



# California Corporate & Securities Law

## Apparently, They Need To Swear More In North Dakota

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### Swearing Is Required By The California Constitution<sup>[1]</sup>

When I was appointed Commissioner of Corporations, I took an oath to support the U.S. and California constitutions. Although I don't recall inquiring about the source of the oath at the time, the oath (and its text) is set forth in Article XX, Section 3 of the California constitution. The constitution goes on to prohibit any other oath, declaration, or test as a qualification for any public office or employment. The Government Code actually has detailed provisions governing the "manner of taking, subscribing, and filing the required oath. See Government Code § 1360 *et seq.* (non civil service employees) and § 18150 (oaths for state employees generally).

### What Happens If You Don't Swear

There's a name for state officers that fail to subscribe to the constitutional oath – volunteers. Government Code § 1367 prohibits the payment of any compensation or reimbursement to any officer unless he or she has taken and subscribed to the oath. In addition, Government Code § 18154 provides that anyone appointed to a non-civil service position who fails to take the oath within the prescribed time forfeits his or her position. See *also* Government Code § 1770(i).

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## What Happens If You Swear

For state officers, the oath is filed with the [Secretary of State](#). These filings are maintained by the [Notary/Special Filings Division](#) and are public records. A person who states as true any material fact that he or she knows to be false is guilty of perjury and can be sent to prison. Government Code § 1368.

### Why There May Be Insufficient Swearing In North Dakota

Recently, I came across this blog [post](#) by Assistant Professor Joshua P. Fershee at the University of North Dakota School of Law. He reports on the recent discovery that the North Dakota Constitution fails to require that members of the executive branch be bound by an oath or affirmation to support the U.S. Constitution as required by Article VI, Section 3 of the United States Constitution. Don't worry about losing the Peace Garden State, the North Dakota legislature this spring passed this [concurrent resolution](#) to fix the problem. My understanding is that it will go before the voters next year.

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[1] Technically, the constitution permits affirming as well as swearing.

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