Public commission and desire to keep the same commission date and expiration date (month and day), you may do so by completing and mailing to the Office of the Secretary of State the Application, Oath and Bond form in advance of the expiration of the commission. If you desire a different expiration date than your previous commission, please indicate what date you wish to have your next six year term begin. Once again, we must receive the application prior to the date you have selected or already have.

To obtain a Notary Application, Oath and Bond form, contact the Office of the Secretary of State, 500 East Capitol Avenue, Pierre, SD 57501 at (605)773-3539 or by website www.sdsos.gov. It is to your advantage to complete the application fully and correctly the first time, so that it need not be returned to you for additional information or correction. Please use a typewriter or print legibly in ink when completing the form. Upon completion of the Notary

Frequently Asked Questions

(Continued)

Application, Oath and Bond form, it should be submitted to the Office of the Secretary of State with the \$30.00 filing fee. Please make all checks payable to the Secretary of State.

10. What about the Notary Seal?

A Notary Seal may be purchased at an office supply company, stationery store, or a print shop. There are two types of seals that are generally available for purchase—the embossing seal and the rubber stamp. Either one of these stamps is acceptable as a notary seal. The seal must contain:

- Applicant's name.
- The words "Notary Public" and "South Dakota."
- A border surrounding the imprint.
- If a rubber stamp is used, the word "Seal" must be included on the stamp.
- The words "My Commission Expires" are NOT to be inside the border of the seal.

A notary must write, print or use a separate stamp imprint with the words "My commission expires" and the expiration date. If the words are printed on the form, the notary need not duplicate them.

The official notary seal imprint on your Application, Oath and Bond is the only Seal imprint to be used when notarizing documents. If you find it necessary to have a different type of notary seal, you must first submit an imprint to our office before using a different notary seal.

It is absolutely necessary that the imprint of the applicant's Notary Seal be included on the Application, Oath and Bond form when it is submitted to the Office of the Secretary of State.

Uniformed Acknowledgement Law

§ 18–5–1 to 18–5–18

This section of the law refers to various types of acknowledgments required under South Dakota Codified Law. This section of the code can be viewed at this website: legis.sd.gov/Statutes/Codified_Laws or you may view or have copies made of these statutes at a public library, courthouse, or by contacting the Secretary of State's office.

SDCL Chapter 18-1: Notary Public

§ 18–1–1. Appointment by Secretary of State–Term of office–Application Procedure–Authority.

The secretary of state shall appoint notaries public, who have residence in this state as defined in § 12-1-4. A notary public shall hold office for six years unless sooner removed by the secretary of state. An applicant to become a notary public shall complete an application form as prescribed by the secretary of state pursuant to chapter 1-26. The applicant shall submit a fee of thirty dollars. The application shall include the applicant's name, street, city, state, zip code, county, and date of birth. The applicant shall apply in the same name as that which will appear as the seal imprint. Each notary may, anywhere in this state, administer oaths and perform all other duties required by law. The secretary of state may not appoint as a notary public any person who has been convicted of a felony. The secretary of state may also appoint an applicant as a notary public if the applicant resides in a county bordering South Dakota and the applicant's place of work or business is within the State of South Dakota.

SDCL Chapter 18-1:

Notary Public (Continued)

§ 18–1–2. Oath and bond of notary.

Each notary public before performing the duties of the office, shall take an oath as required by § 3–1–5, and shall give a bond to this state, to be approved by the attorney general, in the penal sum of five thousand dollars, conditioned for the faithful discharge of the duties of the office.

§ 18–1–3. Seal, oath and bond filed with Secretary of State.

Every notary public before entering upon the duties of his office shall provide an official seal and file an impression of the same, together with his oath and bond, in the Office of the Secretary of State.

§ 18–1–3.1. Requirements of notary public seal– Commission expiration date required on notarized document.

Each notary public shall have a seal which shall be used for the purpose of acknowledging documents. The seal shall be of a type approved by the Secretary of State and shall contain at least the following:

- (1) The notary’s name;
- (2) The words, “South Dakota”;
- (3) The words, “notary public”; and
- (4) A border surrounding the imprint.

In addition, rubber stamp seals shall have the word, “seal”. If a seal is used by a notary public, the notary public shall write, or print by a device made for such printing, below the seal’s imprint or print and if not provided by the form,

SDCL Chapter 18-1:

Notary Public (Continued)

the words, “my commission expires”, and shall provide a date therefor. (To further clarify, the words “My Commission Expires” may NOT appear inside the border of the seal.)

§ 18–1–4. Issuance of commission–Posting–Records maintained by Secretary of State.

The Secretary of State shall issue a commission to each notary public which shall be posted in a conspicuous place in the notary’s office for public inspection. The Secretary of State shall keep in his office a record of such appointments and the date of their expiration.

§ 18–1–5 to § 18–1–6. Repealed

§ 18–1–7. Notarial acts valid despite notary’s agency for party to transaction.

A notary public who is personally interested directly or indirectly, or as a stockholder, officer, agent, attorney, or employee of any person or party to any transaction concerning which he is exercising any function of his office as such notary public, may make any certificates, take any acknowledgments, administer any oaths or do any other official acts as such notary public with the same legal force and effect as if he had no such interest except that he cannot do any of such things in connection with any instrument which shows upon its face that he is a principal party thereto.

§ 18–1–8. Repealed.

SDCL Chapter 18-1:

Notary Public (Continued)

§ 18–1–9. Fee chargeable by notary.

Notaries public may charge and receive a fee not to exceed ten dollars for each instrument notarized, except that no notary public may charge a fee for notarizing a request for an absentee ballot.

§ 18–1–10. Faith and credit to notarial acts.

Full faith and credit shall be given to all the protestations, attestations, and other instruments of publication, of all notaries public now in office or hereafter to be appointed under the provisions of this chapter.

§ 18–1–11. Notarizing without appearance by parties as misdemeanor.

It is a Class 2 misdemeanor for any notary public to affix his official signature to documents when the parties have not appeared before him.

§ 18–1–12. Acting after expiration of term or disqualification as misdemeanor.

It is a Class 2 misdemeanor for any notary public to exercise the duties of his office after the expiration of his commission or when he is otherwise disqualified.

§ 18–1–12.1. Acting without a commission is a violation.

It is a Class 1 misdemeanor for a person to act as a notary public or to affix a signature to a document as a notary public if the person has not first obtained a commission from the Secretary of State pursuant to this chapter.

SDCL Chapter 18-1:

Notary Public (Continued)

§ 18-1-12.2. Party to transaction as notary public prohibited.

It is a Class 1 misdemeanor for a person to affix a signature to a document as a notary public when the person has also signed the document as a party to the transaction proceeding.

§ 18-1-13. Removal of notary from office for violation.

Any notary public who is convicted of committing an act which is designated as a misdemeanor in this chapter or any felony shall be removed from office by the Secretary of State.

§ 18-1-14. Notice to notary of revocation of commission.

Should the commission of any notary public be revoked, the Secretary of State shall immediately notify such person by mail.

§ 18-1-15 to 18-1-17. Repealed



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