

2009-2011

**RECALLING AN ELECTED OFFICIAL OF
THE STATE OR A POLITICAL SUBDIVISION**

North Dakota



**✓ votes
2010**



SECRETARY OF STATE
Alvin A Jaeger
State of North Dakota
600 E Boulevard Ave Dept 108
Bismarck ND 58505-0500
ELECTIONS DIVISION
(701) 328-4146
soselect@nd.gov
www.nd.gov/sos/electvote



Alternate formats for persons with disabilities are available upon request.

FORWARD

This pamphlet is a compilation of laws found in the North Dakota Century Code relating to the recall process in the state of North Dakota. It is a reference source for state and local election officials, candidates, the public and the media. If you have questions regarding this pamphlet, please contact the Elections Division of the Secretary of State's office by calling 701-328-4146, sending an email to soselect@nd.gov, or writing to Secretary of State, Elections Division, 600 East Boulevard Avenue Dept 108, Bismarck ND 58505-0500

DISCLAIMER

The following excerpts of North Dakota law are from the North Dakota Century Code (NDCC) and pertain to elections, election procedures, and the recall process. Although every attempt has been made for accuracy, the reprint of these laws does not carry the same authority as the actual NDCC and should not be equated with the official NDCC. This compilation is only intended as a helpful resource and reference for consolidated election related laws. For official and legal purposes, the official NDCC should be used.

In addition, the following excerpts of North Dakota law do not contain the material found in the legal notes following the various sections contained in the NDCC. These notes found in the NDCC may contain temporary provisions and effective dates along with valuable summaries of applicable court rulings.

TABLE OF CONTENTS

Introduction	4
Getting Started	4
Review the Laws - (North Dakota Constitution and NDCC)	
Drafting the Petition	
Sponsoring Committee	
Gathering Signatures	5
Amount Required	
State, County, or Legislative Officials	
Political Subdivision Officials	
Who Can Circulate and Sign Petitions	
Submitting Signatures To The Proper Filing Officer	6
Where To File Signatures	
Signature Review by the Filing Officer	
Calling the Election.....	6
Commonly Asked Questions	6
North Dakota Constitution - Article III - Powers Reserved To The People	7
Section 44-08-21 - Recall Petitions For Political Subdivisions	8
Section 16.1-01-09.1 - Recall Petitions	8
Sample Recall Petition	12
Sample of Sponsoring Committee Affidavit.....	14
Signature Affidavit Recall Petitions.....	15

NOTES

INTRODUCTION

Article III of the North Dakota Constitution guarantees the right of the people to recall any elected official of the state, of any county or of any legislative district. Section 44-08-21 of the North Dakota Century Code (NDCC) guarantees the right of the people to recall an elected official of all other political subdivisions. This pamphlet is designed to acquaint you with the laws and procedures associated with the recall process.

GETTING STARTED

REVIEW THE LAWS - North Dakota Constitution and the NDCC: You will find it helpful to familiarize yourself with the main sections of law that apply to the recall of elected officials. Recall of state, county, and legislative officials is governed by Article III, sections 1 and 10 of the North Dakota Constitution (see page 7). Recall of other political subdivision officials, such as city, school and township officials is governed by NDCC 44-08-21 (see page 8). NDCC 16.1-01-09.1 relates to the signing, form and circulation of recall petitions (see pages 8-11).

***Note:** The difference between the recall petition of state, county, and legislative officials (articulated in Article III of the North Dakota Constitution) and the recall petition of other political subdivision officials (articulated in NDCC § 44-08-21) is that according to NDCC § 44-08-21 a recall petition must include the stated reason for the recall. A recall petition of state, county, or legislative officials, according to Article III of the North Dakota Constitution, does not require a stated reason for the recall.

DRAFTING THE PETITION: Drafting a recall petition is not difficult and a form to follow is included in this pamphlet. The petition must include the name of the person being recalled (a separate petition is required for each official being recalled), the office for which that person is being recalled, a list of the sponsoring committee members (see below), space for qualified voters to sign, date, and include their residential address, rural route or general delivery address, and a circulator affidavit.

When the petition is for the recall of an elected official of a political subdivision according the petition must include the stated reason or reasons for the recall and be approved as to 'form only' by the Secretary of State prior to circulation. The Secretary of State shall complete the review of the form of a recall petition in not less than five, nor more than seven, business days, excluding Saturdays.

After the Secretary of State approves the petition for circulation, the recall petition, with the required number of signatures, must be submitted to the appropriate filing officer within 90 days. The sample petition on pages 11, 12 and 13 may be used as a guide when preparing a new petition.

SPONSORING COMMITTEE: A recall petition must include a listing of the names and addresses, including the residential addresses, rural route or general delivery addresses, of not less than five qualified voters of the state, political subdivision, or district in which the official is to be recalled who are sponsoring the recall.

SPONSORING COMMITTEE AFFIDAVITS: All sponsoring committee members (for recalls dealing with city, school board and township officials) must complete an affidavit (see page 14). The affidavit is a statement by the sponsoring committee member that the member is a qualified North Dakota voter and has agreed to be a sponsoring committee member. The form requires the signature of the sponsoring committee member to be notarized. This form is not required when recalling an official of the state, of any county, of any legislative or county commissioner district.

Caution: Sponsoring committee members may not notarize the affidavit of other committee members, and husbands and wives may not notarize each other's signatures. The names and addresses of the sponsoring committee members on the front page of the petition must match exactly with the names and addresses found on the affidavits. The signed name on the affidavit, if different than the printed name, should be used on the petition.

GATHERING SIGNATURES

AMOUNT REQUIRED

State, County, Legislative or County Commissioner District Officials: An amount equal in number to 25 percent of those who voted at the preceding general election for the office of governor in the state, county, or district in which the official is to be recalled. The Secretary of State or County Auditor will be able to provide the exact number of required signatures.

City, School Board and Township Officials (Political Subdivisions): An amount equal in number to 25 percent of the voters of the political subdivision who voted in the most recent election that the official sought to be recalled was on the ballot, not including other recall elections. An official who was appointed to fill a vacancy is subject to recall by petition of electors equal in number to 25 percent of the voters who voted in the most recent election in which the office in which the official sought to be recalled was on the ballot, not including other recall elections. The County Auditor, City Auditor, or Business Manager of the school district, as the case may be, will be able to provide you with the exact number of required signatures.

WHO CAN CIRCULATE AND SIGN PETITIONS: Petition circulators and signers must be qualified voters of the area affected by the petition. Circulators must sign an affidavit attached at the end of the petition (see page 10 for an example of a circulator affidavit) stating that the persons signing the petition did so in the presence of the circulator and that to the best of the circulator's knowledge each person signing the petition is a qualified voter of the area affected by the petition.

Caution: *Sponsoring committee members may not notarize a circulator's affidavit. Doing so will disqualify all the signatures on that single petition copy.*

Caution: *Only one circulator may collect signatures on any single copy of a petition. If more than one circulator were to collect signatures on the same petition copy, neither circulator could truthfully sign the affidavit found at the end of the petition.*

Caution: *Petition circulators should instruct petition signers to sign legibly and to add the date and their entire address (including residential address, rural route or general delivery address, city, state, and zip code) to the petition.*

Caution: *Petitions must be signed in the presence of the qualified circulator. Signatures collected on an unattended petition constitute an improper signing practice and places all signatures on the single petition copy at risk. Circulators should be near and in control of petitions as they are being signed.*

Caution: *Circulators wanting to sign the petition should not sign the petition they circulate. Rather they should sign a petition carried by another circulator. Due to the fact that a circulator must sign an affidavit at the end of the petition swearing to the qualifications of the signers, the circulator acts, in a sense, as a notary to the signers. Since a person may not notarize his or her own signature, a circulator should not sign the copy of the petition he or she is circulating.*

SUBMITTING SIGNATURES TO THE PROPER OFFICER

WHERE TO FILE SIGNATURES: The recall petition with the required number of signatures should be filed with the official with whom a petition for nomination to the office in question is filed, unless that official is the person subject to recall, in which case the petition must be filed with the Secretary of State. The following list summarizes the proper filing offices:

RECALL OF

State or Multi-County District Official
Member of the Legislature
County Official
City Official
School Board Official
Township Official

FILE PETITION WITH

Secretary of State
County Auditor of member's residence
County Auditor
City Auditor
School Business Manager
Township Clerk

When filing the signatures with the appropriate filing officer, the chairperson of the sponsoring committee of the recall petition must submit a notarized affidavit attesting to the fact that to the best of that person's knowledge, the petitions contain at least the required number of signatures. A copy of the affidavit, **Signature Affidavit Recall Petitions** (SFN 52363), is found on page 14.

SIGNATURE REVIEW BY THE FILING OFFICER: Upon receipt of a petition with the required number of signatures, the official with whom the petition is filed has up to thirty days to review the signatures. The official may conduct a representative random sampling of the signatures contained in the petitions by the use of either post cards, telephone calls, or other accepted information gathering techniques to determine the validity of the signatures. Signatures determined to be invalid will not be counted and all violations of law will be reported to the proper authorities for prosecution.

CALLING THE ELECTION

If the filing officer finds the petition valid and sufficient, the filing officer shall call a special election. The name of the official to be recalled shall automatically be placed on the ballot unless the official resigns within ten days after the filing officer certifies the petition is valid and sufficient. Other candidates for the office may be nominated in a manner provided by law and shall file nominating papers with the appropriate filing officer by the 60th day before the scheduled recall election. A notice of the recall election must be posted in the official newspaper 30 days before the candidate filing deadline. This notice must include the necessary information for a candidate to file and have the candidate's name included on the ballot. When the election results have been officially declared, the candidate receiving the highest number of votes shall be deemed elected for the remainder of the term. No official shall be subject to recall twice during the term for which that official was elected. Recall elections of political subdivision officials must be held not sooner than 90 days nor later than 100 days following the date the filing officer certifies the petition valid and sufficient. No special election may be called if that date would be within 90 days of the next scheduled election. An official whose office is on the ballot at a regularly scheduled election occurring within one year is not subject to recall. After a recall petition has been submitted to the filing officer for review, a signer's name may not be removed from the petition.

COMMONLY ASKED QUESTIONS

- Q.** How many signatures do I need?
- A.** Recall petitions of state, county, or legislative officials must have signatures of an amount equal in number to 25 percent of those who voted at the preceding general election for the office of governor in the state, county, or district in which the official is to be recalled. A recall petition of a political subdivision official requires signatures of an amount equal in number to 25 percent of the voters of the political subdivision who voted in the most recent election that the official sought to be recalled was on the ballot, not including other recall elections. An official who was appointed to fill a vacancy is subject to recall by petition of electors equal in number to 25 percent of the

voters who voted in the most recent election in which the office of the official sought to be recalled was on the ballot, not including other recall elections.

Q. Who can circulate petitions and collect signatures?

A. Any qualified voter of the area affected by the petition. A qualified voter of the affected area is:

- A U.S. Citizen;
- A resident of this state;
- A resident of the affected area at least 30 days or more; and is
- At least 18 years or older.

Felons, during their period of actual incarceration, and persons who have been declared mentally incompetent by a specific order or finding by a court are not qualified voters.

Q. Who can sign the petition?

A. Any qualified voter of the area affected by the petition as defined above. Petition circulators may sign a petition as long as it is not a petition they have personally circulated.

Q. Can I recall more than one official with the same petition?

A. No. Separate petitions are required for each official to be recalled.

Q. Can sponsoring committee members act as circulators?

A. Yes. Sponsoring committee members must be qualified voters of the area affected by the petition as defined above and as such are eligible to circulate petitions. However, sponsoring committee members may not sign a petition that they are personally circulating.

Q. Can sponsoring committee members sign a petition?

A. Yes. Sponsoring committee members must be qualified voters of the area affected by the petition as defined above and as such are eligible to sign a petition. However, sponsoring committee members may not sign a petition which they are personally circulating.

NORTH DAKOTA CONSTITUTION - ARTICLE III - Powers Reserved To The People

Section 1. While the legislative power of this state shall be vested in a legislative assembly consisting of a senate and a house of representatives, the people reserve the power to propose and enact laws by the initiative, including the call for a constitutional convention; to approve or reject legislative Acts, or parts thereof, by the referendum; to propose and adopt constitutional amendments by the initiative; and to recall certain elected officials. This article is self-executing and all of its provisions are mandatory. Laws may be enacted to facilitate and safeguard, but not to hamper, restrict, or impair these powers.

Section 10. Any elected official of the state, of any county or of any legislative or county commissioner district shall be subject to recall by petition of electors equal in number to twenty-five percent of those who voted at the preceding general election for the office of governor in the state, county, or district in which the official is to be recalled.

The petition shall be filed with the official with whom a petition for nomination to the office in question is filed, who shall call a special election if he finds the petition valid and sufficient. No elector may remove his name from a recall petition.

The name of the official to be recalled shall be placed on the ballot unless he resigns within ten days after the filing of the petition. Other candidates for the office may be nominated in a manner provided by law. When the election results have been officially declared, the candidate receiving the highest number of votes shall be deemed elected for the remainder of the term. No official shall be subject twice to recall during the term for which he was elected.

SECTION 44-08-21 - RECALL PETITIONS

44-08-21. Recall of elected officials of political subdivisions. An elected official of a political subdivision, except an official subject to recall under section 10 of article III of the Constitution of North Dakota, is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the official sought to be recalled was on the ballot, not including other recall elections. An official who was appointed to fill a vacancy is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the office of the official sought to be recalled was on the ballot, not including other recall elections. The provisions of section 16.1-01-09.1, as they relate to signing and circulating recall petitions, apply to petitions under this section.

A recall petition must include a stated reason for the recall and be approved as to form before circulation by the secretary of state. The secretary of state shall complete the review of the form of a recall petition in not less than five, nor more than seven, business days, excluding Saturdays. To be effective, a recall petition must be submitted to the appropriate filing officer within ninety days after the date the recall petition is approved for circulation by the secretary of state.

Once circulated, the recall petition must be filed with the filing officer with whom a petition for nomination to the office in question is filed unless that filing officer is the individual subject to recall, in which case the petition must be filed with the secretary of state. The filing officer with whom the petition is filed shall pass on the sufficiency of a petition pursuant to section 16.1-01-09.1. Except as otherwise provided in this section, the filing officer shall call a special election to be held not sooner than ninety days nor later than one hundred days following the date the filing officer certifies the petition valid and sufficient. No special election may be called if that date would be within ninety days of the next scheduled election. An elector's name may not be removed from a recall petition that has been submitted to and received by the appropriate filing officer.

The name of the official to be recalled must be placed on the ballot unless the official resigns within ten days after the filing officer certifies the petition is valid and sufficient. Other candidates for the office may be nominated in a manner provided by law and shall file nominating papers with the appropriate filing officer by the sixtieth day before the scheduled recall election. If the official resigns, the appropriate political subdivision governing body may call a special election or appoint an individual to complete the unexpired term of the office. When the election results have been officially declared, the candidate receiving the highest number of votes is elected for the remainder of the term. No official is subject to recall twice during the term for which the official was elected. An official whose office is on the ballot at a regularly scheduled election occurring within one year is not subject to recall.

CHAPTER 16.1-01 - RECALL PETITIONS

16.1-01-09.1. Recall petitions – Signature – Form - Circulation.

1. A request of the secretary of state for approval of a petition to recall an elected official or appointed official of a vacated elected office may be presented over the signatures of the sponsoring committee on individual signature forms that have been notarized. The secretary of state shall prepare a signature form that includes provisions for identification of the recall; the printed name, signature, and address of the committee member; and notarization of the signature. The filed signature forms must be originals.
2. An individual may not sign a recall petition circulated pursuant to article III of the Constitution of North Dakota or section 44-08-21 unless the individual is a qualified elector. An individual may not sign a petition more than once, and each signer shall add the signer's complete residential, rural route, or general delivery address and the date of signing. Every qualified elector signing a petition must do so in the presence of the individual circulating the petition. A petition must be in substantially the following form:

RECALL PETITION

We, the undersigned, being qualified electors request that _____(name of the individual being recalled) the _____(office of individual being recalled) be recalled for the reason or reasons of_____.

RECALL SPONSORING COMMITTEE

The following are the names and addresses of the qualified electors of the state of North Dakota and the political subdivision who, as the sponsoring committee for the petitioners, represent and act for the petitioners in accordance with law:

	Name	Complete Residential, Rural Route Or General Delivery Address
1.	_____ (Chairman)	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

INSTRUCTIONS TO PETITION SIGNERS

You are being asked to sign a petition. You must be a qualified elector. This means you are eighteen years old, you have lived in North Dakota for thirty days, and you are a United States citizen. All signers must add their complete residential, rural route, or general delivery address and date of signing. Every qualified elector signing a petition must do so in the presence of the individual circulating the petition.

QUALIFIED ELECTORS

	Month, Day, Year	Name of Qualified Elector	Complete Residential, Rural Route, or General Delivery Address	City State
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
7.	_____	_____	_____	_____
8.	_____	_____	_____	_____

The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual matter.

- Each copy of a petition provided for in this section, before being filed, must have attached an affidavit executed by the circulator in substantially the following form:

State of North Dakota)
) ss
 County of _____)
 (county where signed)

I, _____, being sworn, say that I am a qualified elector; that I reside
 (circulator's name)
 at _____;
 (address)

that each signature contained on the attached petition was executed in my presence; and that to the best of my knowledge and belief each individual whose signature appears on the attached petition is a qualified elector; and that each signature contained on the attached petition is the genuine signature of the individual whose name it purports to be.

 (signature of circulator)

Subscribed and sworn to before me on _____, _____, at _____, North
 Dakota. (city)

(Notary Seal)

 (signature of notary)

Notary Public

My Commission expires _____

- A petition for recall must include, before the signature lines for the qualified electors as provided in subsection 1, the name of the individual being recalled, the office from which that individual is being recalled, and a list of the names and addresses of not less than five qualified electors of the state, political subdivision, or district in which the official to be recalled who are sponsoring the recall.
- Circulators have one year to gather the required number of signatures of qualified electors on the recall petition from the date the secretary of state approves the recall petition for circulation.
- A petition may not be circulated under the authority of article III of the Constitution of North Dakota or section 44-08-21 by an individual who is less than eighteen years of age, nor may the affidavit called for by subsection 3 be executed by an individual who is less than eighteen years of age at the time of signing. All petitions circulated under the authority of the constitution and of this section must be circulated in their entirety.
- When recall petitions are delivered to the secretary of state or other filing officer with whom a petition for nomination to the office in question is filed, the chairman of the sponsoring committee shall submit to the secretary of state or other filing officer an affidavit stating that to the best of that individual's knowledge, the petitions contain at least the required number of signatures. An elector's name may not be removed by the elector from a recall petition that has been submitted to and received by the appropriate filing officer.
- The filing officer has a reasonable period, not to exceed thirty days, in which to pass upon the sufficiency of a recall petition. The filing officer may conduct a representative random sampling of the signatures contained in the petitions by the use of questionnaires, postcards, telephone calls, personal interviews, or other accepted information gathering techniques, or any combinations thereof, to determine the validity of the signatures. Signatures determined by the filing officer to

be invalid may not be counted and all violations of law discovered by the filing officer must be reported to the state's attorney for possible prosecution.

9. The filing officer shall call a special recall election to be held no sooner than ninety days nor later than one hundred days following the date the filing officer certifies the petition valid and sufficient. No special recall election may be called if that date would be within ninety days of the next scheduled election.
10. A notice of the recall election must be posted in the official newspaper thirty days before the candidate filing deadline, which is by four p.m. on the sixtieth day before the election. The official notice must include the necessary information for a candidate to file and have the candidate's name included on the ballot.
11. An official may not be recalled if the recall special election would be held during the same year in which the official's office would be included on the ballot.

SAMPLE RECALL PETITION

RECALL PETITION

We, the undersigned, being qualified electors request that _____ (name of the individual being recalled) the _____ (office of the individual being recalled) be recalled for the reason or reasons of _____. (A reason must be included for recalls of city, school board and township officials.)

RECALL SPONSORING COMMITTEE

The following are the names and addresses of the qualified electors of the state of North Dakota and the political subdivision who, as the sponsoring committee for the petitioners, represent and act for the petitioners in accordance with law:

	Complete Residential, Rural Route, or General Delivery Address
Name _____	
1. _____ (chairman) _____	
2. _____	
3. _____	
4. _____	
5. _____	

INSTRUCTIONS TO PETITION SIGNERS

You are being asked to sign a petition. You must be a qualified elector. This means you are eighteen (18) years old, you have lived in _____, (area affected by the petition) North Dakota for thirty days, and you are a United States citizen. All signers must add their complete residential, rural route, or general delivery address and date of signing. Every qualified elector signing a petition must do so in the presence of the individual circulating the petition.

QUALIFIED ELECTORS

Month, Day, Year	Name of Qualified Elector	Complete Residential, Rural Route, or General Delivery Address	City, State, Zip Code
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

10.			
11.			
12.			
13.			

* **Note:** The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual matter. However, the Secretary of State encourages the space reserved for signatures to be at least as large as the example above.

STATE OF NORTH DAKOTA)
)ss.
COUNTY OF _____)
(county where signed)

I, _____, being sworn, say that I am a qualified elector; that I reside
(circulator's name)
at _____; that each signature contained on the attached petition was
executed
(complete residential address)

in my presence; and that to the best of my knowledge and belief each individual whose signature appears on the attached petition is a qualified elector; and that each signature contained on the attached petition is the genuine signature of the individual whose name it purports to be.

(signature of circulator)

Subscribed and sworn to before me on _____, _____, at _____, North Dakota.
(City)

(NOTARY SEAL)

(signature of notary)
Notary Public

My Commission expires _____

SAMPLE OF SPONSORING COMMITTEE AFFIDAVIT

• **Note:** A signed and notarized affidavit for each member of the sponsoring committee must be collectively delivered to the Secretary of State with the first draft of the petition.

I, _____, (Printed name) being first duly sworn, on oath, state that:

1. My address is:

2. I am a qualified North Dakota voter.

3. I am a member of the sponsoring committee for the recall of _____.

4. The attached recall petition is presented to you as Secretary of State of the State of North Dakota for approval of the form of the petition.

(Signature of Sponsoring Committee Member)

STATE OF NORTH DAKOTA)
)
COUNTY OF _____)

Subscribed and sworn before me, this _____ day of _____, 20_____.

(Notary Seal / Stamp)

Notary Public

My Commission Expires: _____



**SIGNATURE AFFIDAVIT
RECALL PETITIONS**
SECRETARY OF STATE
SFN 52363 (07-2007)

Secretary of State
State of North Dakota
600 E Boulevard Ave Dept 108
Bismarck ND 58505-0500
Telephone 701-328-4146
Toll Free 800-352-0867
Fax 701-328-2992
Web Site: www.nd.gov/sos/electvote

Provisions pertaining to recall petitions are found in North Dakota Century Code, Section 16.1-01-09.1.

INSTRUCTIONS

This notarized affidavit must be submitted to the appropriate election official by the chairperson of the sponsoring committee of the recall petition attesting to the fact that to the best of that person's knowledge, the petitions contain at least the required number of signatures.

AFFIDAVIT

I, _____, certify that I am the chairperson of the sponsoring committee of this
sponsoring committee chairperson

recall petition to recall _____ who is currently serving as the _____
name of official being recalled office serving in

for _____ and that this petition contains at least _____ signatures which
affected area minimum number of signatures required

is the minimum number of signatures required by North Dakota law to recall the above mentioned official.

Signature of sponsoring committee chairperson

VERIFICATION

STATE OF NORTH DAKOTA

COUNTY OF _____

Subscribed and sworn before me on this _____ day of _____, 20 _____.

(NOTARY SEAL/STAMP)

Notary Public

My Commission Expires _____