

## CHAPTER 359

## NOTARIES PUBLIC

**359.01 APPOINTMENT; FEE.**

HISTORY. R.S. 1851 c. 4 art. 6 s. 1; 1858 c. 27 s. 1; P.S. 1858 c. 5 s. 91; G.S. 1866 c. 26 s. 1; G.S. 1878 c. 26 s. 1; 1887 cc. 30, 85; G.S. 1894 s. 2268; R.L. 1905 s. 2656; G.S. 1913 s. 5708; G.S. 1923 s. 6937; M.S. 1927 s. 6937.

**359.02 TERM; BOND; OATH.**

HISTORY. R.S. 1851 c. 4 art. 6 s. 2; 1858 c. 27 s. 2; P.S. 1858 c. 5 s. 91; G.S. 1866 c. 26 s. 2; G.S. 1878 c. 26 s. 2; 1885 c. 48; G.S. 1894 s. 2269; R.L. 1905 s. 2657; G.S. 1913 s. 5709; G.S. 1923 s. 6938; M.S. 1927 s. 6938.

A bond purporting to be the joint and several obligation of one who is about to be commissioned as notary public, but which has been executed by the sureties only, does not upon its face show any contract obligation on the part of the sureties. *Martin v Hornsby*, 59 M 187, 56 NW 751.

A notary public cannot legally certify to the acknowledgment of a party unless he personally knows him or has satisfactory evidence that he is the identical person described in and who executed the instrument. In the instant case the notary was held to be negligent and was held liable in damages. *Barnard v Schuller*, 100 M 289, 110 NW 966.

Notary held not liable. *Baune v Solheim*, 29 M 221, 152 NW 266.

Where the suit was brought against a notary and his sureties and the answer was a general denial, the defendant cannot at the trial raise the question of a lack of leave of court to sue. *Minneapolis Street Ry. v Hare*, 168 M 423, 210 NW 161.

Inasmuch as a forged bill of sale does not divest the owner of his title, a case which shows the forgery but not that plaintiff was disabled from reclaiming his property, show no cause of action against a notary public on his alleged false certificate. *Ziplow v Chisholm*, 175 M 352, 221 NW 244.

Impairment of the notary's bond does not affect the liability of the principal. OAG Oct. 25, 1933.

Conviction of crime vacates the office of notary and restoration of civil rights does not reinstate him, and until a new commission is executed to him he cannot take acknowledgments. 1934 OAG 633, Dec. 13, 1934 (320j).

Where the surety company became involved, the furnishing of a new bond by the notary does not extend the term of the notary's original appointment. OAG May 15, 1935 (320b).

**359.03 SEAL; REGISTER.**

HISTORY. R.S. 1851 c. 4 art. 6 s. 3; 1858 c. 27 s. 3; P.S. 1858 c. 5 s. 93; G.S. 1866 c. 26 s. 3; G.S. 1878 c. 26 s. 3; G.S. 1894 s. 2270; R.L. 1905 s. 2658; G.S. 1913 s. 5710; G.S. 1923 s. 6939; M.S. 1927 s. 6939.

In the instant case the notary's certificate for want of a seal is a nullity, and the assignment void. *De Graw v Ring*, 28 M 118; *Thompson v Scheid*, 39 M 102, 38 NW 801; *Grimes v Fall*, 81 M 225, 83 NW 835; *Coleman v Goodnow*, 36 M 9, 29 NW 338; *Hodge v Anderson*, 161 M 147, 201 NW 603; *Hartkopf v First State Bank*, 191 M 595, 256 NW 169.

Where only one seal was attached to the paper and that was on the right-hand margin, immediately above the certificate and below the jurat, the seal will be considered attached to the certificate and the instrument sufficiently acknowledged. *Osgood v Sutherland*, 36 M 243, 31 NW 211.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 359.04. NOTARIES PUBLIC

2260

The omission of the official seal to the certificate of authentication of a deposition taken before a notary in another state is a mere informality, and the lack of seal alone is insufficient to warrant the rejection of the deposition on the trial. *Rachak v Spencer*, 49 M 235, 51 NW 19.

The great seal of the state is not necessary on a tax deed. OAG Sept. 1, 1939 (410).

### 359.04 POWERS.

**HISTORY.** R.S. 1851 c. 4 art. 6 s. 4; 1858 c. 27 s. 4; P.S. 1858 c. 5 s. 94; G.S. 1866 c. 26 s. 4; G.S. 1878 c. 26 s. 4; G.S. 1894 s. 2271; R.L. 1905 s. 2659; G.S. 1913 s. 5711; G.S. 1923 s. 6940; M.S. 1927 s. 6940.

Where a municipal ordinance required an affidavit, notaries public are authorized to administer the oath. *State v Scatena*, 84 M 281, 87 NW 764.

Court rules are valid only so far as not inconsistent with the laws of the state, and the fact that the notary certifying to the affidavit of service was an attorney of record in the case did not affect the validity of the certificate of acknowledgment. *Young v Young*, 18 M 90 (72).

The taking of acknowledgments of the execution of an instrument by an officer is an act ministerial in its nature and not a judicial one. *Barnard v Schuler*, 100 M 289, 110 NW 966.

In the instant case the certificate of acknowledgment states that the grantor acknowledged the deed. It is some proof of the genuineness of the instrument. *Craig v Walso*, 190 M 499, 252 NW 332.

Where a notary of one county takes an acknowledgment in another county, the venue of the certificate should be entitled in the county where taken and the recital and designation should be of the county for which he holds the commission. 1934 OAG 635, March 10, 1933 (320).

A notary has power to take an acknowledgment in a county other than that in which he resided at the time his commission was executed. OAG July 24, 1933.

A candidate for office may act as notary and take acknowledgments to the signatures of petitioners on a petition which is prepared and circulated on his own behalf. 1938 OAG 235, Oct. 14, 1938 (911j).

An acknowledgment on a tax deed taken in Ramsey county before a notary residing in Hennepin county is valid. OAG Sept. 1, 1939 (410).

### 359.05 DATE OF EXPIRATION OF COMMISSION AND NAME TO BE ENDORSED.

**HISTORY.** R.S. 1851 c. 4 art. 6 s. 4; 1858 c. 27 s. 4; P.S. 1858 c. 5 s. 94; G.S. 1866 c. 26 s. 4; G.S. 1878 c. 26 s. 4; G.S. 1894 s. 2271; 1905 c. 48 s. 1; G.S. 1913 s. 5712; 1921 c. 480 s. 1; G.S. 1923 s. 6941; M.S. 1927 s. 6941.

The mortgage was constructive notice, notwithstanding the notary's certificate to the acknowledgment did not state the time of the expiration of the notary's commission. *First National v Cargill*, 155 M 32, 192 NW 111.

### 359.06 RECORD OF COMMISSION; CERTIFICATES.

**HISTORY.** 1864 c. 37 ss. 1, 2; G.S. 1866 c. 26 s. 5; G.S. 1878 c. 26 s. 5; G.S. 1894 s. 2272; R.L. 1905 s. 2660; G.S. 1913 s. 5713; G.S. 1923 s. 6942; M.S. 1927 s. 6942.

An acknowledgment is valid, although the notary had failed to file his commission with the clerk of the district court. OAG Dec. 8, 1938 (320f).

### 359.07 NOTARY IN DETACHED COUNTY.

**HISTORY.** 1907 c. 323 ss. 1, 2, 3; G.S. 1913 ss. 5714 to 5716; G.S. 1923 ss. 6943 to 6945; M.S. 1927 ss. 6943 to 6945.

### 359.08 MISCONDUCT.

**HISTORY.** R.S. 1851 c. 4 art. 6; 1858 c. 27 s. 8; P.S. 1858 c. 5 s. 94; 1865 c. 68 s. 1; G.S. 1866 c. 26 s. 6; 1868 c. 44 s. 1; G.S. 1878 c. 26 s. 6; G.S. 1894 s. 2273; R.L. 1905 s. 2661; G.S. 1913 s. 5717; G.S. 1923 s. 6946; M.S. 1927 s. 6946.

# MINNESOTA STATUTES 1945 ANNOTATIONS

2261

NOTARIES PUBLIC 359.10

While a notary is not a guarantor of the absolute correctness of his certificates of acknowledgment, he does undertake to certify that the person personally appearing before him is known to him to be the person described in and who executed the instrument. *Barnard v Schuler*, 100 289, 110 NW 966.

Leave of court is not required preliminary to sue on the official bond of a notary public, the answer in this case being only a general denial. *Minneapolis Street Ry. v Hare*, 168 M 423, 210 NW 161.

Violation of this section does not prevent a prosecution for the crime of forgery in the first degree. *State v Bauer*, 171 M 345, 114 NW 262.

## 359.09 PROTESTS.

**HISTORY.** R.S. 1851 c. 4 art. 6; 1856 c. 5 s. 4; P.S. 1858 c. 5 s. 96; G.S. 1866 c. 26 s. 8; G.S. 1878 c. 26 s. 7; G.S. 1894 s. 2274; R.L. 1905 s. 2662; G.S. 1913 s. 5718; G.S. 1923 s. 6947; M.S. 1927 s. 6947.

The law in force at the time of serving notice of protest upon an endorser, and not that in force when the endorsement was made, governs as to the manner of serving the notice of protest. *Levering v Washington*, 3 M 323 (227).

Under Laws 1856, Chapter 5, Section 4, notice of protest of a note might be served by mail upon a party residing in the same town where the notice was mailed. *Kern v Von Pohl*, 7 M 426 (341).

If a notary's record does not show prepayment of postage on the notice of demand and protest, the fact may be proved aliunde. *Rogers v Stevenson*, 16 M 68 (56).

The due depositing in the post-office, properly directed, postage paid, of notice of presentment, demand, nonpayment, and protest, stands as and for notice to the endorser, whether the notice be actually received or not; and evidence of the non-receipt of the notice standing alone is incompetent to go to the jury. *Wilson v Richards*, 28 M 337, 9 NW 872; *Roberts v Wold*, 61 M 291, 63 NW 739.

## 359.10 INSTRUMENT OF PROTEST AS EVIDENCE.

**HISTORY.** R.S. 1851 c. 4 art. 6; 1858 c. 27 s. 7; P.S. 1858 c. 5 ss. 97, 101; G.S. 1866 c. 26 s. 9; G.S. 1878 c. 26 s. 8; G.S. 1894 s. 2275; R.L. 1905 s. 2663; G.S. 1913 s. 5719; G.S. 1923 s. 6948; M.S. 1927 s. 6948.

The notary's certificate of protest is evidence of the facts stated, even though the notary made no record of his acts. *Kern v Von Pohl*, 7 M 426 (341).

In the instant case the instrument of protest was proper evidence of due presentment and demand although the note was made by a resident of this state, who before maturity removed therefrom, and the notice was sent to the maker's last place of residence in this state. *Herrick v Baldwin*, 17 M 209 (183).

A waiver is operative against an endorser and if defendant holding such modified contract chose to waive demand and notice on any note, he was as much bound thereby as any other endorser. The statute does not require notes to be protested; it simply makes the notary's certificate prima facie evidence of the fact. *Bryant v Lord*, 19 M 396 (342).

Instruments of protest may include the proper certificate of notice to endorsers and as such are prima facie evidence of the facts therein contained, and a certificate which stated that the notary "duly notified endorser" was prima facie evidence of proper notice. *Bettis v Schreiber*, 31 M 329, 17 NW 863.

When evidence is produced indicating the notice of protest was never received, it devolved on holder of the note to prove facts showing exercise of such diligence as the law recognizes as equivalent to actual notice. *Bettis v Schreiber*, 31 M 329, 17 NW 863.

When a check is wrongfully protested, the drawer may recover temperate compensatory damages without alleging and proving special damages. *Peabody v Citizens State Bank*, 98 M 302, 108 NW 272.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 359.11 NOTARIES PUBLIC

2262

### 359.11 TAKING DEPOSITIONS.

HISTORY. R.S. 1851 c. 4 art. 6; 1858 c. 27 s. 9; P.S. 1858 c. 5 s. 99; G.S. 1866 c. 26 s. 10; G.S. 1878 c. 26 s. 9; G.S. 1894 s. 2276; R.L. 1905 s. 2664; G.S. 1913 s. 5720; G.S. 1923 s. 6949; M.S. 1927 s. 6949.

### 359.12 REMOVAL FROM OFFICE.

HISTORY. R.S. 1851 c. 4 art. 6; 1858 c. 27 s. 9; P.S. 1858 c. 5 s. 99; G.S. 1866 c. 26 s. 11; 1867 c. 97 s. 2; G.S. 1878 c. 26 s. 10; G.S. 1894 s. 2277; R.L. 1905 s. 2665; G.S. 1913 s. 5721; G.S. 1923 s. 6950; M.S. 1927 s. 6950.