

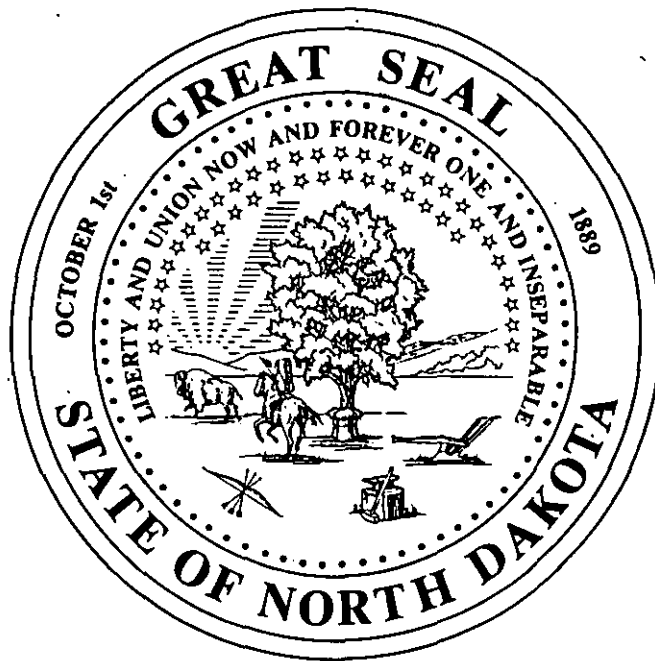
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**HOW TO RECALL
AN ELECTED OFFICIAL
OF THE STATE OR
POLITICAL SUBDIVISION**



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Alternate formats for disabled persons are available upon request

*** NOTICE ***

Portions of this material are printed from the Legislative Council's computerized data base of the North Dakota Century Code (NDCC). This data base does not contain the material in the notes following the sections in the NDCC. These notes may contain temporary provisions and effective dates.

It should also be noted that though portions of *How To Recall An Elected Official Of the State Or Political Subdivision, 1996-97* are a direct download from the Legislative Council, it 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 publication is intended to be a helpful resource for consolidated election related laws. For quoting and citations, the official NDCC should be used.

All forms associated with the election process and mentioned in the following instructions may be copied for convenience.

*** NOTICE ***

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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 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 (CONSTITUTION AND NORTH DAKOTA CENTURY CODE):

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 one and ten of the North Dakota Constitution which is reproduced on page 5 of this pamphlet. Recall of officials of other political subdivisions is governed by section 44-08-21 of the North Dakota Century Code and can be found on page 7. Finally, certain provisions of section 16.1-01-09 of the North Dakota Century Code, as they relate to signing and circulating recall petitions for any recall effort, are found on page 5 and 6.

Note: The difference between the recall petition of state, county, and legislative officials under article III of the ND Constitution and the recall petition of political subdivision officials under section 44-08-21 of the ND Century Code is that a recall petition under 44-08-21 may include the stated reason for the recall. A recall petition of state, county, or legislative officials under article III of the ND Constitution does not require a stated reason for the recall.

DRAFTING THE PETITION: Drafting a recall petition is not difficult. The petition must include the name of the person being recalled (a separate petition is needed for each person being recalled), the office from which that person is being recalled, a list of the sponsoring committee (see below), signature lines for qualified voters, and a circulator affidavit. When the petition is for the recall of an elected official of a political subdivision under section 44-08-21, the petition may include the stated reason or reasons for the recall. You may use the sample petition on pages 7, 8 and 9 as a guide. Of course, you should tailor your petition to the specific official and political subdivision for which the recall effort applies.

SPONSORING COMMITTEE: A petition for recall must include a list of the names and post-office addresses including the residential addresses or post-office box numbers 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.

GATHERING SIGNATURES

AMOUNT OF SIGNATURES REQUIRED

State, County, or Legislative Official--An amount 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 Secretary of State or County Auditor will be able to provide you with the exact number of required signatures.

Political Subdivision Official--An amount equal in number to twenty-five percent of the voters of the political subdivision who voted in the most recent election that the office of the official sought to be recalled was on the ballot, except in any political subdivision with a population of not more than one hundred, the petition must be signed by at least six electors. 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 9 for an example of a circulator affidavit) stating that the people who signed 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. All petitions must be circulated in their entirety.

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

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 at the end of the petition.

Caution: Petition circulators should instruct petition signers to sign legibly and to add the date, their entire address, including street or box number, and the city, state, and zip code.

Caution: Petitions must be signed in the presence of the circulator. Signatures collected on an unattended petition constitutes an improper signing practice and places all signatures on the petition 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; 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 as to the qualifications of the signers, the circulator acts, in a sense, as a notary to the signers. Since one cannot notarize one's own signature a circulator should not sign his/her own petition.*

SUBMITTING SIGNATURES TO THE PROPER OFFICER

WHERE TO FILE SIGNATURES: The 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 office:

RECALL OF:

State Official
Legislative Official
County Official
City Official
School Board Official
Township Official

FILE PETITION WITH:

Secretary of State
County Auditor in county of legislator's residence
County Auditor
City Auditor
School Business Manager
Township Clerk

SIGNATURE REVIEW BY THE FILING OFFICER: Upon receipt of a petition with the necessary number of signatures, the official with whom the petition is filed has up to thirty five days to review the signatures. The official will 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 by the reviewing official 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 reviewing official finds the petition valid and sufficient the official shall call a special election. The name of the official to be recalled shall be placed on the ballot unless the official 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 to recall twice during the term for which that official was elected. Recall elections of officials of political subdivisions must be held within forty days unless that date would be within ninety days of the next scheduled election. A voter's name may not be removed from a recall petition once they have signed it.

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 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. A recall petition of a political subdivision official requires signatures of an amount equal in number to twenty-five percent of the voters of the political subdivision who voted in the most recent election that the office of the official sought to be recalled was on the ballot, except in any political subdivision with a population of not more than one hundred, the petition must be signed by at least six electors.

Q. Who can circulate petitions and collect signatures?

A. Any qualified voter of the area affected by the petition. This means any citizen of the United States who is eighteen years of age or older and is a resident of the area affected by the petition for thirty days or more.

Q. Who can sign the petition?

A. Any qualified voter of the area affected by the petition. This means any citizen of the United States who is eighteen years of age or older and is a resident of the area affected by the petition for thirty days or more. Petition circulators may sign a petition as long as it is not a petition they circulated.

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

A. No. Separate petitions are needed 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 and as such are eligible to circulate the petition.

Q. Can sponsoring committee members sign the petition?

A. Yes. Sponsoring committee members must be qualified voters of the area affected by the petition and as such are eligible to sign the petition. However, sponsoring committee members cannot sign a petition which they circulated.

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.

NORTH DAKOTA CENTURY CODE, SECTION 16.1-01-09

16.1-01-09. Initiative, referendum, or recall petitions - Signature - Form - Circulation.

2. No person may sign any initiative, referendum, or recall petition circulated pursuant to article III of the Constitution of North Dakota unless the person is a qualified elector. No person may sign any petition more than once, and each signer shall add the signer's post-office address including the signer's residential address or post-office box number and the date of signing. Every qualified elector signing a petition shall do so in the presence of the person circulating the petition.

[CONTINUED ON PAGE 6]

[NDCC 16.1-01-09 CONTINUED]

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

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

I, _____, being duly sworn, depose and say
(circulator)

that I am a qualified elector; that I reside 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 person 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 person whose name it purports to be.

(signature of circulator)

Subscribed and sworn to before me this _____ day of _____, 19____, at _____, North Dakota.
(city)

(Notary Seal)

(signature of notary)
Notary Public, North Dakota
My commission expires _____

- 4. A petition for recall must include, before the signature lines for the qualified electors, the name of the person being recalled, the office from which that person is being recalled, and a list of the names and post-office addresses including the residential addresses or post-office box numbers of not less than five qualified electors of the state, political subdivision, or district in which the official is to be recalled who are sponsoring the recall.
- 7. A petition must be submitted to the secretary of state by five p.m. on the day designated as the deadline for submitting the petition.

NORTH DAKOTA CENTURY CODE, SECTION 44-08-21

44-08-21. Recall of elected officials of political subdivisions. An elected official of a political subdivision, except an official subject to recall pursuant to 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 office of the official sought to be recalled was on the ballot, except in any political subdivision with a population of not more than one hundred, the petition must be signed by at least six electors. The provisions of section 16.1-01-09, as they relate to signing and circulating recall petitions, apply to petitions under this section.

The petition may include the stated reason for the recall and must 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 official with whom the petition is filed shall pass on the sufficiency of a petition under this section in the manner required of the secretary of state under section 16.1-01-10. Except as otherwise provided in this section, the official shall call a special election to be held within forty days if the official finds the petition valid and sufficient. No special election may be called if the date would be within ninety days of the next scheduled election. An elector's name may not be removed from a recall petition.

The name of the official to be recalled must be placed on the ballot unless the official resigns within ten days after the filing of the petition. Other candidates for the office may be nominated in a manner provided by law. If the official resigns, the appropriate political subdivision governing body may call a special election or appoint a person 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.

SAMPLE RECALL PETITION

FOR RECALL OF _____ (name of official to be recalled)
HOLDING OFFICE AS _____ (Title) IN
NORTH DAKOTA

We, the undersigned, being qualified electors of the _____ (area affected by petition) located in the state of North Dakota, do hereby petition and request that a recall election be held recalling _____ (name of official to be recalled) holding office as _____ (Title) for the reason of _____. (A reason may be included for recalls of officers of a political subdivision.)

[CONTINUED ON PAGE 8]

NAMES OF SPONSORING COMMITTEE MEMBERS:

<u>Name</u>	<u>Residential Address or P.O. Box Number</u>	<u>City, State, Zip</u>
		(Chairman)

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 more than thirty (30) days, and you are a United States citizen. All signers must add their entire post office address, including post office box number, and the date of signing. Every qualified elector signing a petition must do so in the presence of the person circulating the petition.

Qualified Electors:

<u>Month, Date & Year</u>	<u>Name of Elector</u>	<u>P.O. Address, Residential or P.O. Box #</u>	<u>City, State, & Zip</u>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

[CONTINUED ON PAGE 9]

[SAMPLE RECALL PETITION CONTINUED]

- 9. _____
- 10. _____
- 11. _____
- 12. _____
- 13. _____
- 14. _____
- 15. _____

STATE OF NORTH DAKOTA)
) ss.
 County of _____)

I, _____, (Circulator), being first duly sworn, depose and state that I am a qualified elector of the _____ (area affected by petition) of North Dakota and that I reside at _____ (address of circulator). That each signature contained on the attached Petition was executed in my presence; and that to the best of my knowledge and belief, each person whose signature appears on the attached Petition is a qualified elector of the _____ (area affected by the petition) of North Dakota, and that each signature contained on the attached Petition is the genuine signature of the person whose name it purports to be.

 Signature of Circulator

Subscribed and sworn to before me this _____ day of _____, 19____, at _____, North Dakota.

 Notary Public
 My Commission Expires: _____

(Notary Seal or Stamp)