

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1133

2001 HOUSE POLITICAL SUBDIVISIONS

HB 1133

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1133

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date 1-12-01

Tape Number	Side A	Side B	Meter #
1	xx		3700--end
1		xx	255-738
1		xx	2204-2500
Committee Clerk Signature <i>Rim DeWitt</i>			

Minutes: Chairman Froseth opened hearing on HB1133 with those present: Chair Froseth, Vice-Chair Severson, Reps. Delmore, Disrud, Eckre, Ekstrom, Fairfield, Grosz, Gunter, Herbel, N. Johnson, Kretschmar, Maragos, Niemeier, and Tieman.

Rep. Klemin, Dist. 47, Bismarck : Testified in support of HB 1133. This bill is to correct a conflict between two sections of law. I believe it may have been a drafting error. (See Attached Testimony)

Rep. Fairfield : (4172) After this bill, will it be O.K. for the notary to be a party to a limited liability and still notarize the document?

Rep. Klemin : Yes, that is what section 34 says.

Chair Froseth : How many times is a document invalid because a notary hasn't met all the qualifications?

Rep. Klemin : I don't know that I can answer. It would not occur unless someone questions it. Now we have the answer without having to go to court to find the answer. Now we have to have a judge decide.

Rep. Delmore : (4309) What if it is a dated document that is in question and later found to be invalid? It would change the course of what someone was allowed to do because of the way it was notarized.

Rep. Klemin : That could be. That's the same situation we have right now. Now, notaries should know, upfront, because it is clearly stated in the law.

Rep. Delmore : My point is who will pay for the invalid document?

Rep. Klemin : We are talking about related parties, where the notary is notarizing the signature of his/her spouse. We are not talking about an innocent third party out there who is faced with an invalid document. The document will be invalid anyway, but we should not have to go to court to have a legal decision say that. We can say that upfront in this statute.

Rep. Delmore : In what case, given these relationships, etc., if we are allowing somebody who is a member of this limited corporation to sign on to it. In what instances is it going to be invalid.

Rep. Klemin : (4582) If we delete the reference to limited liability companies, it should spring this section 33 in harmony with section 34.

Rep. Fairfield : Why did we not prohibit it from section 34 rather than deleting it from section 33?

Rep. Klemin : It was a judgment call. Limited liability companies are much like corporations. Why do it for a corporation and not a limited liability. Partnership is different. Can't be in both places.

Bob Schaible, Deputy Sec. Of State : (4800) The Sec. of State wants to go on record as supporting HB1133.

Jim Horner, ND Land & Title Assoc. : We are neutral on this for the main part. We would like the affidavit portion deleted.

Chair Froseth : So you would like the words *or affidavits* be removed from line 12.

Jim : Yes. Since we are cleaning up the bill let's do this, too.

Rep. Klemm : (5215) Acknowledgments and affidavits are not the same thing. He went on to explain the differences. I am neutral as to whether this change is good or bad.

Chair Froseth : (side B 255) If we take the word affidavit from 33, we have to take it out of 34.

Rep. N. Johnson : (494) I don't see a problem, but maybe we should give the Secretary of State a chance to respond.

Chair Froseth : Mr. Horner, would you like to respond?

Jim Horner : (535) Maybe we are just talking about apples and oranges. When we are talking about execution of the affidavits. Who will be executing. Notarizing is different than executing. We don't want the person executing it to be limited. They may be the only person who knows the facts and swears to it.

Malcolm Brown, State Bar Assoc. : (655) I think what Mr. Horner is concerned about is the affidavit in the title of the section. This whole section deals with who shall not execute acknowledgments. Maybe, affidavits should be stricken from the title.

Chair Froseth : Hearing no further testimony, HB1133 is closed.

Tape 1, Side B 2205 1-12-01

Chair Froseth : Let's take up HB1133

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House Political Subdivisions Committee
Bill/Resolution Number HB1133
Hearing Date 1-12-01

Rep. Kretschmar : (2232) I think the word *affidavit* should be left out of the title. I move to amend this bill and delete *and affidavits* on line 6.

Rep. Maragos : (2305) Then should we also delete *affidavit* from line 12?

Rep. Kretschmar : No, we want it in the statute.

Vice-Chair Severson : (2330) I second the motion to amend.

VOICE VOTE ON AMENDMENT: All Yes, amendment passed

Rep. Maragos : I move a **DO PASS AS AMENDED** on HB1133.

Rep. Grosz : (2400) I second the motion.

ACTION: 11 YES, 4 NO, BILL PASSED. Rep. Disrud will carry.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1133 b

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date 1-19-01

Tape Number	Side A	Side B	Meter #
1		xx	230-620
Committee Clerk Signature <i>Pam Owen</i>			

Minutes: Chair Froseth : We need to look at HB1133 again. We had some amendments that Legislative Council had to investigate that Rep. Kretschmar proposed.. We did pass this with the amendments.

Rep. Kretschmar : I move to reconsider HB1133.

Rep. Delmore : I second.

VOICE VOTE to reconsider: ALL YES. Motion carried to reconsider.

Rep. Ekstrom : I move to withdraw the previous amendments.

Vice-Chair Severson : I second.

VOICE VOTE to withdraw amendments: ALL YES. Motion carried.

Rep. Kretschmar : (368) I have now some amendments prepared by Legislative Council that only amends the title to the bill. The statute will prohibit a notary from notarizing an instrument which the notary is a party. The amendment does not change the body of the statute as presented in the bill. I move that amendment.

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House Political Subdivisions Committee
Bill/Resolution Number HB1133 b
Hearing Date 1-19-01

Rep. N. Johnson : I second.

VOICE VOTE on amendment: YES carried. AMENDMENT PASSES.

Vice-Chair Severson : I move a **DO PASS AS AMENDED.**

Rep. Ekstrom : I second.

VOTE: 14 Yes and 1 NO BILL PASSES Rep. Disrud will carry the bill.

10295.0102
Title.0200

Prepared by the Legislative Council staff for
Representative Kretschmar
January 16, 2001

VR
1/19/01

HOUSE AMENDMENTS TO HB 1133 HOUSE POL. SUBS. 1-19-01
Page 1, line 6, overstrike "Who shall not execute acknowledgments and affidavits" and
insert immediately thereafter "Prohibition on self-interested individuals from
proving documents"

Renumber accordingly

Date: 1-12-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House POLITICAL SUBDIVISIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Rep. Maragos Seconded By Rep. Gross

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓		Rep. Wayne W. Tieman	✓	
Vice-Chair Dale C. Severson	✓				
Rep. Lois Delmore		✓			
Rep. Rachael Disrud	✓				
Rep. Bruce Eckre	✓				
Rep. Mary Ekstrom		✓			
Rep. April Fairfield		✓			
Rep. Michael Grosz	✓				
Rep. Jane Gunter	✓				
Rep. Gil Herbel	✓				
Rep. Nancy Johnson	✓				
Rep. William E. Kretschmar	✓				
Rep. Carol A. Niemeier		✓			
Rep. Andrew G. Maragos	✓				

Total (Yes) 11 No 4

Absent -0-

Floor Assignment Rep. Disrud

If the vote is on an amendment, briefly indicate intent:

Date: 1-19-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House POLITICAL SUBDIVISIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number 10295, 0102 0200 Roll

Action Taken Do Pass As Amended

Motion Made By Vice Chair Severson Seconded By Rep Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	/		Rep. Wayne W. Tieman		
Vice-Chair Dale C. Severson	/				
Rep. Lois Delmore	/				
Rep. Rachael Disrud	/				
Rep. Bruce Eckre	/				
Rep. Mary Ekstrom	/				
Rep. April Fairfield		/			
Rep. Michael Grosz	/				
Rep. Jane Gunter	/				
Rep. Gil Herbel	/				
Rep. Nancy Johnson	/				
Rep. William E. Kretschmar	/				
Rep. Carol A. Niemeier	/				
Rep. Andrew G. Marugos	/				

Total (Yes) 14 No 1

Absent 0

Floor Assignment Rep. Disrud

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 19, 2001 2:29 p.m.

Module No: HR-09-1324
Carrier: Disrud
Insert LC: 10295.0102 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1133, as amended, Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). placed on the Sixth order on the calendar.

Page 1, line 6, overstrike "Who shall not execute acknowledgments and affidavits" and insert immediately thereafter "Prohibition on self-interested individuals from proving documents"

Renumber accordingly

2001 SENATE POLITICAL SUBDIVISIONS

HB 1133

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1133

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 16, 2001

Tape Number	Side A	Side B	Meter #
1	x		16.6-29.1
March 1, 2001 2	x		7.1- 18.6
March 2, 2001	x		7.4-16.7
Committee Clerk Signature <i>Mary Jo Whelan</i>			

Minutes:

The hearing was opened on House Bill 1133, relating to the proof of a document.

REP. KLEMIN: Introduced and sponsored HB1133. See written testimony.

This bill amends Section 47:19:33 of the ND Century Code which relates to the restrictions on a notary public concerning the personal interest in a instrument or affidavit.

SENATOR COOK: The amendments in the House, are just cleanup or?

REP. KLEMIN: The amendment in the House related to an ambiguity in the title of this section.

Where it says, who shall not execute an instrument or an affidavits, and that was changed to prohibition on self-interested individuals from proving documents. The reason for that is, were not really not talking about executing a affidavit, cause that is done, by the person who makes the affidavit. We're talking about the notary subscribing on their that the person swore this was his statement. So that amendment is simply to clarify that ambiguity. SENATOR MATHERN: What

would that do to documents that are already in existence? REP. That are in violation of this statute? SENATOR MATHERN: Some of them might be four years old. REP. KLEMIN: Ordinarily, I think there is a general rule of construction on need that the provisions of the Century Code, are prospective unless they are expressly made retroactive. I am not entirely certain how that would apply in this case, but I believe there is.. I look at my legal counselor, and I think it is Title 1, where it is in the Century Code I am not sure. But I believe there is a general principal set out in the Century Code something to that effect. But that is the usual rule, is that the prospective, I'm not entirely certain of that you would apply this to. SENATOR MATHERN: Mr. Chairman that would be the only thing I would want clarification on. Other than that I have no problem with it. SENATOR COOK: I don't know if there are any situations like this, where this would apply to a document that was improperly notarized. That document had other decisions that were made as a result of it. Do all these decisions become null and void? REP. KLEMIN: I think that would have to be up to the court to determine. Certainly I guess I can't think of a situation where there would a second or third thing that would be dependent upon this particular document. If the. I think if it was number one, it would have to depend on the facts of the case. If we look at a situation, where the spouse signs, notarizes for the other spouse and somebody else does something and the wife signs the document it might be dependent upon the whether the second or third person knew that the first notary was a spouse and then the other person which have knowledge of the circumstances. SENATOR COOK: Let me explain, the situation. I remember being chairman of nonprofit. We bought fourteen acres of land, from the city, that had been repossessed by the county for back taxes. We're going through the quick deed title or whatever, and the title on this then low and behold, we find out through our attorney, that an affidavit served to the previous owner by the county, was not signed by the county auditor.

The fact that was not signed, long five years prior to us being involved with it, ended up costing us \$18,000 because the previous owner said that land is mine. I was served an improper affidavit. We were all of a sudden at the negotiating table. Could something like that happen because somebody found that the document was improperly notarized? REP. KLEMIN: Possibly, although, Senator Cook, I guess in your situation, let me point out that the Supreme court has held in a number of cases that matters relating to tax sales and sales from political subdivisions and that sort of thing where person could've ask for the title back are strictly construed and must follow everything to the exact letter or its not going to work. So that's been a real, we had in Bismarck, all tax sales for that whole year were thrown out because the publication in the newspaper was a day late I believe. SENATOR COOK: Rep Klemin, I understand that. but we had that option of going to the Supreme Court, our attorney even said we had a 50-50 chance of winning, but we looked at the cost of what it would go to the Supreme Court and what we could negotiate up front and we were still in a situation that because of one little mistake made by somebody else, it cost us a lot of money. I don't know..REP KLEMIN: I think that if we were court and it as something that was based on a case depended upon the validity of the document, this statute would be used to challenge the validity of the document. I am sure that court would say that the document is not valid. The point of putting this in here, is so we don't to go to court to make that determination. I think that would be the result. SENATOR FLAKOLL: I know there is like a \$7500 fine and stuff, what are the penalties for a notary if they violates some laws? I want to see as a penalty, because I can see a situation, in a worse case scenario, where a husband and wife aren't getting along, one of them is a notary, making them sign the papers, oh I'll just notarized it and then that one person feels a warm and fuzziness about having been covered by an agreement they have between themselves. What is the notary has to lose by ? REP. KLEMIN:

I have this section of law here, 44:06:13.1, prohibitive acts and penalty of notary violates is this section which says things that notaries may not do. Anyone guilty of an infraction and a notary public commission must be revoked by the Secretary of State. MALCOLM BROWN: Lawyer in Bismarck. I am representing the Real Property Section of the State Bar Association. Our section is interested in bills or laws that affect real property transactions and commercial transactions. And our section supports this bill. We testified in favor of it before the House, and we have no problem with the amendment to the title, actually is better than the original one, that has been for a number of years. With regard to Senator Mathern's question, I think that most of the documents, probably, most of the documents that are acknowledged are documents that are recorded in the Register of Deeds, deeds, mortgages or things like that. I think in so far, as they represent notice to the public that would not affect their validity. Now with regard to the transaction between the parties, this penalty section on the bottom may have some affect. Though with regard to notice to the public, it would not. It would still be noticed. Again we support this bill. Again as Rep. Klemin mentioned initially the purpose of the bill was to remove this conflict between the two adjoining sections.

SENATOR COOK: Malcolm, the concern that I have is this a legitimate concern I should have.

MALCOLM BROWN: Well yours is, Senator Cook, was rather complicated I take it. Again, that is a whole different area of the law and had the county auditor's wife notarize the document it might have been, or would've been invalid in any event. The lack of the signature again didn't comply with the law.

Hearing Closed on HB1133.

Page 5
Senate Political Subdivisions Committee
Bill/Resolution Number HB 1133
Date: February 16, 2001

March 1, 2001 Tape 2, Side A,(Meter # 7.1-18.6)

Senator Cook opened the discussion on HB 1133.

Senator Watne said that she had taken a bunch of notary classes and moved for a Do Pass.

Senator Lyson-2nd

After lengthy discussion on this bill the committee asked Senator Watne and Senator Lyson to withdraw their motions until the committee completed discussion. Committee discussion closed.

March 2, 2001 Tape 1, Side A, (Meter # 11.4-12.6)

Senator Cook called the committee back to order to discuss this bill. Hold this bill until language is found a better way to do that.

March 8, 2001 (Tape 2, Side A, Meter 7.4-16.9)(16.1)

Senator Cook asked the committee for discussion on HB1133. After lengthy discussion Senator Watne moved for a Do Pass the Amendment: add from person to individuals; change instrument or affidavit to acknowledgment.

Senator Mathern- 2nd

Roll call vote: 7 Yeas, 0 No, 1 Ab.

Senator Watne moved Do Pass as Amended

Senator Flakoll- 2nd

Roll call vote: 7 Yeas, 0 No, 1 Ab

Carrier: Senator Mathern

Date: *Mar 1, 2001*
Roll Call Vote #: */*

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *H.B. 1133*

Senate	Political Subdivisions	Committee
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☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number

Action Taken do Pass

Motion Made By Sen. Watne Seconded By Sen. Lyman

[illegible]

Total	(Yes)	No
100	100	0

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Reciprocal motions

March 8, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1133

Page 1, line 7, ^{remove "A," and} ~~overstrike "person", and insert immediately thereafter~~ ^{after "hereafter" insert "An} ~~"individual"~~

Page 1, line 10, ^{after "be"} ~~overstrike "person" and insert immediately thereafter~~ ^{insert} ~~"individual"~~

Page 1, line 12, ^{remove "that" and} ~~overstrike "person" and insert immediately thereafter~~ ^{insert} ~~"individual"~~

Page 1, line 13, ^{after "be" insert "that individual" and} ~~replace "instrument or affidavit" with "acknowledgment"~~

Renumber accordingly

Date: Mar. 8, 2001
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. H.B. 1133

Senate Political Subdivisions Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Move the Amendment - From person to individuals
instrument or affidavit to acknowledgment
Motion Made By Sen. Watne Seconded By Sen. Mathern

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson	✓	
Senator Lyson	✓		Senator Mathern	✓	
Senator Flakoll	✓		Senator Polovitz	✓	
Senator Lee					
Senator Watne	✓				

Total (Yes) 7 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: Mar. 8, 2001
Roll Call Vote #: 2.

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. H.B. 1133

Senate Political Subdivisions Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass as amended

Motion Made By Sen. Watne Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson	✓	
Senator Lyson	✓		Senator Mathern	✓	
Senator Flakoll	✓		Senator Polovitz	✓	
Senator Lee					
Senator Watne	✓				

Total (Yes) 7 No 0

Absent 1

Floor Assignment Sen. Mathern

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1133, as engrossed: Political Subdivisions Committee (Sen. Cook, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (7 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1133
was placed on the Sixth order on the calendar.

Page 1, line 7, remove "A", overstrike "person", and after "~~hereafter~~" insert "An individual"

Page 1, line 10, overstrike "person" and after "~~be~~" insert "individual"

Page 1, line 12, remove the second "that" and overstrike "person"

Page 1, line 13, after "~~be~~" insert "that individual" and replace "instrument or affidavit" with
"acknowledgment"

Renumber accordingly

2001 TESTIMONY

HB 1133

TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE POLITICAL SUBDIVISIONS COMMITTEE
HOUSE BILL NO. 1133
JANUARY 12, 2001

Mr. Chairman and Members of House Political Subdivisions Committee:

I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of House Bill No. 1133. HB 1133 amends Section 47-19-33 of the North Dakota Century Code relating to the restrictions on a notary public concerning personal interest in an instrument or affidavit being notarized. Under current law, a notary public cannot notarize his or her own signature nor that of his or her spouse, nor can the notary sign if the notary is a member of a partnership or limited liability company that is a party on the document.

There are two substantive changes being proposed in this bill.

First, the amendment Section 47-19-33 deletes the reference to a "limited liability company" on line 10 of the bill. The reason for this deletion is to correct a conflict with the provisions of Section 47-19-34.

In order to become a notary public, a person must apply to the Secretary of State. In the handout are the materials that the Secretary of State then sends to a notary applicant, which includes a copy of the applicable law relating to notaries. Please turn to the back page of these materials. As you can see, the current provisions of Section 47-19-33 make it illegal for a notary to sign on documents if the notary is a member of a limited liability company that is a party to the document. However, Section 47-19-34 specifically authorizes a notary to do this for both corporations and limited liability companies. Obviously, it cannot be both prohibited and authorized in the law. This was probably a drafting error when the law was last amended in the 1993 Session. The amendment in this bill corrects this problem.

The second substantive change is on lines 12 and 13 of the bill. Section 47-19-33 currently contains no consequence with respect to the instrument or affidavit if the law is violated. While a notary may be liable, either criminally or civilly, for violating the law, there is nothing now that says what effect the violation has on the validity of the document. The new language will provide a consequence and states that an instrument taken or received in violation of this section is invalid.

Notaries should know the law relating to notaries. They are provided with a copy

of the law when they apply to become notaries and are also periodically sent additional information by the Secretary of State, including additional copies of the law. A civil or criminal court action should not be the only way to determine a consequence or the effect of a violation of this law on the validity of a document.

If this bill passes, I'm sure the Secretary of State will inform notaries that the law has changed and that there is now a consequence on the validity of a document taken or received in violation of the law.

I urge your approval of this bill. Thank you very much.

ALVIN A. JAEGER
SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 E BOULEVARD AVE DEPT 108
BISMARCK ND 58505-0500

E-MAIL sos@state.nd.us
HOME PAGE <http://www.state.nd.us/sec>



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CENTRAL INDEXING DIVISION (701) 328-3662
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GENERAL INFORMATION (701) 328-2900
ND TOLL FREE 1-800-352-0867
FAX (701) 328-2992

SECRETARY OF STATE

W/ 1133 12/11/98

Dear Notary Applicant,

Enclosed are the forms you will need to apply for a commission as a Notary Public for the State of North Dakota. Also enclosed is a copy of various sections of law from the North Dakota Century Code that pertain to the duties of a Notary Public. It is very important that you study these laws and become knowledgeable about them. As a commissioned Notary Public, you will become an officer of the state and will be expected to perform your duties in accordance with the Oath of Office you will take.

In order for this office to proceed with the processing of your application, you will need to complete the notary application and notary bond form. Then, send the completed forms to this office along with a payment of \$25 for the filing fee. Please make your check payable to the Secretary of State. If you are a resident of a bordering county in Minnesota or Montana, you will also need to complete the appointment of agent form. Your name must be spelled and signed the same on all of the forms you are submitting.

A notary's bond, in the amount of \$7,500, must be in effect for the entire six years of your notary commission. There are two options available to you for providing a bond. You may purchase a bond from a surety company of your choice (this bond is readily available through most insurance agents). You may also use one or two individuals who are willing to serve as personal sureties. A personal surety must be approved by this office, must be a resident of North Dakota, cannot be your spouse, and must have the financial ability to be answerable for any debt, liability, or default that may be incurred in your carrying out the duties of a notary public.

When all of the application requirements have been fulfilled, this office will issue a certificate of authorization that will allow you to purchase a notary seal/stamp from a vendor of your choice. By law, the vendor must see the authorization before they can provide you with a notary seal/stamp.

After you have your notary seal/stamp, an impression of it must be affixed to the certificate and returned to this office. After the certificate is received, approved, and filed, the Secretary of State will commission you as a Notary Public for the State of North Dakota. You may begin your duties as a Notary Public only when you have received your commission from the Secretary of State.

State law allows this office to retain a handling charge from tendered filing fees if an application filed with this office is rejected and then not perfected by the applicant within a reasonable time period. The handling charge is five dollars, or fifty percent of the filing fee, whichever is greater. Therefore, after you have submitted your application, you must complete the process within a reasonable period of time or the file will be closed and the remaining balance of your fee refunded to you.

If you have any questions, please contact Charlotte in the Licensing Division at (701) 328-2901 or toll free at (800) 352-0867 Ext. 8-2901.

Sincerely,

Mary Feist

Mary Feist, Director
Licensing Division



NOTARY APPLICATION
SECRETARY OF STATE
 SFN 11001 (2-00)

FOR OFFICE USE ONLY

ID#

WO#

Secretary of State
 State of North Dakota
 600 E Boulevard Ave Dept 108
 Bismarck ND 58506-0600
 Telephone 701-328-2901
 Toll Free 800-352-0867
 Ext 82901
 Fax 701-328-1690

ING FEE: \$25.00

INSTRUCTIONS:

1. For reference, see North Dakota Century Code, Chapter 44-06.
2. Please type or print the information requested in the boxes below.
3. Carefully read and sign the Affidavit and Oath of Office in front of another notary.
4. Have the notary notarize your signature in accordance with North Dakota Century Code, Chapter 44-06.
5. Along with this application, submit a six year notary surety bond in the amount of \$7,500.00. The bond may be obtained from any surety company of your choice or from one or two personal sureties who are approved by the Secretary of State. The personal sureties must be residents of North Dakota, not your spouse, and must have the financial ability to be answerable for any debt, liability, or default that may be incurred as you carry out your duties as a Notary Public. (The spelling of the name on the bond must be identical to the name in box #1, which is the name and spelling you will always use when notarizing documents.) The bond may only be notarized in accordance with North Dakota Century Code, Chapter 44-06.
6. After the receipt of the fee, application and notary surety bond, you will be issued a certificate which authorizes a notary seal vendor to provide you with an official notary seal. Once an impression of your seal is affixed to the certificate, the certificate must be returned to the Office of the Secretary of State. When the certificate of authorization is received, approved, and filed, an official notary commission will be issued to you.
7. If you reside in a county bordering the North Dakota stateline, it will be necessary for you to also file an appointment of agent form.

1. Name of Applicant (applicant will always use this name when notarizing documents)		2. Social Security #
3. Home Mailing Address, City, State, Zip Code		4. Home Telephone #
5. Work Mailing Address, City, State, Zip Code		6. Work Telephone #
7. Spouse's Complete Name (if applicable)	8. If applicant is not a North Dakota resident, list your county of residence and which North Dakota county it borders	
9. Type of Application (Check applicable boxes) <input type="checkbox"/> New Appointment <input type="checkbox"/> Re-Appointment Previous Expiration Date: _____		
10. ALL applicants must answer the following questions. If YES, attach a written explanation and ALL legal documentation, if applicable.		
<p>YES NO</p> <p><input type="checkbox"/> <input type="checkbox"/> Have you ever been the subject of any inquiry or investigation by any division of North Dakota?</p> <p><input type="checkbox"/> <input type="checkbox"/> Have you or has any occupational license held by you been censured, suspended, revoked, canceled, terminated or been the subject to any type of administrative action in any state including North Dakota?</p> <p><input type="checkbox"/> <input type="checkbox"/> Have you ever been charged with, or convicted of, or been indicted for, or entered a plea to, any criminal offense (felony, gross misdemeanor or misdemeanor), <u>other than</u> traffic violations, in any State or Federal Court?</p> <p><input type="checkbox"/> <input type="checkbox"/> Been a defendant in any lawsuit involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty or breach of contract?</p>		

AFFIDAVIT OF QUALIFICATIONS AND OATH OF OFFICE

I, the undersigned, being first duly sworn, hereby state that I am over the age of eighteen years of age, that I am a North Dakota resident or reside in a county that borders North Dakota and which is in a state that extends reciprocity to a Notary Public who resides in a bordering county of this state, and that I desire to become a commissioned notary public in the State of North Dakota for a period of six years.

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.

 Applicant Signature

State of _____

County of _____

Subscribed and Sworn before me, this _____ day of _____, _____

(Notary Seal/Stamp)

 Notary Public

My Commission expires: _____



NOTARY BOND
SECRETARY OF STATE
 SFN 19366 (12-00)

Secretary of State
 State of North Dakota
 600 E Boulevard Ave Dept 108
 Bismarck ND 58505-0600
 Telephone 701-328-2901
 Toll Free 800-352-0887
 Ext 82901
 Fax 701-328-1690

INSTRUCTIONS:

- For reference, see North Dakota Century Code, Chapter 44-08.
- In compliance with the Federal Privacy Act of 1974, the disclosure of the social security number or Federal ID number on this form is voluntary. They are not disclosed to the public. The numbers are used by the Secretary of State to maintain accurate notary files. Therefore, while voluntary disclosure is requested, failure to do so will not invalidate this notary bond.
- Please type or print the requested information. You must sign the form in the presence of a notary public.
- This six year notary bond must be in the amount of \$7,500.00. The bond may be obtained from any surety company of your choice or from one or two personal sureties who are approved by the Secretary of State. The personal sureties must be residents of North Dakota, not your spouse, and must have the financial ability to be answerable for any debt, liability, or default that may be incurred as you carry out your duties as a Notary Public.
- The applicant and a representative of the surety company (or the personal sureties) must sign this form before a Notary Public.

1. Name of Principal (Applicant)		Bond #	
Mailing Address of Principal (Applicant)		City	State Zip Code
2. Name of Surety Company or Personal Surety (#1)		Social Security #	
Address		City	State Zip Code
3. Name of Personal Surety (#2)		Social Security #	
Address		City	State Zip Code

ACKNOWLEDGEMENT OF PRINCIPAL (APPLICANT)

I, the undersigned principal (applicant) do hereby hold and firmly bind myself unto the people of the State of North Dakota in the sum of SEVEN THOUSAND FIVE HUNDRED DOLLARS for the payment of which I bind myself, my heirs, executors, administrators and assigns, firmly by these presents. The condition of the foregoing obligation is for my appointment as a Notary Public within and for the State of North Dakota. If I perform the duties of Notary Public according to the law, then this obligation becomes null and void, otherwise it remains in full force and effect.

 Principal (Applicant) Signature

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20 ____.

 Notary Public

My Commission expires: _____

(Notary Seal)

ACKNOWLEDGEMENT OF SURETY/PERSONAL SURETY

As a representative of the above named surety company, or as an individual personal surety, I hereby acknowledge that we are held and firmly bound unto the people of the State of North Dakota in the penal sum of SEVEN THOUSAND FIVE HUNDRED DOLLARS for the payment of which is binding on our company or ourselves as a personal surety, our heirs, executors, administrators and assigns, firmly by these presents. The condition of the foregoing obligation is for the appointment of the principal (applicant) as a Notary Public within and for the State of North Dakota.

(NOTE: If attorney-in-fact executes the bond on behalf of a surety company, a proper authority of such attorney-in-fact must be provided.)

 Surety Company or Personal Surety (#1) Signature

 Personal Surety (#2) Signature

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20 ____.

 Notary Public

My Commission expires: _____

(Notary Seal)

If a bond is furnished by a foreign surety company, resident agent may sign here.

 Resident Agent Signature

STATE LAW AND THE DUTIES OF A NOTARY PUBLIC

Effective as of August 1, 1999

Office of the Secretary of State

State of North Dakota

The following laws are from the North Dakota Century Code (NDCC) and pertain to the duties of a Notary Public. Although every attempt has been made for accuracy, the reprint of these laws does not carry the same authority or weight as the actual NDCC and should not be equated with the NDCC as an equal authority. This copy is only intended as a helpful resource and reference. For official and legal purposes, the official NDCC should be used.

NDCC CHAPTER 44-05 ADMINISTRATION OF OATHS

44-05-01. OFFICERS AUTHORIZED TO ADMINISTER OATHS. The following officers are authorized to administer oaths:

1. Each justice of the supreme court, each judge of the district court, the clerk of the supreme court, and the clerk's deputy.
2. The clerk of the district court, county auditor, register of deeds, and the deputy of each such officer within that officer's county.
3. Each county commissioner and public administrator within that officer's county.
4. Notary public anywhere in the state, upon complying with section 44-06-04.
5. Each city auditor, municipal judge, and township clerk, within that officer's own city or township.
6. Each sheriff and the deputy sheriff within the sheriff's county in the cases prescribed by law.
7. Other officers in the cases prescribed by law or by rule of the supreme court.

44-05-02. PERSON MAY AFFIRM. A person conscientiously opposed to swearing may affirm and is subject to the penalties of perjury as in case of swearing.

44-05-03. FEE FOR TAKING ACKNOWLEDGMENT AND ADMINISTERING AN OATH. Any officer authorized by law to take and certify acknowledgment of a deed or other instrument is entitled to charge and receive not more than five dollars.

44-05-04. PLACE OF FILING OATH OF OFFICE. Unless otherwise provided by law, any public officer required to take an oath of office must file the oath as follows:

1. If a state official or member of a state board, with the secretary of state.
2. If a county official or member of a county board, with the county auditor.
3. If a city official or member of a city board, with the city auditor.
4. If a member of a district or political subdivision that is larger than a county, with the secretary of state.

NDCC 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. 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 which must be posted by such notary in a conspicuous place in the notary's office. The secretary of state shall collect twenty-five dollars for the issuance of such commission. Such sum must be paid into the state treasury and credited to the general fund. The secretary of state shall keep a record of such appointments and the date of the expiration of the same and 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. Such notice must be addressed to such notary public at the last known place of residence. Each notary public issued a commission shall notify the secretary of state by mail within thirty days of any change of address.

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.

An official notary seal may not contain a reproduction of the great seal of the state. An official seal is the property of the notary only and may not be retained or used by any other person. 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 thirty 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.

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 INSTRUMENT PROTESTED BY HIM. Each notary public, when any bill of exchange, promissory note, or other written instrument, is by him 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 his 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 his 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 - DATE OF EXPIRATION. Every notary public taking an acknowledgment to any instrument, immediately following his signature to the jurat or certificates of acknowledgment, shall legibly print, stamp, or type his name and shall endorse the date of the expiration of such commission. Such endorsement may be written legibly, stamped, or printed upon the instrument either connected to or disconnected from the seal and must be substantially in the following form.

My commission expires _____, 19____.

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 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. A notary public may not notarize a signature on a document if

1. 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.
2. The name of the notary public or the spouse of the notary public appears on the document as a party to the transaction.
3. The signature is that of the notary public or the spouse of the notary public.
4. 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.
5. The date of the jurat or certificate of acknowledgment is not the actual date the document is to be notarized. A notary public who violates this section is guilty of an infraction and the notary public's commission must be revoked by the secretary of state using the procedure under chapter 28-32.

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.

NDCC SECTIONS 44-08-06 THROUGH 44-08-07 - MISCELLANEOUS PROVISIONS

44-08-06. DIMENSIONS OF SEAL OF COURT OR OFFICE. Upon every seal of a court or officer of this state required or authorized to have a seal, there must be engraved the words "State of North Dakota" and the name of the court or office in which the seal is to be used. All such seals, except the great seal, 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.

44-08-06.1. VALIDATION - CERTIFICATES OF ACKNOWLEDGMENT. All certificates of acknowledgment by notaries public on all documents filed for record with a register of deeds in the state, notwithstanding any defects or irregularities with the notary seal, are hereby validated, ratified, approved, and confirmed. Notwithstanding section 44-08-06, all seals of a court or officer of this state are binding, legal, and enforceable. The provisions of this section relating to validation of acknowledgments are applicable to all documents filed with any county register of deeds in the state after July 1, 1987.

44-08-07. WHEN TEMPORARY SEAL MAY BE AUTHORIZED. When any court of record is unprovided with a seal, the judge thereof may authorize the use of any temporary seal, or of any device by way of seal, until a permanent seal is provided.

NDCC SECTIONS 47-19-13 THROUGH 47-19-36 - RECORD TITLE

47-19-13. ACKNOWLEDGMENT AND PROOF - PERSONS AUTHORIZED TO MAKE STATEWIDE JURISDICTION. - The proof or acknowledgment of an instrument may be made at any place within this state before a judge, or the clerk, of the supreme court, or a notary public.

47-19-14. ACKNOWLEDGMENT AND PROOF - LIMITED TO DISTRICT OF OFFICER. The proof or acknowledgment of an instrument may be made in this state within the judicial district, county, subdivision, or city for which the officer was elected or appointed, before:

1. A judge or clerk of a court of record;
2. A mayor of a city;
3. A register of deeds;
4. A United States commissioner;

5. A county auditor; or
6. A township clerk or a city auditor.

47-19-14.1. RECOGNITION OF NOTARIAL ACTS. For the purposes of this section and sections 47-19-14.2 and 47-19-14.7, "notarial acts" mean acts which the laws and regulations of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this state.

1. A notary public authorized by any jurisdiction to perform notarial acts
2. A justice, judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed.
3. An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States department of state to perform notarial acts in the place in which the act is performed.
4. A commissioned officer or noncommissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial act, if the notarial act is performed for one of the following, or his dependents: a merchant seaman of the United States, a member of the armed forces of the United States, or any other person serving with or accompanying the armed forces of the United States.
5. Any other person authorized to perform notarial acts in the place in which the act is performed.

47-19-14.2. AUTHENTICATION OF AUTHORITY OF OFFICER.

1. If the notarial act is performed by any of the persons described in subsections 1 through 4 of section 47-19-14.1, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, written indication of his title or rank and serial number, if any, is sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his authority is not required.
2. If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to perform the act if:
 - a. Either a foreign service officer of the United States, resident in the country in which the act is performed, or a diplomatic or consular officer of the foreign country, resident in the United States, certifies that a person holding that office is authorized to perform the act;
 - b. The official seal of the person performing the notarial act is affixed to the document; or
 - c. The title of the person, and an indication of this authority to perform notarial acts appears either in a recognized digest of foreign law, or in a list customarily used as a source of such information.
3. If the notarial act is performed by a person other than one described in subsections 1 and 2, there is sufficient proof of the authority of that person to act, if the clerk of a court of record, in the place in which the notarial act is performed, certifies to the official character of that person, and to his authority to perform the notarial act.
4. The signature and title of the person performing the notarial act are prima facie evidence that he is a person with the designated title and that the signature is genuine.

47-19-14.3. CERTIFICATE OF PERSON TAKING ACKNOWLEDGMENT. - The person taking an acknowledgment shall certify that:

1. The person acknowledging appeared before him and acknowledged that he executed the instrument; and
2. The person acknowledging was known to the person taking the acknowledgment, or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

47-19-14.4. RECOGNITION OF CERTIFICATE OF ACKNOWLEDGMENT. - The form of a certificate of acknowledgment used by a person whose authority is recognized under section 47-19-14.2 shall be accepted in this state if:

1. The certificate is in a form prescribed by the laws or regulations of this state;
2. The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or
3. The certificate contains the words "acknowledged before me" or their substantial equivalent.

47-19-14.5. CERTIFICATE OF ACKNOWLEDGMENT. The words "acknowledged before me", or their substantial equivalent, as used in a certificate of acknowledgment made by a person taking an acknowledgment outside this state shall mean:

1. That the person acknowledging appeared before the person taking the acknowledgment and acknowledged that he executed the instrument;
2. That, in the case of:
 - a. A corporation, the officer or agent acknowledged holding the position or title set forth in the instrument and certificate; signing the instrument on behalf of the corporation by proper authority; and that the instrument was the act of the corporation;
 - b. A limited liability company, the manager or agent acknowledged holding the position or title set forth in the instrument and certificate, signing the instrument on behalf of the limited liability company by proper authority, and that the instrument was the act of the limited liability company;
 - c. A partnership, the partner or agent acknowledged signing the instrument on behalf of the partnership by proper authority and that the instrument was the act of the partnership;
 - d. A person acknowledging as attorney in fact for a principal, signing the instrument by proper authority as the act of the principal;
 - e. A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, signing the instrument by proper authority and in the capacity stated in the instrument; and
3. That the person taking the acknowledgment either knew, or had satisfactory evidence, that the person acknowledging was the person named in the instrument or certificate.

47-19-14.6. SHORT FORMS OF ACKNOWLEDGMENT. The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law or regulation of this state. The forms shall be known as the "statutory short forms of acknowledgment", and may be referred to by that name. The authorization of the forms provided in this section does not preclude the use of other forms:

1. For an individual acting in his own right.

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledging).

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

2. For a corporation:

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent and title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

3. For a limited liability company:

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of manager or agent and title of manager or agent) of (name of limited liability company acknowledging), a (state or place of organization) limited liability company, on behalf of the limited liability company.

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

4. For partnership:

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent), on behalf of (name of partnership), a partnership.

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

5. For an individual acting as attorney in fact for a principal

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

6. For a public officer, trustee, guardian, personal representative, or other representative.

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name and title of position)

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

47-19-19. EFFECT OF RECORDING. The record of any instrument shall be notice of the contents of the instrument, as it appears of record, as to all persons.

47-19-20. IDENTITY OF PERSON ACKNOWLEDGING - PROOF REQUIRED. The acknowledgment of an instrument must not be taken unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness that the person making the acknowledgment is the individual who is described in and who executed the instrument, or if executed by a corporation or limited liability company, that the officer or manager making such acknowledgment is authorized to make it as provided in section 47-10-05.1.

47-19-21. PROOF OF AN UNACKNOWLEDGED INSTRUMENT - METHOD. - Proof of the execution of an instrument when not acknowledged may be made:

1. By the party executing it;
2. By a subscribing witness; or
3. By other witnesses in cases mentioned in sections 47-19-23 and 47-19-24.

47-19-22. KNOWLEDGE REQUIRED BY OFFICER OF SUBSCRIBING WITNESS IN TAKING PROOF. - If proof of the execution of an instrument is made by a subscribing witness, such witness must be known personally to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness or must be proved to be such by the oath of a credible witness. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, that such person executed it, and that the witness subscribed his name thereto as a witness.

47-19-23. PROOF BY HANDWRITING - WHEN RECEIVED - REQUIREMENTS. - The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead;
2. When the parties and all the subscribing witnesses are nonresidents of the state.

3. When the place of their residence is unknown to the party desiring the proof and cannot be ascertained by the exercise of due diligence;
4. When the subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence in attempting to serve a subpoena or attachment; or
5. In case of the continued failure or refusal of the witness to testify for the space of one hour after his appearance.

47-19-24. PROOF BY HANDWRITING - FACTS REQUIRED. - The evidence taken under section 47-19-23 must prove to the officer satisfactorily the following facts:

1. The existence of one or more of the conditions mentioned therein,
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, that he is well acquainted with his signature, and that it is genuine;
3. That the witness testifying personally knew the person who subscribed the instrument as a witness, that he is well acquainted with the signature, and that it is genuine; and
4. The place of residence of the witness testifying

47-19-25. CERTIFICATE OF PROOF - CONTENTS. - An officer taking proof of the execution of an instrument must set forth in his certificate, endorsed thereon or attached thereto:

1. All the matters required by law to be done or known by him;
2. All the matters required by law to be proved before him on the proceeding,
3. The names of all the witnesses examined before him,
4. The place of residence of all witnesses examined before him; and
5. The substance of the evidence given by witnesses examined before him.

47-19-26. CERTIFICATE OF ACKNOWLEDGMENT - FORMS. - An officer taking an acknowledgment of an instrument within this state must endorse thereon or attach thereto a certificate substantially in the forms prescribed in sections 47-19-27, 47-19-28, 47-19-29, and 47-19-30.

47-19-27. GENERAL CERTIFICATE OF ACKNOWLEDGMENT. - A certificate of acknowledgment, unless otherwise provided in this chapter, must be in substantially the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this _____ day of _____, in the year _____ before me personally appeared _____, known to me (or proved to me on 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.

47-19-28. CERTIFICATE OF ACKNOWLEDGMENT EXECUTED BY A CORPORATION. - The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this _____ day of _____, in the year _____ before me (here insert the name and quality of the officer), personally appeared _____, known to me (or proved to me on oath of _____) to be the president (or other officer or person) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

47-19-28.1. CERTIFICATE OF ACKNOWLEDGMENT EXECUTED BY A LIMITED LIABILITY COMPANY. The certificate of acknowledgment of an instrument executed by a limited liability company must be substantially in the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this _____ day of _____, in the year _____ before me (here insert the name and quality of the manager), personally appeared _____, known to me (or proved to me on oath of _____) to be the president (or other manager or person) of the limited liability company that is described in and that executed the within instrument, and acknowledged to me that such limited liability company executed the same.

47-19-29. CERTIFICATE OF ACKNOWLEDGMENT BY AN ATTORNEY IN FACT. - The certificate of acknowledgment by an attorney in fact must be substantially in the following form.

STATE OF NORTH DAKOTA)
County of _____)

On this _____ day of _____, in the year _____ before me (here insert the name and quality of the officer), personally appeared _____, known to me (or proved to me on oath of _____) to be the person who is described in and whose name is subscribed to the within instrument as the attorney in fact of _____ and acknowledged to me that he subscribed the name of _____ thereto as principal and his own name as attorney in fact.

47-19-30. CERTIFICATE OF ACKNOWLEDGMENT BY DEPUTY SHERIFF. - All acknowledgment of deeds or other instruments in writing made by any deputy sheriff of this state shall be made substantially in the following form

STATE OF NORTH DAKOTA)
County of _____)

On this _____ day of _____, in the year _____ before me, a _____, in and for said county, personally appeared _____, known to me to be the person who is described in and whose name is subscribed to the within instrument as deputy sheriff of said county and acknowledged to me that he subscribed the name of _____ thereto as sheriff of said county and his own name as deputy sheriff.

47-19-32. CERTIFICATION OF ACKNOWLEDGMENTS OR PROOF OF INSTRUMENTS - OFFICER'S CERTIFICATE - HOW AUTHENTICATED. - An officer taking and certifying an acknowledgment or proof of an instrument for record must authenticate his certificate by affixing thereto:

1. His signature followed by the name of his office; and
2. His seal of office, if by the laws of the territory, state, or country where the acknowledgment or proof is taken, or by authority of which his acting, he is required to have an official seal.

A judge or clerk of a court of record must authenticate his certificate by affixing hereto the seal of his court. A mayor of a city must authenticate his certificate by affixing thereto the seal of his city.

47-19-33. WHO SHALL NOT EXECUTE ACKNOWLEDGMENTS AND AFFIDAVITS. No person heretofore or hereafter authorized by law to take or receive the proof or acknowledgment of the execution of an instrument or affidavit and to certify thereto shall take or receive such proof, acknowledgment, or affidavit or certify to the same, if he shall be a party to such instrument, or a member of any partnership or limited liability company which shall or may be a party to such instrument, nor if the husband or wife of such person or officer shall be a party to such instrument.

47-19-34. PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS AS TO CORPORATIONS AND LIMITED LIABILITY COMPANIES. No provision in any of the laws of this state, relating to the proof and acknowledgment of instruments and the taking of affidavits, shall be construed to invalidate or affect the proof or acknowledgment, affidavit, or the certificate thereof, of any instrument to which a corporation or limited liability company may be a party and which shall have been or may be proven, acknowledged, sworn to before, or certified to by, an officer, manager, or person authorized by law, who may be an officer, director, governor, manager, employee, stockholder, or member of such corporation or limited liability company. No person otherwise qualified or authorized by law to take and receive the proof or acknowledgment of an instrument or affidavit and to certify thereto shall be disqualified by reason of being an officer, director, employee, or stockholder of any corporation or manager, governor, employee, or member of any limited liability company which is a party to such instrument, and such proof, acknowledgment, and certificate thereof shall be valid for all purposes

47-19-35. PERSONS AUTHORIZED TO TAKE ACKNOWLEDGMENTS AND AFFIDAVITS. All officers and persons, authorized by law to take the proof or acknowledgment of an instrument or affidavit and to certify thereto, may take such proof or acknowledgment and certify to the same in any case not prohibited by this chapter.

47-19-36. AUTHORITY OF OFFICERS IN TAKING PROOF. - Officers authorized to take the proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations;
2. To employ and swear interpreters; and
3. To issue subpoenas, obedience to which may be enforced as provided by title 28.

**TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE POLITICAL SUBDIVISIONS COMMITTEE
HOUSE BILL NO. 1133
FEBRUARY 16, 2001**

Mr. Chairman and Members of Senate Political Subdivisions Committee:

I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of House Bill No. 1133. HB 1133 amends Section 47-19-33 of the North Dakota Century Code relating to the restrictions on a notary public concerning a personal interest in an instrument or affidavit being notarized. Under current law, a notary public cannot notarize his or her own signature nor that of his or her spouse, nor can the notary sign if the notary is a member of a partnership or limited liability company that is a party on the document.

There are two substantive changes being proposed in this bill.

First, the amendment Section 47-19-33 deletes the reference to a "limited liability company" on line 11 of the bill. The reason for this deletion is to correct a conflict with the provisions of Section 47-19-34.

In order to become a notary public, a person must apply to the Secretary of State. In the handout are the materials that the Secretary of State then sends to a notary applicant, which includes a copy of the applicable law relating to notaries. Please turn to the back page of these materials. As you can see, the current provisions of Section 47-19-33 make it illegal for a notary to sign on documents if the notary is a member of a limited liability company that is a party to the document. However, Section 47-19-34 specifically authorizes a notary to do this for both corporations and limited liability companies. Obviously, it cannot be both prohibited and authorized in the law. This was probably a drafting error when the law was last amended in the 1993 Session. The amendment in HB1133 corrects this problem.

The second substantive change is on lines 13 and 14 of the bill. Section 47-19-33 currently contains no consequence with respect to the instrument or affidavit if the law is violated. While a notary may be liable, either criminally or civilly, for violating the law, there is nothing now that says what effect the violation has on the validity of the document. The new language will provide a consequence and states that an instrument taken or received in violation of this section is invalid.

Notaries should know the law relating to notaries. They are provided with a copy

of the law when they apply to become notaries and are also periodically sent additional information by the Secretary of State, including additional copies of the law. A civil or criminal court action should not be the only way to determine a consequence or the effect of a violation of this law on the validity of a document.

If this bill passes, I'm sure the Secretary of State will inform notaries that the law has changed and that there is now a consequence on the validity of a document taken or received in violation of the law.

I urge your approval of this bill. Thank you very much.

MALCOLM H. BROWN, P.C.
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March 5, 2001

Honorable Lawrence R. Klemm
State Representative
600 East Boulevard Ave.
Bismarck, ND 58505

RE: House Bill 1133

Dear Representative Klemm:

I visited with Bob Stroup, Chairman of the Bar Association Title Standards Committee, regarding Senator Cook's question on the last sentence of HB 1133. Bob indicates that sentence was put into this proposed amendment to § 47-19-33, NDCC, to correspond to North Dakota Title Standard 5-08. NDTS 5-08 states "An acknowledgment by a notary public of the execution of an instrument to which the notary or the notary spouse is a party, or to which a partnership in which the notary is a partner is a party, is invalid." Thus, the attempt was to make § 47-19-33, NDCC, track with the Title Standard that interprets that section as it currently exists.

In visiting with Bob, his concern was the statute did not give any indication to a title examiner as to what the consequences were of an acknowledgment being taken in violation of the statute. His concern, and that of the Title Standards Committee, is that a title examiner may then declare the instrument with the defective acknowledgment as being "void" which could create significant title problems. Our thought is that a document that is "invalid" may be corrected, such as by use of other affidavits, whereas, a document that is "void" is more difficult.

However, in visiting with Bob, both of us realize the last sentence of HB 1133 actually should read "An acknowledgment taken or received in violation of this section is invalid." In other words, the instrument, once recorded, has certain standing under the general recording laws, and it is only the acknowledgment that is invalid if done in violation of § 47-19-33, NDCC, not the instrument itself.

Honorable Lawrence R. Klemin

March 5, 2001

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I believe this change would also address Senator Cook's concerns regarding the consequences of an invalid instrument because only the acknowledgment would be invalid, not the instrument itself. While this may or may not fully address the issue he has personal experience with, I do think it is a better statement of the intent of HB 1133 in the first place, rather than to invalidate the instrument.

Thank you for your interest in this matter.

Very truly yours,



Malcolm H. Brown

MHB:cg

c: Honorable Thomas L. Trenbeath, State Senator
Honorable Dwight Cook, State Senator