

## SOUTH DAKOTA CODIFIED LAWS

### TITLE 18. OATHS AND ACKNOWLEDGMENTS CHAPTER 1. NOTARIES 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 Section 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 twenty-five 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.

Source: SDC 1939, § 32.1301; SL 1957, ch 176; 1979, ch 153, § 1; 1997, ch 120, § 1; 2003, ch 8, § 6; 2008, ch TBD, § 1.

#### **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.

Source: SL 1862, ch 62, § 2; PolC 1877, ch 17, § 2; CL 1887, § 496; RPolC 1903, § 735; RC 1919, § 5236; SDC 1939 & Supp 1960, § 32.1303; SL 1974, ch 55, § 23; 1997, ch 120, § 2.

#### **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.

Source: SL 1862, ch 62, § 8; PolC 1877, ch 17, § 8; CL 1887, § 503; RPolC 1903, § 742; RC 1919, § 5243; SDC 1939 & Supp 1960, § 32.1303.

#### **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, the words, my commission expires, and shall provide a date therefor.

Source: SL 1988, ch 180; 2008, ch. TBD. § 2.

**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.

Source: SL 1889, ch 104, § 1; RPolC 1903, § 734; RC 1919, § 5235; SDC 1939 & Supp 1960, § 32.1302; SL 1979, ch 153, § 2.

**18-1-5. Recording of commission and seal by clerk of courts.**

Repealed by SL 1974, ch 55, § 50.

**18-1-6. Recording of commission and seal in new county on change of residence.**

Repealed by SL 1974, ch 55, § 50.

**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.

Source: SL 1911, ch 197; RC 1919, § 5250; SDC 1939 & Supp 1960, § 32.1308.

**18-1-8. Notice to parties when instrument protected by notary -- Record of protests and notices.**

Repealed by SL 1979, ch 153, § 3.

**18-1-9. Fee chargeable by notary.**

A notary 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.

Source: SDC 1939 & Supp 1960, § 32.1312; SL 1979, ch 153, § 4; 1997, ch 120, § 3; 2004, ch. 143 § 2.

**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.

Source: SL 1862, ch 62, § 11; PolC 1877, ch 17, § 11; CL 1887, § 507; RPolC 1903, § 746; RC 1919, § 5247; SDC 1939 & Supp 1960, § 32.1309.

**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.

Source: SL 1887, ch 116, § 1; CL 1887, § 508; RPolC 1903, § 747; RC 1919, § 5248; SDC 1939 & Supp 1960, § 32.1313; SL 1979, ch 153, § 5.

**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.

Source: SL 1887, ch 116, § 1; CL 1887, § 508; RPoC 1903, § 747; RC 1919, § 5248; SDC 1939 & Supp 1960, § 32.1313; SL 1979, ch 153, § 6.

**18-1-12.1. Acting without commission 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.

Source: SL 1997, ch 120, § 5.

**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.

Source: SL 1997, ch 120, § 6.

**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.

Source: SDC 1939, §§ 13.1254, 32.1313; SDC Supp 1960, § 32.1313; SL 1979, ch 153, § 7; 1997, ch 120, § 4.

**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.

Source: PoC 1877, ch 17, § 10; CL 1887, § 506; RPoC 1903, § 745; RC 1919, § 5246; SDC 1939 & Supp 1960, § 32.1306; SL 1974, ch 55, § 24.

**18-1-15 to 18-1-17. Deposit of notarial records with clerk of court -- Disposition of forfeitures -- Maintenance of records.**

Repealed by SL 1974, ch 55, § 50.

**CHAPTER 3. ADMINISTRATION OF OATHS**

**18-3-1. Officers authorized to administer oaths.**

The following officers are authorized to administer oaths:

(1) Supreme Court justices, circuit judges, magistrates, notaries public, the clerk and deputy clerk of the Supreme Court, and clerks and deputy clerks of the circuit court, within the state, and federal judges and federal magistrates;

(2) Members of the Legislature, while acting as a member of any committee thereof, while examining persons before such committee;

(3) The county auditor, the county treasurer, the register of deeds, and the deputy of each, within their respective county;

(4) Mayors, city auditors, deputy city auditors, town and township clerks, within their respective municipalities, and townships;

(5) Sheriffs and deputies if authorized by law to select commissioners or appraisers, or to impanel juries for the view or appraisal of property, or are directed as an official

duty to have property appraised, or take the answer of garnishees;

(6) Conservation officers for the purposes of taking a written statement pursuant to § 23A-2-1 for any offense of Title 41; and

(7) Other officers in cases specifically provided by law.

Source: SDC 1939, § 48.0801; SL 1941, ch 210; 1979, ch 149, § 1; 1992, ch 60, § 2; 1993, ch 167; 1996, ch 145; 1998, ch 119, § 1; 2000, ch 92, § 2.

**18-3-2. Affidavits by persons in military service -- Oath administered by commissioned officer.**

Any affidavit may be made, by any person in the military service of the United States, in the manner and form now provided by the laws of this state, or as provided in this section and § 18-3-3.

Any commissioned officer in the military service of the United States may administer an oath or affirmation and take and certify to an affidavit at any place within or without the United States.

Source: SL 1943, ch 150, §§ 2, 3; SDC Supp 1960, § 48.0801-1.

**18-3-3. Form of jurat for affidavit by person in military service.**

The jurat of the officer taking the affidavit pursuant to § 18-3-2 shall be substantially as follows:

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_, 19\_\_, by \_\_\_\_ to me well known to be in the military service of the United States, and who stated to me that his home post office address is as follows: \_\_\_\_.

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Title and unit

Source: SL 1943, ch 150, § 3; SDC Supp 1960, § 48.0801-1.

**18-3-4. Persons entitled to use military service provisions.**

Persons in the military service of the United States, as used in §§ 18-3-2 and 18-3-3 shall include the following persons and no others: all members of the army, navy, air force, marine corps, and coast guard, all officers of the Public Health Service detailed for duty with the army, navy or air force, and any civilian persons serving with, employed by, or accompanying the armed forces hereinbefore mentioned outside of the United States.

Source: SL 1943, ch 150, § 1; SDC Supp 1960, § 48.0801-1; SL 1963, ch 290.

**18-3-5. Affirmation in lieu of oath.**

Persons conscientiously opposed to swearing may affirm, and shall be subject to the penalties of perjury as in case of swearing.

Source: SL 1867-8, ch 23, § 3; PolC 1877, ch 20, § 2; CL 1887, § 488; RPolC 1903, § 727; RC 1919, § 5252; SDC 1939, § 48.0803.

**18-3-6. Fee not charged for administration of oath by public officer.**

No fee for the administering of oaths shall be charged or taxed as costs against any person by any official authorized to administer oaths when the oath so administered is in connection with some official duty of said officer essential to the administration of his

office.

Source: SL 1929, ch 205; SDC 1939, § 48.0802.

## **CHAPTER 4. ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS**

### **18-4-1. Officers authorized to take proof or acknowledgment within state.**

The proof or acknowledgment of an instrument may be made at any place within this state before a justice or the clerk of the Supreme Court or a notary public.

Source: CivC 1877, § 655; CL 1887, § 3277; RCivC 1903, § 970; SL 1907, ch 3; RC 1919, § 575; SDC 1939, § 51.1604.

### **18-4-2. Officers authorized to take proof or acknowledgment within circuit, county, or municipality.**

The proof or acknowledgment of an instrument may be made anywhere in this state before a judge of the circuit court, a clerk of the circuit court, a magistrate of the circuit court, or a United States magistrate. Within a county or municipality for which the officer was elected or appointed, the proof or acknowledgment of an instrument may be made before a county auditor, a register of deeds, a mayor, or a municipal finance officer.

Source: SDC 1939, § 51.1605; SL 1979, ch 149, § 2; 1992, ch 60, § 2; 1998, ch 120, § 1; 2000, ch 92, § 1.

### **18-4-3. Indian agents authorized to take acknowledgment or proof in Indian country.**

Recording of certificate of appointment. Indian agents or superintendents are authorized to take acknowledgments or proofs of deeds or other instruments in writing, in Indian country, and acknowledgments or proofs so taken shall have the same force and effect as if taken before a notary public. To qualify for taking such acknowledgments or proofs, such Indian agent or superintendent shall file for record in the office of the register of deeds of the county in which he is stationed, or the county to which said county is attached for judicial purposes, a certificate signed by the secretary of the interior of the United States showing his appointment and authority as such Indian agent or superintendent.

Source: SL 1911, ch 2; RC 1919, § 577; SDC 1939, § 51.1606.

### **18-4-4. Officers authorized to take proof or acknowledgment within United States.**

The proof or acknowledgment of an instrument may be made without the state, but within the United States, and within the jurisdiction of the officer, before either:

- (1) A justice, judge, or clerk of any court of record of the United States;
- (2) A justice, judge, or clerk of any court of record of any state or territory;
- (3) A notary public;
- (4) Any officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment; or
- (5) A commissioner appointed for the purpose by the Governor of this state.

Source: CivC 1877, § 657; CL 1887, § 3279; RCivC 1903, § 972; SL 1907, ch 3; RC 1919, § 578; SDC 1939, § 51.1607.

### **18-4-5. Officers authorized to take proof or acknowledgment in foreign countries.**

The proof or acknowledgment of an instrument may be made without the United States, before either:

- (1) An ambassador, a minister, commissioner, or charge d'affaires of the United States,

resident and accredited in the country where the proof or acknowledgment is made;

(2) A consul, vice consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made;

(3) A judge, clerk, register, or commissioner of a court of record of the country where the proof or acknowledgment is made;

(4) A notary public of such country;

(5) An officer authorized by the laws of the country where the proof of acknowledgment is taken to take proof or acknowledgment; or

(6) When any of the officers mentioned in this chapter are authorized to appoint a deputy, the acknowledgment or proof may be taken before such deputy.

All proofs or acknowledgments heretofore taken according to the provisions of this section are hereby declared to be sufficiently authenticated and to be entitled to record, and any such record hereafter made shall be notice of the contents of the instrument so recorded.

Source: CivC 1877, § 658; CL 1887, § 3280; RCivC 1903, § 973; SL 1907, ch 3; RC 1919, § 579; SDC 1939, § 51.1608.

#### **18-4-6. Acknowledgment before commissioned officer of armed forces -- Place of execution need not be shown.**

In addition to the acknowledgment of instruments in the manner and form and as otherwise authorized by the laws of South Dakota, any person serving in or with the armed forces of the United States may acknowledge the execution of an instrument, wherever located, before any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the Army, Air Force, or Marine Corps, or ensign or higher in the Navy or United States Coast Guard. The instrument shall not be rendered invalid by the failure to state therein the place of execution or acknowledgment.

Source: SL 1943, ch 148, § 1; 1951, ch 215; SDC Supp 1960, § 51.1608-1 (1).

#### **18-4-7. Authentication of military certificate not required -- Form of certificate attached.**

No authentication of the officer's certificate of acknowledgment taken pursuant to § 18-4-6 shall be required but the officer taking the acknowledgment shall endorse thereon or attach thereto a certificate substantially in the following form:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, before me \_\_\_\_\_, the undersigned officer personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be serving in or with the armed forces of the United States and to be the person whose name is subscribed to the within instrument and acknowledged that -- he executed the same for the purposes therein contained. And the undersigned does further certify that he is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the armed forces of the United States.

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Rank of officer and command to which attached.

Source: SL 1943, ch 148, § 1; 1951, ch 215; SDC Supp 1960, § 51.1608-1 (1).

**18-4-8. Acknowledgments taken by military officers before 1943.**

No acknowledgment taken prior to February 6, 1943, shall be affected by anything contained in § § 18-4-6 and 18-4-7. All affidavits and the acknowledgment of any and all written instruments taken and certified by any commissioned officer in the military or naval service of the United States, at any place within or without the United States, at any time before July 1, 1943, are hereby legalized and validated and shall be accorded the same standing as those taken and certified by a notary public within this state with his official seal attached thereto.

Source: SL 1943, ch 148, § 2; 1943, ch 149; SDC Supp 1960, §§ 51.1608-1 (2), 65.0324.

**18-4-9. Uniformity of interpretation of military provisions.**

Sections 18-4-6 to 18-4-8, inclusive, shall be so interpreted as to make uniform the laws of those states which enact them.

Source: SL 1943, ch 148, § 3; SDC Supp 1960, § 51.1608-1 (3).

**18-4-10. Identity of person making acknowledgment to be known or proved to officer.**

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 such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is an officer of the corporation authorized to execute the instrument.

Source: CivC 1877, § 659; CL 1887, § 3281; RCivC 1903, § 974; RC 1919, § 580; SDC 1939, § 51.1609.

**18-4-11. Certificate of officer taking acknowledgment to be attached.**

An officer taking the acknowledgment of an instrument must endorse thereon or attach thereto a certificate substantially in the forms prescribed in § § 18-4-12 to 18-4-15, inclusive.

Source: CivC 1877, § 666; CL 1887, § 3288; RCivC 1903, § 981; RC 1919, § 587; SDC 1939, § 51.1615.

**18-4-12. Form of general certificate of acknowledgment.**

The certificate of acknowledgment of an instrument unless it is otherwise in this chapter provided must be substantially in the following form:

Territory of \_\_\_\_\_ or State of \_\_\_\_\_  
County of \_\_\_\_\_ ss

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.

Source: CivC 1877, § 666, subdiv 1; CL 1887, § 3288, subdiv 1; RCivC 1903, § 981, subdiv 1; RC 1919, § 587 (1); SDC 1939, § 51.1615 (1).

**18-4-13. Form of certificate of corporate acknowledgment.**

The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

Territory of \_\_\_\_\_ or State of \_\_\_\_\_  
County of \_\_\_\_\_ ss

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 \_\_\_\_\_ of the corporation that is described in and that executed the within instrument and acknowledged to me that such corporation executed the same.

Source: CivC 1877, § 666, subdiv 2; CL 1887, § 3288, subdiv 2; RCivC 1903, § 981, subdiv 2; RC 1919, § 587 (2); SL 1921, ch 2; SDC 1939, § 51.1615 (2).

**18-4-14. Form of certificate of acknowledgment by attorney.**

The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

Territory of \_\_\_\_\_ or State of \_\_\_\_\_  
County of \_\_\_\_\_ ss

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 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.

Source: CivC 1877, § 666, subdiv 4; CL 1887, § 3288, subdiv 3; RCivC 1903, § 981, subdiv 3; RC 1919, § 587 (3); SDC 1939, § 51.1615 (3).

**18-4-15. Form of certificate of acknowledgment by deputy sheriff.**

The certificate of acknowledgment by any deputy sheriff of South Dakota must be substantially in the following form:

State of South Dakota,  
County of \_\_\_\_\_ ss

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 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.

Source: SL 1887, ch 2, § 1; CL 1887, § 5162; RCivC 1903, § 981, subdiv 3; RC 1919, § 587 (3); SDC 1939, § 51.1615 (4).

**18-4-16. Fees chargeable for acknowledgments -- Violation as petty offense.**

Officers authorized by law to take and certify acknowledgment of deeds and other instruments are entitled to charge and receive twenty-five cents each therefor, and for administering oaths and certifying the same, ten cents. A violation of this section is a petty offense.

Source: SL 1862, ch 41, § 2; PolC 1877, ch 39, § 30; CL 1887, § 1434; RPolC 1903, § 1856; RC 1919, § 7061; SDC 1939, § 48.0606; SL 1979, ch 150, § 22.

**18-4-17. Means of proving instrument not acknowledged.**

Proof of the execution of an instrument, when not acknowledged, may be made either:

- (1) By the party executing it, or either of them;
- (2) By a subscribing witness; or
- (3) By other witnesses, in cases mentioned in § § 18-4-19 and 18-4-20, relating to

proof of handwriting.

Source: CivC 1877, § 662; CL 1887, § 3283; RCivC 1903, § 976; RC 1919, § 582; SDC 1939, § 51.1610.

**18-4-18. Proof of instrument by subscribing witness.**

If proof of the execution of an instrument is made by a subscribing witness, such witness must be personally known 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 and that such person executed it and that the witness subscribed his name thereto as a witness.

Source: CivC 1877, § 662; CL 1887, § 3284; RCivC 1903, § 977; RC 1919, § 583; SDC 1939, § 51.1611.

**18-4-19. Circumstances permitting proof of instrument by handwriting.**

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 the 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.

Source: CivC 1877, § 663; CL 1887, § 3285; RCivC 1903, § 978; RC 1919, § 584; SDC 1939, § 51.1612.

**18-4-20. Facts to be established for proof by handwriting.**

The evidence taken under § 18-4-19 must satisfactorily prove to the officer 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 and 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 and is well acquainted with his signature and that it is genuine; and
- (4) The place of residence of the witness.

Source: CivC 1877, § 664; CL 1887, § 3286; RCivC 1903, § 979; RC 1919, § 585; SDC 1939, § 51.1613.

**18-4-21. Powers of officers authorized to take proof of instruments.**

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;
- (3) To issue subpoenas and to punish for contempt as provided in Title 19 in regard to the means of producing witnesses.

Source: CivC 1877, § 668; CL 1887, § 3290; RCivC 1903, § 983; RC 1919, § 589; SDC 1939, § 51.1617.

**18-4-22. Contents of certificate of officer taking proof of instrument.**

An officer taking proof of the execution of an instrument must in his certificate endorsed thereon or attached thereto set forth all the matters required by law to be done or known by him or proved before him on the proceeding, together with the names of all the

witnesses examined before him, their places of residence respectively, and the substance of their evidence.

Source: CivC 1877, § 665; CL 1887, § 3287; RCivC 1903, § 980; RC 1919, § 586; SDC 1939, § 51.1614.

**18-4-23. Authentication of certificates of acknowledgment or proof.**

Officers taking and certifying acknowledgments or proof of instruments for record must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also their seals of office, if by the laws of the state, territory, or country where the acknowledgment or proof is taken or by authority of which they are acting, they are required to have official seals. Judges and clerks of courts of record must authenticate their certificates as aforesaid by affixing thereto the seal of the proper court; and mayors of first and second class municipalities, by the seal thereof.

Source: CivC 1877, § 666, subdiv 5; CL 1887, § 3288, subdiv 4; RCivC 1903, § 981, subdiv 4; RC 1919, § 587 (4); SDC 1939, § 51.1615 (5); SL 1992, ch 60, § 2.

**18-4-24. Clerk's certificate to accompany proof or acknowledgment taken by magistrate.**

The certificate of proof or acknowledgment, if made before a magistrate, if used in any county other than that in which the magistrate resides, shall be accompanied by a certificate under the hand and seal of the clerk of courts, setting forth that such magistrate at the time of taking was authorized to take such proof or acknowledgment, and that the clerk is acquainted with the magistrate's handwriting and believes that the signature to the original certificate is genuine.

Source: SDC 1939, § 51.1615 (6); SL 1974, ch 153, § 34; 1998, ch 121, § 1.

**18-4-25. False certification of acknowledgment or proof as forgery.**

If any officer authorized to take the acknowledgment or proof of any conveyance of real property or of any other instrument which by law may be recorded, knowingly and falsely certifies that any such conveyance or instrument was acknowledged by any party thereto or was proved by any subscribing witness, when in truth such conveyance or instrument was not acknowledged or proved as certified, he is guilty of forgery.

Source: PenC 1877, § 553; CL 1887, § 6754; RPenC 1903, § 579; RC 1919, § 4184; SDC 1939, § 13.4113.

**18-4-26. Action in circuit court to prove instrument defectively certified -- Judgment entitles instrument to record.**

When the acknowledgment or proof of execution of an instrument is properly made but defectively certified any party interested may have an action in the circuit court to obtain a judgment correcting the certificate.

Any person interested under an instrument entitled to be proved for record may institute an action in the circuit court against the proper parties to obtain a judgment proving such instrument.

A certified copy of the judgment in a proceeding instituted under the provisions of this section showing the proof of the instrument and attached thereto, entitles the instrument to record with like effect as if acknowledged.

Source: CivC 1877, § 667; CL 1887, § 3289; RCivC 1903, § 982; RC 1919, § 588; SDC 1939, § 51.1616.

**18-4-27. Prior instruments governed by prior law.**

The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument made before July 1, 1939, executed, acknowledged, proved, or

recorded is not affected by anything contained in this chapter, but depends for its validity and legality, except as to seals, upon the laws in force when the act was performed except as by other statutes expressly provided.

Source: CivC 1877, § 669; CL 1887, § 3291; RCivC 1903, § 984; RC 1919, § 590; SDC 1939, § 51.1618.

#### **18-4-28. Validity of conveyances acknowledged or proved under prior law.**

All conveyances of real property made before July 1, 1939, and acknowledged or proved according to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded in the same manner and with like effect as conveyances executed and acknowledged in pursuance of this chapter.

Source: CivC 1877, § 670; CL 1887, § 3292; RCivC 1903, § 985; RC 1919, § 591; SDC 1939, § 51.1619.

### **CHAPTER 5. UNIFORM ACKNOWLEDGMENT LAW**

#### **18-5-1. Acknowledgment permitted under chapter or other law.**

Any instrument may be acknowledged in the manner and form now provided by the laws of this state, or as provided by this chapter.

Source: SL 1941, ch 215, § 1; SDC Supp 1960, § 51.16A01.

#### **18-5-2. Officers permitted to take acknowledgment within state.**

The acknowledgment of any instrument may be made in this state before:

- (1) A judge of the circuit court;
- (2) A clerk or deputy clerk of the circuit court;
- (3) A register of deeds;
- (4) A notary public; or
- (5) A magistrate.

Source: SL 1941, ch 215, § 2; SDC Supp 1960, § 51.16A02; SL 1979, ch 149, § 3.

#### **18-5-3. Officers permitted to take acknowledgment within United States.**

The acknowledgment of any instrument may be made without the state but within the United States or a territory or insular possession of the United States or the District of Columbia or the Philippine Islands and within the jurisdiction of the officer, before:

- (1) A clerk or deputy clerk of any federal court;
- (2) A clerk or deputy clerk of any court of record of any state or other jurisdiction;
- (3) A notary public;
- (4) A commissioner of deeds.

Source: SL 1941, ch 215, § 3; SDC Supp 1960, § 51.16A03.

#### **18-5-4. Officers permitted to take acknowledgment in foreign country.**

The acknowledgment of any instrument may be made without the United States before:

- (1) An ambassador, minister, charge d'affaires, counselor to or secretary of a legation, consul general, consul, vice consul, commercial attache, or consular agent of the United States accredited to the country where the acknowledgment is made;
- (2) A notary public of the country where the acknowledgment is made;
- (3) A judge or clerk of a court of record of the country where the acknowledgment is made.

Source: SL 1941, ch 215, § 4; SDC Supp 1960, § 51.16A04.

#### **18-5-5. Identity of person making acknowledgment to be known or proved to officer.**

The officer taking the acknowledgment shall know or have satisfactory evidence that the

person making the acknowledgment is the person described in and who executed the instrument.

Source: SL 1941, ch 215, § 5; SDC Supp 1960, § 51.16A05.

**18-5-6. Acknowledgment by married person.**

An acknowledgment of a married person may be made in the same form as an unmarried person.

Source: SL 1941, ch 215, § 6; SDC Supp 1960, § 51.16A06; SL 1986, ch 27, § 6.

**18-5-7. Officer taking acknowledgment to endorse or attach certificate.**

An officer taking the acknowledgment shall endorse thereon or attach thereto a certificate substantially in one of the forms in § § 18-5-8 to 18-5-12, inclusive.

Source: SL 1941, ch 215, § 7; SDC Supp 1960, § 51.16A07.

**18-5-8. Form of certificate of acknowledgment by individual.**

The form for certificate of acknowledgment by individuals is as follows:

State of \_\_\_\_\_

County of \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name \_\_\_\_\_ subscribed to the within instrument and acknowledged that -- he -- executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
\_\_\_\_\_

Title of officer.

Source: SL 1941, ch 215, § 7; SDC Supp 1960, § 51.16A07 (1).

**18-5-9. Form of certificate of corporate acknowledgment.**

The form for certificate of acknowledgment by a corporation is as follows:

State of \_\_\_\_\_

County of \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of \_\_\_\_\_, a corporation, and that he, as such \_\_\_\_\_ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as \_\_\_\_\_.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
\_\_\_\_\_

Title of officer.

Source: SL 1941, ch 215, § 7; SDC Supp 1960, § 51.16A07 (2).

**18-5-10. Form of certificate of acknowledgment by attorney.**

The form for certificate of acknowledgment by an attorney in fact is as follows:

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed as attorney in fact for \_\_\_\_\_, and acknowledged that he executed the same as the act of his principal for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
\_\_\_\_\_

Title of officer.

Source: SL 1941, ch 215, § 7; SDC Supp 1960, § 51.16A07 (3).

**18-5-11. Form of certificate of acknowledgment by attorney.**

The form for certificate of acknowledgment by an attorney in fact is as follows:

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed as attorney in fact for \_\_\_\_\_, and acknowledged that he executed the same as the act of his principal for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
\_\_\_\_\_

Title of officer.

Source: SL 1941, ch 215, § 7; SDC Supp 1960, § 51.16A07 (4); SL 1993, ch 213, § 95.

**18-5-12. Form of certificate of acknowledgment by partner.**

The form for certificate of acknowledgment by a partner is as follows:

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be one of the partners of \_\_\_\_\_, a partnership, and that he, as such partner, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the partnership by himself as a partner.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
\_\_\_\_\_

Title of officer.

Source: SL 1957, ch 265; SDC Supp 1960, § 51.16A07 (5).

**18-5-13. Signature of certificate by officer -- Endorsement and seal -- Effect of failure to endorse -- Facsimile on fidelity or surety bonds.**

The certificate of the acknowledging officer shall be completed by his signature and immediately following his signature and immediately preceding his official description, he shall endorse thereon his name with a typewriter or print the same legibly with a stamp or with pen and ink, his official seal, if he has one, the title of his office, and if he is a notary public, the date his commission expires. Failure of an acknowledging officer to endorse his name on an instrument as required herein shall not render such instrument invalid, but a recording officer may refuse to accept such instrument for record until such endorsement is made.

Notwithstanding any provision in this chapter, a facsimile of the original signature and notarization may be used in lieu of an original signature when acknowledging a fidelity or surety bond in a form as required herein.

Source: SL 1941, ch 215, § 8; 1959, ch 279; SDC Supp 1960, § 51.16A08; SL 1980, ch 170, § 1.

**18-5-14. Authentication not required.**

If the acknowledgment is taken within this state or is made without the United States by an officer of the United States no authentication shall be necessary.

Source: SL 1941, ch 215, § 9; SDC Supp 1960, § 51.16A09.

**18-5-15. Acknowledgment recognized if valid where executed.**

Notwithstanding any provision in this chapter contained the acknowledgment of any instrument without this state in compliance with the manner and form prescribed by the laws of the place of its execution, if in a state, a territory or insular possession of the United States, or in the District of Columbia, or in the Philippine Islands, verified by the official seal of the officer before whom it is acknowledged, shall have the same effect as an acknowledgment in the manner and form prescribed by the laws of this state for instruments executed within this state.

Source: SL 1941, ch 215, § 10; SDC Supp 1960, § 51.16A10.

**18-5-16. Prior acknowledgments not affected by chapter.**

No acknowledgment taken prior to July 1, 1941, shall be affected by anything contained in this chapter.

Source: SL 1941, ch 215, § 11; SDC Supp 1960, § 51.16A11.

**18-5-17. Uniformity of interpretation of chapter.**

This chapter shall be so interpreted and construed as to make uniform the laws of those states which enact it.

Source: SL 1941, ch 215, § 12; SDC Supp 1960, § 51.16A12.

**18-5-18. Citation of chapter.**

This chapter may be cited as the Uniform Acknowledgment Act.

Source: SL 1941, ch 215, § 13; SDC Supp 1960, § 51.16A13.