

## **CHAPTER 14-03 MARRIAGE CONTRACT**

### **14-03-01. What constitutes marriage - Spouse defined.**

Marriage is a personal relation arising out of a civil contract between one man and one woman to which the consent of the parties is essential. The marriage relation may be entered into, maintained, annulled, or dissolved only as provided by law. A spouse refers only to a person of the opposite sex who is a husband or a wife.

### **14-03-01.1. Members of armed forces deemed residents.**

For the purpose of instituting any action or proceeding in the courts of this state, under the provisions of this title, in which residence is a requirement, any member of any branch of the armed forces of the United States who is stationed within the state, and the wife or husband of such member, if that wife or husband is living within the state, must be deemed to be a resident of the state of North Dakota.

### **14-03-02. Lawful age for marriage.**

Any unmarried person of the age of eighteen years or more, and not otherwise disqualified, is capable of consenting to and consummating a marriage. If a person is sixteen to eighteen years of age, a marriage license may not be issued without the consent of the parents or guardian, if there are any. A marriage license may not be issued to any person below the age of sixteen, notwithstanding the consent of the parents or guardian of said person.

### **14-03-03. Void marriages.**

The following marriages are incestuous and void:

1. Marriage between parents and children, including grandparents and grandchildren of every degree.
2. Marriage between brothers and sisters of the half as well as the whole blood.
3. Marriage between uncles and nieces of the half as well as the whole blood.
4. Marriage between aunts and nephews of the half as well as the whole blood.
5. Marriage between first cousins of the half as well as the whole blood.

This section applies to illegitimate as well as legitimate children and relatives.

### **14-03-04. Marriage between white person and Negro person void - Penalty.**

Repealed by S.L. 1955, ch. 126, § 1.

### **14-03-05. Definition of a Negro person.**

Repealed by S.L. 1955, ch. 126, § 2.

### **14-03-06. Marriage of person having husband or wife void - Exception.**

A marriage contracted by a person having a former husband or wife living, if the former marriage has not been annulled or dissolved, is illegal and void from the beginning unless such former husband or wife was absent and believed by such person to be dead for a period of five years immediately preceding such marriage.

### **14-03-07. Prohibited marriages.**

Repealed by S.L. 1993, ch. 141, § 1.

### **14-03-08. Foreign marriages recognized - Exception.**

Except when residents of this state contract a marriage in another state which is prohibited under the laws of this state, all marriages contracted outside this state, which are valid according to the laws of the state or country where contracted, are valid in this state. This section applies only to a marriage contracted in another state or country which is between one man and one woman as husband and wife.

**14-03-09. Who may solemnize marriages.**

Marriages may be solemnized by all judges of courts of record; municipal judges; recorders, unless the board of county commissioners designates a different official; ordained ministers of the gospel; priests; clergy licensed by recognized denominations pursuant to chapter 10-33; and by any person authorized by the rituals and practices of any religious persuasion.

**14-03-10. Marriage may not be solemnized without license.**

A person may not solemnize any marriage until the parties to the marriage produce a license regularly issued not more than sixty days before the date of the marriage by:

1. A recorder serving the county in which either of the contracting parties resides or is temporarily domiciled, unless the board of county commissioners designates a different official;
2. A recorder serving the county in which a parent of either of the parties resides or is temporarily domiciled, unless the board of county commissioners designates a different official; or
3. A recorder serving the county in which the marriage is to be solemnized, unless the board of county commissioners designates a different official.

For the purpose of obtaining a marriage license, a member of the armed forces of the United States stationed within the state of North Dakota is deemed to reside in the county in which that person is stationed.

**14-03-11. Who issues marriage license to official.**

When an official authorized to issue a marriage license desires to have a license for the official's own marriage issued in the county of the official's residence, the official may request another authorized official to act in the official's stead upon the application for the license. The other official has the power and authority to issue the license in the county of the residence of the official seeking the license. The request must be in writing and must be filed, with the application and other related papers, and must be recorded in the marriage record. Upon the return of the license, the official serving the county in which it was issued may record it and note the record thereon notwithstanding the official is one of the contracting parties named in the license.

**14-03-12. Serological test for syphilis required before application for license filed.**

Repealed by S.L. 1983, ch. 175, § 3.

**14-03-13. Standard serological test defined.**

Repealed by S.L. 1983, ch. 175, § 3.

**14-03-14. Serological test - Contents of laboratory statement.**

Repealed by S.L. 1983, ch. 175, § 3.

**14-03-15. When serological test not necessary.**

Repealed by S.L. 1983, ch. 175, § 3.

**14-03-16. Physician's certificate and laboratory statement - Misrepresentation - Penalty.**

Repealed by S.L. 1983, ch. 175, § 3.

**14-03-17. Application for license.**

1. When application is made to a recorder, unless the board of county commissioners designates a different official, for a marriage license, the recorder, or designated official, shall inquire of the applicant concerning the legality of the contemplated marriage. The recorder, or designated official, may examine other witnesses. The facts concerning the legality of the marriage may be submitted to the recorder, or designated official, by affidavit. The recorder, or designated official, also shall require

each applicant to submit the following facts upon blanks provided by the county, together with documentary evidence of age:

- a. An affidavit by each of the applicants showing that each is over the age of eighteen years. In addition, each applicant shall exhibit to the recorder, or designated official, a birth certificate or other satisfactory evidence of age. If either applicant is under the age of eighteen years, the recorder, or designated official, shall require the written consent of:
    - (1) Either parent of the minor applicant, if the parents are living together;
    - (2) The parent having the legal custody of the minor applicant, if the parents are not living together;
    - (3) The surviving parent, if one of the parents of the minor applicant is deceased; or
    - (4) The guardian, or person under whose care and government the minor applicant is, if both parents of the minor applicant are deceased, or if a person other than a parent has legal and actual custody of the minor applicant.
  - b. An affidavit showing whether either or both of the parties have been divorced. If a decree of divorce has been granted to either or both of the parties, a certified copy of the decree must be filed with the application. A license shall not be issued if it contravenes any provisions of the divorce decree.
2. All affidavits must be subscribed and sworn to before a person authorized to administer oaths. The recorder, or designated official, shall retain on file all papers and records pertaining to all marriage licenses. Anyone knowingly swearing falsely to the statements contained in any affidavit mentioned in this section is subject to the penalty provided in section 14-03-28.
  3. Each application for a marriage license must also contain a statement regarding surname options which is consistent with section 14-03-20.1.
  4. Each application for a marriage license must contain the social security number of each applicant.

**14-03-18. License to and marriage of intoxicated person prohibited.**

A license for marriage may not be issued to anyone under the influence of intoxicating liquor at the time of making application therefor. No marriage ceremony may be performed when either or both of the contracting parties is under the influence of intoxicating liquor or any narcotic drug.

**14-03-19. License issued to all who comply with law.**

If a recorder, unless the board of county commissioners designates a different official, is satisfied that there is no legal impediment to the marriage and that the applicants have complied with the provisions of this chapter, then the recorder, or designated official, shall issue and sign a marriage license in duplicate and affix an official seal to both the original and the duplicate.

**14-03-20. License and certificate.**

The marriage license and certificate of the person solemnizing the marriage must be upon one blank form in duplicate consisting of two pages with a perforated seam to make it readily detachable. The form must be substantially as follows:

MARRIAGE LICENSE

State of North Dakota )

) ss.

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

To any person authorized by law to perform the marriage ceremony:

You may join in marriage \_\_\_\_\_ of \_\_\_\_\_, aged \_\_\_\_\_ who has \_\_\_\_\_ been divorced, and \_\_\_\_\_ of \_\_\_\_\_, aged \_\_\_\_\_ who has \_\_\_\_\_ been divorced. You shall return this license and your certificate to my office within five days.

Dated \_\_\_\_\_, \_\_\_\_\_.  
(Seal)

\_\_\_\_\_  
Recorder/Designated Official

CERTIFICATE OF MARRIAGE

I certify that the persons named in the foregoing license, \_\_\_\_\_ and \_\_\_\_\_, whose names after marriage are \_\_\_\_\_ and \_\_\_\_\_, respectively, were joined in marriage by me at \_\_\_\_\_, county of \_\_\_\_\_, State of North Dakota, on \_\_\_\_\_, \_\_\_\_\_.  
In the presence of

\_\_\_\_\_) \_\_\_\_\_  
\_\_\_\_\_) \_\_\_\_\_

Witnesses

Every marriage license must contain the full name of each party before the marriage. Every certificate of marriage must contain the full name of each party before and after the marriage and be signed by two witnesses to the marriage in addition to the signature of the person who solemnized the marriage.

**14-03-20.1. Surname options.**

1. Every person has the right to adopt any surname by which that person wishes to be known by using that surname consistently and without intent to defraud.
2. A person's surname does not automatically change upon marriage. Neither party to the marriage must change the party's surname. Parties to a marriage need not have the same surname.
3. One party or both parties to a marriage may elect to change the surname by which that party wishes to be known after the solemnization of the marriage by entering the new surname in the space provided on the marriage license application. The entry on the application must consist of one of the following surnames:
  - a. The surname of the other spouse;
  - b. Any former surname of either spouse;
  - c. A name combining into a single surname all or a segment of the premarriage surname or any former surname of either spouse; or
  - d. A combination name separated by a hyphen or space, provided that each part of the combination surname is the premarriage surname or former surname of either spouse.
4. Use of the option under subsection 3 has the effect of providing a record of the surname change. The marriage certificate containing the new surname, if any, constitutes proof that the use of the new surname, or the retention of the former surname, is lawful.
5. Neither the use of nor the failure to use the option of selecting a new surname by means of a marriage license application, as provided in subsection 3, abrogates the right of either party to adopt a different surname through usage at a future date.
6. Compliance with the surname provisions of this section is sufficient to meet the satisfactory evidence requirements of section 39-06-07.1.

**14-03-20.2. Middle name options.**

1. One party or both parties to a marriage may elect to change the middle name by which that individual wishes to be known after the solemnization of the marriage by entering the new middle name in the space provided on the marriage license application. If an individual elects to change that individual's middle name, the middle name entry on the marriage license application or marriage license must consist of the premarriage surname or former surname of that individual.
2. Compliance with the middle name provisions of this section is sufficient to meet the satisfactory evidence requirements of section 39-06-07.1.

**14-03-21. Return of license and certificate - Duplicate delivered to persons married - Records kept - Penalty.**

When a person authorized by law solemnizes a marriage, that person shall fill out and sign the certificate following the license in duplicate, giving the person's official title, or if a minister of the gospel or priest, the ecclesiastical body with which the minister or priest is connected. The original copy of the certificate and license must be returned to the official who issued the license within five days after the date of the solemnization of the marriage and the duplicate copy must be immediately delivered to the persons married. The official shall file the original copy and retain it as an official record. Any person who willfully neglects to make such return within the time required is subject to the penalty provided in section 14-03-28.

**14-03-22. Marriage license fee - Supplemental fee - Fee for marriage ceremony - Duties of officers.**

1. For the issuance and filing of a marriage license, the recorder, unless the board of county commissioners designates a different official, shall collect a fee of up to thirty dollars from the party applying for the license.
2. In addition to the license fee provided for in subsection 1, the recorder, or designated official, shall collect from the applicant a supplemental fee of thirty-five dollars for aid to victims of domestic violence through the domestic violence prevention fund in accordance with chapter 14-07.1.
3. For performing a marriage ceremony during regular courthouse hours, the recorder, or designated official, shall collect a fee of thirty dollars which is to be retained by the county. If the marriage ceremony is performed at a time other than during regular courthouse hours, the recorder, or designated official, may collect and retain a fee in an amount to be determined by the recorder, or designated official.
4. Except as provided in this section, all collected fees must be deposited monthly with the county treasurer. The county treasurer shall forward the amount represented by supplemental fees to the state treasurer by the fifteenth of each month for crediting to the domestic violence prevention fund.
5. The recorder, or designated official, shall prepare a copy of the license and certificate and transmit them to the registrar of vital statistics who shall record them in a book of records kept in the registrar's office for that purpose. The registrar shall index the records and upon request shall issue certified copies of the recorded license and certificate for a one dollar fee. The registrar shall keep an accurate account of these fees and shall turn them over to the state treasurer by the fifteenth of each month for crediting to the general fund.

**14-03-23. Marriage registered with bureau of vital statistics.**

Repealed by S.L. 1971, ch. 148, § 2.

**14-03-24. Certified record is evidence.**

The books of record of marriage licenses issued and certificates returned which are kept by a recorder, unless the board of county commissioners designates a different official, serving any county, or certified copies of such entries, and certified copies of the records of the registrar of vital statistics, must be received as evidence in all courts, and are prima facie evidence in all courts and places of the facts stated therein.

**14-03-25. Performing marriage ceremony without authority - Penalty.**

Every person who attempts to join others in marriage or to perform the marriage ceremony for another within this state without being authorized by law so to do must be punished as provided in section 14-03-28.

**14-03-26. Issuing license of marriage between Negroes and whites - Penalty.**

Repealed by S.L. 1955, ch. 126, § 3.

**14-03-27. Performing marriage ceremony between Negroes and whites - Penalty.**

Repealed by S.L. 1955, ch. 126, § 4.

**14-03-28. Penalty.**

Unless otherwise provided, any person violating any of the provisions of this chapter is guilty of a class A misdemeanor.